

THE COMPETITION AND FAIR TRADING BILL

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THE COMPETITION AND FAIR TRADING ACT

AN ACT

entitled

AN ACT to promote, maintain and encourage competition and to prohibit the prevention, restriction or distortion of competition and the abuse of dominant positions in trade; to promote the welfare and interests of consumers, to establish a Competition Commission and for connected matters.

ENACTING CLAUSE

PART I -Preliminary

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|-----------------|----|--|
| Short title. | 1. | This Act may be cited as the Competition and Fair Trading Act, 2004 |
| Interpretation. | 2. | <p>(1) In this Act, unless the context otherwise requires-</p> <p>"acquire" in relation to -</p> <p style="padding-left: 40px;">(a) goods, includes to obtain by way of gift, purchase or exchange, lease, hire or hire purchase;</p> <p style="padding-left: 40px;">(b) services, includes to accept the service;</p> <p style="padding-left: 40px;">(c) intellectual property, means to obtain by licence, assignment or government grant;</p> <p>"advertisement" means any form of communication made to the public or a section thereof for the purpose of promoting the supply of goods or services;</p> <p>"agreement" includes any agreement, arrangement or understanding, whether oral or in writing or whether or not it is legally enforceable or is intended to be legally enforceable;</p> <p>"authorised officer" means any officer of the Commission authorised by the Commission to assist in the performance of its functions under the Act;</p> <p>"business" includes the business of -</p> <p style="padding-left: 40px;">(a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in goods for gain or other reward; and</p> |

(b) acquiring, supplying and otherwise dealing in services for gain or reward;

"Commission" means the Competition Commission established under section 5;

"Community" means the Caribbean Community including the CARICOM Single Market and Economy;

"Community Competition Commission" means the Competition Commission established under Article 171 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy;

"consumer" means any person, organisation, or enterprise for whom goods or services are or are intended to be supplied in the course of a business carried on by the supplier or potential supplier and who does not seek to receive the goods or services in the course of a business carried on by him;

"control" in relation to a company, means the power of a person to secure by means of –

(a) the holding of shares or the possession of voting power in relation to that company; or

(b) any other power conferred by the articles of incorporation or other document regulating the company,

that the business of the company is conducted in accordance with the wishes of that person;

"document" includes electronic records;

"enterprise" means any person or type of organisation, other than a non-profit organisation, involved in the production of or the trade in goods or the provision of services;

"exclusive dealing" means any practice whereby a supplier of goods -

(a) as a condition of supplying the goods to a person, requires that person to -

(i) deal only or primarily in goods supplied by or designated by the supplier or his nominee; or

(ii) refrain from dealing in a specified class or kind of goods except as supplied by the supplier or his nominee;

(b) induces a person to meet a condition referred to in paragraph (a) by offering to supply the goods to the person on more favourable terms or conditions if the person agrees to meet that condition;

"functions" includes powers and duties;

"goods" means all kinds of property other than immovable property, money, securities or choses in action, and includes services;

“market restriction” means any practice whereby a supplier of goods, as a condition of supplying the goods to a person, requires that person to supply any goods only in a defined market, or exacts a penalty of any kind from the person if he supplies any goods outside a defined market;

"Member State" means a Member State of the Community excluding an Associate Member of the Community;

“Minister” means the competent Minister;

"price" includes any charge or fee, by whatever name called;

“public utilities” includes any person defined as a public utility under Section 4 of the Public Utilities Commission Act, No. 10 of 1999;

“relevant market” means the supply of goods or services to a geographical area which from the viewpoint of the consumer are substitutable in terms of price or use;

"service" means a service of any description, whether industrial, trade, professional or otherwise;

"supply" means, in relation to-

(a) goods, to sell, rent, lease or otherwise dispose of goods or an interest therein or a right thereto or offer or to dispose of such goods, right or interest;

(b) services, to sell, rent or otherwise provide services or offer to provide such services;

and "supplier" shall be construed accordingly;

"tied selling" means any practice whereby a supplier of goods or services -

- (a) as a condition of supplying the goods or services (hereinafter referred to as the "tied goods" or "tied services", respectively) to a person, requires the person to -
 - (i) acquire any other goods or services from the supplier or his nominee; or
 - (ii) refrain from using or distributing, in conjunction with the tied goods, any other goods that are not of a brand or manufacture designated by the supplier or the nominee; and
- (b) induces a person to meet a condition set out in paragraph (a) by offering to supply the tied goods or tied services to the person on more favourable terms or conditions if the person agrees to meet that condition.

"trade" includes any business, industry, profession or occupation relating to the supply or acquisition of goods or services.

(2) For the purposes of this Act-

- (a) any two enterprises are to be treated as interconnected enterprises if one of them is the subsidiary of the other or both are subsidiaries of the same parent enterprise;
- (b) a group of interconnected enterprises shall be treated as a single enterprise.

(3) For the purposes of this Act, an enterprise is a subsidiary of another enterprise if it is controlled by that other enterprise.

(4) Every reference in this Act to the term "market" is a reference to a market in Guyana for goods and services as well as other goods and services that, as a matter of fact and commercial commonsense, may be substituted for them in terms of price and use.

(5) References in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition.

(6) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including actual or potential competition from goods or services supplied or likely to be supplied by persons not resident or carrying on business in Guyana.

- Objects of Act. 3. The objects of this Act are to -
- (a) promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce;
 - (b) prohibit anti-competitive business conduct which prevents, restricts or distorts competition or constitutes the abuse of a dominant position in the market; and
 - (c) promote the welfare and interests of consumers.
- Application of Act. 4. (1) This Act shall not apply to-
- (a) combinations or activities of employees for their own reasonable protection as employees;
 - (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
 - (c) subject to section 24 (3), the entering into of an arrangement in so far as it contains a provision relating to the use, licence or assignment of rights under or existing by virtue of any copyright, patent or trade mark;
 - (d) any act done to give effect to a provision of an arrangement referred to in paragraph (c);
 - (e) the entering into or carrying out of such agreement as is authorised by the Commission under Part V or the engagement in such business practice as is so authorised;
 - (f) activities expressly excluded under any treaty or agreement to which Guyana is a party;
 - (g) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public;
 - (h) such other business or activity as the Minister may, with the agreement of the Commission, declare by Order.
- (2) This Act shall not apply to public utilities.

PART II - The Competition Commission

- Establish- 5. (1) There is hereby established for the purposes of this Act, a

ment of Commission. body corporate to be known as the Competition Commission.

(2) The provisions of the Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

Functions of Commission.

6. (1) The Commission shall perform the following functions-
- (a) keep under review commercial activities with a view to ascertaining practices which may adversely affect the economic interests of consumers;
 - (b) order, on its own initiative or at the request of the Minister or any person, such investigations in relation to the conduct of business as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act;
 - (c) conduct such inquiries as it may consider necessary or desirable in connection with any matter falling within the provisions of this Act;
 - (d) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister;
 - (e) take such action as it considers necessary with respect to the abuse of a dominant position by any enterprise;
 - (f) eliminate anti-competitive agreements;
 - (g) carry out such other functions as are required to give effect to this Act.
- (2) The Commission shall -
- (a) make available -
 - (i) to persons engaged in business, general information with respect to their rights and obligations under this Act;
 - (ii) for the guidance of consumers, general information with respect to the rights and obligations of persons under this Act affecting the interests of consumers;
 - (b) undertake studies and publish reports and information regarding matters affecting the interests of consumers;
 - (c) co-operate with and assist any association or body

of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

- (3) The Commission shall co-operate with -
- (a) the Community Competition Commission for the purpose of enforcing compliance with the provisions of this Act; and
 - (b) competition authorities of other Member States for the purpose of detecting and preventing anti-competitive conduct and exchanging information relating to such conduct.

(4) The Commission shall order investigations into any allegations of anti-competitive conduct referred to it by the Community Competition Commission or by a competition authority of another Member State and shall submit to the Community Competition Commission or that other competition authority, a written report of its findings.

General powers of Commission.

7. (1) For the purpose of carrying out its functions under this Act, the Commission shall have power to -
- (a) appoint such staff, including investigators, as it considers necessary;
 - (b) declare certain business practices to be abuses of dominant position;
 - (c) prohibit the withholding of supplies or any threat thereof;
 - (d) order the termination of an agreement;
 - (e) prohibit the making or carrying out of an agreement;
 - (f) prohibit the attachment of extraneous conditions to any transactions;
 - (g) prohibit discrimination or preferences in prices or other related matters;
 - (h) require the publication of transparent price lists;
 - (i) order enterprises to cease and desist from any form of conduct that has or is likely to have as its object or effect the lessening of competition.
- (2) The Commission shall obtain such information as it considers

necessary to assist it in its inquiry and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

- (3) The Commission shall have power to -
 - (a) summon and examine witnesses;
 - (b) call for and examine documents;
 - (c) administer oaths;
 - (d) require that any document submitted to the Commission be verified by affidavit;
 - (e) adjourn any inquiry from time to time;
 - (f) require the furnishing of such returns or information as it may require by such persons as it may specify by notice.

(4) The Commission may hear orally any person who, in its opinion, will be affected by an investigation or inquiry under this Act.

(5) The Commission may require a person engaged in business or trade or such other person as the Commission considers appropriate, to state such facts concerning goods manufactured, produced or supplied by that person or services so supplied, as the Commission may think necessary to determine whether the conduct of the business in relation to the goods and services constitutes an anti-competitive practice.

(6) If the information specified in subsection (2) is not furnished to the Commission's satisfaction, it may make a finding on the basis of information available before it.

(7) A summons to attend, give evidence or produce documents before the Commission shall be served on the person required so to attend and give evidence or to produce documents and shall be issued under the hand of the secretary or any member of the Commission.

(8) All persons summoned to attend and give evidence or produce documents at any sitting of the Commission shall be bound to obey the summons served upon them.

(9) Hearings of the Commission shall take place in public but the Commission may, whenever the circumstances so warrant, conduct a hearing in camera.

- (10) Any person who -
 - (a) without sufficient cause, fails or refuses-

- (i) to attend or give evidence before the Commission in obedience to a summons issued under this Act;
 - (ii) to produce any document which he is required by such summons to produce; or
 - (iii) refuses to take an oath or make an affirmation as a witness or to answer any question put to him,
- (b) being a witness, leaves a sitting of the Commission without the Commission's permission;
- (c) willfully -
- (i) insults any member or officer of the Commission;
 - (ii) obstructs or interrupts the proceedings of the Commission; or
 - (iii) refuses to comply with a requirement of the Commission under this Act;
- (d) makes a complaint to the Commission that a business enterprise is acting in contravention of this Act, that the Commission finds to be a vexatious, frivolous or malicious complaint,

commits an offence and is liable on summary conviction to a fine not exceeding one million dollars.

Funds of
Commission.

8. The funds of the Commission shall consist of -
- (a) such sums as may be appropriated by the National Assembly for the purposes of this Act;
 - (b) fees collected pursuant to section 9 and any other moneys which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions;
 - (c) fixed penalties paid to the Commission pursuant to section 49;
 - (d) all monies paid to the Commission by way of grants or donations; and
 - (e) all monies borrowed by the Commission under this Act or made available to the Commission under and for the purpose of the Commission with the approval of the Ministry of Finance.

- Power to charge fees. 9. The Commission may charge fees for any services rendered by it and such fees shall be used by the Commission to defray its expenses including the provision of advisory opinions.
- Accounts and audit. 10. (1) The accounts of the Commission shall be audited annually by the Auditor-General or by any auditor or auditors approved by him for that purpose.
- (2) A statement of accounts so audited shall form part of the annual report referred to in section 11(1).
- (3) The Commission shall -
- (a) within four months after the end of the financial year, submit to the Minister a statement of accounts audited in accordance with subsection (1); and
- (b) not later than four months prior to the beginning of the next financial year, submit to the Minister for approval, estimates of revenue and expenditure for the financial year next following.
- Reports. 11. (1) The Commission shall, not later than three months after the end of each financial year, or within such longer period as the Minister may in special circumstances allow, cause to be made and transmitted to the Minister, a report dealing generally with the Commission's activities during the preceding financial year.
- (2) The Commission may from time to time furnish to the Minister a report relating to any particular matter or matters investigated which, in its opinion, require the Minister's special attention.
- (3) The Minister shall cause a copy of the report submitted under subsection (1) to be laid in Parliament, not later than 3 months after receipt from the Commission.
- Appointment of Director and other employees. 12. (1) The Commission shall appoint a Director, who shall hold office for a period of three years and may be re-appointed for a period not exceeding three years at a time.
- (2) The Commission may, with the approval of the Minister, terminate the employment of the Director if that individual -
- (a) becomes permanently unable to perform his functions by reasons of a mental or physical infirmity;
- (b) fails to satisfactorily carry out his responsibilities under this Act; or

- (c) engages in such activities as are reasonably considered to be prejudicial to the Commission's interest.

(3) The Director shall be in charge of the day-to-day management of the Commission.

(4) Subject to subsection (5), the Director shall receive such emoluments and be subject to such terms and conditions of service as may from time to time be prescribed by or under any law or by a resolution of the National Assembly.

(5) The emoluments and terms and conditions of service of the Director, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

(6) The Director may, with the approval of the Commission, appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such other officers and employees, including investigators, as it thinks necessary for the proper carrying out of the provisions of this Act.

(7) The emoluments payable to the Director and staff of the Commission by virtue of this Act shall be charged on and paid out of the funds of the Commission.

Pensions, gratuities and other retiring benefits.

13. (1) The Commission may enter into arrangements respecting schemes, whether by way of insurance policies or not for medical benefits, pensions, gratuities and other retiring or disability or death benefits relating to employees of the Commission.

(2) Arrangements referred to in subsection (1) may include provisions for the grant of benefits to the dependants and the legal personal representatives of the employees.

Power of entry and search.

14. (1) The Commission may, for the purpose of ascertaining whether any person has engaged, is engaging or is likely to engage in conduct constituting or likely to constitute a contravention of this Act, order an investigation to be conducted by its investigators.

(2) For the purpose of conducting an investigation ordered by the Commission under subsection (1), an investigator may -

- (a) enter and search any premises; and
- (b) inspect and remove for the purpose of making copies, any documents or extracts therefrom in the possession or under the control of any person.

(3) An investigator shall not exercise the powers conferred by subsection (2) without a warrant issued under subsection (4).

(4) Where a Magistrate is satisfied on information on oath that there is reasonable ground for believing that any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of this Act, the Magistrate may issue a warrant permitting an investigator to exercise the powers conferred by subsection (2) in relation to any premises specified in the warrant.

(5) A warrant shall not authorise the detention of a document for a period exceeding 90 days.

(6) An investigator shall -

- (a) on entering any premises pursuant to a warrant, produce evidence of his authority to so enter and of his identity;
- (b) upon completing the search authorised by the warrant, leave a receipt listing documents or extracts therefrom that are removed for the purposes of this section.

(7) The occupier or person in charge of any premises entered pursuant to this section shall provide the investigator with all reasonable facilities and assistance for the effective exercise of his functions under this section.

(8) Any person who, in any manner, impedes, prevents, or obstructs any investigation or inquiry by the Commission under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding ten million dollars, and to imprisonment for a term not exceeding three months.

Destruction
of records

15. A person who –

- (a) refuses to produce any document or to supply any information when required to do so by the Commission under this Act; or
- (b) intentionally or recklessly alters or destroys any record likely to be required for any investigation that has commenced under this Act,

is guilty of an offence and is liable on summary conviction to a fine not exceeding ten million dollars and to imprisonment for a term not exceeding three months.

Giving of
false or
misleading
information
to the
Commission

16. Any person who gives to the Commission or an authorised officer any information which he knows to be false or misleading is guilty of an offence and liable on summary conviction to a fine not exceeding one million dollars and to imprisonment for a term not exceeding three months.

Discontin-
uance of
inquiry

17. (1) At any stage of an investigation, the investigator may recommend to the Commission that the investigation be discontinued, giving such reasons for such recommendation.

or investigation.

(2) The Commission may if satisfied, on the basis of the recommendations of the investigator, order the discontinuance of the investigation.

(3) Where, at any stage of an inquiry under this Act, the Commission is of the opinion that the matter subject to inquiry does not justify further inquiry, the Commission may discontinue the inquiry.

(4) Where the Commission discontinues an investigation or inquiry, it shall, within fourteen days thereafter, make a report in writing to the Minister and notify the parties concerned in the investigation or inquiry, stating the information obtained and the reason for discontinuing the investigation or inquiry.

Notice of examination of witnesses 18. Where the presence of a witness is required for the purposes of an investigation, the Commission shall serve on that witness a notice in the form set out as Form A in the Second Schedule.

Notice to produce documents 19. (1) Where the Commission requires a document to be produced for the purposes of an investigation, the Commission shall serve on the relevant person, a notice in the form set out as Form B in the Second Schedule.

(2) The person notified pursuant to paragraph (1) shall produce the document specified in the notice within twenty days of the date of the service thereof.

PART III Anti-Competitive Agreements, Abuse of Dominant Position

Provisions of agreements having effect of restricting, preventing or distorting competition. 20. (1) Subject to the provisions of this section –

(a) all agreements between enterprises, and

(b) concerted practices of enterprises or decisions of associations of enterprises;

which have or are likely to have the effect of preventing, restricting or distorting competition in a market are prohibited and void.

(2) Without prejudice to the generality of subsection (1), agreements referred to in that subsection include agreements containing provisions that-

- (a) directly or indirectly fix purchase or selling prices or determine any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) provide for the artificial dividing up of markets or sources of supply;

- (d) affect tenders to be submitted in response to a request for bids;
- (e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) shall not apply to any agreement or category of agreements, the entry into which has been authorised under Part V or which the Commission is satisfied -

- (a) contributes to the improvement of production or distribution of goods or services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or
- (c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

(4) No person shall give effect to any agreements of enterprises or concerted practices or decisions of associations of enterprises that have the object or effect mentioned in subsection (1).

Agreements containing exclusionary provisions.

21. (1) No person shall give effect to an exclusionary provision in an agreement.

(2) For the purposes of this Act, a provision of an agreement is an exclusionary provision if -

- (a) the agreement is entered into or arrived at between persons any two or more of whom are in competition with each other; and
- (b) the effect of the provision is to prevent, restrict or limit the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons either generally or in particular circumstances or conditions, by all or any of the parties to the agreement, or, if a party is an enterprise, by an interconnected enterprise.

(3) For the purposes of subsection (2), a person is in competition with another person if that person or any interconnected enterprise-

- (a) is, or is likely to be; or
- (b) but for the relevant provision, would be or would be likely to be,

in competition with the other person or with an interconnected enterprise, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.

Action by Commission re anti-competitive agreement or trade practice.

22. (1) Subject to this section, where the Commission determines that any agreement or trade practice referred to in sections 20 and 21 is anti-competitive, it shall serve an order on the parties stating the reasons for the determination and requiring them-

- (a) to cease a practice referred to in section 20; or
- (b) to terminate an agreement referred to in section 21 immediately, or within a time period agreed with the Commission of not more than six months.

(2) A person who has suffered loss as a result of any anti-competitive agreement or trade practice may apply to the Commission for compensation and the Commission may, if it is satisfied that the circumstances of the case so warrant, order the parties whose agreement or trade practice is anti-competitive to pay to the person such compensation as the Commission shall determine.

(3) An enterprise that fails to terminate the anti-competitive agreement or practice within the period agreed with the Commission commits an offence and shall be liable to a fine not exceeding fifty million dollars.

Prohibition of abuse of dominant position.

23. (1) Subject to section 24(2), any conduct on the part of one or more enterprises which amounts to an abuse of a dominant position in a market is prohibited.

(2) For the purposes of this Act, an enterprise holds a dominant position in a market if, by itself or together with an interconnected enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors.

Abuse of dominant position.

24. (1) An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular, but without prejudice to the generality of the foregoing, if it -

- (a) restricts the entry of any enterprise into that or any other market;
- (b) prevents or deters any enterprise from engaging in

competitive conduct in that or any other market;

- (c) eliminates or removes any enterprise from that or any other market;
- (d) directly or indirectly imposes unfair purchase or selling prices or other anti-competitive practices;
- (e) limits production of products to the prejudice of consumers;
- (f) makes the conclusion of agreements subject to acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements;
- (g) engages in any business conduct that results in the exploitation of its consumers or suppliers including but not limited to exclusive dealing, market restriction or tied selling.

(2) An enterprise shall not be treated as abusing a dominant position -

- (a) if it is shown that its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress and consumers were allowed a fair share of the resulting benefit;
- (b) subject to subsection (3), by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark or other property right; or
- (c) if the effect or likely effect of its behaviour in the market is the result of its superior competitive performance.

(3) An enterprise may be treated as abusing its dominant position in enforcing or seeking to enforce the rights referred to in subsection (2) (b), if the Commission is satisfied that the exercise of those rights -

- (a) has the effect of unreasonably lessening competition in a market; and
- (b) impedes the transfer and dissemination of technology.

Action in relation to abuse of dominant position.

25. (1) Where the Commission has reason to believe that an enterprise that has a dominant position in a market has abused or is abusing that position, the Commission may, subject to section 26, order an investigation into the matter.

(2) Following an investigation, if the Commission finds that an enterprise has abused or is abusing a dominant position and that the abuse has had, is having or is likely to have the effect of lessening competition substantially in a market, the Commission shall prepare a report indicating the practices that constitute the abuse and shall -

- (a) notify the enterprise of its finding accompanied by a copy of the report; and
- (b) direct the enterprise to cease the abusive practice immediately, or within a time period agreed with the Commission of not more than six months.

(3) An enterprise that fails to cease the abusive practice referred to in subsection (2) within the period agreed with the Commission commits an offence and shall be liable to a fine not exceeding fifty million dollars.

(4) Where the Commission finds that the abusive practice constitutes tied selling, the Commission shall prohibit the enterprise concerned from continuing that practice immediately.

(5) Subject to subsection (7), the Commission shall act in accordance with subsection (6) if it finds that exclusive dealing or market restriction, because it is engaged in by a major supplier of goods or services in a market or because it is widespread in a market, is likely to -

- (a) impede entry into or expansion of an enterprise in the market;
- (b) impede the introduction of goods into or expansion of sales of goods or services in the market; or
- (c) have any other exclusionary effect in the market,

with the result that competition is or is likely to be lessened substantially.

(6) The Commission may prohibit the supplier referred to in subsection (5) from continuing to engage in market restriction or exclusive dealing and order that supplier to take such other action as, in the Commission's opinion, is necessary to restore or stimulate competition in relation to the goods or services.

(7) The Commission shall not take action under this section where, in its opinion, exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of new goods or a new supplier of goods into a market.

(8) This section shall not apply in respect of exclusive dealing or market restriction between or among interconnected enterprises.

- Exception to section 25. 26. (1) The Commission shall not order an investigation in respect of an enterprise under section 25 unless it is satisfied that the enterprise controls more than forty percent of the market.
- (2) For the purposes of subsection (1), an enterprise controls more than forty percent of a market if-
- (a) where the market relates to the supply of goods or services of any description, more than forty percent of all the goods or services of that description which are supplied in Guyana are supplied by or to that enterprise or a group of interconnected enterprises of which the enterprise is a part;
 - (b) where the market relates to the export of goods of any description from Guyana, more than forty percent of all the goods of that description which are produced in Guyana are produced by that enterprise or a group of interconnected enterprises of which the enterprise is a part.
- (3) In the cases referred to in subsection (2) (b), a dominant position shall be taken to exist both in relation to exports of goods of that description from Guyana generally and to exports of goods of that description from Guyana to each country taken separately.

Provisions relating to order under section 25. 27. (1) Where, within thirty days of the receipt of the order under section 25(2), the enterprise concerned submits to the Commission the measures it would take and the time table for giving effect to the measures to cease the abusive practice, and the Commission is satisfied as to those measures, it shall suspend the operation of the order and notify the enterprise in writing thereof.

(2) Where an enterprise referred to in subsection (1) fails or neglects to give effect to the measures mentioned in that subsection within a period of six months after the date on which those measures were accepted by the Commission, the order issued under section 25(2) shall have effect at the end of that period.

PART IV - Resale Price Maintenance

- Collective agreements by suppliers prohibited. 28. (1) It is unlawful for any two or more enterprises which are suppliers of goods or services to enter into or carry out any agreement whereby they undertake to -
- (a) withhold supplies of goods or services from dealers (whether parties to the agreement or not) who resell or have resold goods or services in breach of any condition as to the price at which those goods or services may be resold;
 - (b) refuse to supply goods or services to such dealers except on

terms and conditions which are less favourable than those applicable in the case of other dealers carrying on business in similar circumstances;

- (c) supply goods or services only to persons who undertake or have undertaken to do any of the acts described in paragraph (a) or (b).

(2) It is unlawful for any two or more enterprises referred to in subsection (1) to enter into or carry out any agreement authorising -

- (a) the recovery of penalties (however described) by or on behalf of the parties to the agreement from dealers who resell or have resold goods or services in breach of any condition described in subsection (1) (a); or
- (b) the conduct of any proceedings in connection therewith

Collective agreement by dealers.

29. (1) It is unlawful for any two or more enterprises which are dealers in any goods or suppliers of services, to enter into or carry out any agreement whereby they undertake to -

- (a) withhold orders for supplies of goods or services from suppliers (whether parties to the agreement or not) who -
- (i) supply or have supplied goods or services without imposing such a condition as is described in section 31(2)(a); or
- (ii) refrain or have refrained from taking steps to ensure compliance with such conditions in respect of goods or services supplied by them; or
- (b) discriminate in their handling of goods or services against goods or services supplied by those suppliers.

(2) It is unlawful for any two or more enterprises referred to in subsection (1) to enter into or carry out an agreement authorising the recovery of penalties (however described) by or on behalf of the parties to the agreement from the suppliers referred to in that subsection or the conduct of any proceedings in connection therewith.

Application of sections 28 and 29 to associations.

30. Sections 28 and 29 apply in relation to an association whose members consist of or include enterprises which are suppliers or dealers in any goods or services or representatives of such enterprises.

Minimum resale price maintained

31. (1) Any term or condition of an agreement for the sale of any goods or services by a supplier to a dealer is void to the extent that it purports to establish or provide for the establishment of minimum prices to be charged on

by contract. the resale of the goods or services.

(2) Subject to subsections (3) and (4), it is unlawful for a supplier of goods or services or his agent to -

- (a) include in an agreement for the sale of goods or services, a term or condition which is void by virtue of this section;
- (b) require, as a condition of supplying goods or services to a dealer, the inclusion in the agreement of any term or condition or the giving of any undertaking to the like effect;
- (c) notify to dealers, or otherwise publish on or in relation to any goods or services, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods or services in.

(3) Subsection (2) (a) does not affect the enforceability of an agreement except in respect of the term or condition which is void by virtue of this section.

(4) Nothing in subsection (2) (c) shall be construed as precluding a supplier (or an association or person acting on a supplier's behalf) from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods or services supplied or to be supplied by the supplier.

Patented goods.

32. (1) Section 31 applies to patented goods (including goods made by a patented process) as it applies to other goods.

(2) Notice of any term or condition which is void by virtue of section 34, or which would be so void if included in an agreement relating to the sale of any such goods, is of no effect for the purpose of limiting the right of a dealer to dispose of those goods without infringement of the patent.

(3) Nothing in section 31 and this section affects the validity, as between the parties to an agreement and their successors, of any term or condition of -

- (a) a licence granted by the proprietor of a patent or a licensee under any such licence; or
- (b) any assignment of a patent,

so far as it regulates the price at which goods produced or processed by the licensee or assignee may be sold by him.

Maintenance of

33. (1) It is unlawful for a supplier to withhold supplies of any goods or services from a dealer seeking to obtain them for resale on the ground

minimum resale prices by other means. that the dealer -

- (a) has sold goods or services obtained either directly or indirectly from that supplier, at a price below the resale price or has supplied such goods or services either directly or indirectly to a third party who had done so; or
- (b) is likely, if the goods or services are supplied by him, to sell them at a price below that price, or supply them either directly or indirectly to a third party who would be likely to do so.

(2) In this section "the resale price", in relation to a sale of any description, means any price -

- (a) notified to the dealer or otherwise published by or on behalf of a supplier of the goods or services in question (whether lawfully or not) as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description; or
- (b) prescribed or purporting to be prescribed for that purpose by an agreement between the dealer and any such supplier.

(3) Where under this section it would be unlawful for a supplier to withhold supplies of goods or services, it is also unlawful for him to cause or procure any other supplier to do so.

Interpretation 34. (1) For the purposes of this Part, a supplier of goods or services shall be treated as withholding supplies from a dealer if-

- (a) he refuses or fails to supply those goods or services to the order of the dealer;
- (b) he refuses to supply those goods or services to that dealer except at prices, or on terms or conditions as to credit, discount or other matters which are significantly less favourable than those at or on which he normally supplies those goods or services to other dealers carrying on business in similar circumstances; or
- (c) although he enters into an agreement to supply goods or services to the dealer, he treats him in a manner significantly less favourable than that in which he normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the agreement.

(2) A supplier shall not be treated as withholding supplies of goods or

services on any ground mentioned in section 33(1) if, in addition to that ground, he has other grounds which, standing alone, would have led him to withhold those supplies.

(3) Subject to subsection (5), if, in proceedings brought against a supplier of goods or services in respect of a contravention of section 33(1), the matters specified in subsection (4) are proved, it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had acted or was likely to act as described in section 33 (1).

(4) The matters referred to in subsection (3) are as follows -

- (a) supplies of goods or services were withheld from a dealer;
- (b) during a period ending immediately before the supplies were so withheld, the supplier was doing business with the dealer or was supplying goods or services of the same description to other dealers carrying on business in similar circumstances; and
- (c) the dealer, to the knowledge of the supplier, had within the preceding six months acted as described in section 33(1)(a) or had indicated his intention to act as described in section 33(1)(b) in relation to the goods or services in question.

(5) Subsections (3) and (4) do not apply where the proof that supplies were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods or services supplied or to be supplied.

PART V - Authorisations

Grant of authorisation.

35. (1) Subject to subsection (2), any person who proposes to enter into or carry out an agreement or to engage in a business practice which, in that person's opinion, is an agreement or practice affected or prohibited by this Act, may apply to the Commission for an authorisation to do so.

(2) The Commission may, in relation to an application under subsection (1) -

- (a) notwithstanding any other provision of this Act, if it is satisfied that the agreement or practice, as the case may be, is likely to promote the public benefit, grant an authorisation subject to such terms and conditions as it thinks fit and for such time as the Commission may specify; or
- (b) refuse to grant an authorisation and in that case, shall inform the applicant in writing of the reasons for refusal.

- Effect of authorisation. 36. While an authorisation granted under section 35 remains in force, nothing in this Act shall prevent the person to whom it is granted from giving effect to the agreement or the provision thereof or from engaging in the practice to which the authorisation relates.
- Revocation of authorisation. 37. (1) Subject to subsection (2), the Commission may revoke or amend an authorisation if it is satisfied that -
- (a) the authorisation was granted on information that was false or misleading; or
 - (b) there has been a breach of any terms or conditions subject to which the authorisation was granted.
- (2) The Commission shall, before revoking or amending an authorisation, serve on the relevant applicant, a notice in writing specifying the default and inform him of his right to apply to the Commission to be heard on the matter within such time as may be specified in the notice.
- Register of authorisation. 38. (1) The Commission shall keep, in such form as it may determine, a register of authorisations granted under this Part.
- (2) The register shall be kept at the office of the Commission and shall be available for inspection by members of the public at all reasonable times.

PART VI Offences

- Price fixing. 39. (1) An enterprise that is engaged in the business of producing or supplying goods or services shall not, directly or indirectly -
- (a) by agreement, threat or promise or any like means, attempt to influence upward or discourage the reduction of, the price at which any other enterprise supplies or offers to supply or advertises goods or services;
 - (b) refuse to supply goods or services to or otherwise discriminate against any other enterprise engaged in business;
 - (c) refuse to supply goods or services to or otherwise discriminate against any other person engaged in business because of the low pricing policy of that other person.
- (2) Subsection (1)(a) does not apply where the enterprise attempting to influence the conduct of another enterprise and that other enterprise are interconnected enterprises or, as the case may be, principal and agent.
- (3) For the purposes of this section, the publication by a supplier of goods or services other than a retailer, of an advertisement that mentions a resale price for

the goods or service is an attempt to influence upward the selling price of any enterprise into the hands of which goods or services come for resale unless the price is so expressed as to make it clear to any person who becomes aware of the advertisement that the goods or services may be sold at a lower price, or is clearly marked as being a suggested retail price.

- Conspiracy. 40. (1) No enterprise shall conspire, combine, agree or arrange with another person to -
- (a) limit unduly the facilities for transporting, producing, manufacturing, storing or dealing in any goods or supplying any service;
 - (b) prevent, limit or lessen unduly, the manufacture or production of any goods or the provision of services or to enhance unreasonably the price thereof;
 - (c) lessen unduly, competition in the production, manufacture, purchase, barter, sale, supply, rental or transportation of any goods or services or in the price of insurance on persons or property;
 - (d) otherwise unduly restrain or injure competition.
- (2) Nothing in subsection (1) applies to a conspiracy, combination, agreement or arrangement which relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public -
- (a) in the practice of a trade or profession relating to the service; or
 - (b) in the collection and dissemination of information relating to the service.

- Bid-rigging. 41. (1) Subject to subsection (2), it is unlawful for two or more enterprises to enter into an agreement whereby -
- (a) one or more of them agree to undertake not to submit a bid in response to a call or request for bids or tenders; or
 - (b) as bidders or tenders they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves.

(2) This section shall not apply in respect of an agreement that is entered into or a submission that is arrived at only by enterprises each of which is, in respect of every one of the others, an affiliate.

Misleading advertising. 42. (1) An enterprise shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or any business interest, by any means -

- (a) make a representation to the public -
 - (i) that is false or misleading or likely to be misleading in a material respect;
 - (ii) in the form of a statement, warranty or guarantee of performance, efficacy or length of life of goods or services that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation;
 - (iii) in a form that purports to be a warranty or guarantee of any goods or services or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue service until it has achieved a specified result, if the form of purported warranty, guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out;
- (b) falsely represent to the public in the form of a statement, warranty or guarantee that services are of a particular kind, standard, quality or quantity, or are supplied by any particular person or by any person of a particular trade, qualification or skill;
- (c) make a materially misleading representation to the public concerning the price at which any goods or services or like goods or services have been, are or will be ordinarily supplied.

(2) For the purposes of this section and section 43, the following types of representation shall be deemed to be made to the public by and only by the enterprise who caused it to be expressed, made or contained, that is to say, a representation that is -

- (a) expressed on an article offered or displayed for sale;
- (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale;
- (c) expressed on a display in the place where the article is sold;
- (d) made in the course of selling the article to the ultimate consumer;

- (e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner made available to a member of the public.

(3) Where the enterprise referred to in subsection (2) is outside of Guyana, the representation shall be deemed to be made-

- (a) in a case described in subsection (2) (a), (b) or (e), by the enterprise that imported the article; and
- (b) in a case described in subsection (2) (c), by the enterprise that imported the display into Guyana.

(4) Subject to subsections (3) and (4), every enterprise that, for the purpose of promoting, directly or indirectly, the supply or use of any goods or services or any business interest, supplies to a wholesaler, retailer or other distributor of goods or services, any material or thing that contains a representation of a kind referred to in subsection (1) shall be deemed to have made that representation to the public.

Represent-
tation
as to
test and
publication
of testimon-
ials.

43. An enterprise shall not, for the purpose of promoting, directly or indirectly, the supply or use of any goods or services or any business interest, make a representation to the public that a test as to the performance, efficacy or length of life of the goods has been made by any enterprise or publish a testimonial with respect to the goods or services, unless it can establish that -

- (a) the representation or testimonial was previously made or published by the enterprise by which the test was made or the testimonial was given, as the case may be; or
- (b) before the representation or testimonial was made or published, it was approved and permission to make or publish it was given in writing by the enterprise which made the test or gave the testimonial, as the case may be,

and it accords with the representation or testimonial previously made, published or approved.

Double
ticketing.

44. An enterprise shall not supply any article at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the article in the quantity in which it is so supplied at the time at which it is so supplied -

- (a) on the article, its wrapper or container;
- (b) on anything attached to, inserted in or accompanying the article, its wrapper or container or anything on which the article is mounted for display or sale; or

- (c) on a display or advertisement at the place at which the article is purchased.
- Sale at bargain price. 45. (1) For the purposes of this section, "bargain price" means a price -
- (a) that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise;
- (b) so represented in an advertisement, that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the goods or services advertised or like articles are ordinarily sold.
- (2) An enterprise shall not advertise at a bargain price, goods or services which it does not supply in reasonable quantities having regard to the nature of the market in which it carries on business, the nature and size of the business carried on by it and the nature of the advertisement.
- (3) Subsection (2) does not apply where the enterprise that is advertising proves that -
- (a) it took reasonable steps to obtain in adequate time, a quantity of the article that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond its control that it could not reasonably have anticipated;
- (b) it obtained a quantity of the article that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefore because that demand surpassed its reasonable expectations; or
- (c) after it became unable to supply the article in accordance with the advertisement, it undertook to supply the same article or equivalent article of equal or better quality at the bargain price and within a reasonable time to all persons who requested the article and who were not supplied therewith during the time when the bargain price applied and that it fulfilled the undertaking; and
- (d) it took all reasonable steps to remove all the advertisements stating that the good or service was available at a bargain price once it became aware that it would not be able to supply that good or service in reasonable quantities at that price.
- Sale above 46. (1) An enterprise that advertises goods or services for sale or rent in a

advertised price. market shall not, during the period and in the market to which the advertisement relates, supply goods or services at a price that is higher than that advertised.

(2) This section shall not apply in respect of -

- (a) an advertisement that appears in a catalogue or other publication in which it is prominently stated that the prices contained therein are subject to error if the enterprise establishes that the price advertised is in error;
- (b) an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement.

(3) For the purposes of this section, the market to which an advertisement relates shall be deemed to be the market to which it could reasonably be expected to reach, unless the advertisement defines market specifically by reference to a geographical area, store, sale by catalogue or otherwise.

PART VII - Enforcement, Remedies and Appeals

Application for enforcement. 47. If the Court is satisfied on an application by the Commission that any enterprise has contravened any of the provisions of this Act, the Court may exercise any of the powers referred to in section 48.

Powers of Court. 48. (1) Pursuant to section 47 the Court may -

- (a) order the enterprise concerned to pay to the State such pecuniary penalty not exceeding one million dollars in the case of an individual and ten million dollars in the case of a person other than an individual; or
- (b) grant an injunction restraining the enterprise from engaging in conduct described in section 47,

in respect of each contravention or failure referred to in that section.

(2) In exercising its powers under this section, the Court shall have regard to -

- (a) the nature and extent of the default;
- (b) the nature and extent of any loss suffered by any person as a result of the default;
- (c) the circumstances of the default;
- (d) any previous determination against the person.

- (3) The standard of proof in proceedings under this section and section 47 shall be the standard of proof applicable in civil proceedings.

Fixed
Penalties

49. (1) The Commission may, with the approval of the Director of Public Prosecutions give to any person who has committed an offence specified in the Act, a notice in the prescribed form offering that person immunity from prosecution for that offence on payment of a fixed penalty to the Commission.

(2) No person to whom a notice has been given under subsection (1) shall be prosecuted for the offence if the fixed penalty is paid in accordance with subsection (1) and by the date specified in that notice.

(3) Where a person is given a notice under this section, proceedings shall not be taken against that person for the offence until the expiration of 15 days following the date of the notice or such longer period as may be specified in the notice.

(4) Payment of a fixed penalty under this section shall be made by the date specified in the notice, and the Commission shall issue a certificate in that behalf. In any proceedings the certificate shall be conclusive evidence of the facts stated therein.

(5) A notice under subsection (1) shall-

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state-
 - (i) the period during which proceedings will not be taken in accordance with subsection (3);
 - (ii) the amount of the fixed penalty, the authorised officer to whom and the address at which the fixed penalty shall be paid.

(6) If any proceedings are brought against any person for an offence under this Act, or under Order or Regulation made under this Act, it shall be a defence if the person proves that the offence with which he is charged has been compounded under this section.

(7) If the Commission withdraws a notice issued under subsection (1), after payment of the fixed penalty, the amount shall be refunded and all liability discharged.

(8) The Commission may appoint authorised officers for the purposes

of this section.

(9) The Minister may, by Order, prescribe the form of the notice under subsection (1).

Civil
liability

50. (1) Every enterprise which engages in conduct which constitutes -
- (a) a contravention of any of the obligations or prohibitions imposed in Parts III, IV, or VI ;
 - (b) aiding, abetting, counselling or procuring the contravention of any such provision;
 - (c) inducing by threats, promises or otherwise, the contravention of any such provision;
 - (d) being knowingly concerned in or party to any such contravention; or
 - (e) conspiring with any other person to contravene any such provision,

is liable in damages for any loss caused to any other person by such conduct.

(2) An action under subsection (1) may be commenced at any time within three years from the time when the cause of action arose.

Appeals.

51. (1) Any enterprise that is aggrieved by a finding of the Commission may, within fifteen days after the date of that finding appeal to a Judge in Chambers.

- (2) The Judge in Chambers may -
- (a) confirm, modify or reverse the Commission's finding or any part thereof; or
 - (b) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.
- (3) In giving any direction under this section the Judge shall -
- (a) advise the Commission of his reasons for doing so; and
 - (b) give to the Commission such directions as he thinks just concerning the reconsideration of the whole or any part of the matter that is referred for reconsideration.

(4) In reconsidering the matter, the Commission shall have regard to the Judge's reasons for giving a direction under subsection (1) and the Judge's direction under subsection (3).

Operation of order pending determination of appeal.

52. Where an appeal is brought against any findings of the Commission, any directions or order of the Commission that is based on such findings shall remain in force pending the determination of the appeal, unless the Judge otherwise orders.

PART VIII The Community Competition Commission

References to Community Competition Commission.

53. (1) Where the Commission seeks to determine whether conduct by an enterprise in another Member State prejudices trade and prevents, restricts or distorts competition in Guyana, the Commission shall refer the matter to the Community Competition Commission.

(2) The competent Minister may request the Community Competition Commission to cause an investigation to be carried out where he has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in Guyana.

(3) A reference or request made under subsections (1) or (2) shall be in writing and shall disclose such information as would enable the Community Competition Commission to make a preliminary assessment whether it should proceed to cause the investigation to be carried out.

(4) Where the Community Competition Commission:

(a) on its own initiative, or

(b) at the request of the Minister or Commission

has conducted an investigation, in accordance with Article 174 of the Revised Treaty of Chaguaramas, respecting any anti-competitive business conduct by an enterprise in another Member State, and given notice of its determination to the Commission, the Commission shall record the determination and register it in the High Court.

(5) A determination referred to in subsection (4) shall be binding on all parties to the matter and shall be enforced in the same manner as a judgment of the High Court.

(6) A party who is aggrieved by a determination of the Community Competition Commission may apply to the Court for a review of that determination.

Powers of Community Competition Commission.

54. (1) The Community Competition Commission shall exercise the functions specified in section 6 in Guyana.

(2) The Community Competition Commission shall, in relation to any

matter referred to it or any request made to it under section 53(1) or (2), as the case may be, have power to do any act specified in section 7(1) to (6).

(3) The provisions of the sections specified in subsection (4) shall apply with necessary modifications in relation to any investigation or inquiry being carried out by the Community Competition Commission under this Act.

(4) The sections referred to in subsection (3) are -

- (a) section 7 (7) - (10) (summons and hearings and offences connected therewith);
- (b) section 14 (power of entry and search);
- (c) section 15 (destruction of records);
- (d) section 17 (discontinuance of inquiry or investigation);
- (e) section 22 (action in relation to anti-competitive agreement or trade practice);
- (f) section 25 (action in relation to abuse of dominant position);
- (g) section 26 (exception to section 25);
- (h) section 27 (provisions relating to order under section 25);
- (i) section 35 (grant of authorisation);
- (j) section 37 (revocation of authorisation);
- (k) section 38 (register of authorisation);
- (l) section 57 (power to prohibit disclosure of information, documents and evidence);
- (m) section 58 (confidentiality).

Effect of
decisions of
Community
Competition
Commission.

55. A decision of the Community Competition Commission under this Act is binding on all parties.

PART IX - General

Regulations.

56. The Commission may, with the approval of the Minister, make regulations generally for giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, may make Regulations prescribing the procedures to be followed in respect of applications and notices to, and the

proceedings of the Commission, and also the form of any forms or notices necessary to give effect to the Act. In addition, the Commission shall publish regulations setting the levels of fees that it shall charge under section 9, and guidelines for the levels of fixed penalties that it shall charge under section 49.

Power to prohibit disclosure of information, documents and evidence.

57. (1) The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the Commission's operations.

(2) A person who publishes or communicates any information, documents or evidence, the publication of which is prohibited under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding one million dollars.

Confidentiality.

58. (1) The Commission and every person concerned or employed in the administration of this Act shall regard as secret and confidential, all documents, information or matters disclosed in the administration of this Act except those disclosures which the Commission considers necessary in the discharge of its functions.

(2) It shall be an offence for any person in the service of the Commission to disclose to any other person who is not in the service of the Commission, any trade secret of any enterprise which may come to his knowledge in the course of discharging his duties under this Act.

(3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding one million dollars.

Transitional.

59. The Commission shall not take action under section 19(2) if, within one month after the commencement of this Act, the parties concerned notify the Commission of the details of the anti-competitive agreement or practice and agrees with the Commission as to the manner and the period within which that agreement or practice will be terminated and have otherwise settled the matter.

FIRST SCHEDULE

The Competition Commission

Constitution of Commission.

1. (1) The Commission shall consist of such number of persons, not being less than three nor more than five as the Minister may appoint and the Secretary.

(2) The members shall be appointed by the Minister by instrument in writing for such period not exceeding three years as the Minister may specify in the instrument of appointment and each member shall be eligible for reappointment. Members shall be appointed from among persons appearing to the Minister to be of high character and integrity, and to be qualified as having had extensive and relevant professional expertise in trade, finance, economics, law, accounting, or business management, or extensive experience in matters relevant

to the functions of the Commission.

(3) The Director shall be a member *ex officio* of the Commission, and shall be the Secretary to the Commission, but shall not have voting rights.

Chairman. 2. The Minister shall appoint one of the members of the Commission to be chairman of the Commission.

Acting appointments. 3. If the chairman or any other member of the Commission is absent or unable to act, the Minister may appoint any person to act in the place of the chairman or other member.

Resignations. 4. (1) A member other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of that instrument, that member shall cease to be a member of the Commission.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date on which the Minister receives that instrument.

Revocation. 5. The Minister may revoke the appointment of any member if such member -

- (a) becomes permanently unable to perform his functions by reason of a physical or mental infirmity;
- (b) is convicted and sentenced to a term of imprisonment;
- (c) fails without reasonable excuse to carry out any of his functions under this Act;
- (d) engages in such activities as are reasonably considered prejudicial to the Commission's interest.

Gazetting of appointments. 6. The names of all members of the Commission as first constituted and every change of membership shall be published in the Gazette.

Leave of absence. 7. The Minister may, on application in writing, grant leave of absence to a member.

Seal and execution of documents. 8. (1) The Commission's seal shall be kept in the custody of the Secretary and shall be affixed to instruments pursuant to a resolution of the Commission, in the presence of the Secretary and any other member of the Commission.

(2) The Commission's seal shall be authenticated by the signature of the chairman or in his absence the Commissioner so acting.

(3) All documents other than those required by law to be under seal, made by, and all decisions of; the Commission may be signified under the hand of the chairman and Secretary or persons so acting.

Procedure
and
meetings.

9. (1) The Commission shall meet as often as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Commission may determine.

(2) The chairman may at any time call a special meeting of the Commission, and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members.

(3) The chairman shall preside at all meetings of the Commission and if the chairman is absent from a meeting, the members present and constituting a quorum shall elect one of their number to preside at that meeting.

(4) The quorum of the Commission shall be three.

(5) The Commission's decisions shall be by a majority of votes, and in addition to an original vote, the chairman or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes of each meeting shall be kept in proper form and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

(7) Subject to the provisions of this Schedule the Commission may regulate its own proceedings.

Disclosure
of
interest.

10. A member who is directly or indirectly interested in any matter which is being dealt with by the Commission shall disclose the nature of his interest at a meeting of the Commission and shall not take part in any deliberation or decision of the Commission with respect to that matter.

Protection
of
Commission.

11. No act done or proceeding taken under this Act shall be questioned on the ground of -

(a) the existence of any vacancy in the membership of; or any defect in the constitution of the Commission; or

(b) any omission, defect or irregularity not affecting the merits of the case.

Protection
of
members.

12. (1) No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done bona fide in the course of carrying out the provisions of this Act.

(2) Where any member is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would if that member were a servant or agent of the Commission.

Remuneration of members. 13. There shall be paid from the funds of the Commission to the chairman and other members of the Commission such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

SECOND SCHEDULE

FORM A

Summons to Witness to Appear before the Competition Commission

TO:

(name of witness)

.....

(address of witness)

Take Notice that you are hereby required to appear before the Commission for examination pursuant to section 7(8) of the Competition and Fair Trading Act.

The Commission is presently conducting an investigation pursuant to section 6(1)b of the Act to determine whether

.....

(name of enterprise)

is engaged in business practices in contravention of the Act.

Please be present as follows:-

Date:

Time:

Place:

.....

You have a right to be represented by an Attorney-at-law or any other person.

Failure to appear without reasonable excuse may subject you to a fine not exceeding One Million Dollars (\$1,000,000.00) pursuant to section 7(10) of the Competition and Fair Trading Act.

Date the day of

.....

Director,
Competition Commission

FORM B

NOTICE TO PRODUCE DOCUMENTS

IN RELATION TO AN INVESTIGATION BY THE COMPETITION COMMISSION

Nature of Investigation

.....
.....

TO:
(name of person required to provide documents)

.....
(address)

Take Notice that pursuant to section 7(3) of the Competition and Fair Trading Act the Commission requires you to produce for its inspection the following document(s), which must be produced at the offices of the Competition Commission located at

.....
.....

within twenty (20) days of the date of service of this Notice.

Description of Documents required
.....
.....

Failure to produce the document(s) as required is an offence under section 7(10) of the Competition and Fair Trading Act and may subject the offender to a fine not exceeding One Million Dollars (\$1,000,000.00).

.....
Date

.....
Director,
Competition Commission