Affairs, decided not to allow FDI in retail trade. This is reported in the 'Business Standard' of 27th August. Then, the Steering Group of the Planning Commission on FDI, headed by Shri N.K. Singh, recommended not to allow FDI in retail trade. There is another Report called 'Foreign Investment'. This is also a Planning Commission document. On page 46 of the Report, it is stated that FDI will be allowed. But suddenly, we have come to know that the Tenth Plan document, which is going to be discussed by the NDC tomorrow, has a recommendation by a Task Force that FDI be allowed in retail trade. Now, Sir, retail trade gives employment to 2 crore people, and, in the background of the experience of the East Asian and South-East Asian nations, we feel that there will be a drastic cut in employment in this retail sector. Therefore, Sir, we would like to know from the hon. Finance Minister whether he will clear the apprehension.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Sir, I will take only a minute. This issue has already been clarified in the other House. There is no such proposal, and the hon. Member is reading far too much in what is after all a document for Plan consideration.

श्री सभापति : कम्पीटिशन बिल लेने से पहले मैं माननीय सदस्यों को सूचित करना चाहता हूं कि आज माननीय प्रधान मंत्री जी द्वारा अकाल के संबंध में दिये गये वक्तव्य पर स्टेटमेंट की बात थी । मैंने क्वेश्चन के समय सब माननीय सदस्यों से रिक्वैस्ट की थी कि यदि कुछ पूछना चाहें तो पूछ लें । अब आप कृपया उसका इंतजार न करें, वह स्टेटमेंट नहीं दिया जाएगा ।

GOVERNMENT BILL

The Competition Bill, 2002

SHRI PRANAB MUKHERJEE (West Bengal): Thank you, Mr. Chairman, Sir, for giving me this opportunity to explain my perceptions in this piece of legislation, which was examined and scrutinised by the Department-related Parliamentary Standing Committee dealing with Home, Law, Justice and Company Affairs, at that point of time. Sir, while moving the Bill, the hon. Finance Minister pointed out that this Bill was introduced in August, 2001, and referred to the Standing Committee. The Standing Committee presented its Report after it examined it over a period of one full year, in 13 sittings.

[THE DEPUTY CHAIRMAN in the Chair]

Sir, before that also, there were some initiatives taken in respect of this Competition Bill. At the initial stage, there were lot of doubts. Naturally, our steps were faulty, halting and hesitant. The first announcement in respect of the Competition Bill was made by the hon. Finance Minister in his Budget Speech of 1999-2000. But, prior to that, the Ministry of Commerce, which is the nodal Ministry in respect of World Trade Organisation, after the declaration of the Singapore Ministerial Conference, set up an Expert Group, under the Chairmanship of Mr. Chakravarthy, to examine the necessity for such a Bill in the context of trade and investment. That Expert Group examined a large number of issues, including TRIPs, trade and investment, trade and competition, anti-dumping and the related matters. After the announcement in the Budget, an Expert Group was appointed, under the Chairmanship of Mr. Raghvan. After the report of the Experts Group being made available, a concept Bill was circulated through the website of the Department of Company Affairs, and in the usual process, the consultations took place between the various Ministries and the State Governments. Ultimately, in this shape, the Bill came. While considering the Bill, there were different views. We had a very long discussion; I would not like to go into the details of it. But, as it is, in one way, it is a major improvement in our corporate governance. Therefore, we shall have to look into it from that perspective. The Committee had the privilege of having discussions with not only a large number of bodies representing trade, commerce and industry, like FICCI, ASSOCHAM, PHD Chamber of Commerce and Industry, but also a large number of professional bodies like the Institute of Chartered Accountants, the Institute of Cost Accountants and the lending organisations like IDBI and the institutions associated with the stock market like the National Stock Exchange and SEBI. After that, the Report was placed, and I am happy that the hon. Minister has referred to the fact that, except on three areas, the Government has accepted the recommendations of the Committee. The Bill which is having 66 clauses deals with certain major aspects, and certain conceptual formulations have been made therein. They require not only the attention of the Government but also of all those who are concerned with it.

The very fundamental question arose whether the MRTP Act which was passed by both Houses of Parliament in 1969 could do this job; and, whether, by making certain appropriate amendments in the MRTP Act, the objective of advocating competition, preventing restrictive trade practices,

and encouraging competition could have been possible or not. It was found that, with the changing scenario, and, specially, with the opening up of the economy, with the growing globalisation, the institutional arrangements and the legal framework which were available in a, more or less, controlled economy would not be adequate to reflect the situation prevailing right now. For example, Madam, in the early eighties, only 40 countries of the world had the competition law. Even a country like United Kingdom did not have the competition law till 1996, and, today, more than one hundred countries have already established the competition law. Trade and competition is going to be a debatable subject in the series of negotiations, which are coming, related to the WTO. Therefore, it was considered necessary to have an appropriate legal framework to encourage competition and also to make a departure from the practices which we used to have. If we look at the entire thrust of the MRTP Act, it was on that side, and my colleague, Dr. Singh, as Finance Minister, had to do away with these aspects of the MRTP Act even before we conceptualised about the introduction of the Competition Bill. In the mid eighties, the ceiling which was fixed for the monopoly houses was expanded and later on removed. Today, competition is going to be the crux of not only in the manufacturing sector but also in many other areas. Therefore, there is a need for competition advocacy. One of the major objectives of this Bill, for which a legal framework is being provided, is to protect the consumers. There would be extreme difficulties, if somebody abuses the dominance. The new concept that has been brought in this Bill is that dominance as such is not bad, but abuse of dominance is bad. To prevent the abuse of dominance an institutional arrangement, in the form of the Competition Commission of India, is being established. As regards the procedure of appointment of Chairman and Members of the Competition Commission of India, it is being amended. In the original Bill, it was provided that a collegium consisting of the Ministers of two relevant Ministries and certain other persons would select them. Now, the Government has said that it will select them. Naturally, the Government has kept with it the power to select these persons.

There are certain issues which I would like to place before the House and I request the hon. Minister to respond to them. One of the issues, which was debated, is this. I am not a legal expert. Many legal luminaries are there in this House and they may throw some light on this issue. One of the provisions is that the Competition Commission of India will be a body corporate. It can sue and it can be sued. In the Standing Committee, it was discussed that this body was not a quasi-judicial body,

but almost a judicial body. Its major job would be to adjudicate. A judicial body does not sue anybody. It only passes the order. Therefore, the question was whether this concept would be contradictory or not. That position requires a little clarification.

Secondly, I agree that the Competition Commission of India need not be overloaded by the retired Judges or by the sitting Judges. But, at the same time, when you are giving it enormous judicial powers for adjudication, to go into various legal aspects, would it not be proper? It is not necessary that it should be institutionalised in the Act itself. But, while appointing the Chairman and other Members of the Competition Commission of India, the Government should consider a proper mix, a proper blend, of persons. As you have suggested, in the initial stage, one of the jobs of the Competition Commission would be to create an awareness of the need for competition, to create a competitive atmosphere and to advocate competition. In that context, the selection of the persons should be such that it should reflect a proper blend of judiciary and other walks of life.

The third issue to which I would like to draw the attention of the hon. Minister is clause 66, which deals, in detail, with the consequences, which will take place after the abolition of the MRTP Commission. It deals with the cases pending before it and the fate of the Members of the MRTP Commission, including the Chairman and other employees. So far as the Chairman and the Members are concerned, they will be given due compensation. So far as the other employees are concerned, as per the provisions, those who are on deputation will go back or will be riverted back to their parent Departments and those who are on the rolls of the MRTP Commission will be absorbed by the Government of India. But here one phrase, "unless they are terminated", has been used. What I would like to know from the hon. Minister is whether there will be any premature termination or whether their services will be terminated in normal course of retirement. An interpretation of this becomes difficult, as both the words "either terminated" and "or retired" are used. In normal course, their services are terminated after retirement. Then, I have nothing to say. As in the case of employees of the Company Law Board, - which the hon. Finance Minister was gracious enough to accept, at the very beginning, while moving the Bill - a similar, humanitarian consideration should be shown to the employees of MRTPC, and, particularly, to those who have a long time to go for the retirement.

The third aspect to which I would like to draw the attention of the hon. Finance Minister is about the number which we have fixed - minimum is two and maximum is ten. Now, you are transferring a large number of cases from the MRTP cases. Some of these cases related to unfair trade practices will go to the consumer courts and consumer commission - The National Commission for Consumer Protection - but the cases which are related to MRTP, will be transferred to this body. Now, do you have any time frame by which these old cases would be disposed of? I am not going into the details. For example, while participating in the discussion on the Companies (Second Amendment) Bill, I pointed out that some of the cases were pending for as long as 25 years. In the case of MRTP Commission also, a large number of cases are quite old. Therefore, this is the point to which I would like to draw the attention of the hon. Finance Minister and get a response from him. After all, after the Commission is set up, we will have to ask them to have a time-frame by which these cases would be disposed of.

The fourth point to which I would like to draw the attention - we have referred to it in the Report itself - is that there may be some anomaly between the Consumer Protection Act and this Act. We advice the Government to reconcile the position, and, if there be any anomaly, that should be removed and it should be harmonised. I do not know, in his introductory remarks, the hon. Finance Minister has not said whether that exercise has been made or not. Otherwise, very shortly, the Government will have to come with amendments.

The fifth aspect to which I would like to draw the attention of the hon. Finance Minister is - as has been pointed out, in detail, in the Report; in the discussion, many Members made their contribution in this regard - even in the Act, there is no precise definition of 'competition'. Would it pose any legal problem later on? That is the question. Because clause 2 defines various aspects, but 'competition' as such has not been defined in the Act itself. And, we have accepted 'competition' in the sense we understand - competition between two- economic enterprises to draw customers towards their products. And, it has invariably been found that in large number of cases, the competition kills the competitor, and, ultimately, it degenerates into monopoly. To prevent that kind of a situation, the concept of a Competition Bill and Competition Commission has been brought. But framing the rules, special care will have to be taken in respect of predatory pricing and certain other means, through which this tendency gets pronounced in the market.

The last point to which I would like to draw the attention of the hon. Finance Minister, we have elaborately discussed it in the Report, while replying to the debate, he. should clarify it - is in regard to the merger amalgamation of companies. Specially, the organised industries expressed concern that, so far, even the big companies of India, compared to the multinational corporations, are all pigmies, and the restrictions which we are putting on merger amalgamation are going to put the Indian companies in a non-competitive situation compared to their counterparts.

In other words, while framing the rules, you shall have to be careful and see to it that the Indian companies do not face difficulties in respect of merger amalgamation and combination, in due course of time. With these words, I support the Bill.

Madam, I take this opportunity to place on record our appreciation for the cooperation which we had received from the Department of the hon. Finance Minister when we were discussing this Bill. He deserves special thanks from the Members of the Committee. When we took up the Bill -- in fact, it has a long history -- we took one full year to discuss it. We had 13 sittings and each sitting was spread over 7-8 hours. We began considering this Bill when Shri Arun Jaitley was the Minister in charge and we ended when Shri Jaswant Singh took over the charge. What happened was, the Department was transferred to the Ministry of Finance. Then a technical issue arose because we could not complete the report by then. We had examined the witnesses but we could not complete the report and in between ministerial changes took place. As per the Allocation of Business Rules, the Department of Company Affairs was transferred from the Ministry of Law and Justice to the Ministry of Finance. But the Minister was gracious enough to write to me to continue with the job, and with the permission of the hon. Chairman, it was ensured that till the Committee submitted its report, the physical transfer of the Department of Company Affairs from the Standing Committee on Home Affairs to the Standing Committee on Finance would not take place. For that I thank the hon. Minister. With these words, I once again support the Bill. Thank you.

SHRI ARUN JAITLEY (Gujarat): Madam, after a very elaborate presentation by Shri Pranab Mukherjee, there is very little that remains to be said on the Competition Bill. This Session has seen a large number of economic legislations being legislated in this House. Amongst them, the Competition Bill is not merely the current need, but it is also a futuristic legislation. It is a futuristic legislation because we have so far lived under

the MRTP regime. The MRTP law was legislated in 1969 when the regime was more regulated. The MRTP Act was enacted to deal with restrictive and unfair trade practices. As Shri Pranab Mukherjee has pointed out, it was enacted on the presumption that the size of a corporation was something which was to be eminently discouraged. When the law was originally enacted, in fact, the size of the business world was almost regarded as an evil. But this became somewhat irrelevant to the present times. We need our corporations today to compete globally. We need them to be very large in size. We also need them to benefit from the economies of scale. But, at the same time, we must also take care that no abuse of that takes place. The second reason why the MRTP Act has lost its relevance is, as it was pointed out, there are areas under unfair trade practices which have a lot of commonality with the Consumer Forum. Therefore, that is one jurisdiction which is gradually moving away from the MRTP Commission and what remains now is a restrictive trade practice. The MRTP Act has 17 trade practices which are referred to, *per se* as restrictive trade practices. In a market regulated economy, perhaps, a very large number of them may not even be regarded as restrictive trade practices in the present context. So the Competition Bill has been brought keeping this thing in mind. The Competition Bill has three basic components. The underlying intention of each of the three components is that in a free market economy or a regulated economy, when aberrations start from the market itself, should the economy and the Government and the system be helpless in dealing with those aberrations? You give them freedom, but you expect a certain amount of fairness along with that freedom. And, that fairness will be ensured by putting a regulatory mechanism and the rules in place which every corporation has to follow. The first component, therefore, which is dealt with under clause 3 of this Bill is the anti-competitive practices. There is a complete prohibition that no corporation, no company, shall indulge in any form of anti-competitive practices. I may mention here that those 17 restrictive trade practices under the MRTP Act have been reduced, on a presumption, to four anti-competitive practices. Now, these are four anti-competitive practices which are eminently presumed to be *per se* anti-competitive. One instance is large companies which control the market share, starting regulating the sale price. The object of competition is, when competition increases, quality will improve, quantums will improve, prices will come down and the consumer will benefit. The essence of this law is that the consumer interest is to be protected. It is a macro law unlike the Consumer Protection Act, which is a

micro law to redress the grievances of the consumer, which protects through the market economy, the interest of the consumer. But, if all of them gang up, all of them form a cartel, and then the says, "None of us will sell below this price" -- we had last year instances of cement companies in this country doing it -- in such a case, will the system be helpless or will there be a forum like Competition Commission which will have the jurisdiction to pass appropriate orders to crack and break a cartel of this kind? Another anti-competitive practice, besides cartelisation in terms of prices, is also to limit the supply. We find in the international oil arena, at times, the oil supplies are restricted and the result of it is that prices go up. So, if you restrict supplies, consumer interest is adversely affected. The third is, you can divide markets to eliminate competition. You can say somebody will sell only in the East and somebody else will sell only in the West, so that in the respective geographical markets, competition is eliminated. Now, this is *per se* an anti-competitive practice. The other instance of anti-corrupt practice, which is given, is collusive bidding or bid-rigging in matters of contracts. Now, these are four practices, which are *per se* regarded as anti-competitive; they are prohibited, they will be penalised, but there can be other market practices also in addition to these four, which, by rule of reason, can be anti-competitive. That is the essence of the first part of this law and I feel that this is one aspect, which requires to be put in force at the earliest. The second component of this Bill relates to size. But, unlike the MRTP Act, it doesn't consider size *per se* as evil. Market dominance is not itself prohibited; it is the abuse of market dominance, which really has been considered to be objectionable, as far as this law is concerned and one of the illustrations which is given here is predatory pricing. Predatory pricing is indulged in by a very large corporation, which may have big pockets, which can sell below the cost price. By doing so, it can eliminate competition and once competition is eliminated, it can create a situation where it can exploit the market. These are two aspects of this Bill which are authorities now, which are jurisdictions vested in the Competition Commission, which, I do not think, there is any dispute about. But, one area that Mr. Pranab Mukherjee did mention, there is a considerable debate on that area, which is with regard to amalgamations and mergers. This has been referred to as combination control, as far as this Bill is concerned. Now, this is a debate, which has gone on in several jurisdictions. But, in most large economies, the principle that they have followed is that if the effect of a merger or an amalgamation is to have an appreciable adverse effect on competition, that

is to say, if there are four large scooter manufacturers in India and they decide to all merge, and, therefore, the effect of the merger is that they eliminate competition altogether, and the consumers, who would have had benefited from the competition in terms of quality, in terms of prices, are denied that, should then, the system be helpless and permit such a merger to take place? Now, in advanced western economies, they have been quite rigid about this provision. There has been a considerable debate, as far as the industry in India is concerned, whether this provision is really required at this stage of our economy, in this particular Bill or not. There have been examples in several countries, over a hundred countries, of the competition or anti-trust law and a number of them actually provide for prior permission of the Anti Trust Authority or the Competition Authority before a merger or amalgamation can take place. In this law, therefore, as far as rules of merger and amalgamation are concerned, the Minister of Finance has made them quite liberal in the first instance. There is a threshold limit which is provided. I saw one of the figures which was given out in an article written by one of the Advisers to the CII. If those threshold limits are taken into consideration at the current rates, then, there are not going to be more than 70 to 75 Indian corporations which are going to get covered under that. Firstly, the threshold limit is reasonably high; secondly, besides the threshold limit being reasonably high, you must be in the same product line amongst those 75 companies to merge together, and thirdly, the effect of that merger would be to eliminate competition. And, one of the factors which has to be kept in mind today is that competition does not get eliminated merely by the merger because a large number of products are such that, because of the present tariff barriers, they are internationally available. And, the availability of the product even from outside because of the reasonable tariff barriers is one of the considerations which has been kept in mind. Prior permission before merger and amalgamation, which could have discouraged some mergers and amalgamations, has been made optional. The corporations have been permitted to give an advance notice of merger. That is, for an advanced ruling, they have an option to go to the Competition Commission and say, "Well, I intend to merge; please give me an advanced ruling whether this will have an appreciable adverse effect on competition or not." Alternatively, if they don't choose to do that, then, within one year of the merger, -- one year is the limit when the curtains will go down -- the Competition Commission itself, within the first one year, can say whether there has been an appreciable adverse effect on competition. In such a situation, the difficulty would, necessarily, arise because once a merger has

taken place, then, to crack up a corporation and then unscramble the egg becomes a lot more difficult, as we have seen in America happening recently in the Microsoft case itself. So, this is one difficulty which does arise in these cases. Therefore, there are two provisions in this law which, I find, are very interesting. The first provision is in clause 1 itself, which says, "This shall come into force only in gradual stages." Our economy is at a stage where we need a lot of advocacy as far as competition is concerned. There is one suggestion which I would like to give to the Finance Minister. Stage 1 is the advocacy function and stage 2 is the stage where provisions relating to anti-competitive practices, those relating to abuse of dominance come into force. As the free market economy has grown further, the last Chapter relating to amalgamations and mergers comes into force at the third stage, when the economy is more prepared for a provision of this kind.

There is one more provision which is going to create a lot of interesting situations; that is, clause 32. Clause 32 gives jurisdiction to India's Competition Commission on acts which take place outside India, but the impact of which is on the Indian market itself. Now, a lot of people ask: By this provision, would you be controlling what goes on in foreign markets, if it is going to impact the domestic market itself? Questions have been raised; there are some questions in the media also in this connection. But this is peculiar now to this law almost in several jurisdictions in the world. Because of the globalisation of the economy itself, products produced elsewhere are making themselves available in other jurisdictions, and once competition gets eliminated outside, or, there is an anti-competitive practice outside, this may have an impact on the domestic market itself. We remember a case, two years ago, I think, relating to the merger of GE and Honeywell, where the competition authorities in the United States permitted it, but the European Union took a plea saying, "You might have merged in your own jurisdiction with permission, but the impact of this merger is felt in our market as well, and we are not going to accept this". Therefore, the European Union itself took a different view. In that sense, we will have to see, as the law grows, how this provision of clause 32 gets worked out itself.

Madam, one final comment with regard to the setting up of these regulators. Shri Pranab Mukherjee mentioned a very vital point. I am almost convinced after seeing the performance of a large number of our regulators that the number of regulators, their functions and jurisdictions are going to increase. The Regulator is going to be as good as the persons

who man this Regulator. Unfortunately, we have got into a tradition now, in the last few years, where all our regulatory mechanisms are becoming parking lots for retired judges or retired civil servants. A large number of them have absolutely no idea with regard to the functions of those regulatory mechanisms. These commissions are going to play an important role rather than just be commissions, where retired people are to be adjusted and jobs are to be found for some retired persons either from the judiciary or from the Civil Services. These are areas, which relate eminently to the functioning of the market. Unless we make it a point to have a large number of those who understand the market and who understand these areas, the functioning of some of these commissions may eventually run into difficulty. Madam, with these words, I propose this Bill for the approval of this House.

SHRI P.PRABHAKAR REDDY (Andhra Pradesh): Madam Deputy Chairperson, I thank you, for giving me an opportunity to speak on the Competition Bill, 2002. Madam, after listening to senior Members like Shri Pranab Mukherjee and Shri Arun Jaitely, I think what I am going to say is going to be superfluous. But, anyway, I will make an attempt. Madam, in our country, the economic scenario has undergone a sea change. Madam, in the global economic scenario the market economy has come to play a dominant role and slowly we are moving away from the regulated economy to liberalisation. Madam, in the wake of these changes, it has become necessary to get rid of certain outdated, outlived, laws and make new provisions or new laws. And one such legislation is the Competition Bill, 2002 seeking to replace the Monopolies and Restrictive Trade Practices Act. Madam, when the MRTP Act was brought into existence, at that time, it was designed to control the size of the companies because the mindset then was that the size was synonymous with monopoly. Madam, at that time, the MRTP Act was brought into existence to control the size of the company but that idea has become outdated. Today, the concept is, bigger the companies, better economy of scales and better ability will they have to face the competition.

SHRI PRITHVIRAJ CHAVAN (Maharashtra): Will you yield for a minute? I think I need to point it out here. Even Mr. Jaitely mentioned about size a number of times. In the 1991 amendment of the MRTP Act, the concept of size was given up. Nobody is mentioning that. We continue to say that MRTP dealt with size. Yes, originally it did, but after the 1999 amendment, the concept of size was given up.

1.00 p.m.

SHRI P.PRABHAKAR REDDY: According to the present Bill, the size is no problem and dominance is also not frowned upon. But the only thing is, making misuse of the dominance is a problem. Madam, I would like to underline the importance of this Bill. I will quote only two paragraphs from the article written by Mr. Joseph Stiglitz. He is a professor of economics at Columbia University and was formerly Chairman of the Council of Economic Advisers to President Clinton and Chief Economist and Senior Vice President of the World Bank.

Madam, I quote:

> "Competition is the basis of a dynamic market economy. Yet, as Adam Smith recognised firms inevitably seek to restrict it: More profits can be made by creating a monopoly rather than through better products. The Microsoft case in America brought home both the variety of abusive practices and the chilling effect anti-competitive behaviour can have on innovation. So government must "set the rules of the game" to maintain a fair playing field, and vibrant competition." Madam, "The Clinton era anti-trust team exposed and successfully prosecuted some major price fixing conspiracies that reached across international borders and cost global consumers billions of dollars. They attacked, for example, predatory pricing by airlines, in which established airlines drove out low cost carriers not only by cutting fares, but by adding substantial capacity - at great losses;..."But once the low-cost carriers were driven out, the big airlines raised their prices and cut back on services once again". Madam, he concludes by saying, "Strong competition is not just a luxury, to be enjoyed by the rich countries, but a real necessity for those striving to create democratic market economies".

Madam, this is a very useful piece of legislation. Therefore, I wholeheartedly welcome this Bill. But, while welcoming this Bill, I would like to make a few suggestions to the hon. Finance Minister.

Madam, the hon. Member, Shri Arun Jaitley, said that, earlier, the concept was that of the size, but that, in the present Bill, size was not the criterion. As I understand it, clause 5 conveys that in the matter of mergers and combinations, size is the only criterion that has been taken into

consideration. It says that, if the combined turn-over of the companies, which are going to be merged, exceeds Rs.3,000 crores in turn-over or Rs.1,000 crores, in asset value, then they come under the purview of the Act. Unfortunately, only the 'size' has been taken to be the criterion. In my respectful submission, Madam, size is not that important; there are other factors. There may be companies which are very big in size, and, yet, they may not pose any problem, as far as competition is concerned. On the contrary, there may be small companies which have asset value below Rs.1,000 crores, and annual turnover of less than Rs. 3,000 crores, yet, they may pose a problem and stifle the competition. Therefore, my submission is that, instead of taking only the size as the criterion, even factors like the market share, the market, size, the area in which they have dominance in the market, and the percentage of dominance in the market, should have been taken into consideration. Unfortunately, in this Bill also, the size has been given more importance.

Then, the other point, which I would like to make, is that we are trying to attract investments in a big way. We are trying to attract the MNCs. The thing is that the threshold limit that we have fixed -- Rs.1,000 crores and Rs.3,000 crores is slightly more; If it is a foreign company, it is Rs.2,000 crores of asset value, and Rs.6000 crores of annual turnover. But in the international context, this amount is not big. The MNCs that come here have, invariably, an asset value of more than Rs.2000 crores. So, it will be an impediment and have a dampening effect on the MNCs to come to India.

The other point, which I would like to mention, is that mergers are being governed by the High Courts and the SEBI. Once again, this very matter would be examined by the CCI. Our effort now is to reduce the number of hurdles and procedural hassles. But we are creating one more authority; and one more peculiar situation might arise from out of this. Hypothetically speaking, if the High Court agrees that the merger is okay in respect of the two companies, and it ultimately comes to the CCI, and, if the CCI, looking at it from a different angle, says that the merger is bad, what will happen? This is a peculiar situation, which needs the attention of the Government.

Madam, one more point that I would like to raise is about the definition - as Shri Pranab Mukherjee also pointed out -- of appreciable adverse affect on competition', the words used repeatedly in this Bill, particularly in clause 6. This clause says that a common person or an

enterprise that enters into a combination, which causes or is likely to cause an appreciable adverse affect on competition within the relevant market in India, then, such a combination shall be void. The definition is not clear. What is appreciable adverse effect on competition? It can be a subjective decision. Each person can interpret it in a different way. If the market share is 51 per cent, one may perceive it as if it will have an adverse effect on competition; and, in another case, even if there is a market share of 80%, the other person might take the view that it may not have an adverse effect. That apart; not only the persons who are adjudicating, but even the persons who wants to combine should have clarity. They should have a clear idea as to what is the meaning of adverse effect on competition. So, this is very, very important; otherwise, this will lead to a lot of complications, discriminations and it will also lead to corruption. So, this has to be clarified because this is very important.

Madam, the other fact which I would like to say is - this is a very important point, according to me - the independence of the Commission. Madam, it has been stated in the Statement of Objects and Reasons of the Bill that this Commission is going to be a quasi-judicial body, but there are several provisions in the Bill which say that it is not going to act independently. For example, clause 53(1) which says, "The Government reserves the right to issue directions on policy matters." Clause 54(1) says, "The Government has a right to supersede the Commission." There is another clause which says that even though the Commission expresses its opinion, it is not binding on the Government, and the decision of the Government is final. I don't understand this. On the one hand, we are saying that this is a quasi-judicial body; on the other hand, we are saying that the decisions of the CCI are not final. It is left to the discretion of the Government; the Government has got a right to supersede the Commission and it can give directions from time to time to the Commission. So, this will seriously impair the independence of the Commission. This should not be the case. The Commission should act in an independent manner, particularly keeping in mind the fact that the appointment of members is being made by a very, very high level committee consisting of the Chief Justice of India, the Finance Minister, the concerned Minister and the Cabinet Secretary. The collegium of these four is going to make these appointments. From that point of view, if the Government supersedes the decisions of the Commission, then this will definitely impair the independence of the Commission.

Madam, my next point is this. There is no appeal even to the High Court. The appeal lies only to the Supreme Court. It has got powers even to overrule the decisions of the High Court. So, such a body should act in an independent manner. This is my submission.

Madam, the last point which I would like to make is this. As hon. Arun Jaitley has said, this Commission should not become a parking place for retired people. This is a new law. This has to be in tune with the time, with the changing scenario; this is a futuristic legislation. The age limit that has been prescribed in the law is, 75 years for the Chairman and 65 years for members. This is going to be another sanctuary for retired bureaucrats and retired judges. This should not be the case, and people with young blood and with new ideas should be there in the Commission. So, this is my suggestion to the hon. Minister.

Madam, another very dangerous provision is there in clause 12, which says that no member shall seek appointment for a period of six months in any company that he had adjudicated. That means, after six months, he is at liberty. This is a very, very dangerous provision. We are demerging; we are giving so much of power to the Commission; and if, after retirement, a member goes and joins a company, which he had adjudicated, then this will have very serious implications and complications. I feel that this provision should go. With these words, I support this Bill.

THE DEPUTY CHAIRMAN: Now, the question is: Should we finish this Bill and then do the closing ceremony because today we have to adjourn *sine die*? There are six more speakers who have to speak on this Bill.

SHRI PRANAB MUKHERJEE: Madam, we can complete it.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION (SHRI O. RAJAGOPAL): We can complete it.

THE DEPUTY CHAIRMAN: Defer the lunch!

SHRI PRANAB MUKHERJEE: Members can go and have their lunch. There should not be any lunch break today.

SHRI O. RAJAGOPAL: Madam, skip the lunch hour today.

THE DEPUTY CHAIRMAN: The Chair can continue without having lunch! Okay. The sense of the House is, we should continue. Shri Jibon Roy.

SHRI JIBON ROY (West Bengal): Madam Deputy Chairperson, I thank you for giving me this opportunity to speak. Madam, one can pose a brave face that this Bill is a replacement of the MRTP Act or it will save the consumer. In real effect - this Bill will be passed - it a tragic submission to the diktats of the international finance capital to allow multinational companies for plying our nation and it is a declaration to kill our national companies. If one goes into the Bill, he will find that the first part, the operative part is not being discussed here or outside. It is a declaration to kill our national companies. Yes. The thing is that you call for competition. What competition does it mean? At the national level, it is a competition between a mouse and a cat. If you bring in the companies of international level, then it is a competition between a chicken and an elephant and the referee is a bunch of toothless vegetarians, and may at any time, as it happens marketed in any market inside and outside. What kind of a referee can it be if you open the entire country to the world for competition. Madam, the thing is that, what does the Bill say? The Bill talks about the withdrawal of the Government from production. By bringing forward the Competition Bill, can you explain an enterprise as to what an enterprise is? If you take down all the means withdrawal of the Government from production of goods and services. It is stated in the Bill that an enterprise means that all, excepting the sovereign areas of the Government, atomic energy and space. That means from a sawmill to a steel mill, from education to health, according to the Bill, nowhere the Government will exist. With the strength of clause 52(a) you can continue. But it is a basic declaration that the Government has withdrawn, not only from industry itself, but also form municipal services, health services, education, etc. Then it says that there will be no synergy between one enterprise and another enterprise and nor an agreement between one enterprise and another. The Railways cannot buy railway engines from the BHEL and Chitaranjan Locomotives through an agreement. You will have to go to the tender and other things. It means that there can be no synergy between the SAIL and the RINL. It means everything will go. No agreement can be signed between the companies. Nothing can be sold below the cost price. If everything goes out of the control of the Government, when everything is in competition, then a time may come when health services will also be profiteering enterprise, education also will be profiteering enterprise, primary schools will be profiteering enterprise. Even *safai* will be profiteering enterprise. You are leading the national to a disaster. You lead. But the thing is that, if you are so confident, if the Government is so confident, then

why are they not going to the people, and why are they not going to the masses? On the question of amalgamation, you have put companies of Rs.1000 crores asset with the companies having asset of an infinite amount together in the single basket and they will be treated at par. You are talking that you will deal with multinational companies and world competitors. They have got workshop in one country, production in another country, selling agency in another country and how will you fight against multinational companies on the basis of this competition law? The point is, we can only protest. We can register our protest on record. Beyond that, we cannot do anything. But it is our duty to put it on record that this attitude, this decision, will, in the end, encroach upon our sovereignty. We have time up to 2005 to enact this legislation. We could have taken advantage of that. We could have found out various modalities to tackle this issue. Madam, China has taken a position. We are talking, again and again, about China, which has a policy of 'one nation and two systems.' We could have taken that position. We could have discussed. We could have taken time. Instead, we are just submitting, one after the other. What is happening in the USA? Recently, amalgamation of Honey Well and General Electricals had taken place. Madam, Alcola, owned by the Treasury Secretary himself formed an international cartel, and said, "We will stop cartel from India." It has formed an international cartel on aluminium and hiked the price of aluminium, all over the world. It said that some Commission would control the cartelisation of the product. It has became a laughing stock, and making the nation fools. Very recently, Mr. Bush, President of the USA, was trying to form a steel cartel and trying to dictate the international prices of steel. So, my point is, we should take a patriotic. I pose a question. Is there any inclination on the part of the Government to take a patriotic decision over the matter and take a common position to confront the international diktats or the WTO regulations? Otherwise, we are leading the country to nowhere.

Now, empty House. Decision is already taken. Before I conclude, Madam, I want to comment something on politics too. To our understanding, communalisation of the society ,alone is not hampering politics. Now, it appears that it is hampering ecorlomics too. Keeping that in the forefront, everything is being done in our country. The economy is going out of politics. All kinds of draconian measures are being taken and people are not consulted, since they know that they cannot fight the election by making reforms as a plank. Therefore, no bigger political party neither the party in power nor the main party in the Opposition is taking

reforms as a matter of electoral politics. Madam, three or four elections have taken place. Nobody has taken the reforms to the masses because they know, with reforms as their political plank, they cannot win any election. And, now, to our surprise, this time, communal politics has...*(time-bell)*...I am finishing in one minute.

THE DEPUTY CHAIRMAN: I think we are considering the Competition Bill.

SHRI JIBON ROY: Madam, I am speaking only on Competition Bill. Communal politics has turned out to be the demarcating line between the main opposition and the ruling party. Therefore, they are all united on economics. And, because they are all united on economics, it is helping the Ruling Party, the ruling combination, and our ruling classes.

My point is, we are going to pass this draconian Bill. We are passing this Bill within the allotted time of three hours, with empty benches, without discussing with the people and the masses. Communalism is the only focus of the masses. Economics is not there because, now, it suits everybody. I request Members of this House to rise to the occasion. We are leading the country to a position where we will be losing our independence. Time is not far off. Mr. Jaitley was saying, "Where is the national economy being stabbed?". You withdraw the Government from everywhere. No synergy between companies and companies. Amalgamate a company of thousand crores, with a company of thousands of crore. It is just killing. It is killing the nation, killing the national economy. With these words, I conclude, Madam.

SHRI P.G. NARAYANAN (Tamil Nadu): Sir, the Competition Bill seeks to ensure a fair competition in India, by prohibiting trade practices which cause an appreciable adverse effect on competition in markets within India. To facilitate this objective, the proposed Bill provides for the establishment of a quasi-judicial body, to be called the Competition Commission of India.

The composition and the job profile of this Commission should be widened so that the Indian markets can face competition from within the country and outside. International economic developments should extensively be studied by the Competition Commission to meet the international standards of market. The Competition Commission should gear up and undertake competition advocacy for creating awareness and imparting training on competition issues.

The proposed Bill aims at curbing the negative aspects of competition. The definition of 'negative aspects of the competition' should be made clear to an extent that it would not affect the genuine marketers within and outside the country.

The striking aspect of the Bill is that it proposes that the Central Government will also have powers to issue directions to the Commission on policy matters, after considering its suggestions, as well as the power to supersede the Commission, if such a situation is warranted.

But I would suggest that this vital power should be exercised in a very cautious manner, since the Competition Commission of India is having a quasi-judicial authority; and, since, further, against the decision of the Competition Commission an appeal can be entertained by the Supreme Court. The intervention of the Central Government to supersede the Commission will be counterproductive. Therefore, I submit that this aspect has to be carefully considered.

The proposed Bill confers power on the Competition Commission to levy penalty for contravention of its orders, failure to comply with its directions, making of false statements or omission to furnish material information, etc. The fine imposed by the Commission would, at least, be 10 per cent of the average turnover of the last three years, irrespective of the nature or gravity of the act. This has also to be meticulously looked into, to avoid victimization.

The proposed Bill has the power to order demerger, in the case of mergers and amalgamations that adversely affect competition. It should not be exercised instantly, as it will give an impression to the global markets that it is draconian. I request the hon. Minister to clarify this aspect of concern also. The Minister has to clarify this aspect. At this crucial juncture, we are saying 'goodby' to monopoly, and are saying 'helio' to competition. An enforcing agency, like the Trade- related Competition Commission has to be set up in keeping with the spirit of the law. Madam, people having a prejudiced mindset about the businessmen must be kept away from the agency. A mix of law, business, economics, and consumer interests must be brought for this purpose. Further, this group must be brought on par on issues relating to cross-border transactions, trade, direct investments, and mergers which have a direct bearing on the degree of competition in the domestic economy, as well as on the complex interaction between

technology and market power. In a dynamic environment of competition, it is the consumer who will benefit a lot. This should be the objective and main focus of the entire exercise. With these words, I support this Bill.

THE DEPUTY CHAIRMAN: Now, Mr. S. Viduthalai Virumbi. Mr. P.G. Narayan has supported the Bill, so, you also support it.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Madam, Deputy Chairperson, after this Bill becomes an Act, the MRTP Commission would be replaced with the Competition Commission of India. Madam, the MRTP Commission looked into the aspect of reducing the dominance of the dominant undertakings. Previously, there was a provision in the MRTP Act that if any undertaking produces, supplies, distributes, provides or controls 25 per cent of the Indian consumer's needs...*(Interruptions)*...

श्री बालकवि बैरागी (मध्य प्रदेश): मैडम, फाइनेंस मिनिस्टर नहीं हैं ।

SHRI S. VIDUTHALAI VIRUMBI: No; the Cabinet Minister is here. *(Interruptions)*....

श्री सुरेश पचौरी (मध्य प्रदेश): रेलवे मिनिस्टर हैं, उनको ऐडीशनल चार्ज मिल जाएगा फाइनेंस मिनिस्ट्रो का ।

SHRI S. VIDUTHALAI VIRUMBI: He will take the collective responsibility. ...*(Interruptions)*...

श्री हरीश रावत (उत्तरांचल): मैडम, रेलवे मिनिस्टर और फाइनेंस मिनिस्टर एक ही होने चाहिए ।

उपसभापति : ये भी बजट प्रेज़ेंट करते हैं और वे भी बजट प्रेज़ेंट करते हैं ।

श्री सुरेश पचौरी : लेकिन फाइनेंस वाले रेलवे को ज्यादा चला नहीं पाते हैं ।

SHRI S. VIDUTHALAI VIRUMBI: Mr. Nitish Kumar is a financial expert, sohe can take care of it.

श्री बालकवि बैरागी : मैडम, आपकी उदारता का यह सरकार बहुत दुरुपयोग करती है।

उपसभापति : कोई उपयोग करे तो मुझे उसमे कोई तकलीफ नहीं है लेकिन दुरुपयोग करे तो ज़रा मुश्किल होती है ।

श्री बालकवि बैरागी : मैं वही निवेदन कर रहा हूं मैडम ।

उपसभापति : विरुम्भी जी, बोलिए ।

SHRI S. VIDUTHALAI VIRUMBI: Previously, if any undertaking produces, supplies, distributes, provides, or controls 25 per cent of the consumer needs, then, it was branded as a monopoly institution, or a monopoly enterprise. This was analysed on the basis of value, cost, price, quantity and capacity, not by mere size of the economy. All these factors or one among these factors has to be taken into account to find out whether it is a monopoly institution or not. Now, what is of greater importance? Is it the size of the undertaking or the action of the undertaking? Previously, the size of the undertaking itself had been prohibited. Now, they say, the size of the undertaking might be immaterial, but the action of a particular undertaking has to be taken into account. Maybe, we are a little late. It was already there in the States. There the competition is based on the consumer welfare. In the European Union, not only the consumer welfare, but the action taken by an undertaking, and the after-effects of that action are also taken into account. In Britain, they take even the public interest into consideration. Recently, in the month of July, they blocked a move to merge Lloyds and Abbey National. And the reason they put forth was that it was not in the public interest, so it should be blocked. Therefore, different countries, like Britain, European Union etc., are analysing it in a different manner. We have just entered into the era of liberalisation. And in this era of liberalisation, there should be checks and balances on each other. Right now, I won't praise it or criticize it. Only after two or three years, we will be able to find out how it works. Then only, we can have an idea about this.

Madam, in sub-clause (3) of clause 10, there is a small anomaly. I would suggest that the words "subscribe to an oath of office", should be replaced with "subscribe to an oath or affirmation of office".

Now I come to clause 12, which is mentioned on page 10. It bars the Chairpersons, and other Members from accepting any employment with an adjudicated company for one year from the date on which they cease to hold office. But, what about their immediate relatives? Will they be allowed to take jobs in the adjudicated companies? Though the Chairperson and other Members have been debarred, their son-in-laws will be there in the States or in the continental banks. It has been the practice. Therefore, I would say that their immediate relatives should also be barred from taking

up jobs in companies which are under adjudication. If the immediate family members are allowed to take up jobs, then, there there is no purpose of having clause 12. If the relative of the Chairperson or Member is working in some company which is involved in some issues, then, does this clause serve any purpose? Even if the relative is employed in the adjudicated company abroad, it will be as if he is employed in India. That is, when the Commission goes for adjudication of a company, and when a *suo motu* action or a chargesheet is made, the people affected by the chargesheet can come out and say that it has been done without any reasonable ground. So, there is a loophole here. But we have to approach it in a judicial manner. If the Commission gives them any direction, it should be consistent with the Act. Whether it is consistent with the Act or not, should be looked into not by the Commission alone, but by the court also. Even though the Commission says that its direction is consistent with the Act, the affected person may go to the court and say that it is not consistent with the Act.

My third point is this. Even if a person, knowingly, fails to give some material details, it has to be proved, beyond doubt, by the Commission itself that he has concealed the information, knowingly. The court has to prove that it was done with his knowledge. Otherwise, he can come out with it afterwards. Therefore, even though the Competition Bill aims at curbing the monopoly, there is a possibility that they might escape from these three routes.

The Competition Commission of India is a quasi-judicial body. It is going to be appointed by the Executive. We have to appoint it. There is no harm in it. Now the point is that even though it is a quasi-judicial body,but, sometimes, on the one side, there might be the Government and on the other side, there might be some other undertaking. As per this Bill, the Government has been empowered to supersede the Commission itself. Then, it will be a situation just like article 356 of the Constitution of India. It means that the Government can itself act as a party, and it can also supersede the Commission, under which they have to get justice. Don't you feel that it will affect the effective functioning of the Commission? Or, is it a usual practice followed by all Commissions?

Now, I come to clause 47 which relates to Competition Advocacy. There was a Committee on Competition Advocacy. That Committee has already defined the term "Competition". If the Competition Commission works for the promotion of competition advocacy, clause 49 is a welcome

clause. The value of the assets is not based on the market value. As per this Bill, value of assets shall be determined by taking the book value of the assets. Madam, whether it would work in the public interest or not, the hon. Minister has to see. The hon. Minister has to go through this aspect as to whether the book value is better or the market value is better. We may have to go through all these things.

Then, Madam, regarding those employees who are working in the previous Commission, the Monopolies and Restrictive Trade Practices Commission, I would like to say that there are some employees who are there on deputation. This new Commission would take in those employees who are already regularised; this Commission would take them in. But, Madam, what about other employees? I have a doubt regarding them. I feel, they will be thrown out. What will be the position of those employees who have worked in the Monopolies and Restrictive Trade Practices Commission, after the new Commission comes into existence? Madam, the hon. Minister was kind enough to give some sort of assurance yesterday to Bhardwaj Ji. It does not mean that that assurance is taken as a precedent. The issue is the same there also. Since it is the same issue, I would request the hon. Minister, through you, to kindly see that those employees who are working in the Monopolies and Restrictive Trade Practices Commission are not thrown out of employment because of this - shall I say - merger; because this is also a type of merger; this is also a type of amalgamation. Madam, I feel, because of the merger, because of the amalgamation, the future of those employees who are working in the previous Commission should not be affected; they should not be deprived of their employment. When I say that they should not be deprived of, I mean that they should not be thrown out of their employment. Madam, in the Bill it has been said that all legal facilities would be given to all those employees who would lose their jobs due to this; they will be given all the dues which the Government has to pay to them. But what about the fate of the family of that person who is thrown out in this way? Madam, suppose a person would have worked in this Commission for 13 years. Now, if he is thrown out today, what will happen to his family? His son and daughter may be 8 or 9 years old; and they may be studying in 3rd or 4th standards; if the Government says that whatever legally it has to pay, it would pay; if the Government says that whatever an employee is entitled to, for example, gratuity, pension, etc. he would be paid, but he is thrown out, Madam, legally, it is all right. But, on moral grounds, I would like to know from the hon. Minister what would be fate of the family of that employee who is thrown out in this way? Madam,

on humanitarian grounds, it has to be seen that the employees who are working in the Monopolies and Restrictive Trade Practices Commission should be absorbed by the proposed Commission. I do not say this with regard to Chairman and Members - you may take them on your own accord. I am talking only about the employees. The aspect of absorption has to be taken into account with regard to the employees.

With these words, I conclude my speech. Thank you, Madam.

SHRI FALI S. NARIMAN (Nominated): I share - Madam, at the very beginning of my speech, I would like to say this - the anguish of Mr. Jibon Roy who bemoaned the fact that this very important Bill is being discussed on the very last day of this Session. I only wish to say one thing, that the objective of a competition law which has first gone through a high-powered committee, and, thereafter, the Select Committee should be the development of the Indian economy; and that should be the thrust or the objective. I would urge upon the hon. Finance Minister to kindly bear it in mind while framing rules since it is not mentioned in the Preamble at all. There is an indication in clause 32 that 'acts taking place outside India, but having an effect on competition in India' would be within the purview of the Commission. But that is a very indirect method of saying that the whole object of this law is for the promotion or furtherance or the development of the economy of India. That would be a good thrust for the Commission also to consider, and I would respectfully submit that since we are now creating one of the most highly powered bodies, under this Bill, with an expert Selection Committee, etc., the success or the failure of this Competition Bill will be centred around clause 9. It will depend upon the time that the busy persons, mentioned as the members of the Selection Committee including the Governor of the Reserve Bank, can spend on the selection of the personnel of the Committee. I do not mean to say anything in disrespect of retired Judges and things like that. As many people have mentioned, there are very competent retired Judges as well. But I only wish to say that this is a very new field. I do remember, when we were drafting the Convergence Bill, which is coming up next year, we were worried about who was going to have the vision and the direction, which this Competition Bill here in the present case will have. There have to be people who have the necessary vision and expertise and the personnel must be chosen, irrespective of their age - it is not merely the people who have retired, either the bureaucrats or judges - but persons who have made an extraordinary study of the subject, so that they are able to inspire confidence. I would,

respectfully, submit that this very dynamic piece of legislation must have dynamic non-retired persons in control of the Commission.

Secondly, I would like to take up the point, which the hon. Member, Shri Pranab Mukherjee, made for the consideration of the hon. Finance Minister. I find some problem in a body which is described as a corporate sole and a body corporate and has also the functions of a tribunal, whose orders are subject to appeal to the Supreme Court. I also have some difficulty in appreciating how a tribunal can have both offices and benches. A tribunal must have a bench. Therefore, it is a quasi-judicial tribunal. The Statement of Objects and Reasons says that "we are trying to create a quasi-judicial tribunal". Therefore, the assimilation of a corporate character to a quasi-judicial tribunal is something which is very difficult to understand. I am sure that it has been referred to or mentioned somewhere, but I am totally ignorant of it. I have not seen an enactment which says there is a body which is created as a body corporate and that very body corporate becomes a tribunal. It is like having a court which is a body corporate and the court exercising powers, because a quasi-judicial body must necessarily be composed of persons who constitute it and fit in under Article 136 of the Constitution to the definition of a tribunal with adjudicatory powers. That is the essence of this commission. Therefore, it would have been perhaps better to have left the corporate character of this commisson and give it a new name under the sole charge of the Director-General of the Commission. That would have been perfectly all right under the supervision of the Chairman. But, to assimilate a commission as a corporate body and, at the same time, describe it as a tribunal, makes it somewhat a hybrid character.

This, I think, ought to have been avoided. This brings me to one of the most important questions, which I do want the hon. Finance Minister to kindly consider.

Clause 53 expressly empowers the Central Government to decide finally on what are the questions of policy and directs that the Commission are bound by directions on the question of policy. And for non-compliance with such directions, the Commission can also be superseded. It is a point which was made by Mr. Virumbi. It is a very odd situation to find a tribunal being superseded on account of failure to comply with the directions of the Central Government. I ask myself whether the Supreme Court would entertain an appeal under the Section that you are providing, when an order

is of a body, which is not, strictly speaking, a tribunal. I do wish that if this is possible to be done by rules, the hon. Finance Minister may bifurcate the functions of this Commission suitably so that this Commission in its corproate character is distinct from the commission as a tribunal. Then, it would be perfectly understandable and it could be assimilated. It is very important that the Commission is bound on directions on questions of policy other than those relating to technical and administrative matters. What about an adjudicatory matter? I have no doubt that you, hon. Finance Minister, don't intend that the Government will give a direction, even with regard to a matter which is being adjudicated before the Tribunal, because it would be ridiculous to say that that was the intention of the Government. I have no doubt that it is not your intention. But, kindly, clarify it in the rules because it should not be said, as it is capable of being said, that under clause 53 matters of policy are to be determined. Finally, as to what is the matter of policy is to be determined, solely, by the Central Government and that could include adjudicatory functions.

Therefore, under the rules, it should be provided that adjudicatory functions of the Tribunal would certainly not include matters of policy. That, perhaps, would then explain Clause 53 and Clause 54 and will not lead to unnecessary litigation and misgivings on the part of most persons. I do support the Bill. It is a good thing that we are introducing it. But the most important thing is - the point which has been emphasised by Mr. Jaitely as well - the distinction between the Commission's corporate character and the Commission's quasi-judicial function may be amplified in the rules. Thirdly, the policy directions that are given cannot possibly include policy direction on adjudicatory functions of the Tribunal. Otherwise, it will cease to be a Tribunal, and it will lead to a great deal of unnecessary litigation, which, I respectfully submit, ought to be avoided for such a high-powered body, which is being created for the first time. Thank you.

THE DEPUTY CHAIRMAN: I have now Shri Prithviraj Chavan and Shri Apte to speak. श्री पृथ्वीराज चव्हाण । आप थोड़े समय में अपनी बात कह दें ।

SHRI PRITHVIRAJ CHAVAN: Thank you, Madam, I will not take much time. We are debating a very important piece of economic legislation on the last day of the Session, which has been very productive. I support the Bill because it is a new initiative to move on to globalise the economy. I support it with great apprehensions and concerns. I will take my time to highlight my concerns and apprehensions. My senior colleague and Leader, Shri Pranab Mukherjee, has chaired the Standing Committee, which cleared

this Bill. They put in a lot of effort and with the support of the Government, a good piece of legislation is coming. But, what are the apprehensions? A reference has been made to the MRTP Act, which is sought to be repealed. Particularly, Mr. Jaitely, who was instrumental and played a leading role in drafting this legislation, failed to mention that the MRTP Act was amended in 1991, to do away with its emphasis on bursting monopolies or restricting monopolies. It was 'anti-size' to begin with. But, after 1990-91 amendments, which the hon. Leader of the Opposition had the privilege to bring before the House, it was no longer 'anti-size.' From where did the original MRTP Act, 1969, flow? It drew its inspiration from articles 38 and 39 of the Constitution, which still seeks to prevent concentration of economic power. Perhaps, today the whole concept is now given up. Maybe BJP Government with its new economic philosophy will, probably, bring an amendment in the Budget Session to do away with these Articles of the Constitution, which seek to prevent the concentration of economic power. After 1991 amendment, when we deleted sections 21 to 26 of Chapter III of the MRTP Act, the MRTP Act was no longer able to get into monopolies and size, but was limited to restrictive trade practices. But, in the 1999 Budget Speech of the hon. Finance Minister, and also in the objects and reasons of this Bill, an important statement worries me, and that is, there has to be a shift from curbing monopolies to promoting competition. I repeat--there has to be a shift from curbing monopolies to promoting competition. Curbing monopolies is no longer considered good. In fact, a monopoly, in other words, a large-sized monopoly, is welcomed, because a large-sized monopoly is important to compete internationally. But, what that large size monopoly would do to a country like India? While we certainly want to compete internationally, but a large undertaking, a dominant undertaking, would have a tendency to abuse its dominance, and that point is somehow being ignored. Therefore, that raises one issue. What is the real reason behind bringing in this legislation? Is it what it appears here or what has been said or is there some other reason? That worries me. The note, which has been circulated by the Department of Company Affairs, in its paragraph on Need for Competition Law, has a very important bullet point, and that is, commitment to W.T.O., to liberalise and have non-discrimination between enterprises. Is this to placate the Western world, the WTO authorities, the World Bank, the IMF, the Americans, who are now able to direct not only our foreign policy, but also the economy? And that raises two questions. First, the trade and competition is an important area, under the Doha Round of the W.T.O. negotiations, and there is going to be

discussion on this, and all countries, who are signatories to the WTO, would have to accept certain agreements, which fall within the trade and competition area of the W.T.O. Could it not have been better to wait till those negotiations progressed and some finality was arrived at? Would it not weaken our negotiating and bargaining position by already enacting a law before the negotiations concluded? Therefore, could it not have been better, as has been suggested by many Chambers, Punjab and Delhi Chambers, and some other Chambers, to amend the present MRTP law? We could drop the word 'M' because it no longer gets monopolies. The Restrictive Trade Practices law could have been amended, with all the good things that you are trying to bring in by this legislation. But, you have come up with this Bill. What I am worried about is that the word 'monopoly' now does not appear anywhere in the legislation. But, the word 'dominance' has come in. But, the word 'dominance' is not being clearly defined. Anyway, dominance is not considered bad. But, the new concept of abuse of dominance is being focussed on. Unfortunately, abuse of dominance, the way it is sought to be brought in the legislation, is not quantitatively defined, as was defined in the earlier laws. Dominance, has necessarily got to be related to market share, and not necessarily to size. Market share would lead to a cartelisation, would lead to unfair trade practices, restrictive trade practices. But, nowhere is the concept of market share present in this Bill. Size was given up by the MRTP Act. But, we have now brought back the concept of size, particularly, in combination's part of the legislation, mergers and acquisitions. You bring back the size. I have reservations with the absolute figures that have been given, such as Rs. 1000 crores, Rs. 2000 crores, Rs. 3000 crores, so many millions, so many billions. This law is going to be there for a long time; the MRTP Act has been in existence for the last 31 years. If you fix absolute numbers - the value of the rupee falls, as the economy grows - like Rs. 1000 crores or Rs. 2000 -crores -- they may not be relevant after ten years; we shall probably have to make amendments every ten years to change these numbers. Perhaps, it would have been better if you had defined the numbers in the Merger and Acquisition Chapter, the Combination Chapter, as a percentage of current GDP -- GDP is the value that defines the size of the economy - such as 1 per cent of GDP, 0.1 per cent of GDP or 0.5 per cent of GDP, which will then remain for a long time to come and not be restricted. Madam, I had reservations about the concept of market share being given up completely. Because, if the market share concept is given up, we cannot define the abuse of dominance, in quantitative terms; it will have to be interpreted on a case-to-

case basis; this will create problems. So, as I said, the objective, as given by the Department of Company Affairs, and therefore, by the Ministry and the Minister, is that, this is about giving national treatment to all enterprises, including foreign enterprises, multinational companies. Now, multinational companies, by their very nature, are very large. And, given the regime of lowering of tariffs that we are now introducing against these multinational companies, which will now be given national treatment, no legislation, no rules, can be framed against the entry of multinational companies' products in India, as they come here; nothing can be done to put some restriction on foreign exchange balancing, on local content; all these things would go away. Now, when this starts killing our local, medium industry, local, small-scale industry, do you expect the small and medium-scale industries to go to the CCI - the Competition Commission of India - every time something is done by the multinational companies, due to predatory pricing, due to transfer pricing, because of transfer pricing, the technique methodology, which is used to kill foreign markets? I think the whole concept needs a review. It is fine that we are coming up with this legislation; I think it would be reviewed, as the time progresses. But I have these reservations. Now, the Anti-Trust legislation in the Western countries, particularly, in the USA, the Sherman Act and the Clayton Act, which go back to about one hundred years, have sufficient teeth to break monopolies. I don't see the current legislation having these kinds of powers to break monopolies. We know about the history of USA business and industry, when the steel industry was broken up, AT&T was broken up, and IBM was broken up, Microsoft was proceeded against by the Justice Department. Do you have such powers? I don't think we have such powers. But, all the same, Madam, I am supporting this initiative of the Government, with some reservations. I have a few suggestions and doubts. First of all, we are seeking to transfer all the restrictive trade practice cases from MRTP to Consumer Courts. You know, how the Consumer Courts function. According to my information, which may be wrong, over 5000 cases are pending with MRTP, and over 10,000 cases are pending in the Consumer Courts. The Consumer Courts, which normally deal with individuals, individual grievances - not so much the grievances of the corporations - are going to be clubbed with the MRTP cases, which are going to be transferred. Now, when are the cases going to be adjudicated, going to be decided? How much are they going to be delayed? How many years are they going to take? There is no time-limit. I wish, the legislation had put some time-limit on the CCI decisions. Also, there is a need to bring some change in the Consumer Courts' laws.

2.00 p.m.

I have already mentioned about the merger and acquisition of units. The ceilings that you have put in need to be redefined, not in absolute terms, but with certain parameters which relate to the the economy.

Madam, there is another problem about the definition of dominance. There is no quantitative definition of dominance or abuse of dominance. Whether it will be left to the CCI is worrisome.

There is also a need to demarcate the powers of SEBI and NCLT. The new law is enacted, and the Company Law Board has gone. The National Company Law Tribunal has come. SEBI, NCLT- these are all agencies to which we are looking for merger and acquisition of units. We are looking to the RBI in cases of foreign exchange involvement. What will be the jurisdiction of CCI? What will be the jurisdiction of NCLT? Some of them, of course, take care of the interests of the shareholders. I think we need to demarcate the powers and the jurisdiction of these three authorities. Maybe, it will further require the amendment of the SEBI and NCLT Acts.

Madam, two or three points more, and I would have done. Mr. Jaitley mentioned about unscrambling the Egg. Suppose a few units or a few entities are merged, and the CCI finds that the merger is anti-competitive, and orders a demerger. There are no clear-cut rules for that. It may take a year or two for the demerger to be decided. Till that time, they will work as a merged entity. There is no clarity on how to demerge them. Madam, there is no clarity about who should approach the CCI for pre-merger kind of a discussion, and whether they would be termed 'anti-competitive' or not. The guidelines are not clear about that. The western law, particularly the western anti-trust law lays down a specific criterion for anti-competition. We have not done it. That is worrying me. When two entities want to merge, when there is a merger on an acquisition proposal, they do not know whether it will be treated as anti-competitive or not, because we have not, very clearly, laid down criteria for that. I hope that it would be clearly defined in the rules that you are going to formulate.

Madam, I have to make just one or two points more. As regards the formation of the Competition Commission of India, its Chairman could be even a non-judicial person. I have a problem with that, because this will, really, be a quasi-judicial body. Of course, there is some confusion, as was mentioned by the previous speaker, Fali S. Narimanji, whether it is a corporate body which can be sued or a quasi-judicial body which cannot be

sued. If we take it as a quasi-judicial body or a judicial body, which can have benches and all that, there is a problem. If it is going to be a quasi-judicial body, its Chairman, at least, needs to be a judicial person; other members could be from other fields, a dumping ground for retired judges, as somebody said earlier. I wish that does not happen, and only experts and professionals are appointed to this Commission. But I think the Chairman should be a judicial person.

In the composition clause, you have said that there should be a minimum of two members. Please change it, and have a minimum of five members. Our experience of these commissions and regulatory bodies has not been good. Take, for example, the BIFR. Under the SICA, Parliament had sanctioned a strength of 15 members for BIFR. Even after seventeen years of its existence, there have never been more than six members. The CCI has ten members but you may work with only three or four members. Cases will not be decided; they will be delayed. Please have a minimum number of, at least, five or six members, instead of two members. Otherwise, that will create problems.

Madam, I won't take more time. It is an initiative to be commended by all. There are problems. Maybe, they are working under pressure, from the international community, to use words like 'dominance'. Even the OECD countries have been talking about the enactment of a competition law so that their multinational companies are not discriminated against in India because they will be large companies. The concept of large companies has to be given up if the multinational companies have to come to India. And you have accommodated them; this is my worry. But in the formation of rules, let us protect the interests of Indian industries, the small and medium Indian industries, even the large Indian industries, which are puny in size, compared to the multinational corporations. I think the Minister, with his well-meaning efforts to boost up the economy, has brought the amendments. I support the Bill, though I have certain apprehensions. I have mentioned them. I hope he will take care of these apprehensions. Thank you.

THE DEPUTY CHAIRMAN: Now, the hon. Minister to reply.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Madam, I am very grateful to the hon. Members for the broad support that the Bill has received, and also for the great interest that they have demonstrated in discussing this piece of

legislation. This has, after all, gone through very considerable scrutiny and examination by the Select Committee, the Standing Committee, the Lok Sabha and then here. So, most of the aspects have really been dealt with. I will to my best cover the issues that have been raised. As Pranabji has chaired the Standing Committee, every observation that he makes is, of course, of great importance to us, and it was with some great difficulty that we were unable to accept that this should be a judicial body. There are a number of implications of having a judicial body that is going to deal essentially with largely industrial and commercial considerations. That is why we did this. It is a regulatory body, with quasi-judicial functions, and that is the determination that we have arrived at and are proceeding on. It will also be necessary to keep the suing provision, the provision about sue, because clause 7 (2) permits the CCI to hold and dispose of property, and it is on that account -- for being able to sue or be sued -- we felt it necessary. That is why this has been done. Then, I wish to make it quite clear and this is a point that he made, and, I think, Mr. Virumbi also made -- about staff and members. I wish to assure you that there will be no premature termination or retirement. As in NCLT, absorption to the maximum possible extent shall be encouraged, but the bottom line, in any event, is that no one loses his or her job when this transition takes place. The phrase that is being used 'duly terminated', in clause 64, means, 'termination on account of disciplinary proceedings, superannuation, etc.' not termination on account of these changes. There is another point that hon. Pranabji had raised. He said that there is not a sufficiently-clear or satisfactory definition of competition. Competition is broadly understood in the context in which it is used, and that is the manner in which we left it, rather than going into any further definition, which would then make it specific and, perhaps, not as comprehensive. The other point is regarding harmony with the Consumer Act. This was raised in the Lok Sabha also. It is proposed to ensure harmony between the Competition Act and the Consumer Protection Act by some of these, not exclusively only these, which we will be examining, in consultation with the Department of Legal Affairs, separately. All the UTP cases which fit within the definition of the Consumer Protection Act, 1986, may be transferred to the consumer forum, immediately on enactment of the Competition Act. MRTPC should not, hereafter, accept any new case. Thirdly, the MRTPC should make every effort to dispose of the UTP cases within one year, that is, the period for which MRTPC will function after the enactment of the Competition Bill. In respect of RTPs, the Department of Consumer Affairs has stated that there

is no overlapping of jurisdiction since the objectives of both the legislations are different and, based on the views of the Department of Legal Affairs, further action will be taken by the Department of Consumer Affairs. So, we are, to the extent possible, trying to avoid overlapping.

There is another point about growth of Indian companies. Now, there is no restriction in the Bill on investment, capacity expansion, capacity creation or even conglomerate activity. Even combinations are not prohibited, but they are regulated. By and large, horizontal combinations are the ones which should be examined from the perspective of competition. The threshold of combinations has been set very high because, as you know very well, of the 6 lakh companies in India, barely 100 companies are likely to have assets or turnover beyond the threshold. The intimation of combinations to the CCI is optional.

One of the new amendments is that the CCI must consider the relative advantage of the combination domination by way of contribution to the economic development. There is a mention about the economic development aspect of the country in the Preamble itself. It is a point that was raised by my distinguished friend, Shri Prithviraj Chavan.

Hon. Member, Shri Prabhakar Reddy, made a point about the High Courts. There is a distinct separation here. The High Courts are really dealing with mergers or points of interests of the shareholders and creditors, whether the required number of shareholders have taken the decision or not. They take 6-12 months to decide. The Competition Commission has to decide it within 90 days. It is really from the point of view of competition, not on other aspects, that it decides.

The other point which Shri Prabhakar Reddy raised was about appreciable adverse effect on entrepreneurs. It will, naturally, have to be on a case-to-case basis. We cannot define appreciable adverse effect across the board. The issue is treated separately. There are several market forces. It is very difficult to have a standardised application of it. That is why we need a commission to hear the affected parties and adjudicate it. If a definition were possible, then no application of mind would be required. I think this is how it is.

Another point is related to Central Government's direction. Several hon. Members, including renowned jurist, Shri Fali Nariman, had raised this issue. He mentioned about the provisions in clause 54. The independence of the Commission is not going to be undermined by the Central

Government under clause 53, because the provisions of clause 54 are to ensure that the Commission performs the duties imposed on it by or under the provisions of the Bill. The Government may have security or other concerns, where it gives directions. A similar provision, incidentally, exists in other enactments too, for example, in the National Highways Authority, the Telecom Regulatory Authority, the National Trust for Persons with Autism, the Airports Authority, SEBI, etc. This is not an activity that the Government freely and easily takes recourse to. I do not visualise the possibility. The other suggestion that Mr. Nariman has made is about separating the two functions, because it functions as a judicial body as well as an administrative body. When we are making rules, we should certainly pay very serious attention to that aspect also. Mr. Prabhakar Reddy had a point about the size or combination. There is a threshold limit. I have spoken of the threshold, and there is no presumption that simply because you cross the threshold, you are becoming anti-competitive.

Mr. Arun Jaitley very strongly supported it. I just wish to clarify one aspect. The Bill envisages that in the first year the functioning of the Bill is only advisory. In the second year, anti-competition practices and misuse of dominance will be taken up, and, in the third year, it is the regulation of mergers and acquisitions. So, it is not as if, overnight, the transition is taking place. The entire trade, industry and commerce has to evolve into it. That is how we are doing and that is how we will be taking it up.

Mr. Narayanan, while supporting the Bill, wanted that experts should man the CCI, and not retired judges and civil servants. Well, it is not the retired judges and civil servants. I can assure the hon. Member that we do not intend to treat the Competition Commission as a kind of a parking lot where we have retired personnel finding their place.

Mr. Jibon Roy has opposed the Bill. But there is only one point that I would like to mention to Mr. Jibon Roy. This Bill has not been brought because of any external factors, as you seem to suggest. It is entirely a sovereign function. Hon. Mr. Virumbi spoke of employment of members, with companies they have dealt with, should be prohibited. We will take due care in this regard. About employees and their job security, I have already told you. Dominance should not be defined in terms of market share. This is impossible for all sectors. You had pointed out that Government's power to give directions should not be used in cases where it is a party. Of course, it cannot be. See, the Government does not also

have arbitrary or unlimited powers. We are subject to your scrutiny. We are subject to judicial scrutiny. So, it will not be. You said, for mergers, market value and not the book value should be taken. This is a contentious area. The book value should not be the fraudulent value, and if you go into market values, then you are lending it open to subjective interpretation or possible contention. That is why we have left it out.

Mr. Nariman spoke about being able to 'sue' or 'sued'. I have explained it. Clause 7(2) says, "...to acquire, hold, dispose of property", we are doing it. There is a similar provision, as I said, existing in the SEBI, IRDA Acts etc. You had a point about policy directions. I have attempted to answer it as best I can. Policy directions by Government in reality, are extremely rare. And, I do not intend personally to make that a commonplace occurrence, and I do not see any change in policy in this regard either. Of course, the directive is always open to review by the courts and as also by the Parliament. Policy directives can simply not be about the cases that are under consideration or, indeed, even about immovable property transfers.

Hon. Shri Prithviraj Chavan had a point about MRTP. The MRTP phraseology, its purpose, ideology, thinking, were very different. I do not want to go into the total transformation that has taken place. It is a progression from the MRTP to here. You asked, "Why didn't you amend the MRTP Act?" I don't think it would have served the purpose. We have to transform it. What is being done, in effect, is that very thing. You also said that the size was a factor before 1991 and 'dominance' under the MRTP Act was 25 per cent or more. The size was given up in 1995, but the dominance was not. However, the MRTP Act, in essence, became restrictive. The Competition Bill is to encourage competition. You also said that there was no mention of the market share anywhere in the Bill. I draw your attention to clause 19 (4). It has not been given up completely. It is only the first consideration. The hon. Member also pointed out that every time the small enterprises have to go to the CCI. Complaints can be filed by the parties with the CCI *suo moto* under clause 19. He also said that RTPs were being transferred from the MRTP. This is incorrect. Only UTPs are being transferred. I have just now explained it. So far as your apprehension about weakening the WTO is concerned, the Ministry of Commerce which deals with the WTO negotiations has not communicated to us any such apprehension. If what you averred were to be true, almost 70 countries which have the Competition Bill or its equivalence would also

have a position that would be considered enfeeble in the WTO negotiations. I cannot say that. He also said that there was no mention of division of an enterprise. Clause 28 of the Bill covers it. The hon. Member also talked about confusion. There is no confusion in the jurisdiction of the CCI, the SEBI, the RBI or the NCLT. Any other regulatory authority can refer the matter to the CCI for its opinion and the CCI must give its advice within 21 days. Madam, I have covered almost all the major points. Having done that, I now request the House to grant its approval to the Bill. Thank you.

THE DEPUTY CHAIRMAN: The question is:

> "That the Bill to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto, as passed by Lok Sabha be taken into consideration".

The motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 66 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JASWANT SINGH: Madam, I beg to move:

"That the Bill be passed".

The question was put and the motion was adopted.

THE DEPUTY CHAIRMAN: Now there are two matters which we have to take up. One is in regard to the issue which was raised by Shri Kapil Sibal yesterday regarding Paradeep Phospate and the hon. Chairman's direction is there. The concerned Minister is still not here. But under the direction of the hon. Chairman, the Minister of Parliamentary Affairs, Shri Pramod Mahajan is here. He is not making a *suo moto* statement. He is only reacting to the issue. I don't think we should have any clarifications on this.