

LAW AND TECHNOLOGY

COMMONWEALTH DRAFT MODEL LAW ON COMPETITION

INTRODUCTION

1. The subject of competition laws is covered generally in paper LMM(02)9 (section B). Meeting in Jersey in 2002, Law Ministers and Attorneys General from Commonwealth Small Jurisdictions acknowledged the importance of this subject and agreed to have it referred to the next Law Ministers meeting for discussion.

2. A model law (annexed to this paper) has been prepared for the assistance of those Commonwealth countries considering enactment of such legislation. In developing this law, the consultant considered, in particular, the existing laws of south Africa and Zambia and had regard to the rules and regulations on competition that have been developed by, first, the United Nations Commission on Trade and Development (UNCTAD), and second, the Organisation for Economic Co-operation and Development (OECD). The provisions governing competition in the European Union were also taken into account.

THE MODEL LAW

3. The provisions of the model are described briefly below –

- Clause 1 is the short title to the Act.
- Clause 2 is the interpretation section defining the words and expressions used in the Act.
- Clause 3 sets out the scope and application of the Act.
- Clause 4 prohibits anti-competitive agreements, practices and decisions between parties in a horizontal relationship.
- Clause 5 prohibits anti-competitive agreements between parties in a vertical relationship.
- Clause 6 empowers the Authority (as established under Clause 10) to exempt particular anti-competitive agreements and practices or categories of anti-competitive agreements or practices from the prohibitions imposed by Clauses 4 and 5.
- Clause 7 prohibits a party with a dominant position of market power from abusing that power.
- Clause 8:-
 - (i) Provides for the notification to the Authority, of any merger or amalgamation which would result in a concentration over the prescribed limit;
 - (ii) Empowers the Authority to prohibit a concentration over the prescribed limit if the concentration is likely to limit competition; and
 - (iii) Empowers the Authority to exempt an enterprise from such prohibition if the concentration would result in a technological, efficiency or other pro-competitive gain or is the only way to rescue a failing enterprise.

- Clause 9 empowers the Authority to employ experts to investigate concentrations and proposed concentrations.
- Clause 10 establishes the Competition Authority and provides for the appointment of its chairman and members by the Minister of Trade.
- Clause 11 provides for the independence of the Authority.
- Clause 12 sets out the functions of the Authority.
- Clause 13 sets out the powers of the Authority.
- Clause 14 empowers the Authority to issue guidelines indicating the manner in which it will enforce the provisions of the Act.
- Clause 15 empowers the Authority to appoint the staff necessary for the discharge of its functions under the Act.
- Clause 16 sets out the manner in which complaints about prohibited practices (as defined in the Act) are to be made to the Authority.
- Clause 17 empowers the Authority, for the purposes of an investigation under the Act, to summon any person to appear before it for examination or for production of any document or article in the possession of that person.
- Clause 18 empowers a Judge of the High Court to issue, on an application made by an officer of the Authority, to issue a search warrant for the search of any premises for any document or article relevant to an investigation conducted by the Authority, and suspected to be on those premises.
- Clause 19 empowers a court exercising civil jurisdiction to grant, on the application of the Authority, an injunction restraining an alleged prohibited practice until the completion of an investigation into that prohibited practice by the Authority.
- Clause 20 empowers the Authority to make orders requiring an enterprise to desist from a prohibited practice, and where necessary, to require the enterprise to carry out further action for elimination and prevention of any harmful practice.
- Clause 21 prohibits a member or officer of the Authority or any expert or Inspector employed by the Authority from disclosing any information which may come to his or her knowledge in the performance and discharge of his or her duties and functions under this Act.
- Clause 22 sets out the offences under the Act.
- Clause 23:-
 - (1) enables a person who suffers loss or damage as a result of a prohibited practice or because of a violation of an order made by the Authority, to institute a civil action for damages for such loss or damage;
 - (2) enables a person who apprehends loss or damage from an alleged prohibited practice to make an application to a civil court for an injunction restraining that prohibited practice;

- (3) allows for an injunction to be applied if the Court is satisfied that there is evidence of a prohibited practice or act and that a person or a group of persons is likely to suffer serious or irreparable damage should the prohibited act be not restrained.
 - (4) authorises one person in that group to sue for damages for such loss or damage or to apply for an injunction restraining such prohibited practice, on behalf of the whole group;
 - (5) empowers a court to award treble damages in cases of loss or damage caused as a result of a prohibited practice involving price fixing.
 - (6) mandates the Authority, on the plaintiff's request, to make available any documentation or information which the Authority has and which may be of assistance to the plaintiff in establishing the loss of damage to the plaintiff or his/her group. Information or documents shall not be given pursuant to the disclosure provisions of Clause 21.
- Clause 24 empowers the Authority to give advance rulings as regards the eligibility of an enterprise for exemption from the prohibitions imposed by clauses 4 and 5.
 - Clause 25 enables a person to apply for judicial review of a decision of the Authority within 60 days of that decision being communicated to that person.
 - Clause 26 empowers the Authority to make regulations for the purposes of the Act.
 - The Schedule provides for the qualifications for appointment as a member of the Authority, resignation and removal from office, of members of the Authority, term of office of members of the Authority, the Chairman of the Authority, meetings of the Authority and remuneration payable to members of the Authority.

ACTION BY MINISTERS

4. Ministers may wish to acknowledge the usefulness of the model as a guide to countries seeking assistance with either the preparation or modernisation of a law on competition.

MODEL COMPETITION ACT

AN ACT to control and eliminate anti-competitive agreements and arrangements between enterprises or through mergers and acquisitions or by the abuse of dominant position of market power, which limit access to markets or otherwise prevent or lessen competition to establish a Competition Authority; and for connected matters.

BE IT ENACTED by the Parliament [*name of legislature*] of[*name of country*] as follows:

- Short Title 1. This Act may be cited as the Competition Act, [*year of enactment*].
- Interpretation 2. In this Act, unless the context otherwise requires -
- “authority” means the Competition Authority established under section 10;
- “concerted practice” means co-operative or collaborative conduct between enterprises, achieved through direct or indirect contact, in substitution for their independent action;
- “dominant position of market power” means a situation where an enterprise, either by itself or acting with a few other enterprises, is in a position to control the relevant market in [*name of country*] or any part of it, for a particular good or service or group of goods or services;
- “enterprise” includes a firm, partnership, corporation, company, association or natural or legal person, irrespective of whether formed or controlled by private persons or by the State, and which engages directly or indirectly in economic activity;
- “essential facility” means an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide goods or services to their customers;
- “excessive price” means a price for a good or service which -
- (a) bears no reasonable relation to the economic value of that good or service; and
 - (b) is higher than the value referred to in paragraph (a).
- “exclusionary act” means an act that impedes or prevents an enterprise from entering into, or expanding within, a market;
- “horizontal relationship” means a relationship between competitors;
- “market power” means the power of an enterprise to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers;

“prescribed” means prescribed by regulations made under this Act;

“prohibited practice” means an agreement, arrangement, practice, action or concentration prohibited by section 4 or 5 or 7 or 8;

“relevant market” means a market in [name of country] for any goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them;

“vertical relationship” means the relationship between an enterprise and its suppliers, its customers or both.

Scope of the Act 3.(1) This Act applies to all economic activity within, or having effect within,.....[name of country].

(2) This Act does not derogate from the direct enjoyment of the privileges and protections conferred by other laws protecting intellectual property, including inventions, industrial models, trade marks and copyrights. It applies however, to the use of such property in such a manner as to cause the anti-competitive effects prohibited herein.

(3) This Act does not apply to concerted conduct designed to achieve a non commercial socio-economic objective or similar purpose.

(4) Insofar as this Act applies to an industry or a sector of industry that is subject to the regulation and control of a another regulatory authority, the exercise of the powers of that other regulatory authority shall not be construed as derogating from the exercise of powers by the Authority established to administer this Act.

Prohibition of restrictive agreements, arrangements or concerted practices between rival or potentially rival enterprises. 4.(1) An agreement between, or concerted practice by, enterprises, or a decision by an association of enterprises, is prohibited if it is between parties in a horizontal relationship and if –

(a) it has the effect of substantially preventing or lessening competition in a relevant market, unless a party to the agreement, concerted practice or decision can prove that any technological, efficiency or other pro-competitive gain resulting from the agreement, practice or decision outweighs that effect; or

(b) it involves any of the following restrictive practices –
(i) directly or indirectly fixing a purchase or selling price or any other trading condition;
(ii) dividing markets by allocating customers, suppliers, territories or specific types of goods or services, or
(iii) collusive tendering; or
(iv) concerted refusals to purchase or concerted refusals to supply.

(2) An agreement to engage in a restrictive practice referred to in subsection (1) (b) of this section is presumed to exist between two or more enterprises in a horizontal relationship if -

- (a) any one of those enterprises owns a significant interest in the other, or they have at least one director or substantial shareholder in common, and
- (b) any combination of those enterprises engages in that restrictive practice.

(3) A presumption referred to in subsection (2) of this section may be rebutted if the enterprise, director or shareholder concerned establishes that a reasonable basis exists to conclude that the practice referred to in subsection (1)(b) of this section was a normal commercial response to conditions prevailing in that market.

(4) For the purposes of subsections (2) and (3) of this section, “director “ means –

- (a) a director of a company as defined by the law relating to the incorporation of companies;
- (b) a trustee of a trust; or
- (c) a person holding an equivalent position in an enterprise.

(5) The provisions of subsection (1) of this section do not apply to an agreement between, or concerted practice engaged in by-

- (a) a company, its wholly owned subsidiary, a wholly owned subsidiary of that subsidiary or any combination of them; or
- (b) the constituent enterprises within a single economic entity similar in structure to those referred to in paragraph (a) of this sub-section.

Prohibition of restrictive practices by parties in vertical relationship

5.(1) An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a relevant market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs that effect.

(2) An agreement referred to in subsection (1) shall be deemed not to substantially prevent or lessen competition in a relevant market unless –

- (a) at least one of the parties to the agreement holds a dominant position in that market; or
- (b) the lessening of competition results from the fact that similar agreements are widespread in a market affected by the agreement.

Authorization of prohibited agreements

6.(1) The Authority may –

- (a) of its own motion ,authorize a category of agreements or practices, prohibited by section 4 or 5; or
- (b) on an application made by an enterprise for the exemption of an agreement or practice, or a category of agreements or practices, from the prohibition imposed by section 4 or section 5, authorize such agreement or practice or category of agreements or practices,

if it is satisfied that such agreement or practice or category of agreements and practices as a whole will produce a net public benefit because the agreement or practice or category of agreements or practices –

- (i) contributes to –
 - (A) improving production or distribution; or
 - (B) promoting technical or economic progress;while allowing consumers a fair share of the resulting benefit but –
- (ii) does not –
 - (A) impose on the enterprises concerned restrictions which are not indispensable to the attainment of those objectives; or
 - (B) afford the enterprises concerned the possibility of eliminating competition in respect of a substantial part of the goods in question.

(2) An authorization under subsection(1) of this section shall be for such period, and may be subject to such conditions, as may determined by the Authority.

Abuse of dominant position of market power

7.(1) An enterprise shall be deemed to have dominant position of market power if –

- (a) it has a share of at least 45 per centum of the market;
- (b) it has a share of 35 per centum or over but less than 45 per centum of the market, unless it can show that it does not have market power; or
- (c) it has a share of less than 35 per centum of the market but has market power.

(2) The abuse of dominant position of market power by an enterprise is prohibited .

(3) An action of an enterprise having dominant position of market power which results in, or is likely to result in, a lessening of competition in that market is an abuse of that dominant position.

(4) The following actions of an enterprise having dominant position of market power shall be deemed to constitute abuses of that dominant position –

- (a) predatory behaviour towards competitors, such as using below – cost pricing to eliminate competitors, or to prevent competitors from entering the market;
- (b) refusing to give a competitor access to an essential facility when it is economically feasible to do so;
- (c) limiting production, markets or technical development to the prejudice of consumers;
- (d) directly or indirectly imposing unfair trading conditions;
- (e) applying dissimilar conditions to equivalent transactions with trading parties, thereby placing them at a competitive disadvantage;

- (f) making 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 the contracts; or
- (g) refusing to supply scarce goods or provide services to a competitor when supplying those goods or providing those services is economically feasible.

(5) The provisions of this section shall be deemed not to prohibit actions by an enterprise that create –

- (a) obstacles to the entry of new enterprises; or
- (b) reduce the competitiveness of existing enterprises in,

the market, if those actions are the result of increasing the efficiency of that enterprise or have the effect of passing the benefits of greater efficiency to consumers.

(6) If the Minister of Trade (hereinafter referred to as “the Minister”) is satisfied that there are exceptional and compelling reasons of public policy why the prohibition contained in subsections (2) and (3) of this section ought not to apply in particular circumstances to actions not falling within subsection (4) of this section, he or she may, after a public consultation and advice from the Authority, by Order published in the Gazette, provide for it not to apply to such actions in such circumstances as may be specified in the Order. Such an Order may provide further that the prohibition is to be deemed never to have applied in relation to actions specified in the Order.

(7) When an enterprise has abused its dominant position of market power and no other remedy under this Act or under any other applicable law would be likely to rectify the resulting position or prevent recurrence of the abuse, the Authority may re-organize or divide the enterprise provided there is a reasonable likelihood that the entity or entities resulting from the reorganization or division would be economically viable and provided that the power to reorganize or divide conferred by this section is exercised in a manner designed to minimize any increases in the cost of providing the good or service in question.

Notification, investigations and prohibition of mergers of concentrated markets.

8.(1) A concentration shall be deemed to arise when –

- (a) two or more previously independent enterprises merge, amalgamate or combine the whole or a part of their businesses; or
- (b) one or more natural or legal persons already controlling at least one enterprise acquire, whether by purchase of securities or assets, by contract or by other means, direct or indirect control of the whole or parts of one or more other enterprises.

(2) For the purposes of this section, “control “ means the ability to materially influence an enterprise, in particular through –

- (a) ownership of, or the right to use the whole or part of the assets of, the enterprise; or
- (b) rights or contracts that confer decisive influence on the composition, voting or decisions of the organs of the enterprise.

(3) When an agreement or public bid will result in a concentration larger than the minimum size prescribed by regulations made under subsection (7) of this section, the parties to the agreement or bid are prohibited from consummating such concentration until.....days after providing notification of the proposed concentration to the Authority, in such form and containing such information as is specified in regulations made under subsection (7) of this section.

(4) Before the expiration of the period referred to in subsection (3) of this section, the Authority may issue a written request to the parties concerned for further information. The issuance of such a request shall have the effect of extending the period within which the concentration may not be consummated for an additional [.....] days beginning on the day after substantially all of the requested information is furnished to the Authority.

(5) Parties to an agreement or public bid not required to give notification under in subsection (3) of this section may voluntarily notify the Authority and, if they do so, shall be subject to the same procedures, restrictions, and rights as are applicable in cases of compulsory notification.

(6) If, before consummation of a concentration, the Authority determines that such concentration is prohibited by subsection (8) of this section and does not qualify for exemption under subsection (9) of this section, the Authority may -

- (a) prohibit consummation of the concentration;
- (b) prohibit consummation of the concentration unless and until it is modified by changes specified by the Authority; or
- (c) prohibit consummation of the concentration unless and until the relevant party or parties enter into legally enforceable agreements specified by the Authority.

(7) The Authority may from time to time make regulations prescribing -

- (a) the minimum size or sizes of the concentrations in respect of which notification is required to be given under subsection (3) of this section;
- (b) the information that must be furnished in respect of such concentrations;
- (c) the types of concentration excepted or exempted from the requirement of giving notification under subsection (3) of this section; or
- (d) other rules relating to the notification procedures referred to in subsections (3), (4) and (5) of this section.

(8) Concentrations that will probably lead to a significant lessening of competition are prohibited.

(9)(a) Concentrations prohibited by subsection (8) of this section may be exempted from the prohibition by the Authority if the parties establish that either

–

- (i) the concentration has brought about, or is likely to result in any technological or efficiency or other pro-competitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition that may result, or is likely to result, from the concentration, and would not likely to be obtained if the concentration is prevented; or
- (ii) one of the parties to the concentration is faced with actual or imminent financial failure, and the concentration represents the least anti-competitive among the known alternative uses for the failing enterprise's assets.

(b) The burden of proof under subsection (a) lies with the party seeking the exemption.

(c) A party seeking to rely on the exemption specified in paragraph (a)(i) of this subsection must demonstrate that if the concentration were not consummated it is not likely that the relevant technological, efficiency or other pro-competitive gains would be realized by means that would limit competition to a lesser degree than the concentration.

(d) A party seeking to rely on the exemption specified in paragraph (a)(ii) of this subsection must –

- (i) demonstrate that reasonable steps have been taken within the recent past to identify alternative purchasers for the failing enterprise's assets; and
- (ii) fully describe the results of that search.

(10) The Authority may determine, within three years after consummation of a concentration, that either a concentration which has not been notified under subsection(3) of this section or a notified concentration with respect to which the provisions of subsections (3) to (5) of this section have not been fully complied with, has led or will probably lead to a significant lessening of competition and does not qualify for either of the two exemptions set out in subsection (9) of this section. If it so determines, the Authority may –

- (a) undo the concentration by dissolving it into its constituent elements;
- (b) require other modifications of the concentration, including sale of a portion of its operations or assets; or
- (c) require the surviving enterprise or enterprises to enter into legally enforceable agreements specified by the Authority and designed to prevent or lessen the anti-competitive effects of the concentration.

(11) Notifiable concentrations that the Authority determines are prohibited by subsection (8) of this section and do not qualify for exemption under subsection (9) of this section may nevertheless be authorised by a published decision of the Government of(name of country) for overriding reasons of public policy involving a unique and significant contribution to the general welfare of the citizens of(name of country).

Concentration investigations

9.(1) In investigating a concentration or a proposed concentration, the Authority may direct an expert or experts to investigate the concentration or proposed concentration.

(2) Any person, whether or not a party to, or participant in, a concentration investigation may voluntarily file with the Authority, any document, affidavit, statement or other relevant information in respect of the concentration or proposed concentration.

Competition Authority

10.(1) There shall be an authority to be called the Competition Authority.

(2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal, and may sue and be sued in such name.

(3) The Authority shall consist of three members appointed by the Minister, one of whom shall be appointed as the Chairman of the Authority.

(4) The provisions of the Schedule to this Act shall apply to qualifications for appointment as a member of the Authority, resignation and removal from office, of members of the Authority, term of office of members of the Authority, the Chairman of the Authority, meetings of the Authority, remuneration payable to members of the Authority and protection of action of members of the Authority.

Independence of the Authority

11.(1) The Authority is independent and subject only to the law and the Constitution.

(2) The Authority shall be impartial and shall exercise, perform and discharge, its powers, duties and functions, under this Act, without fear, prejudice or favour.

(3) Parliament (name of legislature) shall appropriate annually, for the use of the Authority, such sums of money as may be necessary for the proper exercise, performance and discharge, by the Authority, of its powers, duties and functions under this Act.

- Functions of the Authority 12. The functions of the Authority shall be to-
- (a) implement and enforce the provisions of this Act;
 - (b) encourage and promote competition in all sectors of the economy;
 - (c) take steps to reduce barriers to entry into any sector of the economy or to engage in any form of economic activity;
 - (d) take measures to increase public awareness of the provisions of this Act; and
 - (e) assist in the preparation, amendment or review of legislation on restrictive business practices and competition policy.
- Powers of the Authority 13. The Authority shall have the power to-
- (a) conduct such investigations as may be necessary for enforcing the provisions of this Act;
 - (b) require any person to furnish such returns and information as may be necessary for implementing the provisions of this Act;
 - (c) acquire and hold, property, both movable and immovable, and to sell, lease, mortgage or otherwise dispose of the same;
 - (d) enter into such contracts as may be necessary for the proper discharge of its functions;
 - (e) conduct seminars, workshops and symposia; and
 - (f) do all such other things as may be necessary or incidental to the proper discharge of its functions.
- Guidelines on enforcement of the Act. 14.(1) The Authority may, from time to time and with a view to enabling enterprises to order their affairs in compliance with the provisions of this Act, cause to be published in the Gazette, guidelines indicating the manner in which the Authority will interpret, and give effect to, the provisions of this Act.
- (2) Subject to the provisions of section 21 prohibiting the disclosure of information, the Authority shall cause to be published in the Gazette, all decisions and orders made by the Authority, together with the reasons therefore, and all advance rulings given under section 24.
- (3) Guidelines published under this section shall not be binding on the Authority.
- Staff of the Authority 15.(1) The Authority shall have the power to –
- (a) appoint such officers as may be necessary for the proper discharge of its functions under this Act;
 - (b) exercise disciplinary control over, and dismiss, the officers so appointed ; and
 - (c) pay remuneration to such officers, at such rates as may be determined by the Authority out of the funds appropriated for the use of the Authority by Parliament (name of legislature).
- (2) For the purposes of conducting an investigation under this Act, the Authority may obtain the services of such experts and Inspectors as may be necessary. The Authority may pay such experts and Inspectors, remuneration at such reasonable rates as may be determined by the Authority.

Complaint procedure

16.(1) Any person may –

- (a) submit to the Authority, a complaint against an alleged prohibited practice, in the prescribed form; or
- (b) furnish to the Authority, information about an alleged prohibited practice, in any manner or form.

(2) Upon receipt of a complaint under subsection (1)(a) of this section or any information under subsection (1)(b) of this section, the Authority may investigate, or direct an Inspector to investigate, such complaint or the prohibited practice referred to in the information.

Power to summon persons to appear before the Authority.

17.(1) The Authority may, for the purposes of an investigation under this Act, summon any person residing in(*name of country*) to appear before the Authority or any Inspector authorized by the Authority, to be examined by the Authority or such Inspector or to produce to the Authority or such Inspector, any document or article in his or her possession.

(2) Any person receiving a summons under subsection (1) shall appear before the Authority or the Inspector specified in the summons, at the time and place specified in the summons, and shall submit himself or herself for examination by the Authority or the Inspector, as the case may be, or produce to the Authority or Inspector, as the case may be, any document or article in his or her possession and referred to in the summons.

Powers of entry and search

18.(1) A Judge of the High Court (highest court exercising original criminal jurisdiction) may, on application made by an officer of the Authority, issue a warrant authorizing such officer to enter and search any premises within the jurisdiction of that court, if the Judge is satisfied, on information given on oath or affirmation that –

- (a) a prohibited practice has taken place, is taking place, or is to take place, on those premises; or
- (b) a document or article connected with an investigation into that prohibited practice is in the possession of, or under the control of, a person on those premises.

(2) An officer authorized by a warrant issued under subsection (1) may enter and search the premises named in the warrant, and shall, immediately upon such entry, hand over a copy of the warrant to the owner or person in charge of those premises.

(3) An officer authorized by a warrant issued under subsection (1) of this section to enter and search any premises may –

- (a) enter and search those premises;
- (b) search any person on those premises if there are reasonable grounds for believing that that person has in his or her possession, any document or article which has a bearing on the investigation;
- (c) examine any book or document which is on in those premises and has a bearing on the investigation, and take extracts from, or make copies of, any such book or document;

- (d) operate any computer system on those premises, or require assistance from any person on those premises to operate that computer system, and –
 - (i) search any data contained in, or available to, that computer system;
 - (ii) reproduce any record from that data;
 - (iii) seize any output from that computer for examination or copying; and
- (e) remove from those premises for examination, any article which has a bearing on the investigation.

(4) An officer who enters and searches any premises under this section shall conduct the entry and search with strict regard to decency and order, and with respect to each person's dignity, freedom and security.

(5) During a search under subsection (3)(b) of this section, only a female officer may search a female, and only a male officer may search a male.

(6) An officer removing an article from any premises under subsection (3)(e) of this section shall issue a receipt for that article to the owner, or person in charge, of those premises, and shall return the article to those premises, immediately upon completion of the investigation.

Authority may apply for interim injunction

19.(1) Where the Authority receives a complaint about an alleged prohibited practice, the Authority may apply to a civil court of competent jurisdiction (a court exercising original civil jurisdiction) for an injunction restraining the alleged prohibited practice until the completion of an investigation into the complaint by the Authority.

(2) Upon an application made under subsection (1) of this section, the court may, after giving the person named as the respondent to the application, a reasonable opportunity of being heard, grant such injunction if the court is satisfied that –

- (a) there is evidence of the alleged prohibited practice ; and
- (b) a person or a group of persons may suffer serious and irreparable damage as a result of the alleged prohibited practice.

Orders of the Authority

20. After considering the statements made, or documents or articles produced, in the course of an investigation conducted by it under this Act, or where such investigation was conducted by an Inspector authorized by it, after considering the report of the Inspector, the Authority may issue orders prohibiting an enterprise from carrying on a prohibited practice, and where necessary, requiring such enterprise to take such action as is specified in the order to eliminate the harmful effects of such practice and to prevent the recurrence of such practice.

Duty to preserve secrecy

21.(1) Every member and officer of the Authority and every expert and Inspector employed to assist the Authority shall preserve, and aid in preserving secrecy with regard to –

- (a) all matters relating to the business, commercial or official affairs of any person;
- (b) all matters that have been identified as confidential under subsection (2) of this section; and
- (c) all matters relating to the identity of persons furnishing information to the Authority;

that may come to his or her knowledge in the performance and discharge of his or her duties and functions under this Act and shall not communicate any such matter to any person, except insofar as such communication is necessary for the performance or discharge of any such duty or function.

(2) Any person, when furnishing any information to the Authority, may identify information that he or she claims to be confidential information. Every such claim shall be supported by a written statement giving reasons why the information is confidential.

Offences

22.(1) Every person who –

- (a) does any act referred to in section 7 (4), amounting to a serious abuse of dominant position of market power;
- (b) repeatedly does any act, other than an act referred to in subsection 7(4), amounting to an abuse of dominant position of market power;
- (c) fails, without reasonable cause, to give effect to, or comply with, a decision or order of the Authority; or
- (d) being a person who is required to give a notification to the Authority under section 8 (3), fails to give such notification,

is guilty of an offence under this Act, and shall on conviction after summary trial by a Magistrate court (court exercising original criminal jurisdiction) be liable to a fine not less than the prescribed amount and not exceeding the prescribed amount.

(2) Every person who –

- (a) being a person on whom summons has been served under this Act –
 - (i) fails without reasonable cause, to appear before the Authority or an Inspector authorized by the Authority, at the time and place mentioned in the summons;
 - (ii) fails without reasonable cause, to answer any question put to him touching the matters being investigated by such Authority or Inspector ; or
 - (iii) fails without reasonable cause, to produce or show to the Authority or such Inspector, any document or article in his or her possession and which is, in the opinion of the Authority or Inspector, necessary for arriving at the truth of the matters being investigated by such Authority or Inspector;

- (b) resists or obstructs an officer of the Authority or any expert or Inspector employed to assist the Authority, in the exercise by that officer, expert or Inspector, of any power conferred on him or her, by or under this Act;
- (c) makes any statement, or furnishes any information, which to his or her knowledge is false, to the Authority or any Inspector authorized by the Authority;
- (d) wilfully omits from any statement made, or information furnished, to the Authority or any Inspector authorized by the Authority, any material particular; or
- (e) does any act in violation of the provisions of section 21,

is guilty of an offence under this Act, and shall on conviction after summary trial by a Magistrate court (court exercising original criminal jurisdiction), be liable to a fine not exceeding the prescribed amount.

Right of persons affected to institute civil action.

23.(1) Any person who suffers loss or damage as a result of –

- (a) a prohibited practice; or
- (b) an act committed in violation of an order made by the Authority,

shall be entitled to institute action in a civil court of competent jurisdiction (court exercising original civil jurisdiction) for damages for such loss or damage, and for reasonable costs incurred in investigating such prohibited practice or act, and in instituting such action.

(2) A person who apprehends loss or damage as a result of –

- (a) an alleged prohibited practice; or
- (b) an act allegedly committed in violation of an order made by the Authority,

shall be entitled to make an application to a civil court of competent jurisdiction (a court exercising original civil jurisdiction) for an injunction restraining the commission or continuation of such prohibited practice or act.

(3) Upon an application made under subsection (2), the court may, after giving the person named as the respondent to the application a reasonable opportunity of being heard, grant the injunction applied for if it is satisfied that –

- (a) there is evidence of the alleged prohibited practice or act; and
- (b) a person or a group of persons is likely to suffer serious or irreparable damage if the prohibited practice or act is not restrained.

(4) Where a group of persons suffers any loss or damage referred to in subsection (1) or apprehends any loss or damage referred to in subsection (2), a person belonging to that group shall be entitled to –

- (a) institute action under subsection (1); or
- (b) make an application under sub section (2),

on behalf of that group of persons.

(5) Where it is established, in an action instituted under subsection (1), that a person or group of persons has suffered loss or damage as a result of an agreement or practice fixing, directly or indirectly, the selling or purchase price of a good, the court may award as damages for such loss or damage, a sum equal to three times the loss or damage established to have been suffered by that person or group of persons.

(6) The Authority shall, on a request made by a plaintiff in an action instituted under subsection (1), make available to such plaintiff, any documents or information (other than documents or information, the disclosure of which is prohibited under section 21) in the possession of the Authority and which may be of assistance to the plaintiff in establishing that such plaintiff or the group to which such plaintiff belongs has suffered loss or damage as a result of a prohibited practice or other act.

Power of Authority to give advance rulings

24.(1) An enterprise may apply to the Authority for an advance ruling as to its eligibility for an authorization under section 4,5 or 8 exempting the enterprise from any of the prohibitions imposed by those sections, and the Authority may give such advance ruling if it is satisfied that the enterprise is eligible for such authorization.

(2) An advance ruling given under subsection (1) shall be valid for such period as is specified in the ruling, be subject to such conditions and requirements as the Authority may think fit to impose to prevent the abuse of such ruling, and shall be binding on the Authority.

(3) The Authority may renew an advance ruling for a further period, on an application for such renewal made by the enterprise on whose application the ruling was made.

(4) The Authority may revoke or modify an advance ruling given by it under subsection (1) or renewed by it under subsection (3) if -

- (a) a significant change of circumstances has occurred since the ruling or the renewal of the ruling, as the case may be;
- (b) the enterprise on whose application the ruling was given, has violated a condition or requirement specified in the ruling;
- (c) the decision to give or renew such ruling was materially influenced by fraudulent, inaccurate or misleading evidence; or
- (d) the enterprise on whose application the ruling was given, has abused an exemption granted to it.

Applications for judicial review

25.(1) A person aggrieved by a decision of the Authority shall be entitled to make an application to(court vested with jurisdiction to grant prerogative writs) for a judicial review of that decision.

(2) Notwithstanding anything in any other law, (the court vested with jurisdiction to grant prerogative writs) shall not entertain an application seeking judicial review of a decision of the Authority unless the application is made within 60 days of the date on which that decision was communicated to the person making the application.

Power to make regulations

26.(1) The Minister, in consultation with the Authority, may make regulations for giving effect to the principles and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations in respect of all matters which are required by this Act to be prescribed, or in respect of which regulations are authorized by this Act to be made; and in particular, may make regulations fixing the amount of the fines that may be imposed for offences under this Act. Different amounts may be fixed in respect of different offences, having regard to the gravity of the offence, and the losses likely to be caused by the commission of the offence.

Schedule (Section 10 (4))

1. No person shall be appointed as a member of the Authority unless that person is qualified for that appointment, having regard to the functions of the Authority, by virtue of that person's expert knowledge or experience in law, economics, commerce or consumer affairs.
2. No person shall be qualified for being appointed or continuing as a member of the Authority if he or she -
 - (a) has been sentenced to imprisonment for a term not less than 6 months;
 - (b) has been declared under any law in force in ...(name of country), to be of unsound mind;
 - (c) has been adjudged by a competent court to be bankrupt or insolvent, and remains an undischarged bankrupt or insolvent; or
 - (d) has any such financial or other interest as is likely to affect prejudicially the discharge of his or her functions under this Act.
3. A member of the Authority may resign from office by letter in that behalf addressed to the Minister, and the resignation shall take effect upon it being accepted by the Minister in writing.
4. The Minister may remove a member of the Authority from office if he or she-
 - (a) becomes subject to any of the disqualifications set out in paragraph 2;
 - (b) becomes permanently incapacitated ; or
 - (c) engages in any activity which would, in the view of the Minister, be prejudicial to the independence of the Authority.
5. A member of the Authority shall not make private use of, or profit from, any confidential information obtained by him or her in the course of exercising or discharging his or her powers or functions under this Act.
6. Subject to the provisions of paragraphs 3 and 4, the term of office of a member of the Authority shall be 5 years.
7. Where a member of the Authority vacates office by death, resignation or removal, the Minister may appoint another member in his or her place, and the member so appointed shall hold office for the remainder of the term of office of the member whom he or she succeeds.
8. A member of the Authority vacating office, otherwise than by removal, shall be eligible for re-appointment.
9.
 - (a) The Chairman may resign from the office of Chairman by letter in that behalf addressed to the Minister and the resignation shall take effect upon it being accepted by the Minister in writing.
 - (b) The Minister may, remove the Chairman from the office of Chairman, on any of the grounds referred to in paragraph 4.
 - (c) Subject to the provisions of sub paragraphs (a) and (b) of this paragraph, the term of office of the Chairman shall be his or her period of membership of the Authority.

10.
 - (a) The quorum for a meeting of the Authority shall be two.
 - (b) The Chairman shall preside at all meetings of the Authority. In the absence of the Chairman from any meeting of the Authority, the members present shall elect, from among themselves, a member to preside at such meeting.
 - (c) Subject to the provisions of subparagraphs (a) and (b) of this paragraph, the Authority may regulate the procedure in regard to its meetings and the transaction of business at such meetings.
 - (d) A member of the Authority who is in any way interested in any decision proposed to be made by the Authority, shall disclose the nature of his or her interest at a meeting of the Authority. The disclosure shall be recorded in the minutes of the Authority and that member shall not take part in such decision.
 - (e) No act or decision of the Authority shall be deemed to be invalid by reason only of a vacancy in the Authority or defect in the appointment of any of its members.
11. The members of the Authority shall be paid remuneration at such rates as may be determined by the Minister with the concurrence of the Minister of Finance.
12. No civil or criminal proceedings shall be instituted –
 - (a) against the Authority for any act which in good faith is done by the Authority under this Act;
 - (b) against the member or officer of the Authority or any expert or Inspector employed to assist the Authority, for any act which in good faith is done by him or her under this Act, or on the direction of the Authority.

GUIDE TO THE ACT

Definitions	Clause 2
Scope of the Act	Clause 3
Restrictive agreements and practices between rival enterprises	Clause 4
Restrictive Vertical practices	Clause 5
Provision authorizing prohibited agreements	Clause 6
Abuse of Dominant Position of Market Power	Clause 7
Notification and Investigation of Mergers	Clause 8
Competition Authority	Clause 10
Independence of the Authority [Paragraph 77 of the Report]	Clause 11
Number of Members and Chairman of the Authority [Paragraph 81 of the Report]	Clause 10[3]
Qualification for appointment as members [Paragraphs 82 and 83 of the Report]	Schedule Paragraphs 1 and 2
Removal of members [Paragraph 85 of the Report]	Schedule Paragraph 4
Conflicts of interest [Paragraph 85 of the Report]	Schedule Paragraphs 2[d], 5, and 10[d]
Immunity of members [Paragraph 85 of the Report]	Schedule Paragraph 12
Tenure of office of members [Paragraph 86 of the Report]	Schedule Paragraphs 6 and 9[c]
Appointment of staff [Paragraph 86 of the Report]	Clause 15
Functions and Powers of the Authority [Paragraph 87 of the Report]	Clauses 12 and 13
Regulations [Paragraph 88 of the Report]	Clause 26
Appointment of Experts [Paragraph 89 of the Report]	Clause 15[2]
Confidentiality [Paragraph 90 of the Report]	Clause 21
Complaint Procedure [Paragraph 91 of the Report]	Clause 16
Cease and desist orders [Paragraph 94 of the Report]	Clause 20
Interim Injunctions pending Investigation [Paragraph 95 of the Report]	Clause 19
Offences punishable with fines [Paragraphs 97 and 101 of the Report]	Clauses 22[1] and [2]
Private actions for damages [Paragraph 103 of the Report]	Clause 23
Enforcement guidelines and Advance rulings [Paragraph 104 of the Report]	Clauses 14 and 24
Powers of Search [Paragraph 105 of the Report]	Clauses 18 and 17
Judicial Review [Paragraph 108 of the Report]	Clause 25