



ANNEX III

Compendium of Competition Laws in ASEAN

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BRUNEI DARUSSALAM

No. S 1

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

COMPETITION ORDER, 2015

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.

PART II

CONSTITUTION, FUNCTIONS AND POWERS OF COMMISSION

3. Constitution of Commission.
4. Functions of Commission.
5. Powers of Commission.
6. Appointment of Director.
7. Appointment of authorised officers.
8. Direction by Minister.
9. Appointment of committees and delegation of powers.

PART III

COMPETITION

Chapter 1

General

10. Application of Part.

Chapter 2

Agreements etc. preventing, restricting or distorting competition

11. Agreements etc. preventing, restricting or distorting competition.
12. Excluded agreements.
13. Individual exemption.
14. Revocation or variation of individual exemption.
15. Block exemption.
16. Block exemption order.
17. Opposition to block exemption.
18. Procedure for block exemption.
19. Variation and revocation of block exemption order.
20. Criteria for block exemption.

Chapter 3

Abuse of dominant position

21. Abuse of dominant position.
22. Excluded cases.

Chapter 4

Mergers

23. Mergers.
24. Excluded mergers.
25. Requests for Commission to consider anticipated mergers and mergers.
26. Notification of anticipated merger.
27. Notification of merger.

28. Interim measures in relation to notifications of anticipated mergers and mergers.
29. Effect of decision that anticipated merger, if carried into effect, will not infringe section 23 prohibition.
30. Effect of decision that merger has not infringed section 23 prohibition.

Chapter 5

Commitments

31. Commitments.
32. Effect of commitments.

Chapter 6

Investigation and enforcement

33. Guidelines on enforcement of Part.
34. Power to require documents or information.
35. Power to investigate.
36. Power when conducting investigation.
37. Power to enter premises without warrant.
38. Power to enter premises under warrant.
39. Self-incrimination and savings for professional legal advisers.
40. Interim measures.
41. Decision of Commission upon completion of investigation.
42. Enforcement of decision of Commission.
43. Notification.
44. Leniency regime.
45. Power to accept undertaking.

46. Enforcement of direction, undertaking and commitment in High Court.
47. Commission may retain document.
48. Access to computerised data.
49. Warrant admissible notwithstanding defect.
50. List of record, book, account etc. seized.
51. Release of record, book, account etc. seized.
52. No cost or damages arising from seizure to be recoverable.

PART IV

OFFENCES

53. Access to records etc.
54. Giving false or misleading information, evidence or document.
55. Destruction, concealment, mutilation or alteration of records etc.
56. Obstruction of authorised officer.
57. Tipping off.
58. Threat and reprisal is prohibited.

PART V

COMPETITION APPEAL TRIBUNAL

59. Appealable decisions.
60. Competition Appeal Tribunal.
61. Powers and decisions of Tribunal.

PART VI

GENERAL

62. Power to conduct market review.
63. Determination of market review.

64. General penalty.
65. Composition of offences.
66. Offences by body corporate.
67. Rights of private action.
68. Co-operation between Commission and other regulatory authorities on competition matters.
69. Co-operation between Commission and foreign competition bodies.
70. Preservation of secrecy.
71. Protection against suit and legal proceedings.
72. Amendment of Third and Fourth Schedules.
73. Regulations.
74. Transitional provisions.

FIRST SCHEDULE — PROCEEDINGS OF COMMISSION

SECOND SCHEDULE — POWERS OF COMMISSION

**THIRD SCHEDULE — EXCLUSIONS FROM SECTION 11 PROHIBITION AND
SECTION 21 PROHIBITION**

FOURTH SCHEDULE — EXCLUSIONS FROM SECTION 23 PROHIBITION

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

COMPETITION ORDER, 2015

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Competition Order, 2015 and shall commence on a date to be appointed by the Minister, with approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint different dates for the commencement of the different Parts or provisions of this Order or for the different purposes of the same provisions.

(3) The long title of this Order is “An Order to promote and protect competition in markets in Brunei Darussalam, to promote economic efficiency, economic development and consumer welfare; and to provide for the functions and powers of the Competition Commission of Brunei Darussalam and to provide for matters connected therewith”.

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

“agreement” includes any agreement, arrangement, understanding, undertaking or promise, whether expressed or implied, written or oral;

“anticipated merger” means an arrangement that is in progress or contemplation and that, if carried into effect, will result in the occurrence of a merger referred to in section 23(2);

“authorised officer” means an authorised officer appointed under section 7;

“block exemption” has the meaning assigned to it in section 15(5);

“block exemption order” has the meaning assigned to it in section 15(3);

“Chairman” means the Chairman of the Commission and includes any temporary Chairman of the Commission;

“Commission” means the Competition Commission of Brunei Darussalam;

“concerted practice” means any form of coordination between undertakings which knowingly substitutes practical co-operation between them for the risks of competition, and includes any practice which involves direct or indirect contact or communication between undertakings, the object or effect of which is either –

- (a) to influence the conduct of one or more undertakings in a market; or
- (b) to disclose the course of conduct which an undertaking has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“consumer” means any direct or indirect user of goods or services supplied by an undertaking in the course of business, and includes another undertaking that uses the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer;

“Director” means the Director of the Commission appointed under section 6 and includes any person acting in that capacity;

“document” has the same meaning as in section 2 of the Evidence Act (Chapter 108) and includes information recorded in any form;

“dominant position” means a situation in which one or more undertakings possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors within Brunei Darussalam or elsewhere;

“goods” means property of every kind, whether tangible or intangible and includes –

- (a) all kinds of movable property;
- (b) buildings and other structures;

(c) vessels and vehicles;

(d) utilities;

(e) minerals, trees and crops, whether on, under or attached to land or not;

(f) animals, including fish; and

(g) chose in action;

“individual exemption” has the same meaning assigned to it under section 13(3);

“information” includes estimates and forecasts;

“member” means a member of the Commission;

“Minister” means the Minister charged with the responsibility for general competition matters;

“party involved in a merger” means a person or an undertaking specified in section 23(2) and includes the merged entity;

“party to an anticipated merger” means a person or an undertaking which would be a person or an undertaking specified in section 23(2) if the anticipated merger were carried into effect;

“person” includes any undertaking;

“premises” does not include domestic premises unless —

(a) they are used in connection with the affairs of an undertaking; or

(b) documents relating to the affairs of an undertaking are kept there,

but includes any vehicle;

“price” includes any form of consideration given in return for any goods or services of any kind, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such goods or services;

“public interest consideration” means national or public security, defence and such other considerations as the Minister may, by order published in the *Gazette*, prescribe;

“section 11 prohibition” means the prohibition referred to in section 11(1);

“section 21 prohibition” means the prohibition referred to in section 21(1);

“section 23 prohibition” means the prohibition referred to in section 23(1);

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

“supply” includes —

(a) in relation to goods, the supply and re-supply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and

(b) in relation to services, the provision by way of sale, grant or conferment of the services;

“Tribunal” means the Competition Appeal Tribunal established by section 60;

“undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

(2) The fact that to a limited extent the section 11 prohibition does not apply to an agreement, because of an exclusion provided by or under this Order, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Order, the power to require information, in relation to information recorded otherwise than in a legible form, includes the power to require a copy of it in a legible form.

(4) Any power conferred on any person by this Order to require information includes the power to require any document which he believes may contain that information.

PART II

CONSTITUTION, FUNCTIONS AND POWERS OF COMMISSION

Constitution of Commission.

3. (1) There shall be a Competition Commission of Brunei Darussalam.

(2) The Commission shall consist of a Chairman and such other members, not being less than 6 or more than 12, appointed by His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(3) The First Schedule shall have effect with respect to the Commission, its members and proceedings.

Functions of Commission.

4. (1) The Commission shall have the following functions —

(a) to enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Brunei Darussalam;

(b) to promote and sustain competition in markets in Brunei Darussalam;

(c) to promote a strong competitive culture and environment throughout the economy;

(d) to act as an advocate for competition matters;

(e) to educate and promote public understanding of the value of competition and how this Order promotes competition;

(f) to advise the Government or other public authority on national needs and policies in respect of matters concerning competition in Brunei Darussalam;

(g) to promote research into and the development of skills in relation to the legal, economic and policy aspects;

(h) to act internationally as the national body representative of Brunei Darussalam in respect of competition matters; and

(i) to carry on such activities and do such things as are necessary or advantageous and proper for the administration of the Commission.

(2) In performing the functions and discharging the duties imposed on it by subsection (1), the Commission shall have regard to –

(a) the differences in the nature of various markets in Brunei Darussalam;

(b) the economic, industrial and commercial needs of Brunei Darussalam; and

(c) maintaining the efficient functioning of the markets in Brunei Darussalam.

(3) The Commission may undertake such other functions and duties as the Minister may assign to the Commission and in so doing, the Commission shall be deemed to be fulfilling the purposes of this Order, and the provisions of this Order shall apply to the Commission in respect of such functions and duties.

(4) Nothing in this section shall be construed as imposing on the Commission, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Commission.

5. (1) Subject to the provisions of this Order, the Commission may carry on such activities as appear to the Commission to be advantageous, necessary or convenient for it to carry on for or in connection with the performance of its functions and the discharge of its duties under this Order or any other written law and, in particular, the Commission may exercise any of the powers specified in the Second Schedule.

(2) This section shall not be construed as limiting any power of the Commission conferred by or under any other written law.

(3) The Commission shall furnish the Minister information with respect to its activities in such manner and at such times as the Minister may require.

Appointment of Director.

6. (1) His Majesty the Sultan and Yang Di-Pertuan shall, by notification published in the *Gazette*, appoint a Director who shall be responsible for the overall administration and management of the functions, activities and day-to-day affairs of the Commission for the purposes of carrying out the provisions of this Order.

(2) The Director shall perform such other duties as the Minister may direct.

Appointment of authorised officers.

7. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint such number of authorised officers to carry into effect any specific provisions of this Order or any regulations made thereunder.

(2) For purposes of an investigation under this Order, the Minister may appoint any other person to be an authorised officer.

Direction by Minister.

8. The Minister may, in writing, give to the Commission directions of a general character, consistent with the provisions of this Order, relating to the performance of the functions and powers of the Commission and the Commission shall give effect to such directions.

Appointment of committees and delegation of powers.

9. (1) The Commission may, in its discretion, appoint from among its own members or persons who are not members such number of committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Commission, would be better regulated and managed by means of such committees.

(2) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee all or any of the powers, functions and duties vested in the Commission by this Order or any other written law, except the power of delegation conferred by this subsection.

(3) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to the Chairman, the Director, any employee of the Commission or any person all or any of the powers, functions and duties vested in the Commission by this Order or any other written law, except the power of delegation conferred by this subsection; and any power, function or duty so delegated may be exercised, performed or discharged by the Chairman, the Director, employee or person in the name and on behalf of the Commission.

(4) The Commission may continue to exercise a power conferred upon it, perform a function or discharge a duty under this Order or any other written law, notwithstanding the delegation of the power, function or duty under this section.

PART III
COMPETITION

Chapter 1

General

Application of Part.

10. (1) Notwithstanding that —

(a) an agreement referred to in section 11 has been entered into outside Brunei Darussalam;

(b) any party to such agreement is outside Brunei Darussalam;

(c) any undertaking abusing the dominant position referred to in section 21 is outside Brunei Darussalam;

(d) an anticipated merger will be carried into effect outside Brunei Darussalam;

(e) a merger referred to in section 23 has taken place outside Brunei Darussalam;

(f) any party to an anticipated merger or any party involved in a merger is outside Brunei Darussalam; or

(g) any other matter, practice or action arising out of such agreement, such dominant position, an anticipated merger or a merger is outside Brunei Darussalam,

this Part shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if —

(i) such agreement infringes or has infringed the section 11 prohibition;

(ii) such abuse infringes or has infringed the section 21 prohibition;

(iii) such anticipated merger, if carried into effect, will infringe the section 23 prohibition; or

(iv) such merger infringes or has infringed the section 23 prohibition,

as the case may be.

(2) In so far as this Part applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority —

(a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and

(b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purpose of co-ordinating the exercise of powers by the Commission under this Part and the exercise of powers by any other regulatory authority referred to in subsection (2), and may, in particular, make regulations to provide for the procedure to be followed —

(a) in determining in a particular case or category of cases whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and

(b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.

(4) Nothing in this Part shall apply to any activity carried on by, any agreement entered into or any conduct on the part of —

(a) the Government;

(b) any statutory body; or

(c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.

(5) Notwithstanding subsection (4), this Part shall apply to —

(a) such statutory body or person acting on behalf of such statutory body; or

(b) such activity carried on, agreement entered into or conduct engaged in, by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct,

as the Minister may, by order published in the *Gazette*, prescribe.

(6) In this section, "statutory body" means a body corporate established by or under any written law.

Chapter 2

Agreements etc. preventing, restricting or distorting competition

Agreements etc. preventing, restricting or distorting competition.

11. (1) Subject to section 12, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Brunei Darussalam are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) For the purposes of subsection (1), agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Brunei Darussalam if they –

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) 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; or

(f) perform an act of bid rigging.

(3) Any provision of any agreement or any decision which is prohibited by subsection (1) shall be void on or after the commencement date of this section to the extent that it infringes that subsection.

(4) Unless the context otherwise requires, a provision of this Order which is expressed to apply to, or in relation to, an agreement shall be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

(5) Subsection (1) shall apply to agreements, decisions and concerted practices implemented before, on or after the commencement date of this section.

Excluded agreements.

12. The section 11 prohibition shall not apply to such matter as may be specified in the Third Schedule.

Individual exemption.

13. (1) An undertaking may apply to the Minister, through the Commission, for an exemption with respect to a particular agreement from the section 11 prohibition.

(2) The Minister may, with the recommendation of the Commission, by order grant the exemption if, in the opinion of the Minister, the agreement is one to which this section applies.

(3) An exemption granted under this section is referred to as an individual exemption.

(4) The individual exemption granted by the Minister may be —

(a) subject to any fees, condition or obligation as the Commission considers it appropriate to impose; and

(b) for a limited duration as specified in the order.

(5) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

(6) This section shall apply to any agreement which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not —

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Revocation or variation of individual exemption.

14. (1) If the Minister is satisfied that —

(a) there has been a material change of circumstance since the grant of an individual exemption; or

(b) an obligation has been breached,

the Minister may, by order published in the *Gazette* —

(i) revoke the individual exemption;

(ii) vary or remove any condition or obligation; or

(iii) impose additional condition or obligation.

(2) If the Minister is satisfied that —

(a) the information on which the Minister based his decision to grant an individual exemption is false or misleading in a material particular; or

(b) any condition has been breached,

the Minister may, by order published in the *Gazette*, revoke the individual exemption.

(3) Any action taken by the Minister under subsection (1) shall have effect from the date the order is made.

(4) An individual exemption which is revoked —

(a) by virtue of subsection (2)(a) shall be void from the date the individual exemption was granted; or

(b) by virtue of subsection (2)(b) shall have effect from the date the condition is breached.

Block exemption.

15. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements referred to in section 20, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

(2) The Minister may make an order giving effect to such a recommendation —

(a) in the form in which the recommendation is made; or

(b) subject to such modifications as he considers appropriate.

(3) An order made under this section is referred to in this Part as a block exemption order.

(4) An agreement which falls within a category specified in a block exemption order shall be exempt from the section 11 prohibition.

(5) An exemption under this section is referred to in this Part as a block exemption.

Block exemption order.

16. (1) A block exemption order may impose conditions or obligations subject to which a block exemption shall have effect.

(2) A block exemption order may provide —

(a) that breach of a condition imposed by the order shall have the effect of revoking the block exemption in respect of an agreement as from such date as the Commission may specify;

(b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, revoke the block exemption in respect of the agreement as from such date as the Commission may specify; and

(c) that if the Commission considers that a particular agreement is not one to which section 20 applies, it may revoke the block exemption in respect of that agreement as from such date as the Commission may specify.

(3) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

(4) A block exemption order may provide that the order shall cease to have effect at the end of a specified period.

(5) In this section, “specified” means specified in a block exemption order.

Opposition to block exemption.

17. (1) A block exemption order may provide that a party to an agreement which does not qualify for the block exemption created by the order, but satisfies specified criteria, may notify the Commission of the agreement for the purposes of subsection (2).

(2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) shall be treated, as from the end of the

notice period, as falling within a category specified in a block exemption order unless the Commission —

(a) is opposed to it being so treated; and

(b) gives notice in writing to the party concerned of its opposition before the end of that period.

(3) If an agreement to which the section 11 prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

(a) beginning with the date on which the notification was given; and

(b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.

(4) The date specified in a notice under subsection (3)(b) shall not be earlier than the date on which the notice is given.

(5) In this section —

“notice period” means such period as may be specified with a view to giving the Commission sufficient time to consider whether to oppose under subsection (2);

“specified” means specified in a block exemption order.

Procedure for block exemption.

18. (1) Before making a recommendation under section 15(1), the Commission shall —

(a) publish details of its proposed recommendation in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and

(b) consider any representations made to the Commission regarding its proposed recommendation.

(2) If the Minister proposes to give effect to such a recommendation subject to modifications, he shall inform the Commission of the proposed modifications and take into account any comments made by the Commission.

Variation and revocation of block exemption order.

19. (1) If, in the opinion of the Commission, it is appropriate to vary or revoke a block exemption order, the Commission may make a recommendation to that effect to the Minister.

(2) Section 18 shall apply to any proposed recommendation under subsection (1).

(3) Where there has been no recommendation under subsection (1), the Minister shall, before exercising his power to vary or revoke a block exemption order —

(a) inform the Commission of the proposed variation or revocation;
and

(b) take into account any comments made by the Commission.

Criteria for block exemption.

20. Section 15 shall apply to any agreement which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not —

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Chapter 3

Abuse of dominant position

Abuse of dominant position.

21. (1) Subject to section 22, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Brunei Darussalam is prohibited.

(2) For the purposes of subsection (1), conduct may, in particular, constitute such an abuse if it consists in —

- (a) predatory behaviour towards competitors;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- (d) 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.

Excluded cases.

22. The section 21 prohibition shall not apply to such matter as may be specified in the Third Schedule.

Chapter 4

Mergers

Mergers.

23. (1) Subject to section 24, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Brunei Darussalam for goods or services are prohibited.

(2) For the purposes of this Part, a merger occurs if —

(a) two or more undertakings, previously independent of one another, merge;

(b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

(c) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

(3) For the purposes of this Part, control, in relation to an undertaking, shall be regarded as existing if, by reason of rights, contracts or any other means, or any combination of rights, contracts or other means, decisive influence is capable

of being exercised with regard to the activities of the undertaking and, in particular, by —

(a) ownership of, or the right to use all or part of, the assets of an undertaking; or

(b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(4) For the purposes of this Part, control is acquired by any person or other undertaking if he or it —

(a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or

(b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(5) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger falling within subsection (2)(b).

(6) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(7) For the purposes of this Part, a merger shall not be deemed to occur if —

(a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;

(b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;

(c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or

(d) control is acquired by an undertaking referred to in subsection (8) in the circumstances specified in subsection (9).

(8) The undertaking referred to in subsection (7)(d) is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(9) The circumstances referred to in subsection (7)(d) are that —

(a) the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and

(b) any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists —

(i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and

(ii) is not for the purpose of determining the manner in which any activity of the other undertaking, being an activity that could affect competition in markets for goods or services in Brunei Darussalam is carried on.

(10) In subsection (9), "specified period" means —

(a) the period of 12 months from the date on which control of the other undertaking was acquired; or

(b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

Excluded mergers.

24. The section 23 prohibition shall not apply to any merger specified in the Fourth Schedule.

Requests for Commission to consider anticipated mergers and mergers.

25. (1) Section 26 provides for an anticipated merger to be considered by the Commission on the application of a party to that anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 23 prohibition.

(2) Section 27 provides for a merger to be considered by the Commission on the application of a party involved in that merger who thinks the merger may infringe the section 23 prohibition.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations provide —

(a) that only such anticipated mergers as are prescribed may be notified to the Commission under section 26; and

(b) for the procedure to be followed —

- (i) by any party making an application under section 26 or 27; and
- (ii) by the Commission, in considering such an application.

Notification of anticipated merger.

26. (1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section shall —

- (a) notify the Commission of the anticipated merger; and
- (b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 31 and 32, on an application under this section, the Commission may make a decision as to —

(a) whether the section 23 prohibition will be infringed by the anticipated merger, if carried into effect; and

(b) if it will not be infringed, whether it is —

- (i) because of the effect of an exclusion which will apply if the anticipated merger is carried into effect;
- (ii) because the anticipated merger, if carried into effect, is exempted from the application of the prohibition under subsection (3); or
- (iii) because a commitment has been accepted pursuant to section 31.

(3) Where the Commission proposes to make a decision that the section 23 prohibition will be infringed by an anticipated merger, if carried into effect, the Commission shall give written notice to the party who applied for a decision on the anticipated merger and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) shall be final.

(5) Where the Minister exempts an anticipated merger under subsection (3), the Commission may make a decision under subsection (2)/(b)(ii).

{6} The Minister may revoke the exemption of an anticipated merger granted under subsection {3} if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

{7} Subject to subsection {8}, where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the section 23 prohibition, the Commission may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

{8} Before the expiry of the period referred to in subsection {7}, if any, an application may be made by all parties to the anticipated merger who applied to the Commission for a decision on the anticipated merger under this section for that period to be extended.

{9} Where an application for an anticipated merger to be considered has been made to the Commission in accordance with subsection {1} and the anticipated merger is carried into effect before the Commission makes a decision under subsection {2} in respect thereof, the application relating to the anticipated merger —

(a) may be treated by the Commission as if it were an application for the resulting merger to be considered made in accordance with section 27; and

(b) the Commission may make a decision under section 27 in respect of the resulting merger.

{10} For the purpose of subsection {9}, the Commission may make a decision under section 27{2}/b/{iii} (read with section 27{5}) in respect of the merger referred to in subsection {9}, notwithstanding the exemption was granted by the Minister under subsection {3} in respect of the anticipated merger.

{11} Notwithstanding subsection {9}, the Commission may refuse to make any decision in respect of a merger referred to therein and require any party involved in the merger to apply to the Commission for the merger to be considered under section 27{1}.

{12} In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type prescribed by regulations made under section 25{3}/a).

Notification of merger.

27. {1} A party involved in a merger which applies for the merger to be considered under this section shall —

(a) notify the Commission of the merger; and

(b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 31 and 32, on an application under this section, the Commission may make a decision as to —

(a) whether the section 23 prohibition has been infringed; and

(b) if it has not been infringed, whether that is —

(i) because of the effect of an exclusion;

(ii) because the merger is exempted from the prohibition under subsection (3); or

(iii) because a commitment has been accepted pursuant to section 31.

(3) Where the Commission proposes to make a decision that the section 23 prohibition has been infringed, the Commission shall give written notice to —

(a) the party who applied for a decision on the merger; or

(b) in a case where section 26(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

and the party or merged entity so notified by the Commission may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) shall be final.

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(7) A reference in any provision of this Order to an application or a notification under section 27 shall include a reference to an application or a notification under section 26 that the Commission treats as an application or a notification under section 27 pursuant to section 26(9).

Interim measures in relation to notifications of anticipated mergers and mergers.

28. (1) If, in respect of an application under section 26 or 27, the Commission has reasonable grounds for suspecting that —

- (a) the section 23 prohibition will be infringed by an anticipated merger, if carried into effect; or
- (b) the section 23 prohibition has been infringed by a merger,

but has not completed its consideration of the matter, and the Commission considers that it is necessary for it to act under this section —

- (i) for the purpose of preventing any action that may prejudice —
 - (A) the consideration of the anticipated merger or merger; or
 - (B) the giving of any direction under section 42; or
- (ii) as a matter of urgency for the purpose —
 - (A) of preventing serious, irreparable damage to a particular person or category of persons; or
 - (B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(2) Before giving a direction under this section, the Commission shall —

- (a) give written notice to the person to whom it proposes to give the direction; and
- (b) give that person an opportunity to make representations.

(3) A notice under subsection (2) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(4) A direction given under this section shall have effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 42.

(5) Sections 42(2)(c)(i) and (d)(i) and 46 shall also apply to directions given under this section.

Effect of decision that anticipated merger, if carried into effect, will not infringe section 23 prohibition.

29. (1) This section shall apply to an anticipated merger in respect of which the Commission has determined an application under section 26 by making a decision that the anticipated merger, if carried into effect, will not infringe the section 23 prohibition.

(2) The Commission shall take no further action in relation to the section 23 prohibition with respect to the anticipated merger (including where the anticipated merger is carried into effect, or if the Commission's decision is valid for a specified period, where the anticipated merger is carried into effect within that period) unless —

(a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the anticipated merger, if carried into effect, will not infringe the section 23 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 23 prohibition by the anticipated merger to which this section applies, if carried into effect or, where the Commission's decision is valid for a specified period, if carried into effect within that period.

(5) The Commission may remove the immunity given by subsection (4) if —

(a) it takes action under this Part with respect to one of the circumstances referred to in subsection (2);

(b) it considers that it is likely that the anticipated merger, if carried into effect, or the resulting merger will infringe the section 23 prohibition; and

(c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(6) If the Commission has reasonable grounds for suspecting that —

(a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party to the anticipated merger, was incomplete, false or misleading in a material particular; or

(b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

(7) Where —

(a) the Commission has made a decision that an anticipated merger, if carried into effect, will not infringe the section 23 prohibition; and

(b) the merger resulting from a purported carrying into effect of the anticipated merger is materially different from the anticipated merger,

nothing in this section shall prevent the Commission from taking any action in relation to the section 23 prohibition in respect of the merger.

Effect of decision that merger has not infringed section 23 prohibition.

30. (1) This section shall apply to a merger if the Commission has determined an application under section 27 by making a decision that the merger has not infringed the section 23 prohibition.

(2) The Commission shall take no further action in relation to the section 23 prohibition with respect to the merger unless —

(a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the merger has not infringed the section 23 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 23 prohibition by a merger to which this section applies.

(5) The Commission may remove the immunity given by subsection (4) if —

(a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);

(b) it considers that it is likely that the merger will infringe the section 23 prohibition; and

(c) it gives notice in writing to —

(i) the party on whose application the decision was made; or

(ii) in a case where section 26(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

that it is removing the immunity as from the date specified in its notice.

(6) If the Commission has reasonable grounds for suspecting that —

(a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party involved in the merger, was incomplete, false or misleading in a material particular; or

(b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

Chapter 5

Commitments

Commitments.

31. (1) The Commission may, at any time before making a decision pursuant to an application under section 26 or 27 or an investigation under section 35(1)(c) or (d) as to whether —

(a) the section 23 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 23 prohibition has been infringed by a merger,

accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which —

(i) may be expected to result from the anticipated merger, if carried into effect; or

(ii) has resulted or may be expected to result from the merger.

(2) A commitment shall come into force on the date specified by the Commission when it is accepted.

(3) The Commission may, at any time when a commitment is in force, accept —

(a) a variation of the commitment; or

(b) another commitment in substitution,

for the purpose referred to in subsection (1).

(4) A commitment may be released by the Commission where it has reasonable grounds for believing that the commitment is no longer necessary or appropriate for the purpose referred to in subsection (1).

(5) Before accepting, varying, substituting or releasing a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.

Effect of commitments.

32. (1) Where the Commission has accepted a commitment under section 31, and subject to subsection (2), the Commission shall make a decision that —

(a) the section 23 prohibition will not be infringed by an anticipated merger, if carried into effect; or

(b) the section 23 prohibition has not been infringed by a merger,

as the case may be.

(2) Nothing in subsection (1) shall prevent the Commission from revoking the decision already made, commencing or continuing any investigation, or making a decision or giving a direction, where –

(a) it has reasonable grounds for suspecting that any information on the basis of which it accepted a commitment was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) If the Commission revokes a decision referred to in subsection (1), the commitment shall be treated, unless otherwise stated, as released from the date of that revocation.

(4) The Commission may review the effectiveness of commitments it has accepted under section 31 in such circumstances as it considers appropriate.

Chapter 6

Investigation and enforcement

Guidelines on enforcement of Part.

33. (1) The Commission may, from time to time and with a view to enabling any person to order his affairs in compliance with the provisions of this Part, cause to be published in the *Gazette* guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part.

(2) For the purpose of preparing any guidelines under subsection (1), the Commission may consult with such persons as it thinks appropriate.

(3) Where the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission shall, in preparing those guidelines, consult with that regulatory authority.

(4) Guidelines published under this section shall not be binding on the Commission.

Power to require documents or information.

34. (1) Where the Commission –

(a) has reasonable grounds for suspecting that any feature, or combination of features, of a market in Brunei Darussalam for goods or

services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Brunei Darussalam; or

(b) in considering an application for decision filed pursuant to section 26 or 27, has reasonable grounds for suspecting that —

(i) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(ii) the section 23 prohibition has been infringed by any merger,

the Commission may, by notice in writing to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.

(2) A notice under subsection (1) shall indicate —

(a) the purpose for which the specified document or specified information is required by the Commission; and

(b) the nature of the offences created by Part IV.

(3) The Commission may specify in the notice —

(a) the time and place at which any document is to be produced or any information is to be provided; and

(b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

(a) if the document is produced —

(i) to take copies of it or extracts from it; and

(ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or

(b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) For the purposes of subsection (1)(a), any reference to a feature of a market in Brunei Darussalam for goods or services shall be construed as a reference to —

(a) the structure of the market concerned or any aspect of that structure;

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(6) In this section —

“conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct;

“specified” means —

(a) specified or described in the notice; or

(b) falling within a category which is specified or described in the notice.

Power to investigate.

35. (1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that —

(a) the section 11 prohibition has been infringed by any agreement;

(b) the section 21 prohibition has been infringed by any conduct;

(c) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) the section 23 prohibition has been infringed by any merger.

(2) For the purpose of subsection (1), the Commission may appoint an authorised officer to conduct the investigation.

(3) Any authorised officer shall have all the powers of investigation and enforcement under this Order.

(4) For the avoidance of doubt, it is declared that for the purposes of this Order, the authorised officer investigating any commission of an offence under this Order shall have all or any of the powers of a police officer in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code (Chapter 7).

Power when conducting investigation.

36. (1) For the purposes of an investigation under section 35, the Commission or an authorised officer may, by notice in writing to any person, require that person to produce to the Commission or the authorised officer a specified document, or to provide the Commission or the authorised officer with specified information, which the Commission or the authorised officer considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) shall indicate —

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offences created by Part IV.

(3) The Commission or the authorised officer may also specify in the notice —

- (a) the time and place at which any document is to be produced or any information is to be provided; and
- (b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or
- (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) In subsection (1), “specified” means —

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

Power to enter premises without warrant.

37. (1) In connection with an investigation under section 35 any authorised officer and such other person as the Commission has authorised to accompany the authorised officer (authorised person) may enter any premises.

(2) No authorised officer and no authorised person or person required by the authorised officer respectively, shall enter any premises in the exercise of the powers under this section unless the authorised officer has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by Part IV.

(3) Subsection (2) shall not apply —

(a) if the authorised officer has reasonable grounds for suspecting that the premises are, or have been, occupied by an undertaking which is being investigated in relation to —

- (i) an agreement referred to in section 11;
- (ii) conduct referred to in section 21; or
- (iii) an anticipated merger, or a merger referred to in section 23;
or

(b) if the authorised officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised —

- (a) in the case of an any authorised person, upon production of —
 - (i) evidence of the the authorisation of every authorised person accompanying him; and
 - (ii) a document containing the information referred to in subsection (2)(b) and (c); and

(b) in the case of an authorised officer and any person required by him, upon production of —

- (i) evidence of his appointment; and
- (ii) a document containing the information referred to in subsection (2)(b) and (c).

(5) An authorised person, an authorised officer or a person required by the authorised officer entering any premises under this section may —

- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises —
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible; and
- (f) take any step which appears to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.

Power to enter premises under warrant.

38. (1) Any authorised officer may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that —

- (a) there are reasonable grounds for suspecting that there are on any premises documents —
 - (i) the production of which has been required under section 36 or 37; and
 - (ii) which have not been produced as required;

(b) there are reasonable grounds for suspecting that —

- (i) there are on any premises documents which the Commission or the authorised officer has power under section 36 to require to be produced; and
- (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or

(c) an authorised person, an authorised officer or a person required by the authorised officer has attempted to enter the premises in the exercise of his powers under section 37 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

(2) A warrant under this section shall authorise a named officer, and such other persons as the authorised officer may require, to do all or any of the following —

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;

(c) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (the relevant kind);

(d) to take possession of any document appearing to be of the relevant kind if —

- (i) such action appears to be necessary for preserving the document or preventing interference with it; or
- (ii) it is not reasonably practicable to take copies of the document on the premises;

(e) to take any other step which appears to be necessary for the purpose mentioned in paragraph (d)(i);

(f) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(g) to require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —

- (i) in which it can be taken away; and
- (ii) in which it is visible and legible; and

(h) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation.

(3) If, in the case of a warrant under subsection (1)(b), the court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsection (2) to be taken in relation to any such document.

(4) Where possession of any document is taken under subsection (2)(d) or (3), the named officer may, at the request of the person from whom possession of the document was taken, provide such person with a copy of the document.

(5) A named officer may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(h) to be retained on those premises subject to such conditions as the named officer may require.

(6) Any person who fails to comply with any condition imposed under subsection (5) is guilty of an offence.

(7) A warrant issued under this section shall indicate —

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offences created by Part IV,

and shall continue in force until the end of the period of one month beginning from the day on which it is issued.

(8) The powers conferred by this section shall not be exercised except upon production of a warrant issued under this section.

(9) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(10) If there is no one at the premises when the named officer proposes to execute such a warrant, he shall, before executing it —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(11) If the named officer is unable to inform the occupier of the intended entry, he shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(12) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(13) Any document of which possession is taken under subsection (2)(d) may be retained for a period of 3 months.

(14) In this section —

“named officer” means the authorised officer named in the warrant;

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

Self-incrimination and savings for professional legal advisers.

39. (1) A person is not excused from disclosing any information or document to the Commission or, as the case may be, to an authorised officer, authorised person or a person required by the authorised officer, under a requirement made of him under any provision of this Order on the ground that the disclosure of the information or document might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Order to the Commission or, as the case may be, to an authorised officer, authorised person or a person required by the authorised officer, that the statement might tend to incriminate him, that statement —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under Part IV; but

(b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings, including proceedings under this Order.

(3) Nothing in this Part shall —

(a) compel a professional legal adviser to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or

(b) authorise the taking of any such document or other material which is in his possession.

(4) A professional legal adviser who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

Interim measures.

40. (1) If the Commission —

(a) has reasonable grounds for suspecting that the section 11 prohibition or the section 21 prohibition has been infringed but has not completed its investigations into the matter; and

(b) considers that it is necessary for it to act under this section as a matter of urgency for the purpose —

(i) of preventing serious, irreparable damage to a particular person or category of persons; or

(ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(2) If the Commission has reasonable grounds for suspecting that the section 23 prohibition —

(a) will be infringed by an anticipated merger, if carried into effect; or

(b) has been infringed by a merger,

but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —

(i) for the purpose of preventing any action that may prejudice —

(A) the investigations; or

- (B) the giving of any direction under section 42; or
- (ii) as a matter of urgency for the purpose —
 - (A) of preventing serious, irreparable damage to a particular person or category of persons; or
 - (B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(3) Before giving a direction under this section, the Commission shall —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(4) A notice under subsection (3) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section shall have effect while subsection (1) or (2), as the case may be, applies, but may be replaced if the circumstances permit by a direction under section 42.

(6) In the case of a suspected infringement of the section 11 prohibition, sections 42(2)(a) and 46 shall also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 21 prohibition, sections 42(2)(b) and 46 shall also apply to directions given under this section.

(8) In the case of a suspected infringement of the section 23 prohibition by an anticipated merger, if carried into effect, or a merger, sections 42(2)(c)(i) and (d)(i) and 46 shall also apply to directions given under this section.

Decision of Commission upon completion of investigation.

41. (1) Where after considering the statements made, or documents or articles produced, and after considering the report of the authorised officer, the Commission proposes to make a decision that the section 11 prohibition has been infringed by any agreement, the section 21 prohibition has been infringed by any conduct, the section 23 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 23 prohibition has been infringed by any merger, the Commission shall —

(a) give written notice to the person likely to be affected by such decision; and

(b) give such person an opportunity to make representations to the Commission.

(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(b), the Commission may, as it thinks fit, make a decision that —

(a) the section 11 prohibition has been infringed by any agreement;

(b) the section 21 prohibition has been infringed by any conduct;

(c) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) the section 23 prohibition has been infringed by any merger.

(3) Where —

(a) in relation to an anticipated merger, the Commission proposes to make a decision that the section 23 prohibition will be infringed by the anticipated merger, if carried into effect; or

(b) in relation to a merger, the Commission proposes to make a decision that the section 23 prohibition has been infringed by the merger,

and the Commission has given written notice under subsection (1)(a) to the parties to the anticipated merger or the parties involved in the merger, as the case may be, any such party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, or the merger to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister under subsection (3) shall be final.

(5) Where the Minister exempts an anticipated merger or a merger under subsection (3), the Commission may make a decision that —

(a) the section 23 prohibition will not be infringed by the anticipated merger, if carried into effect; or

(b) the section 23 prohibition has not been infringed by the merger.

(6) The Minister may revoke the exemption of an anticipated merger or a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

Enforcement of decision of Commission.

42. (1) Where the Commission has made a decision that —

- (a) any agreement has infringed the section 11 prohibition;
- (b) any conduct has infringed the section 21 prohibition;
- (c) any anticipated merger, if carried into effect, will infringe the section 23 prohibition; or
- (d) any merger has infringed the section 23 prohibition,

the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

(2) A direction referred to in subsection (1) may, in particular, include provisions —

- (a) where the decision is that any agreement has infringed the section 11 prohibition, requiring parties to the agreement to modify or terminate the agreement;
- (b) where the decision is that any conduct has infringed the section 21 prohibition, requiring the person concerned to modify or cease the conduct;
- (c) where the decision is that any anticipated merger, if carried into effect, will infringe the section 23 prohibition —
 - (i) prohibiting the anticipated merger from being carried into effect;
 - (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10 of the Third Schedule; and

- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10 of the Third Schedule;

(d) where the decision is that any merger has infringed the section 23 prohibition —

- (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct;
- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, notwithstanding that the agreement is excluded under paragraph 10 of the Third Schedule; and
- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, notwithstanding that the conduct is excluded under paragraph 10 of the Third Schedule;

(e) where the decision is that any agreement has infringed the section 11 prohibition, any conduct has infringed the section 21 prohibition or any merger has infringed the section 23 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and

(f) in any case, requiring any party to an agreement that has infringed the section 11 prohibition, any person whose conduct has infringed the section 21 prohibition, any party to an anticipated merger which, if carried into effect, will infringe the section 23 prohibition or any party involved in a merger that has infringed the section 23 prohibition —

- (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
- (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and

- (iii) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

(3) For the purpose of subsection (2)(e), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.

(4) No financial penalty fixed by the Commission under this section may exceed 10 *per cent* or such other percentage of such turnover of the business of the undertaking in Brunei Darussalam for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the *Gazette*, prescribe.

(5) The Commission shall, in any direction requiring the payment of a financial penalty, specify the date before which the financial penalty is to be paid, being a date not earlier than the end of the period within which an appeal against the direction may be brought under section 59.

(6) The Minister may, by order published in the *Gazette*, prescribe the interest payable on the outstanding amount of any financial penalty imposed under subsection (2)(e) and for payment by instalment (as may be directed by the Commission in its discretion) of any financial penalty imposed under subsection (2)(e).

Notification.

43. The Commission shall, within 14 days of its making any decision or direction under this Part, notify any person affected by such decision or direction.

Leniency regime.

44. (1) There shall be a leniency regime, with a reduction of up to a maximum of 100 *per cent* of any penalties which would otherwise have been imposed, which may be available in the cases of any undertakings which has —

(a) admitted its involvement in an infringement of any section 11 prohibition; and

(b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other undertakings.

(2) A leniency regime may permit different percentages of reductions to be available to an undertaking depending on —

(a) whether the undertaking was the first person to bring the suspected infringement to the attention of the Commission;

(b) the stage in the investigation at which —

(i) an involvement in the infringement was admitted; or

(ii) any information or other co-operation was provided; or

(c) any other circumstances which the Commission considers appropriate to have regard to.

Power to accept undertaking.

45. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an undertaking any undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the undertaking.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the undertaking providing that undertaking pursuant to section 42.

Enforcement of direction, undertaking and commitment in High Court.

46. (1) Where the Commission determines that an undertaking has failed, without reasonable excuse, to comply with a direction made, or an undertaking or commitment accepted by the Commission under this Part, the Commission may, subject to subsection (2), apply to the High Court for an order requiring the undertaking to make good the default within a time specified in the order.

(2) The Commission shall consider any representations the undertaking wishes to make before making an application under subsection (1).

(3) The High Court may provide in the order that all the costs of, or incidental to, the application shall be borne by the undertaking in default.

(4) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(5) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the undertaking providing that undertaking pursuant to section 42.

Commission may retain document.

47. (1) The Commission may take and retain for such duration as it deems necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the Commission is satisfied that the retaining of the document is no longer necessary, the Commission may, as soon as practicable, return the document to the person who provided the document.

Access to computerised data.

48. (1) Any authorised officer conducting a search under this Order shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purpose of this section, the authorised officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable the comprehension of the computerised data.

Warrant admissible notwithstanding defect.

49. (1) A search warrant issued under this Order shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any record, book, account, document, computerised data or other thing seized under such warrant shall be admissible in evidence in any proceedings under this Order.

List of record, book, account etc. seized.

50. (1) Except as provided in subsection (2), where any record, book, account, document, computerised data or other thing is seized pursuant to this Order, the authorised officer making the seizure —

(a) shall prepare —

- (i) a list of the record, book, account, document, computerised data or other thing seized and shall sign the list; and
- (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall, as soon as practicable, serve a copy of the list of the record, book, account, document, computerised data or other thing seized and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served pursuant to subsection (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Order are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the authorised officer shall post a copy of the list of the record, book, account, document, computerised data or other thing seized conspicuously on the premises.

Release of record, book, account etc. seized.

51. (1) If any record, book, account, document, computerised data or other thing has been seized under this Order, the authorised officer who effected the seizure may release the record, book, account, document, computerised data or other thing to the person he determines to be lawfully entitled to it, if the record, book, account, document, computerised data or other thing is not otherwise required for the purpose of any proceedings under this Order or for the purpose of any prosecution under any other written law.

(2) In the event referred to in subsection (1) neither the authorised officer effecting the seizure, nor the Government, the Commission or any person acting on behalf of the Government or the Commission shall be liable to any proceedings by any person if the seizure and the release of the record, book, account, document, computerised data or other thing had been effected in good faith.

No cost or damages arising from seizure to be recoverable.

52. No person shall, in any proceedings before any court in respect of any record, book, account, document, computerised data or other thing seized in the exercise or the purported exercise of any power conferred under this Order, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

PART IV

OFFENCES

Access to records etc.

53. (1) A person shall, if at any time directed by the authorised officer, allow the authorised officer access to his records, books, accounts, documents, computerised data, or other things for the purposes of carrying out any of the function of the authorised officer or powers under this Order.

(2) Any person who fails to comply with the direction under subsection (1) is guilty of an offence.

Giving false or misleading information, evidence or document.

54. A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, is guilty of an offence.

Destruction, concealment, mutilation or alteration of records etc.

55. A person who —

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Brunei Darussalam,

any record, book, account, document, computerised data or other thing kept or maintained with intent to defraud the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Commission under this Order is guilty of an offence.

Obstruction of authorised officer.

56. Any person who —

(a) refuses any authorised officer access to any premises which the authorised officer is entitled to have under this Order or in the execution of any duty imposed or power conferred by this Order; or

(b) assaults, obstructs, hinders or delays any authorised officer in effecting any entry which the authorised officer is entitled to effect under this Order or in the execution of any duty imposed or power conferred by this Order,

is guilty of an offence.

Tipping off.

57. (1) Any person who —

(a) knows or has reasonable grounds to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Order and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reasonable grounds to suspect that a disclosure has been made to an authorised officer under this Order and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter —

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that —

(a) he did not know or suspect that the disclosure made under subsection (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

Threat and reprisal is prohibited.

58. (1) No person shall —

(a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or

(b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of subsection (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the revocation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows —

(a) making a complaint to the Commission of any alleged infringement or offence under this Order; and

(b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section is guilty of an offence.

PART V

COMPETITION APPEAL TRIBUNAL

Appealable decisions.

59. (1) Any party to an agreement in respect of which the Commission has made a decision, any person in respect of whose conduct the Commission has made a decision or any party involved in a merger in respect of which the Commission has made a decision, may appeal within the prescribed period to the Tribunal against, or with respect to, that decision.

(2) Any person, other than a person referred to in subsection (1), to whom the Commission has given a direction under section 28, 40 or 42 may appeal within the prescribed period to the Tribunal against, or with respect to, that direction.

{3} Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the making of an appeal under this section shall not suspend the effect of the decision to which the appeal relates.

{4} In subsection (1), "decision" means a decision of the Commission as to —

(a) whether the section 11 prohibition has been infringed by any agreement;

(b) whether the section 21 prohibition has been infringed by any conduct;

(c) whether the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) whether the section 23 prohibition has been infringed by any merger,

and includes a direction given under section 28, 40 or 42 (including the imposition of any financial penalty under section 42 or as to the amount of any such financial penalty) and such other decision as the Minister may by regulations prescribe.

Competition Appeal Tribunal.

60. (1) For the purpose of hearing any appeal referred to in section 59(1), there shall be a Competition Appeal Tribunal consisting of not more than thirty members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(2) Members of the Tribunal shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

(3) The Minister may at any time remove any member of the Tribunal from office without assigning any reason.

(4) A member of the Tribunal may resign his office by notice in writing to the Minister.

(5) The Minister shall appoint to be Chairman of the Tribunal a person who is qualified to be a Judge of the Supreme Court.

(6) The Chairman of the Tribunal shall, when present, preside at every meeting of the Tribunal, and in his absence such member of the Tribunal as may be chosen by the members present shall preside.

(7) The Minister may appoint a secretary to the Tribunal and such other officers and employees of the Tribunal as may be necessary.

(8) All the powers, functions and duties of the Tribunal may be exercised, performed and discharged by any committee of the Tribunal consisting of not less than three members of the Tribunal, one of whom may be the Chairman of the Tribunal.

(9) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Tribunal.

(10) The secretary shall, from time to time, summon such members of the Tribunal as may be nominated by the Chairman of the Tribunal, to constitute a committee of the Tribunal for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

(11) Subject to subsection (12), where the Chairman of the Tribunal is nominated under subsection (10) as a member of a committee, he shall preside at every meeting of the committee, and where the Chairman is not nominated as a member of a committee, the Chairman shall determine which member of the committee shall preside at every meeting of that committee.

(12) Where the Chairman of the Tribunal or the member determined by the Chairman under subsection (11) (as the case may be) is absent at any committee meeting, such member of the committee as may be chosen by the members present shall preside.

(13) All matters coming before the Tribunal or a committee of the Tribunal at any sitting thereof shall be decided by a majority of votes of those members present and, in the event of an equality of votes, the Chairman of the Tribunal or any other member presiding shall have a second or casting vote.

(14) Members of the Tribunal may receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(15) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) prescribing the period within which appeals may be made;

(b) prescribing the manner in which appeals shall be made to the Tribunal;

(c) prescribing the procedure to be adopted by the Tribunal in hearing appeals and the records to be kept by the Tribunal;

(d) prescribing the places where and the times at which appeals shall be heard by the Tribunal;

(e) prescribing the fees to be paid in respect of any appeal under this Part;

(f) prescribing the award of costs of or incidental to any proceedings before the Tribunal or the award of expenses, including any allowances payable to persons in connection with their attendance before the Tribunal; and

(g) generally for the better carrying out of the provisions of this Part.

Powers and decisions of Tribunal.

61. (1) The Tribunal shall, by notice to the Commission and the appellant, specify the date on and the place at which the appeal shall be heard.

(2) The Tribunal shall have all the powers and duties of the Commission that are necessary to perform its functions and discharge its duties under this Order.

(3) The Tribunal shall have the powers, rights and privileges vested in a court on the hearing of an action, including —

(a) the enforcement of the attendance of witnesses and their examination on oath or otherwise;

(b) the compelling of the production of documents; and

(c) the award of such costs or expenses as may be prescribed under section 60(15).

(4) A summons signed by such member of the Tribunal as may be authorised by the Tribunal shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(5) Where any person being duly summoned to attend before the Tribunal does not so attend, that person is guilty of an offence.

(6) A witness before the Tribunal shall be entitled to the same immunities and privileges as if he were a witness before a court.

(7) All appeals under this section shall be determined, having regard to the nature and complexity of the appeal, as soon as reasonably practicable.

(8) The Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may —

(a) remit the matter to the Commission;

(b) impose or revoke, or vary the amount of, a financial penalty;

(c) give such direction, or take such other step, as the Commission could itself have given or taken; or

(d) make any other decision which the Commission could itself have made.

(9) Any decision of the Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Commission.

(10) If the Tribunal confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

(11) The Tribunal shall notify the appellant of its decision in respect of his appeal and the reasons for its decision which shall be final.

PART VI

GENERAL

Power to conduct market review.

62. (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.

(2) The market review includes a study into —

(a) the structure of the market concerned;

(b) the conduct of undertakings in the market;

(c) the conduct of suppliers and consumers to the undertakings in the market; or

(d) any other relevant matters.

Determination of market review.

63. (1) Upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations.

(2) The report of the Commission shall be made available to the public.

General penalty.

64. Any person who commits an offence under this Order for which no penalty is expressly provided is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Composition of offences.

65. (1) Any offence under this Order or any regulations made thereunder, may be compounded under this section if the offence is prescribed as a compoundable offence.

(2) For the purpose of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) to prescribe the offences under this Order or any subsidiary legislation made thereunder as offences that may be compounded under this section;

(b) to designate the person who may compound such offences; and

(c) to specify the maximum sum for which such offence may be compounded, except that the maximum sum so specified shall not exceed —

(i) one half of the amount of the maximum fine that is prescribed for the offence; or

(ii) \$5,000,

whichever is the lower.

(3) The person designated under subsection (2)(b) may compound any offence prescribed under subsection (2)(a) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (2)(c) in respect of that offence.

Offences by body corporate.

66. (1) If a body corporate commits an offence under this Order, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management —

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Order to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed —

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Rights of private action.

67. (1) Any person who suffers loss or damage directly as a result of an infringement of the section 11 prohibition, the section 21 prohibition or the section 23 prohibition shall have a right of action for relief in civil proceedings in a court under this section against any undertaking which is or which has at the material time been a party to such infringement.

(2) No action to which subsection (1) applies may be brought —

(a) until after a decision referred to in subsection (3) has established that the section 11 prohibition, the section 21 prohibition or the section 23 prohibition has been infringed; and

(b) during the period referred to in subsection (4).

(3) The decisions which may be relied upon for the purposes of an action under this section are –

(a) the decision by the Commission under section 41; and

(b) the decision of the Tribunal under section 61 (on an appeal from the decision of the Commission under section 59).

(4) The period during which an action may not be brought under this section is the period during which an appeal may be made to the Tribunal under section 59(1).

(5) Where any appeal referred to in subsection (4) is made, the period specified in that subsection includes the period before the appeal is determined.

(6) No action to which subsection (1) applies may be brought after the end of 2 years after the period specified in subsection (4).

(7) In determining a claim under this section, the court shall accept as final and conclusive any decision referred to in subsection (3) which establishes that the prohibition in question has been infringed.

(8) The court may grant to the plaintiff in an action under subsection (1) all or any of the following reliefs –

(a) relief by way of injunction or declaration;

(b) damages; and

(c) such other relief as the court thinks fit.

(9) Nothing in this section shall be construed as conferring on any party to an agreement which infringes the section 11 prohibition a right of action for relief.

Co-operation between Commission and other regulatory authorities on competition matters.

68. (1) The Commission may enter into any agreement with any regulatory authority for the purposes of –

(a) facilitating co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;

(b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and

(c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.

(2) An agreement that is entered into under subsection (1) is referred to in this section as a co-operation agreement.

(3) A co-operation agreement may include —

(a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions;

(b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter; and

(c) a provision requiring each party to consult with any other party before performing any function in circumstances where the respective exercise by each party of the function concerned involves the determination of issues of competition between undertakings that are identical to one another or fall within the same category of such an issue, being a category specified in the agreement.

(4) In this section —

“issue of competition between undertakings” includes an issue of competition between undertakings that arises generally in the sector of activity in relation to which the Commission or the regulatory authority may exercise powers and such an issue that falls, or could fall, to be the subject of the exercise by the Commission or the regulatory authority of powers in particular circumstances;

“party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “other party” is used) shall, where there are two or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate.

Co-operation between Commission and foreign competition bodies.

69. (1) The Commission may, with the approval of the Minister, enter into arrangements with any foreign competition body whereby each party to the arrangements may —

(a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and

(b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

(2) The Commission shall not furnish any information to a foreign competition body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, including terms that correspond to the provisions of any other written law concerning the disclosure of that information by the Commission.

(3) The Commission may give an undertaking to a foreign competition body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where —

(a) those terms correspond to the provisions of any written law in force in the country or territory in which the body is established, being provisions which concern the disclosure by the body of the information referred to in paragraph (b); and

(b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Commission pursuant to the arrangements referred to in subsection (1).

(4) In this section, “foreign competition body” means a person in whom there are vested functions under any written law of another country or territory with respect to the enforcement or the administration of provisions of written law of that country or territory concerning competition between undertakings (whether in a particular sector of the economy of that country or territory or throughout that economy generally).

Preservation of secrecy.

70. (1) Subject to subsection (5), every specified person shall preserve, and aid in the preserving of, 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 (3); and

(c) all matters relating to the identity of persons furnishing information to the Commission,

that may come to his knowledge in the performance of his functions and discharge of his duties under this Order and shall not communicate any such matter to any person, except in so far as such communication –

(i) is necessary for the performance of any such function or discharge of any such duty; or

(ii) is lawfully required by any court or the Tribunal, or lawfully required or permitted under this Order or any other written law.

(2) Any person who fails to comply with subsection (1) is guilty of an offence.

(3) Any person, when furnishing any information to the Commission, may identify information that he claims to be confidential information.

(4) Every claim made under subsection (3) shall be supported by a written statement giving reasons why the information is confidential.

(5) Notwithstanding subsection (1), the Commission may disclose any information relating to any matter referred to in subsection (1) in any of the following circumstances –

(a) where the consent of the person to whom the information relates has been obtained; or

(b) for the purposes of –

(i) a prosecution under this Order;

(ii) subject to subsection (6), enabling the Commission to give effect to any provision of this Order;

(iii) enabling the Commission, an authorised officer to investigate a suspected offence under this Order or to enforce a provision thereof; or

(iv) complying with such provision of an agreement between Brunei Darussalam and a country or territory outside Brunei Darussalam (referred to in this section as a foreign country or

territory) as may be prescribed, where the conditions specified in subsection (7) are satisfied.

(6) If the Commission is considering whether to disclose any information under subsection (5)(b)(iii), the Commission shall have regard to —

(a) the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;

(b) the need for excluding, so far as is practicable —

(i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or

(ii) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and

(c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

(7) The conditions referred to in subsection (5)(b)(iv) are —

(a) the information or documents requested by the foreign country or territory are available to the Commission;

(b) unless the Government otherwise allows, the foreign country or territory undertakes to keep the information given confidential at all times; and

(c) the disclosure of the information is not likely to be contrary to the public interest.

(8) In this section, “specified person” means a person who is or has been —

(a) a member, an officer, an employee or an agent of the Commission;

(b) a member of a committee of the Commission or any person authorised, appointed or employed to assist the Commission;

(c) an authorised officer or a person authorised, appointed or employed to assist an authorised officer; or

(d) a member of the Tribunal or any person authorised, appointed or employed to assist the Tribunal.

Protection against suit and legal proceedings.

71. (1) No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against —

(a) the Commission;

(b) any member of the Commission or any member of its committee;
or

(c) any other person lawfully acting on behalf of the Commission,

in respect of any act, neglect or default done or committed by him or it in good faith or any omission omitted by him or it in good faith in such capacity.

Amendment of Third and Fourth Schedules.

72. The Minister may at any time, by order published in the *Gazette*, amend the Third and Fourth Schedules.

Regulations.

73. (1) The Minister may, with the approval of the His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters —

(a) the form and manner in which a notification under section 17(1) is to be made;

(b) the form and manner in which complaints that the section 11 prohibition has been infringed by any agreement, the section 21 prohibition has been infringed by any conduct, the section 23 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 23 prohibition has been infringed by any merger, are to be submitted to the Commission;

(c) the acceptance of commitments, and the variation, substitution or release of commitments, including the parties that may apply for the variation, substitution or release of commitments and the form and manner in which applications for the variation, substitution or release of any commitment are to be submitted to the Commission;

(d) the form and manner in which notices of decisions and directions of the Commission are to be given, and the persons to whom such notices are to be given;

(e) the fees to be charged in respect of anything done or any services rendered by the Commission under or by virtue of this Order, including the calculation of the amount of fees by reference to matters including —

- (i)* the turnover of all or any party to an agreement (determined in such manner as may be prescribed);
- (ii)* the turnover of any person whose conduct the Commission is to consider (determined in such manner as may be prescribed);
- (iii)* the turnover of all or any party to an anticipated merger (determined in such manner as may be prescribed); and
- (vi)* the turnover of all or any party involved in a merger (determined in such manner as may be prescribed); and

(f) anything which may be prescribed or is required to be prescribed under this Order.

Transitional provisions.

74. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for —

(a) the repeal or amendment of any written law which appears to him to be unnecessary having regard to the provisions of this Order or to be inconsistent with any provision of this Order; and

(b) such transitional, savings and other consequential, incidental and supplemental provisions as he considers necessary or expedient, including providing —

- (i)* for any transitional period (whether granted upon an application or otherwise), and any extension or early termination thereof;
- (ii)* for different transitional periods to apply —
 - (A)* to different provisions of this Order; or

- (B) to different activities, agreements or conduct or different categories of activity, agreement or conduct, to which such provisions relate; and
- (iii) that any provision of this Order shall not apply, or shall apply in a modified form, for the purpose of or in connection with the transitional period, whether generally or in relation to any specific activity, agreement or conduct or category of activity, agreement or conduct.

FIRST SCHEDULE

(section 3(3))

PROCEEDINGS OF COMMISSION

Tenure of office of members of Commission.

1. A member of the Commission shall hold office on such conditions and for such term of not less than 3 years and not more than 5 years as the Minister may determine, and shall be eligible for re-appointment.

Temporary Chairman.

2. His Majesty the Sultan and Yang Di-Pertuan may appoint any person to be a temporary Chairman during the temporary incapacity from illness or otherwise, or during the temporary absence from Brunei Darussalam, of the Chairman.

Revocation of appointment.

3. His Majesty the Sultan and Yang Di-Pertuan may, at any time, revoke the appointment of the Chairman or any member if he considers such revocation necessary in the interest of the effective and economical performance of the functions of the Commission under this Order or in the public interest.

Resignation.

4. A member may resign from his office at any time by giving not less than one month's notice to His Majesty the Sultan and Yang Di-Pertuan.

Chairman may delegate function.

5. The Chairman may, in writing, authorise any member of the Commission to exercise any power or perform any function conferred on the Chairman under this Order.

Vacation of office.

6. The seat of a member shall become vacant —

(a) on his death;

(b) if he fails to attend three consecutive meetings of the Commission without sufficient cause (the sufficiency thereof to be decided by the Commission);

(c) if he becomes in any manner disqualified from membership of the Commission;

(d) if he resigns from his office; or

(e) if his appointment is revoked.

Filling of vacancies.

7. If a vacancy occurs in the membership of the Commission, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to fill the vacancy, and the person so appointed shall hold office for the remainder of the term for which the vacating member was appointed.

Disqualification from membership.

8. No person shall be appointed or shall continue to hold office as a member if he —

(a) is an undischarged bankrupt or has made any arrangement with his creditors;

(b) has been sentenced to imprisonment for a term exceeding 6 months and has not received a free pardon;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member.

Disclosure of interest by members.

9. (1) A member who is in any way, directly or indirectly, interested in a transaction or project of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Commission and, after the disclosure, that member —

(a) shall not take part in any deliberation or decision of the Commission with respect to that transaction or project; and

(b) shall be disregarded for the purpose of constituting a *quorum* of the Commission for such deliberation or decision.

(3) For the purposes of this paragraph, a member whose spouse, parent, step-parent, son, adopted son, step-son, daughter, adopted daughter, step-daughter, brother, half-brother, step-brother, sister, half-sister or step-sister has an interest in the transaction or project referred to in subparagraph (1) shall be deemed to be interested in such transaction or project.

Salaries, fees and allowances payable to members of Commission.

10. There shall be paid to the members of the Commission such salaries, fees and allowances as the Minister may from time to time determine.

Quorum.

11. (1) At every meeting of the Commission, one half of the number of members shall constitute a *quorum*.

(2) The Chairman, or in his absence the temporary Chairman, shall preside at meetings of the Commission, and if both the Chairman and temporary Chairman are absent from any meeting or part thereof, such member as the members present may elect shall preside at that meeting or part thereof.

(3) A decision at a meeting of the Commission shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman or any other member presiding shall have a casting vote in addition to his original vote.

(4) Where not less than four members of the Commission request the Chairman by notice in writing signed by them to convene a meeting of the Commission for any purpose specified in the notice, the Chairman shall, within 7 days from the receipt of the notice, convene a meeting for that purpose.

Vacancies.

12. The Commission may act notwithstanding any vacancy in its membership.

Procedure at meetings.

13. (1) The Chairman or any other officer authorised by him shall, subject to such standing orders as may be made by the Commission under subparagraph (2), summon all meetings of the Commission for the despatch of business.

(2) Subject to the provisions of this Order, the Commission may make standing orders to regulate its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and auditing of accounts.

Validity of act or proceeding.

14. No act or proceeding of the Commission shall be questioned on the ground —

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

(b) of any defect in the appointment of any person acting as the Chairman or as a member;

(c) of any omission, defect or irregularity in the procedure of the Commission not affecting the merits of the case; or

(d) that any member has contravened paragraph 11.

SECOND SCHEDULE

(section 5(1))

POWERS OF COMMISSION

1. To conduct such investigations as may be necessary for enforcing this Order.
2. To require any person to furnish such returns and information as may be necessary for implementing the provisions of this Order.
3. To issue or make arrangements for approving codes of practice relating to competition and to give approval to or withdraw approval from such codes of practice.
4. To publish educational materials or carry out other educational activities relating to competition; or to support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

5. To carry out research and studies and to conduct seminars, workshops and symposia relating to competition, or to support (financially or otherwise) the carrying out by others of such activity.

6. To become a member or an affiliate of any international body, the functions, objects or duties of which are similar to those of the Commission.

7. To do anything incidental to any of its functions under this Order or any other written law.

THIRD SCHEDULE (sections 12, 22 and 72
and paragraph 2 of
Fourth Schedule)

EXCLUSIONS FROM SECTION 11 PROHIBITION AND SECTION 21 PROHIBITION

Services of general economic interest etc.

1. Neither the section 11 prohibition nor the section 21 prohibition shall apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

Compliance with legal requirements.

2. (1) The section 11 prohibition shall not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The section 21 prohibition shall not apply to conduct to the extent to which it is engaged in order to comply with a legal requirement.

(3) In this paragraph, "legal requirement" means any requirement imposed by or under any written law.

Avoidance of conflict with international obligations.

3. (1) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Brunei Darussalam, it would be appropriate for the section 11 prohibition not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 11 prohibition.

(2) An order under subparagraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under subparagraph (1) may also provide that the section 11 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Brunei Darussalam, it would be appropriate for the section 21 prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under subparagraph (4) may provide that the section 21 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) An international arrangement relating to civil aviation and designated by an order made by the Minister is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph, "specified" means specified in the order.

Public policy.

4. (1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 11 prohibition ought not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 11 prohibition.

(2) An order under subparagraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under subparagraph (1) may also provide that the section 11 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

{4} If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 21 prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

{5} An order under subparagraph {4} may provide that the section 21 prohibition is to be deemed never to have applied in relation to specified conduct.

{6} In this paragraph, "specified" means specified in the order.

Goods and services regulated by other competition law.

5. The section 11 prohibition and the section 21 prohibition shall not apply to any agreement or conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.

Specified activities.

6. (1) The section 11 prohibition and the section 21 prohibition shall not apply to any agreement or conduct which relates to any specified activity.

(2) In this paragraph, "specified activity" means —

(a) the supply of waste management services, including the collection, treatment and disposal of waste;

(b) the supply of scheduled bus services by any person licensed and regulated under the Road Traffic Act (Chapter 68); and

(c) the licence to supply goods and services specified in the Schedule to the Monopolies Act (Chapter 73).

Clearing houses.

7. The section 11 prohibition and the section 21 prohibition shall not apply to any agreement or conduct which relates to the clearing and exchanging of articles undertaken by the Clearing House established under the Banking Order, 2006 (S 46/2006).

Vertical agreements.

8. (1) The section 11 prohibition shall not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

{2} In this paragraph, "vertical agreement" means any agreement entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

Agreements with net economic benefit.

9. The section 11 prohibition shall not apply to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

but which does not —

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Provisions directly related and necessary to implementation of mergers.

10. The section 11 prohibition and the section 21 prohibition shall not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger.

Mergers.

11. (1) The section 11 prohibition shall not apply to any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger.

(2) The section 11 prohibition shall not apply to any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

FOURTH SCHEDULE

(sections 24 and 72)

EXCLUSIONS FROM SECTION 23 PROHIBITION

1. The section 23 prohibition shall not apply to any merger —

(a) approved by any Minister or regulatory authority (other than the Commission) pursuant to any requirement for such approval imposed by any written law;

(b) approved by the Autoriti Monetari Brunei Darussalam established by section 3 of the Autoriti Monetari Brunei Darussalam Order, 2011 [S 103/2010] pursuant to any requirement for such approval imposed under any written law; or

(c) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition issued under any written law.

2. The section 23 prohibition shall not apply to any merger involving any undertaking relating to any specified activity as defined in paragraph 6(2) of the Third Schedule.

3. The section 23 prohibition shall not apply to any merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Brunei Darussalam.

Made this 15th. day of Rabiulawal, 1436 Hijriah corresponding to the 6th. day of January, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM



CAMBODIA



INDONESIA



LAW
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION OF
MONOPOLISTIC PRACTICES
AND
UNFAIR BUSINESS COMPETITION

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION
OF THE REPUBLIC OF INDONESIA

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Content

1. LAW OF THE REPUBLIC OF INDONESIA NUMBER 5 YEAR 1999 CONCERNING THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

CHAPTER I	General Provisions	8
CHAPTER II	Principles and Purposes	10
CHAPTER III	Prohibited Agreements	11
CHAPTER IV	Prohibited Activities	15
CHAPTER V	Dominant Position	17
CHAPTER VI	Commission for the Supervision of Business Competition	19
CHAPTER VII	Case Handling Procedure	23
CHAPTER VIII	Sanctions	27
CHAPTER IX	Miscellaneous Provisions	28
CHAPTER X	Transitional Provisions	29
CHAPTER XI	Closing Provisions	30

2. ELUCIDATION ON THE LAW OF THE REPUBLIC OF INDONESIA NUMBER 5 YEAR 1999 CONCERNING THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

General	33
Article by Article	35

LAW OF THE
REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION
OF MONOPOLISTIC
PRACTICES
AND UNFAIR BUSINESS
COMPETITION



THE PRESIDENT OF THE REPUBLIC INDONESIA

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION OF MONOPOLISTIC PRACTICES AND
UNFAIR BUSINESS COMPETITION**

BY THE GRACE OF THE ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering:
- a. whereas development in the field of economy must be directed towards the achievement of the people's welfare based on Pancasila and the 1945 Constitution;
 - b. whereas democracy in the field of economy calls for equal opportunity for every citizen to participate in the process of production and marketing of goods and or services, in a fair, effective and efficient business environment, so as to be able to promote economic growth and the functioning of a reasonable market economy;
 - c. whereas anyone engaging in business in Indonesia must be in the condition of fair and normal competition, thus not causing a concentration of economic power around certain business actors, while observing the commitments made by the State of the Republic of Indonesia with regard to International Conventions;
 - d. whereas in order to achieve the matters as intended in items a, b and c, based on the initiative proposed by the Dewan Perwakilan Rakyat (People's Legislative Assembly), a Law concerning the Prohibition of Monopolistic Practices and Unfair Business Competition needs to be formulated;

In view of: Article 5 paragraph (1), Article 21 paragraph (1), Article 27 paragraph (2) and Article 33 of the 1945 Constitution,

With the approval of
THE PEOPLE'S LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA

HAS DECIDED TO:

Stipulate: LAW CONCERNING THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

CHAPTER I GENERAL PROVISIONS

Article 1

Referred to in this law as:

1. Monopoly shall be control of the production and or marketing of goods and or the use of certain services by one business actor or by one group of business actors.
2. Monopolistic practices shall be the concentration of economic power by one or more business actors, resulting in the control of the production and or marketing of certain goods and or services thus causing unfair business competition and being potentially harmful to the public interest.
3. The centralization of economic power shall be the actual control of a market by one or more business actors, enabling them to determine the price of goods and or services.
4. Dominant position shall be a condition in which a business actor has no substantial competitors in the relevant market in relation to the market share controlled, or a business actor has the highest position among its competitors in the relevant market in terms of financial capacity, capacity to access supply or sales, and the capability to adjust supply or demand of certain goods or services.
5. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy.

6. Unfair business competition shall be competition among business actors in conducting activities for the production and or marketing of goods and or services in an unfair or unlawful manner impeding competition.
7. Agreement shall be the act of one or more business actors to bind themselves with one or more other business actors under any name, either in writing or in non-written form.
8. Conspiracy or business conspiracy shall be a form of cooperation undertaken by one business actor with another with the intention of controlling the relevant market in the interest of the conspiring business actors.
9. Market shall be an economic institution in which sellers and buyers are able to conduct, either directly or indirectly, transactions for the trading of goods and or services.
10. Relevant market shall be the market related to a certain marketing range or area by business actors in respect of goods and or services of the same or similar type or substitutes for such goods and or services.
11. Market structure shall be market conditions providing indicators of aspects having significant impact on business actors' behavior and market performance, among other things the number of sellers and buyers, barriers to enter and exit the market, product variety, distribution system, and market share control.
12. Market behavior shall be conduct undertaken by business actors in their capacity as suppliers or buyers of goods and or services with the aim of achieving the company's objectives, among other things for gaining profits, increasing assets, sales targets and competition methods applied.
13. Market share shall be the percentage of the sale or purchase value of certain goods or services controlled by a certain business actor in the relevant market within a certain calendar year.
14. Market price shall be the price paid in transactions of goods and or services in accordance with the agreement reached among the parties concerned in the relevant market.
15. Consumers shall be any user and or utilizer of goods and or services, either for their own interest or for the interest of other parties.
16. Goods shall be any physical objects, either tangible or intangible, movable or immovable, which can be traded, used, utilized or exploited by consumers or business actors.

17. Services shall be any services in the form of work or performance traded in society with the purpose of being utilized by consumers or business actors.
18. Commission for the Supervision of Business Competition shall be a commission formed to oversee business actors in conducting their business activities in order to ensure that they do not conduct monopolistic practices and or unfair business competition.
19. District Court shall be the court, as intended under applicable laws and regulations, at the legal domicile of the business of the business actors concerned.

CHAPTER II PRINCIPLES AND PURPOSES

Article 2

Business actors in Indonesia must conduct their business activities based on the principles of economic democracy, with due observance of the equilibrium between the interests of business actors and the public interest.

Article 3

The purposes of enacting this law shall be as follows:

- a. safeguard the public interest and enhance the efficiency of the national economy as one of the endeavors aimed at improving the people's welfare;
- b. create a conducive business climate by regulating fair business competition in order to ensure certainty in equal business opportunities for large-, middle- as well as small-scale business actors;
- c. prevent monopolistic practices and or unfair business competition caused by business actors; and
- d. creating effectiveness and efficiency in business activities.

**CHAPTER III
PROHIBITED AGREEMENTS**

Part One

Oligopoly

Article 4

- (1) Business actors shall be prohibited from entering into agreements with other business actors for jointly controlling the production and or marketing of goods and or services which may potentially cause the occurrence of monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to be jointly involved in the control of the production and or marketing of goods and or services, as intended in paragraph (1), if 2 (two) or 3 (three) business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Two

Price Fixing

Article 5

- (1) Business actors shall be prohibited from entering into agreements with their business competitors to fix the price of certain goods and or services which must be paid by consumers or customers in the same relevant market.
- (2) The provisions intended in paragraph (1) shall not be applicable to the following:
 - a. an agreement entered into in the context of a joint venture; or
 - b. an agreement entered into based on prevailing laws.

Article 6

Business actors shall be prohibited from entering into agreements causing a buyer having to pay a price which is different from that payable by other buyers for the same goods and or services.

Article 7

Business actors shall be prohibited from entering into agreements with their business competitors to fix prices below market prices, which may potentially cause unfair business competition.

Article 8

Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that parties receiving the goods and or services shall not sell or resupply the goods and or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Part Three

Dividing Territories

Article 9

Business actors shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territories or allocating the market for goods and or services, potentially causing monopolistic practices and or unfair business competition.

Part Four

Boycott

Article 10

- (1) Business actors shall be prohibited from entering into agreements with their business competitors which may impede other business actors in engaging in the same business, either for domestic or overseas market purposes.
- (2) Business actors shall be prohibited from entering into agreements with their business competitors to refuse to sell any goods and or services of other business actors, whereby such act:
 - a. causes a loss or may be suspected of potentially causing a loss to other business actors; or

- b. poses constraint on other business actors in selling or buying any goods and or services from the relevant market.

Part Five

Cartel

Article 11

Business actors shall be prohibited from entering into agreements with their business competitors, with the intention of influencing prices by arranging the production and or marketing of certain goods and or services, which may cause monopolistic practices and or unfair business competition.

Part Six

Trust

Article 12

Business actors shall be prohibited from entering into agreements with other business actors to engage in cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each respective company or its members, with the aim of controlling the production and or marketing of goods and or services, which may cause monopolistic practices and or unfair business competition.

Part Seven

Oligopsony

Article 13

- (1) Business actors shall be prohibited from entering into agreements with other business actors with the aim of jointly controlling the purchase or acquisition of supplies in order to control prices of goods and or services in the relevant market, which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to be jointly controlling the purchase or acquisition of supplies as intended in paragraph (1) if 2 (two) or 3 (three) business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Eight

Vertical Integration

Article 14

Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society.

Part Nine

Exclusive Dealing

Article 15

- (1) Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that the party receiving the goods and or services shall only resupply or shall refrain from resupplying the aforementioned goods and or services to certain parties and or at a certain place.
- (2) Business actors shall be prohibited from entering into agreements with other parties setting forth the condition that the party receiving certain goods and or services must be prepared to purchase other goods and or services from the supplying business actor.
- (3) Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and or services, setting forth the condition that the business actor receiving goods and or services from the supplying business actor:
 - a. must be prepared to purchase other goods and or services from the supplying business actor; or
 - b. shall not purchase the same or similar goods and or services from other business actors that are the competitors of the supplying business actor.

Part Ten
Agreements With Foreign Parties

Article 16

Business actors shall be prohibited from entering into agreements with other parties overseas setting forth conditions which may cause monopolistic practices and or unfair business competition.

CHAPTER IV
PROHIBITED ACTIVITIES

Part One

Monopoly

Article 17

- (1) Business actors shall be prohibited from controlling the production and or marketing of goods and or services which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to control the production and or marketing of goods and or services as intended in paragraph (1) in the following events:
 - a. there is no substitute available yet for the goods and or services concerned; or
 - b. causing other business actors to be unable to enter into business competition for the same goods and or services; or
 - c. one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services.

Part Two
Monopsony

Article 18

- (1) Business actors shall be prohibited from controlling the acquisition of supplies or from acting as sole buyer of goods and or services in the relevant market which may potentially cause monopolistic practices and or unfair business competition.

- (2) Business actors shall be reasonably suspected or deemed to control the acquisition of supplies or to be acting as sole buyer as intended in paragraph (1) if one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services.

Part Three Market Control

Article 19

Business actors shall be prohibited from engaging in one or several activities, either individually or jointly with other business actors, which may cause monopolistic practices and or unfair business competition, in the form of the following:

- a. reject and or impede certain other business actors in conducting the same business activities in the relevant market; or
- b. impede consumers or customers of their competitors in engaging in a business relationship with such business competitors; or
- c. restrain the distribution and or sales of goods and or services in the relevant market; or
- d. engage in discriminatory practices against certain business actors.

Article 20

Business actors shall be prohibited from supplying goods and or services at a price below cost or by setting extremely low prices with the aim of eliminating or ruining the business of their competitors in the relevant market which may cause monopolistic practices and or unfair business competition.

Article 21

Business actors shall be prohibited from engaging in unfair practices in determining production cost and other costs as part of the price component of goods and or services which may potentially cause unfair business competition.

**Part Four
Conspiracy**

Article 22

Business actors shall be prohibited from conspiring with other parties with the aim of determining the awardees of tenders which may cause unfair business competition.

Article 23

Business actors shall be prohibited from conspiring with other parties with the aim of obtaining information regarding the business activities of their competitors classified as company secret which may cause unfair business competition.

Article 24

Business actors shall be prohibited from conspiring with other parties in order to impede the production and or marketing of goods and or services of their competitors with the aim of causing the goods and or services offered or supplied in the relevant market to diminish, either in the quantity, quality or timeliness required.

**CHAPTER V
DOMINANT POSITION**

Part One

General

Article 25

- (1) Business actors shall be prohibited from using dominant position either directly or indirectly to:
 - a. determine the conditions of trading with the aim of preventing and or impeding consumers from obtaining competitive goods and or services, both in terms of price as well as quality; or
 - b. restrain the market and technology development; or
 - c. hamper other potential business actors from entering the relevant market.

- (2) Business actors shall have a dominant position as intended in paragraph (1) in the following events:
- a. one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services; or
 - b. two or three business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Two Interlocking Directorate

Article 26

A person holding the position as a member of the board of directors or as a commissioner of a company, shall be prohibited from concurrently holding the position as a member of the board of directors or a commissioner in another company, in the event that such companies:

- a. are in the same relevant market; or
- b. have a strong connection in the field and or type of business activities concerned; or
- c. are jointly capable of controlling the market share of certain goods and or services,

which may result in monopolistic practices and or unfair business competition.

Part Three Share Ownership

Article 27

Business actors shall be prohibited from owning majority shares in several companies of the same type conducting business activities in the same field in the same relevant market, or from establishing several companies with the same business activities in the same relevant market, if such ownership causes:

- a. one business actor or a group of business actors to control more than 50% (fifty per cent) of the market share of a certain type of goods or services;
- b. two or three business actors or a group of business actors to control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Four
Mergers, Consolidations and Acquisitions

Article 28

- (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be prohibited from conducting the acquisition of shares in other companies if such action may cause monopolistic practices and or unfair business competition.
- (3) Further provisions regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1), and provisions concerning the acquisition of shares in companies as intended in paragraph (2) shall be set forth in a Government Regulation.

Article 29

- (1) The Commission must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in the asset value and or selling price thereof exceeding a certain amount, by no later than 30 (thirty) days from the date of such merger, consolidation or acquisition.
- (2) Provisions regarding the determination of the asset value and or the selling price as well as the procedure for giving notice as intended in paragraph (1) shall be set forth in a Government Regulation.

CHAPTER VI
COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION

Part One
Status

Article 30

- (1) A Commission for the Supervision of Business Competition, hereinafter referred as the Commission, shall be formed to oversee the implementation of this Law.
- (2) The Commission shall be an independent institution free from the influence and authority of the Government and other parties.

- (3) The Commission shall be responsible to the President.

Part Two Membership

Article 31

- (1) The Commission shall consist of a Chairperson acting concurrently as member, a Vice Chairperson acting concurrently as member, and not less than 7 (seven) members.
- (2) Members of the Commission shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly.
- (3) Members of the Commission shall be appointed for a term of office of 5 (five) years and they shall be eligible for reappointment for 1 (one) subsequent term of office.
- (4) If due to the expiration of the term of office a vacancy occurs in the Commission's membership, the term of office of members may be extended until a new member is appointed.

Article 32

The requirements for membership in the Commission shall be as follows:

- a. citizen of the Republic of Indonesia, at least 30 (thirty) years of age and not older than 60 (sixty) years at the time of appointment;
- b. loyal to Pancasila and the 1945 Constitution;
- c. believes in and devoted to The Almighty God;
- d. honest, fair and having good conduct;
- e. residing within the territory of the State of the Republic of Indonesia;
- f. experienced in the field of business or possessing knowledge and expertise in the field of law and or economics;
- g. has never been convicted of a crime;
- h. has never been declared bankrupt by a court of justice; and
- i. is not affiliated with a particular business entity.

Article 33

Membership in the Commission shall terminate due to the following reasons:

- a. demise;
- b. resignation upon the person's own request;
- c. residing outside the territory of the state of the Republic of Indonesia;
- d. continuous physical or mental illness;
- e. expiration of term of membership in the Commission; or
- f. dismissal.

Article 34

- (1) The formation of the Commission and its organizational structure, duties and functions shall be stipulated by a Presidential Decree.
- (2) For the uninterrupted implementation of its duties, the Commission shall be assisted by a secretariat.
- (3) The Commission may form a working group.
- (4) Provisions regarding the organizational structure, duties and functions of the secretariat and working group shall be further regulated in a decision of the Commission.

Part Three Duties

Article 35

The duties of the Commission shall include the following:

- a. assess agreements that may result in monopolistic practices and or unfair business competition as set forth in Article 4 up to and including Article 16;
- b. assess business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition as stipulated in Article 17 up to and including Article 24;

- c. assess the existence or absence of the abuse of dominant position which may cause monopolistic practices and or unfair business competition as set forth in Article 25 up to and including Article 28;
- d. undertake actions in accordance with the Commission's authority as set forth in Article 36;
- e. provide advice and opinion concerning Government policies related to monopolistic practices and or unfair business competition;
- f. prepare guidelines and or publications related to this Law;
- g. submit periodic reports on the results of the Commission's work to the President and the People's Legislative Assembly.

Part Four Authorities

Article 36

The Commission's authorities shall include the following:

- a. receive reports from the public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition;
- b. conduct research concerning allegations of the existence of business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition;
- c. conduct investigation and or examination of allegations of cases of monopolistic practices and or unfair business competition reported by the public or by business actors or discovered by the Commission as a result of its research;
- d. make conclusions regarding the results of its investigation and or examination as to whether or not there are any monopolistic practices and or unfair business competition;
- e. summon business actors alleged of having violated the provisions of this law;
- f. summon and present witnesses, expert witnesses, and any persons deemed to have knowledge about the violation of the provisions of this law;
- g. seek the assistance of investigators to present business actors, witnesses, expert witnesses, or any persons as intended in sub-articles e and f, who are not prepared to appear in response to the Commission's summons;

- h. request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of this law;
- i. obtain, examine and or assess letters, documents or other instruments of evidence for the purpose of investigation and or examination;
- j. determine and stipulate the existence or non-existence of losses suffered by other business actors or society;
- k. notify the business actors alleged of having engaged in monopolistic practices and or unfair business competition about the Commission's decisions;
- l. impose administrative sanctions on business actors violating the provisions of this Law.

Part Five

Funding

Article 37

Expenses related to the performance of the Commission's duties shall be charged to the State Revenues and Expenditures Budget and or other sources permitted by applicable laws and regulations.

CHAPTER VII CASE HANDLING PROCEDURE

Article 38

- (1) Any person having knowledge of the occurrence of or reasonably suspecting that a violation of this Law has occurred, may report it in writing to the Commission with a clear statement concerning the occurrence of violation, attaching the identity of the reporting party.
- (2) A party suffering losses as a result of the violation of this Law may file a written report to the Commission with a complete and clear statement regarding the occurrence of violation and the losses inflicted, attaching the identity of the reporting party.
- (3) The identity of the reporting party as intended in paragraph (1) must be kept confidential by the Commission.

- (4) The reporting procedure as intended in paragraph (1) and paragraph (2) shall be stipulated further by the Commission.

Article 39

- (1) Based on the report as intended in Article 38 paragraph (1) and paragraph (2), the Commission shall be obligated to conduct a preliminary examination, and within 30 (thirty) days after receiving the report concerned, the Commission shall be obligated to determine whether or not follow-up examination is required.
- (2) In follow-up examination, the Commission shall be obligated to examine the business actor against whom the report was filed.
- (3) The Commission shall be obligated to keep confidential the information obtained from business actors classified as company secret.
- (4) If deemed necessary, the Commission may hear the statement of witnesses, expert witnesses and or other parties.
- (5) In conducting activities as intended in paragraph (2) and paragraph (4), members of the Commission shall be provided with warrants.

Article 40

- (1) The Commission may conduct examination of business actors if there is an allegation of the occurrence of violations of this Law even though no report is filed.
- (2) Examinations as intended in paragraph (1) shall be conducted in compliance with the procedure set forth in Article 39.

Article 41

- (1) Business actors and or other parties examined shall be required to submit instruments of evidence required in the investigation and or examination.
- (2) Business actors shall be prohibited from refusing to be examined, from refusing to provide information required for investigation and or examination, or from impeding the investigation and or examination process.
- (3) Violations of the provisions of paragraph (2) shall be submitted by the

Commission to a criminal investigator for conducting criminal investigation in accordance with prevailing provisions.

Article 42

Instruments of evidence in investigations by the Commission shall be in the form of the following:

- a. witness statement,
- b. expert statement,
- c. letters and or documents,
- d. indication,
- e. statement by business actors.

Article 43

- (1) The Commission shall be obligated to complete follow-up examination within 60 (sixty) days from the start of follow-up examination as intended in Article 39 paragraph (1).
- (2) If required, the time frame for follow-up examination as intended in paragraph (1) may be extended by not more than 30 (thirty) days.
- (3) The Commission shall be obligated to determine whether or not a violation of this Law occurred within 30 (thirty) days from the completion of follow-up examination as intended in paragraph (1) or paragraph (2).
- (4) The Commission's decision as intended in paragraph (3) must be read out in a hearing open to the public and the business actor concerned must be notified forthwith thereof.

Article 44

- (1) Within 30 (thirty) days from the time at which the business actor concerned receives notice about the Commission's decision as intended in Article 43 paragraph (4), the business actor concerned shall be obligated to implement

such decision and to submit a report on the implementation of the same to the Commission.

- (2) The business actor concerned may appeal to the District Court by no later than 14 (fourteen) days after receiving notification of the aforementioned decision.
- (3) A business actor not appealing within the time frame as intended in paragraph (2) shall be deemed to have accepted the Commission's decision.
- (4) In the event that the provisions of paragraph (1) and paragraph (2) are not implemented by the business actor concerned, the Commission shall submit such decision to a criminal investigator for conducting a criminal investigation in accordance with the provisions of prevailing laws and regulations.
- (5) The Commission's decisions as intended in Article 43 paragraph (4) shall serve as sufficient initial evidence for a criminal investigator to conduct investigation.

Article 45

- (1) The District Court concerned must examine appeals filed by business actors as intended in Article 44 paragraph (2) within 14 (fourteen) days as from the receipt of the appeal concerned.
- (2) The District Court must render a decision within 30 (thirty) days as from the commencement of the examination of the aforementioned appeal.
- (3) A party filing an appeal in respect of the District Court's decision as intended in paragraph (2), may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days.
- (4) The Supreme Court must render a decision within 30 (thirty) days from the time at which the appeal is received.

Article 46

- (1) In the event that there is no appeal, the Commission's decision as intended in Article 43 paragraph (3) shall have permanent legal force.
- (2) A stipulation on the execution of the Commission's decision as intended in paragraph (1) shall be requested from the District Court.

CHAPTER VIII SANCTIONS

Part One

Administrative Measures

Article 47

- (1) The Commission shall be authorized to impose sanctions in the form of administrative measures against business actors violating the provisions of this Law.
- (2) Administrative measures as intended in paragraph (1) may be in the form of the following:
 - a. stipulation on the annulment of agreements as intended in Article 4 up to and including Article 13, Article 15 and Article 16; and or
 - b. order to business actors to cease vertical integration as intended in Article 14; and or
 - c. order to business actors to cease activities proven to have caused monopolistic practices and or unfair business competition and or being harmful to society; and or
 - d. ordering business actors to cease the abuse of dominant position; and or
 - e. stipulation on the annulment of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and or
 - f. stipulation on the payment of compensation for losses; and or
 - g. imposition of a fine of not less than Rp.1,000,000,000,- (Rupiah one billion) and not more than Rp.25,000,000,000,- (Rupiah twenty- five billion).

Part Two

Principal Criminal Sanctions

Article 48

- (1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 16 up to and including Article 19, Article 25, Article 27, and Article 28 shall be subject to the criminal sanction of a fine of not less than Rp 25,000,000,000,- (Rupiah twenty-five billion) and not more than Rp 100,000,000,000,- (Rupiah

one hundred billion), or the criminal sanction of imprisonment as a replacement of fine for no longer than 6 (six) months.

- (2) Violations of the provisions of Article 5 up to and including Article 8, Article 15, Article 20 up to and including Article 24, and Article 26 of this Law shall be subject to the criminal sanction of a fine of not less than Rp.5,000,000,000,- (Rupiah five billion) or not more than Rp.25,000,000,000,- (Rupiah twenty-five billion), or a criminal sanction of imprisonment as replacement of fine for no longer than 5 (five) months.
- (3) Violations of the provisions of Article 41 of this Law shall be subject to a fine of not less than Rp.1,000,000,000,- (Rupiah one billion) and not more than Rp.5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of fine for no longer than 3 (three) months.

Part Three

Additional Criminal Sanctions

Article 49

In compliance with the provisions of Article 10 of the Criminal Code, in addition to the criminal sanctions as set forth in Article 48, additional criminal sanctions may be imposed in the form of the following:

- a. revocation of business licenses; or
- b. prohibition of business actors proven to have violated this law from filling the position of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or
- c. order to cease certain activities or actions causing losses to other parties.

CHAPTER IX

MISCELLANEOUS PROVISIONS

Article 50

Excluded from the provisions of this law shall be the following:

- a. actions and or agreements aimed at implementing applicable laws and regulations; or

- b. agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; or
- c. agreements for the stipulation of technical standards of goods and or services which do not restrain, and or do not impede competition; or
- d. agency agreements which do not stipulate the resupply of goods and or services at a price level lower than the contracted price; or
- e. cooperation agreements in the field of research for raising or improving the living standard of society at large; or
- f. international agreements ratified by the Government of the Republic of Indonesia; or
- g. export-oriented agreements and or actions not disrupting domestic needs and or supplies; or
- h. business actors of the small-scale group; or
- i. activities of cooperatives with the specific aim of serving their members.

Article 51

Monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large as well as branches of production of strategic importance to the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institutions formed or appointed by the Government.

CHAPTER X TRANSITIONAL PROVISIONS

Article 52

- (1) As from the time at which this Law becomes effective, all laws and regulations regulating or related to monopolistic practices and or business competition shall be declared as remaining in effect insofar as not contradictory or not superseded by new ones by virtue of this Law.
- (2) Business actors having entered into agreements and or conducting activities and or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this Law's coming into effect to make adjustments.

**CHAPTER XI
CLOSING PROVISIONS**

Article 53

This Law shall become effective within 1 (one) year as from its enactment.

For public cognizance, it is hereby ordered that this Law be promulgated by announcement in the State Gazette of the State of the Republic of Indonesia.

Ratified in Jakarta
on March 5, 1999

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgd.

BACHARUDDIN JUSUF HABIBIE

Enacted in Jakarta
On March 5, 1999

STATE MINISTER SECRETARY OF
STATE OF THE REPUBLIC OF INDONESIA

sgd.

AKBAR TANDJUNG

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 1999
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CABINET SECRETARIAT OF THE REPUBLIC OF INDONESIA
Head of the Legislature Bureau I

Lambock V. Nahattands

ELUCIDATION ON
THE LAW OF THE
REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION
OF MONOPOLISTIC
PRACTICES AND UNFAIR
BUSINESS COMPETITION



THE PRESIDENT OF THE REPUBLIC INDONESIA

**ELUCIDATION ON
THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR
BUSINESS COMPETITION**

GENERAL

Economic development in the First Long Term Development has resulted in substantial progress, manifested in among other things the improvement of the people's welfare. The aforementioned progress achieved in development has been supported by development policies in various fields, including policies in the field of economy as set forth in the Broad Outlines of State Policy and the Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, as reflected in high economic growth, there are still many challenges or unresolved issues, especially in economic development, alongside the trend of globalization in the economy and the dynamics and development of private businesses since the early 1990s.

In reality, the business opportunities created during the last three decades have not been able to ensure that all levels of society participate in development in various economic sectors. The development of the private sector during the above mentioned period has on the one hand been marked by various forms of not fully appropriate Government policies leading to market distortions. On the other hand, the development of the private sector has in fact been mainly the result of unfair business competition conditions.

The above described phenomena have developed and have been supported by the relationship between decision-makers and business actors, either directly or indirectly, leading to the further deterioration of the situation. The implementation of national economy has not fully adhered to the mandate of Article 33 of the 1945 Constitution, and has shown a highly monopolistic tendency.

Businessmen close to the elite of power have obtained excessive facilities resulting in the creation of a social gap. The emergence of conglomerates and a group of strong businessmen not supported by the spirit of real entrepreneurship has been one of the factors which have caused the economic resilience to become extremely vulnerable and uncompetitive.

In view of the above situation and conditions, there is a need for us to study and reorganize business activities in Indonesia, enabling businesses to grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and to avoid the concentration of economic power around certain individuals or groups, among other things, in the form of monopolistic practices and unfair business competition harmful to society, which are contradictory to the ideals of social justice.

Therefore, it is necessary to formulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended to uphold the rule of law and to provide equal protection to every business actor in an effort to create fair business competition.

This law provides for assurances of legal certainty for stimulating further rapid economic development in an effort to improve general welfare, as well as in implementation of the spirit and soul of the 1945 Constitution.

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, there is a need to form a Commission for the Supervision of Business Competition, namely an independent institution free from the influence of the government and other parties, having the authority to conduct supervision of business competition and to impose sanctions. Such sanctions shall be in the form of administrative measures, whereas criminal sanctions shall be under the authority of the court of justice.

In general, the substance of the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition consists of 6 (six) parts being regulated namely as follows:

1. prohibited agreements;
2. prohibited actions;
3. dominant position;
4. Commission for the Supervision of Business Competition;
5. law enforcement;
6. miscellaneous provisions.

This law has been formulated based on the principles of Pancasila and the 1945 Constitution, and it has been based on the principles of economic democracy with due observance of the equilibrium between the interests of business actors and the public interest with the aim to: safe-guard public interest and protect consumers; develop a conducive business climate through the creation of fair business competition, and ensure certainty in equal business opportunity for every person; prevent monopolistic practices and or unfair business competition caused by business actors; and create effectiveness and efficiency in business activities in the context of improving the efficiency of the national economy as one of the endeavors in the context of enhancing the people's welfare.

ARTICLE BY ARTICLE

Article 1

- Sub-Article 1
Self-explanatory
- Sub-Article 2
Self-explanatory
- Sub-Article 3
Self-explanatory
- Sub-Article 4
Self-explanatory
- Sub-Article 5
Self-explanatory
- Sub-Article 6
Self-explanatory
- Sub-Article 7
Self-explanatory
- Sub-Article 8
Self-explanatory
- Sub-Article 9
Self-explanatory
- Sub-Article 10
Self-explanatory

Sub-Article 11
Self-explanatory

Sub-Article 12
Self-explanatory

Sub-Article 13
Self-explanatory

Sub-Article 14
Self-explanatory

Sub-Article 15
Self-explanatory

Sub-Article 16
Self-explanatory

Sub-Article 17
Self-explanatory

Sub-Article 18
Self-explanatory

Sub-Article 19
Self-explanatory

Article 2
Self-explanatory

Article 3
Self-explanatory

Article 4
Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 5
Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 6
Self-explanatory

Article 7
Self-explanatory

Article 8
Self-explanatory

Article 9
Agreements may be vertical or horizontal in nature. Such agreements are prohibited because business actors eliminate or reduce competition by dividing the market or market allocation. Marketing territories may mean the territory of the state of the Republic of Indonesia, or parts of the territory of the state of the Republic of Indonesia, for example regency, province, or other regional territories. Dividing marketing territories or market allocation means dividing territories with the aim of obtaining or supplying goods, services, or goods and services, determining the parties from which goods, services, or goods and services may be obtained or supplied.

Article 10
Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 11
Self-explanatory

Article 12
Self-explanatory

Article 13

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 14

Referred to as controlling the production of a number of products being part of a production chain which are normally referred to as vertical integration shall be the control of a production process series of certain goods from upstream to downstream or a process continuing for certain services by certain business actors. Even though vertical integration practices may result in low priced goods and services, these can cause unfair business competition which is harmful to the building blocks of the society's economy. Such practices are prohibited insofar as they cause unfair business competition and or are harmful to society.

Article 15

Paragraph (1)

Referred to as supplying shall include the procurement of supplies, either in the form of goods or services, in the context of sale and purchase, lease, lease purchase and leasing activities.

Paragraph (2)

Self-explanatory

Paragraph (3)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Article 16

Self-explanatory

Article 17

Paragraph (1)

Self-explanatory

Paragraph (2)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Referred to as other business actors shall be business actors possessing significant competitive capacity in the relevant market.

Sub-Paragraph c

Self-explanatory

Article 18

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 19

Sub-Article a

It is not allowed to reject or impede certain business actors in an unreasonable manner or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others.

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Article 20

Self-explanatory

Article 21

Unfair practices in determining production cost and other costs shall be violation of prevailing laws and regulations with the aim of obtaining production factor costs which are lower than the actual cost.

Article 22

Tenders shall be bids submitted to contract certain work, for the procurement of goods, or the provision of services.

Article 23

Self-explanatory

Article 24

Self-explanatory

Article 25

Paragraph (1)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Sub-Paragraph c

Self-explanatory

Paragraph (2)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Article 26

Sub-Article a

Self-explanatory

Sub-Article b

Companies shall be closely related if such companies support each other or are in direct contact in the process of production, marketing, or production and marketing.

Sub-Article c

Self-explanatory

Article 27

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Article 28

Paragraph (1)
Business entities shall be companies or forms of business, either incorporated as legal entities (e.g., limited liability companies) or not incorporated as legal entities, engaging in a type of business which is permanent and continuous in nature, with the purpose of generating profits.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 29

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 30

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 31

Paragraph (1)

The Chairperson and the Vice Chairperson of the Commission shall be elected from among and by Members of the Commission.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Extension of the term of membership in the Commission for the purpose of avoiding a vacancy may not exceed 1 (one) year.

Article 32

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f

Self-explanatory

Sub-Article g

Not having been convicted of a crime shall mean a person's not having been imposed with a criminal sanction due to a serious criminal act or due to the violation of morality.

Sub-Article h

Self-explanatory

Sub-Article i

Not affiliated with a particular business entity shall mean that as from the time at which the person concerned becomes a member of the Commission, such person does not act as:

1. a member of the board of commissioners or supervisors, or of the board of directors of a company;
2. a member of the management or inspection body of a cooperative;
3. a party providing services to a company, such as consultant, public accountant and appraiser;
4. a majority shareholder in a company.

Article 33

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Stated in the form of a statement by an authorised physician.

Sub-Article e

Self-explanatory

Sub-Article f

Dismissed due to the reason of, among other things, no longer meeting the requirements for Commission membership as intended in Article 32.

Article 34

Paragraph (1)

Self-explanatory

Paragraph (2)

Secretariat shall be the organizational unit supporting or assisting the Commission in the implementation of its duties.

Paragraph (3)

Working unit shall be a professional team appointed by the Commission to assist in the implementation of certain tasks at a certain time.

Paragraph (4)

Self-explanatory

Article 35

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f

Self-explanatory

Sub-Article g

Self-explanatory

Article 36

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f
Self-explanatory

Sub-Article g
Investigator shall be an investigator as intended in Law Number 8 Year 1981.

Sub-Article h
Self-explanatory

Sub-Article i
Self-explanatory

Sub-Article j
Self-explanatory

Sub-Article k
Self-explanatory

Sub-Article l
Self-explanatory

Article 37

In principle, the State is responsible for the operational implementation of the Commission's duties by providing support in the form of funding through the State Revenues and Expenditures Budget. However, bearing in mind the broad and diverse scope and field of the Commission's duties, the Commission may obtain funds from other sources not contradictory to the prevailing laws and regulations, which are not binding in nature and will not influence the Commission's independence.

Article 38

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 39

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Paragraph (5)
Self-explanatory

Article 40

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 41

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
The Commission shall submit to the investigators for investigation not only criminal acts or actions as intended in paragraph (2) of this article, but also the principal cases under investigation and examination by the Commission.

Article 42

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Sub-Article d
Self-explanatory

Sub-Article e
Self-explanatory

Article 43

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
The Commission's decision making as intended in paragraph (3) of this Article shall be conducted in a Council meeting consisting of at least 3 (three) Commission members.

Paragraph (4)
Referred to as notified shall be conveying an excerpt from the Commission's decision to the business actor concerned.

Article 44

Paragraph (1)
30 (thirty) days shall be counted as from the receipt of the excerpt from the Commission's decision by the business actor concerned or its legal proxy.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Paragraph (5)
Self-explanatory

Article 45

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 46

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 47

Paragraph (1)
Self-explanatory

Paragraph (2)

Sub-Paragraph a
Self-explanatory

Sub-Paragraph b
Ceasing vertical integration shall be implemented, among other things, by annulment of the agreement, transfer of a part of the company to another business actor, or change of the form of production series.

Sub-Paragraph c
The order shall be to cease certain activities or conduct, rather than the entire business activities of the business actor concerned.

Sub-Paragraph d
Self-explanatory

Sub-Paragraph e
Self-explanatory

Sub-Paragraph f
Compensation for losses shall be granted to the business actor concerned and to other parties having suffered a loss.

Sub-Paragraph g
Self-explanatory

Article 48

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 49

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Article 50

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Sub-Article d
Self-explanatory

Sub-Article e
Self-explanatory

Sub-Article f
Self-explanatory

Sub-Article g
Self-explanatory

Sub-Article h
Referred to as business actors of the small-scale group shall be as intended in Law Number 9 Year 1995 concerning Small-Scale Business.

Sub-Article i
Referred to as serving their members shall be providing services exclusively to their members and not to the public for the procurement of basic needs, production facilities requirements including credit and raw materials, as well as services for the marketing and distributing products of members which do not result in monopolistic practices and or unfair business competition.

Article 51
Self-explanatory

Article 52
Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 53
Self-explanatory

SUPPLEMENT TO
THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 3817



LAO PDR



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

National Assembly

No. 60/NA
Vientiane, Dated 14th July 2015

Law on Competition

Part I **General Provisions**

Article 1 Objectives

This Law determines principles, regulations and measures for managing and monitoring the competition in business activities in order to make such competition lawful, fair, transparent, flexible and equal, and aims to prevent and counter the unfair competition and the restriction of the business competition as well as to protect rights and interests of the State, business operators and consumers, which contributes to regional and international integration, and the expansion and sustainability of the national socio-economic development.

Article 2 Competition

Competition shall be the competition among the same type of business operators in conducting activities with regard to quality, quantity, price and others, aiming to achieve their business objectives.

Article 3 Definitions

The terms used in this Law shall have the following meanings:

- 1. Business operation** refers to the business activities regarding production, trade and services;
- 2. Market** refers to the scope of business activities where buyers, sellers and service providers directly or indirectly contact and agree to buy and sell goods and services;
- 3. Market share** refers to the percentage of the value of purchasing and selling of goods and services of any enterprises in the relevant market;

4. Relevant market refers to the relevant product and service markets, and the geographical market:

– **Product and service markets** refer to the scope of purchasing and selling goods and services which may be substituted in terms of characteristics, purpose of use and price;

– **Geographical market** refers to the scope of any specific geographical area in which goods and services may be interchanged with or substituted for each other;

5. Business secret refers to undisclosed information regarding method, production process, business operation or services;

6. Merger of enterprises refers to an act whereby two or more enterprises agree to transfer all of their legitimate assets, rights, obligations and interests to become either the existing enterprises or a new enterprise;

7. Acquisition of enterprise refers to an act whereby an enterprise agrees to buy a part or all of assets of other enterprise to be under its ownership and administration;

8. Joint venture refers to partnership investment of two or more enterprises agreeing to join legitimate assets, rights, obligations and interests to form a new enterprise;

9. Business association refers to an organization which is voluntarily established and regularly operated as a non-profit organization, to protect legitimate rights and interests of association and of its members;

10. Quality of goods refers to a level that defines characteristics, features, and suitability for the consumption of such goods.

Article 4 State Policy on Competition

The State recognizes and protects the rights of all economic sectors in competition for operating their activities under equal, fair competitive conditions as stipulated in the laws and regulations.

The State facilitates a free competition under by-law and does not allow any authority to impede or create barriers to competition.

The State promotes competition and encourages all sectors in the society participating in raising awareness of fair competition culture so as to prevent and counter the unfair competition and the restraint of competition.

The State creates conditions for and enhances the capacity of Small and Medium Enterprises (SMEs) to participate in the fair competition.

Article 5 Principles of Competition

The competition shall be complied with fundamental principles as follows:

1. Ensuring the compliance with policies, laws and regulations;
2. Ensuring the rights and interests of the State, business operators and consumers;
3. Ensuring the equality, transparency and fairness in the competition;
4. Ensuring that the production, distribution of goods and services meet quality, standards and fair price;
5. Abiding by the international conventions and treaties to which the Lao PDR is a party.

Article 6 Scope of Application

This Law shall apply to domestic and foreign individuals, legal entities and organizations with business presence in Lao PDR.

Article 7 International Cooperation

The State liberalizes and promotes foreign, regional and international cooperation in competition by exchanging lessons, information, scientific techniques, technologies, trainings and improving technical capacities in order to ensure effective competition and conformity with the international conventions and treaties to which the Lao PDR is a party.

Part II Unfair Competition

Article 8 Unfair Competition

Unfair competition is a business operation of one or two or a group(s) of enterprises involving in any practice as stipulated in article 9 of this law.

Article 9 Unfair Competition Practices

Unfair competition consists of the practices as follows:

1. Misleading conduct;
2. Violation of business secrets;
3. Coercion in business operation;
4. Defamation of other business operators;

5. Imposing obstacles to business operation;
6. False advertisement;
7. Unfair sales promotion;
8. Discrimination by business association;
9. Other practices as stipulated in the relevant laws and regulations.

Article 10 Misleading Conduct

Misleading conduct is an act that provides consumers with misleading information about a trademark, brand, geographical indication, packaging, label and other elements of goods or services which make consumers understand that those are reliable, standardized or registered.

Article 11 Violation of Business Secrets

Violation of business secrets is any practice as stipulated in this article in order to take advantage of other business operators.

Violation of business secrets is as follows:

1. Accessing and collecting business secrets without permission;
2. Disclosing and using business information without permission;
3. Breaching a contract of keeping business secrets confidential;
4. Taking advantage of trust from the business secrets holders in order to access and collect business secrets.

Article 12 Coercion in Business Operation

Coercion in business operation is an act that a business operator directly or indirectly uses deception, order or threat to coerce other business operators to do or not to do something in favor of his/her interest which is inconsistent with those business operators' objectives.

Article 13 Defamation of other Business Operators

Defamation of other business operators is an act that slanders other business operators by directly or indirectly disclosing and providing false information which negatively impacts on their business operation.

Article 14 Imposing Obstacles to Business Operation

Imposing obstacles to business operation is an act of directly or indirectly creating difficulties for other business operators in operating businesses such as the access to finance, raw materials, information and technology.

Article 15 False Advertisement

False advertisement is an act that discloses incorrect, distorted or over stated, information regarding production, characteristics, quality of goods and services which negatively affect interests of other business operators and consumers.

Article 16 Unfair Sales Promotion

Unfair sales promotion is a deceptive advertisement or any kind of acts that persuade the consumers to buy more goods and services through any means such as: failure to provide the prize as announced, offering free goods or services to customers for a trial use but requiring their payment at later stage.

Article 17 Discrimination by Business Association

Discrimination by Business Association is an act of unfairly refusing admission to or withdrawal from the Business Association, as well as unequal treatment to its members, in order to gain benefit from competition,

Part III Restraint of Competition

Article 18 Restraint of Competition

Restraint of competition is the business operation of one or two or a group[s] of enterprises aimed to reduce, distort and/or prevent competition through any types of operation as stipulated in article 19 of this Law.

Article 19 Types of Restraint of Competition

Types of restraint of competition are as follows:

1. An agreement aimed at restraint of competition;
2. Abuse of dominant market position and market monopoly;
3. Combination aimed at restraint of competition.

There will be the exclusion/exemption for each type of restraint of competition mentioned above as stipulated in Section 4 of this Part.

Section 1

Agreement aimed at Restraint of Competition

Article 20 Agreement aimed at Restraint of Competition

Agreement aimed at restraint of competition is a commitment among business operators to reduce, distort and/or impede the business competition.

Article 21 Practices Considered as the Agreement aimed at Restraint of Competition

Practices considered as the agreement aimed at restraint of competition are follows:

1. Fixing the price of goods and services;
2. Fixing the market share and allocating market;
3. Fixing the quantity of production;
4. Restraining the development of technology and quality of goods and services;
5. Imposing conditions on purchasing and selling of goods and services;
6. Preventing other business operators from entering market;/impeding market access of other business operators
7. Driving other business operators out of the market;
8. Bid rigging;
9. Other practices as stipulated in the relevant laws and regulations.

Article 22 Fixing the Price of Goods and Services

Fixing the price of goods and services is an agreement among business operators to set prices of goods and services to be higher or lower and other forms of price fixing to monopolize the market.

Article 23 Fixing the Market Share and Allocating Market

Fixing the market share and allocating market are an agreement among business operators to divide market share and allocate the market, sources of the supply of goods and services, which drive other business operators out of markets or restrain, and prevent/impede other business operators from supplying goods and services in the relevant market.

Article 24 Fixing the Quantity of Production

Fixing the quantity of production is an agreement among business operators to produce a certain quantity of production in order to hoard the products, to increase price of products or unfairly dominate the market.

Article 25 Restraining the Development of Technology and Quality of Goods and Services

Restraining the development of technology and quality of goods and services is an agreement among business operators to prevent any business operator from developing the technology, production, and quality of goods and services, which result in an increase in the production costs of their products or services.

Article 26 Imposing Conditions on Purchasing and Selling of Goods and Services

Imposing conditions on purchasing and selling of goods and services is an agreement among business operators to set unfair conditions for other business operators when signing a sale and purchase contract of goods and services by determining different quality of goods and services; different terms of payment; offering different prices of the same kind of goods or services; requesting further obligations for purchasing and sale; and forcing other business operators thereof to accept other requirements which are not relevant to such contract.

Article 27 Preventing other Business Operators from Entering Market

Preventing other business operators from entering market is an agreement among business operators by applying direct or indirect means to restrict, impede, prevent other business operators from entering the market in order to facilitate its group members to dominate the market.

Article 28 Driving other Business Operators out of the Market

Driving other business operators out of the market is an agreement among business operators by applying direct or indirect means to force other business operators out of the market.

Article 29 Bid Rigging

Bid rigging is an agreement among business operators or business operators and relevant officials in order to win a bid for their own benefits.

Section 2

Abuse of Dominant Market Position and Market Monopoly

Article 30 Dominant Market Position and Market Monopoly

Dominant market position is the business operation of one or two or a group of enterprises which has the market share over the threshold defined periodically by the Competition Commission.

Market monopoly is the business operation of one or a group of enterprises as only seller of goods and services in the relevant market.

Article 31 Practices of Abuse of Dominant Market Position and Market Monopoly

Practices of abuse of dominant market position and market monopoly are as follows:

1. Unfairly fixing the prices of purchasing and selling of goods and services;
2. Selling goods and services at below production costs and selling goods with poor quality;
3. Refusing to sell goods and services to customers;
4. Imposing the conditions of tied selling-buying of goods and services;
5. Imposing the different prices or conditions of purchasing and selling the same kind of goods and services;
6. Other practices as stipulated in the relevant laws and regulations.

Article 32 Unfairly Fixing the Prices of Purchasing and Selling of Goods and Services

Unfairly fixing the prices of purchasing and selling of goods and services is an act of one or two or a group of enterprises who forces other business operators to purchase and sell goods and services at its preferred prices or determines the retail prices which compromise consumers' welfare.

Article 33 Selling Goods and Services at below Production Costs and Selling Goods with poor Quality

Selling goods and services at below production costs and selling goods with poor quality are the acts of one or two or a group of enterprises to fix the selling price of goods and services at below production costs and selling a poor quality of goods, thereby causing other competitors unable to compete in order to dominate and monopolize the market.

Article 34 Refusing to Sell Goods and Services to Customers

Refusing to sell goods and services to customers is an act of one or two or a group of enterprises to refuse or discriminate the customers, consumers and other business operators, which is inconsistent with the laws and regulations.

Article 35 Imposing the Conditions of Tied Selling-Buying of Goods and Services

Imposing conditions of tied selling-buying of goods and services is an act of one or two or a group of enterprises to impose the conditions for other business operators to sign a sale-purchase contract of goods and services or to force other business operators to perform other obligations that are not stipulated in the contract.

Article 36 Imposing the different Prices or Conditions of Purchasing and Selling the same Kind of Goods and Services

Imposing the different prices or conditions of purchasing and selling the same kind of goods and services is an act of one or two or a group of enterprises to impose the different conditions on purchasing and selling the same kind of goods and services in the same market, which aims to create the inequality in business competition.

Section 3

Combination aimed at Restraint of Competition

Article 37 Combination

Combination is an agreement among business operators in the forms of merger, acquisition or transfer of the enterprises, and a joint venture.

Article 38 Combination aimed at Restraint of Competition

Combination aimed at restraint of competition is the combination which results in the following consequences:

1. Holding the market share in the relevant market over the threshold defined by the Competition Commission;
2. Restraining market access and the development of technology;
3. Creating a negative impact on consumers, other business operators and the national socio-economic development.

Article 39 Application of Combination

All required documents for the combination of large enterprises shall be submitted to the Competition Commission for consideration. For small and medium enterprises, the submission of documents thereof shall be exempted but their combinations shall be notified to the Competition Commission.

Article 40 Documents for the application of Combination

Documents for the application of combination are as follows:

1. The Application Form from the Competition Commission;
2. The copy of Enterprise Registration Certificate of each relevant enterprise;
3. The Financial Statement of the last two consecutive years of each relevant enterprise, which shall be certified by audit agency;
4. The Contract or Agreement of combination.

Article 41 Examination of Documents for the application of Combination

The Competition Commission shall examine the documents for the application of combination within seven (7) days after receiving the documents. In case of the insufficient documentation or incorrect/incomplete information, the Commission shall notify the relevant enterprises in written and request the enterprises to provide the additional documents or improve the content to be sufficient and correct.

Article 42 Consideration of application of Combination

After receiving the sufficient and correct documents of application of combination, the Competition Commission shall consider and notify the enterprises about approval or disapproval of the combination within thirty (30) days; In case of disapproval, the Commission shall notify the relevant enterprises in written together with explanation of such disapproval. In case of necessity, the consideration process of application of combination can be extended up to thirty (30) days with approval from the Minister of Industry and Commerce.

After the application of combination is approved, the relevant enterprises shall notify the Enterprise Registration Office and complete other processes required by the Law on Enterprise.

Article 43 Providing the Additional Information Relating to the Combination

In the case of unclear or inaccurate information or documents for application of

combination, the Competition Commission may coordinate with relevant agencies who have the obligations to provide the additional information or documents.

Article 44 Withdrawal of the Application of the Combination

After submitting the application of the combination, the enterprises who would like to withdraw that application shall notify the Competition Commission on their decision of withdrawal.

Section 4 Exemption for the Restraint of Competition

Article 45 Exemption for the Agreement aimed at Restraint of Competition

The agreement aimed at restraint of competition as stipulated in clauses 1, 2, 3, 4, 5 and 6 under article 21 of this Law can be considered for an exemption by the Lao Competition Committee on case by case basis, if such agreement provides benefits in promoting the advance of technologies and techniques, improves the quality of goods and services and strengthens the competitiveness of SMEs

Article 46 Exemption for the Abuse of Dominant Market Position and Market Monopoly

The Government can consider the exemption on case by case basis for the abuse of dominant market position and market monopoly practices as stipulated under article 31 of this Law, if those practices are contributing to the national socio-economic development or due to national strategy and security reasons, however, the exempted enterprises shall comply with the following Government's Administration and Regulations:

1. Management of the prices of goods and services;
2. Management of the quantity, market scope of goods or service;
3. Management of the production plans and the distribution of goods or services.

Article 47 Exemption for Combination aimed at restraint of competition

The Combination aimed at restraint of competition which may cause a consequent result as stipulated in clause 1 under article 38 of this Law may be exempted for the following reasons:

1. One or two or more enterprises involving in the combination aimed at restraint of competition is under the circumstance of bankruptcy;
2. The combination shall contribute to the growth of exports or foster the technological and technical development.

Part IV

Lao Competition Commission

Article 48 Lao Competition Commission

The Lao Competition Commission is the non-standing committee, performs in accordance with the laws and regulations, acts as advisor to the Government; is independent in terms of technical aspects and directly responsible for monitoring, inspecting and performing its mandated tasks in cooperation with relevant agencies and local authorities.

The abbreviation of Lao Competition Commission is “LCC”.

Article 49 Personnel Structure of the LCC

Personnel structure of the LCC consists of:

1. A Vice Minister of Industry and Commerce as Chairman and Standing Commissioner;
2. A representative of the Ministry of Finance, Vice Chairman;
3. A representative of the Ministry of Planning and Investment, Vice Chairman;
4. A representative of the Ministry of Agriculture and Forestry, Member;
5. A representative of the Ministry of Justice, Member;
6. A representative of the Ministry of Posts and Telecommunications, Member;
7. A representative of the National Economic Research Institute, Member;
8. A representative of the Institute of Finance and Banking, Member;
9. A representative of the Lao National Chamber of Commerce and Industry, Member;
10. A representative of the Lao Bar Association, Member;
11. Head of the Secretariat of the LCC, Member.

The LCC shall be appointed by the Prime Minister based on a recommendation of the Minister of Industry and Commerce.

The LCC shall have the Secretariat as its advisor located in the Ministry of Industry

and Commerce.

In case of necessity the Provincial Competition Commission (PCC) may be established.

Article 50 Rights and Duties of the LCC

The LCC shall have the rights and duties as follows:

1. To consider and adopt plans, programmes and projects concerning the competition based on the proposal from its Secretariat;
2. To study, propose adoption of legislations concerning competition as well as advocate and disseminate such legislations;
3. To consider the combination;
4. To apply administrative measures against individuals, legal entities who breach this Law and the relevant regulations;
5. To issue orders, inspection decisions and apply measures against violators based on the decision of relevant agencies as stipulated in the Law on Criminal Procedure;
6. To submit criminal referral to the Office of the Public Prosecutor for prosecution in accordance with justice processes;
7. To collaborate and cooperate with foreign countries, regional and international organizations concerning the competition affairs;
8. To summarise and report its performances to the Minister of Industry and Commerce;
9. To perform other rights and duties in accordance with laws and regulations.

Article 51 The LCC Secretariat

The LCC Secretariat is a body equivalent to Department level under the Ministry of Industry and Commerce, and acts as advisor to the LCC in administering competition activities.

The LCC Secretariat's organizational structure and activities shall be stipulated in the specific regulations.

Article 52 Competition Inspectors

Competition Inspectors are the investigatory officials working under a supervision of the LCC Secretariat. The Inspectors shall be appointed and demoted by the Minister of Industry and Commerce based on the recommendation of the Chairman of the LCC.

Qualification requirements for competition inspectors shall be stipulated in the specific regulations.

Article 53 Rights and Duties of Competition Inspectors

Competition inspectors shall have the rights and duties as follows:

1. To receive and record the reports, complaints and confessions on a violation of competition;
2. To carry out investigations and gather preliminary information on a violation of competition;
3. To seize and keep exhibits related to a violation of competition;
4. To inspect premises relating to a violation of competition;
5. To summarize and report on findings of preliminary inspection and gathering information to the LCC Secretariat;
6. To perform other rights and duties as stipulated in the relevant laws and regulations.

Article 54 Uniform, Logo, Identity Card of Competition Inspector and Budget of the LCC

Competition inspectors shall have their own uniform, logo and identity card in performing their rights and duties.

To ensure effective and efficient performance of the LCC, the LCC shall have a budget allocated under the Annual Budget of the Ministry of Industry and Commerce.

Part V Prohibitions

Article 55 General Prohibitions

Individual, legal entity or organization is prohibited:

1. To use violence, to threaten or to impede competition inspectors from performing their duties;
2. To assist or protect any person who breaches laws and regulations relating to competition;
3. To act as a broker, to offer or receive a bribe for gaining benefit from competition;

4. To conduct any practice violating laws and regulations.

Article 56 Prohibitions for Business Operators

Business operators are prohibited:

1. To undertake any practices aimed at unfair competition as stipulated in article 9 of this Law;
2. To undertake any practices aimed at restraint of competition as stipulated in articles 21 and 31 of this Law;
3. To deceive competition inspectors;
4. To conduct other practices violating laws and regulations.

Article 57 Prohibitions for the LCC

The LCC is prohibited:

1. To disclose confidential information of individual(s), legal entities and organizations in relation to competition affairs under LCC's responsibilities without permission;
2. To hold a position or act as an advisor to individual(s), legal entities and organizations in doing business relating to competition;
3. To hold back and delay a process of documentations, to misuse a position power for the purpose of personal, group, family and relative interests;
4. To submit or provide false information related to unfair competition to concerned business operators;
5. To provide and use the received information relating to the consideration of competition in an unfair manner;
6. To conduct any other practices violating the relevant laws and regulations.

Article 58 Prohibitions for Competition Inspectors and Relevant Government Officials

Competition inspectors and relevant government officials are prohibited:

1. To unfairly and illegally perform the duties which against laws and regulations;
2. To misuse a position power, rights and duties for the purpose of personal, group, family and relatives' interests;
3. To forge or use forged documents, disclose confidential information, delay or destroy documents relating to competition;

4. To conduct any other practices violating laws and regulations.

Part VI

Settlement of the Competition Violation

Section 1

Inspection of the Competition Violation

Article 59 Inspection of the Competition Violation

Inspection of the competition violation is an inspection of concerned business operators in order to prevent and counter the competition violation as stipulated in this Law and other relevant regulations.

Article 60 The Grounds for the Inspection

The grounds for the inspection of the competition violation are as follows:

1. Receiving the report or complaint from any individual, legal entity, or organization relating to the competition violation;
2. Receiving the confession from the violator[s];
3. Finding out a clue/trace of the violation such as data and evidence relating to the unfair competition and the restraint of competition.

Article 61 Report or Complaint

Individuals, legal entities or organizations that found or knew about the competition violation shall report or complain in verbal or written forms to the Secretariat of the LCC in order to conduct the inspection as stipulated in article 64 of this Law.

Article 62 Confession of Violator[s]

The confession of violator[s] is the report of any person on the competition violation to the Secretariat of the LCC voluntarily.

The officials who receive the confession of the violator[s] shall record the confession and report to the LCC.

The confessor[s] shall be granted the leniency in accordance with the relevant laws and regulations.

Article 63 Finding out a Trace of the Competition Violation

When competition inspectors have found any trace or evidence which demonstrates the elements of the competition violation, they shall gather preliminary information and record the situation and report to the LCC for considering of issuing an inspection order.

Article 64 Inspection Procedure

The inspection occurred due to any grounds as stipulated in article 60 of this Law shall be proceeded as follows:

1. Gathering preliminary information;
2. Issuing an inspection order;
3. Interrogating;
4. Searching, seizing or sequestering materials or documents;
5. Applying preventative measures;
6. Summarizing and reporting on findings of the inspection.

Article 65 Gathering Preliminary Information

Any grounds occurred as stipulated in article 60 of this Law, the competition inspectors shall gather preliminary information about the competition violation and report to the LCC for considering of issuing an inspection order.

In case of the preliminary information gathered indicates a criminal offence, the competition inspectors shall report to the LCC and lodge information and evidence to criminal prosecution authorities.

In the case of the preliminary information gathered indicates that there is no evidence concerning competition violation, the competition inspectors shall report to the LCC for considering of issuing an order to stop the inspection.

Article 66 Issuing an Inspection Order

After receiving a report containing information and evidence on the competition violation, the LCC shall consider to issue an inspection order.

In case of unclear or insufficient information and evidence, the LCC shall order the competition inspectors to gather additional information.

Article 67 Interrogation

Once the LCC issued the inspection order, the competition inspectors shall have the rights to summon violator[s], suspect[s] or other related persons for interrogation about the competition violation.

Every interrogation shall be recorded as stipulated in the Law on Criminal Procedure.

Article 68 Searching, Seizing or Sequestering Materials or Documents

The search can be conducted only after the President of Office of the Public Prosecutor issued the Search Warrant in accordance with a request of the LCC; however, in case of a confrontation or urgent circumstance the search can be conducted and the competition inspectors shall report to the Office of the Public Prosecutor within twenty-four hours after completing the search.

In case of finding materials or documents relating to the competition violation, the competition inspectors shall have the rights to seize or sequester such materials or documents and report to the LCC and the Office of the Public Prosecutor within twenty-four hours after seizing and sequestering.

Seizing or sequestering materials or documents shall be clearly recorded with the indication of date; time; inspected site; names and surnames, positions of competition inspectors who conducted the inspection; details of materials or documents seized or sequestered. After completing the record(s), the record(s) must be read out, signed or fingerprinted by all participants.

Article 69 Applying Interim Measures

During the inspection of the competition violation, when it is necessary for applying interim measures, while waiting for a decision from the LCC or Court, the LCC shall have the rights to propose to the Office of the Public Prosecutor or the People's Court for consideration of applying the interim measures.

Article 70 Summarizing and Reporting on Findings of the Inspection

After completing the inspection, competition inspectors shall report the findings of the inspection as well as submit all gathered information and evidence to the LCC in order to consider on case by case basis.

The report shall be clearly identified the practices of the competition violation and details of the violations, as well as propose means of settlement.

Article 71 Timeframes for Inspection

The timeframes for inspection of the competition violation shall be determined as follows:

1. Inspection of the unfair competition shall be completed within ninety (90) days after the date of issuing the inspection order. In case the inspection is incomplete, the competition inspectors shall be able to propose to the LCC to extend the inspection period up to sixty (60) days;

2. Inspection of the restraint of the competition shall be completed within one hundred and fifty (150) days after the date of issuing the inspection order. In case the inspection is incomplete, the competition inspectors shall be able to propose to the LCC to extend the inspection period up to ninety (90) days.

Section 2 Settlement of the Competition Violation

Article 72 Settlement of the Competition Violation

After receiving the summarizing and reporting on findings of the inspection regarding the competition violation, the LCC shall take actions as follows:

1. Issuing an order to apply the administrative measure;
2. Issuing an order to conduct additional inspection;
3. Compiling criminal referral;
4. Issuing the Decision to cease the settlement.

Article 73 Issuing an order to apply the administrative measure

In case the competition violation is administrative violation, the LCC shall issue an order to apply the administrative measures against violators on case by case basis within fifteen (15) days such as education, warning, disciplinary measures and fine.

Article 74 Issuing an order to conduct additional inspection

In case information and evidence gathered are not enough and insufficient the LCC shall issue an order for competition inspectors to conduct an additional inspection within ten (10) days.

After receiving the order for conducting an additional inspection, the competition inspectors shall complete the inspection for the unfair competition within thirty (30) days; and for restraint of the competition within sixty (60) days.

Article 75 Compiling Criminal Referral

In case competition violation is, proved with strong evidence, the criminal offence, the LCC shall compile criminal referral including all information and exhibits, then submit to the relevant Office of the Public Prosecutor in order to prosecute as stipulated in the Law on Criminal Procedure.

Article 76 Issuing the Decision to cease the settlement

The LCC shall have the rights to issue the Decision to cease the settlement of the competition violation within ten (10) days from the date of issuing the decision based on one of the followings:

1. No evidence indicating the competition violation;
2. When there is the confession and agreed for compensation from the violator and the complainants or damaged person(s) agreed to end the case;
3. When there is the confession and agreed for compensation from the violator according to the decision of the LCC.

After issuing decision to cease the settlement of the competition violation due to any above-mentioned cases, the LCC shall distribute such decision to the inspected person, complainant, reporter, damaged person and other relevant parties.

Article 77 Claiming for Civil Compensation

The damaged persons due to the competition violation shall have the rights to complain to the court in order to claim for civil compensation as stipulated in the relevant laws and regulations.

Part VII

Administration and Inspection of the Competition Activities

Section 1

Administration of the Competition Activities

Article 78 Competition Administration Authority

The Government shall centrally and uniformly administer the competition activities nationwide, by delegating to the Industry and Commerce sector to take main responsibility and collaborate with other sectors such as Finance, Planning and Investment, Agriculture and Forestry, Justice, Posts and Telecommunications and others, and relevant local Administrations.

The Competition Administration Authority consists of:

1. Ministry of Industry and Commerce;
2. Industry and Commerce Office at (State) Capital and Provincial levels;
3. Industry and Commerce Offices at District and Municipality levels.

Article 79 Rights and Duties of the Ministry of Industry and Commerce

The Ministry of Industry and Commerce shall have the rights and duties to administer the competition activities in accordance with its responsibilities as follows:

1. Drafting policies, strategic plans and laws relating to competition activities in order to propose to the Government for consideration;
2. Executing policies, strategic plans and laws relating to the competition activities into plans, action plans and projects, as well as directing, monitoring, supporting the effective implementation;
3. Advocating, disseminating policies, laws, strategic plans and action plans relating to the competition activities to society;
4. Issuing decisions, orders and instructions relating to competition activities;
5. Enhancing, training, educating and improving knowledge of technical officials relating to the competition issues;
6. Cooperating and coordinating with foreign countries, regional, international organizations relating to the competition activities;
7. Summarizing and reporting the competition activities to the Government regularly;
8. Performing rights and other duties in accordance with the laws and regulations.

Article 80 Rights and Duties of Industry and Commerce Office at (State) Capital and Provincial Levels

Industry and Commerce Office at (State) Capital and Provincial levels shall have the rights and duties to administer the competition activities in accordance with its responsibilities as follows:

1. Executing and implementing policies, strategic plans, laws, regulations, action

plans relating to the competition activities;

2. Advocating and disseminating policies, laws, strategic plans, and action plans relating to the business competition activities to the society;

3. Facilitating and cooperating with the competition inspectors in implementing the competition activities;

4. Receiving recommendations and reporting relating to the competition activities from public and other relevant sectors in order to report to supervisory levels for consideration;

5. Cooperating with foreign countries, regional, international organizations relating to the competition activities as assigned;

6. Summarizing and reporting the results of implementation of competition activities to supervisory levels regularly;

7. Performing rights and other duties in accordance with laws and regulations or as assigned.

Article 81 Rights and Duties of Industry and Commerce Offices at District and Municipality Levels

Industry and Commerce Offices at District and Municipality levels shall have the rights and duties as follows:

1. Implementing plans, decisions, orders, instructions relating to the competition activities of supervisory levels;

2. Disseminating the laws and regulations relating to the competition activities, educating and raising awareness to all sectors in the society to understand the competition activities within districts and municipalities;

3. Directing, monitoring, encouraging the implementation of competition activities within districts and municipalities effectively;

4. Receiving recommendations and reporting relating to the competition activities from public and other relevant sectors in order to report to supervisory levels for consideration;

5. Summarizing and reporting the results of the implementation of competition activities to supervisory levels regularly;

6. Performing rights and other duties in accordance with laws and regulations or as assigned.

Article 82 Rights and Duties of other Sectors and Local Administrations

The Finance, Public Works and Transport, Public Health, Education and Sports, Agriculture and Forestry, Posts and Telecommunications, Science and Technology, Energy and Mines sectors, the Bank of Lao PDR, other sectors, relevant organizations and local administrations shall have the rights and duties to administer the competition activities, cooperate and coordinate with the Industry and Commerce sector in accordance with their roles and responsibilities.

Section 2 Inspection of the Competition Activities

Article 83 Competition Inspection Authority

Competition Inspection Authorities are

1. The Internal Inspection Authority, which is the Competition Administration Authority as stipulated in article 78 of this Law;
2. The External Inspection Authorities, which are the National Assembly, the State Inspection Authority, the State Audit Organization, the Lao Front for National Construction, Mass Organizations and Media to inspect the implementation of competition activities in accordance with their roles, rights and duties.

Article 84 Contents of Competition Inspection

The main contents of competition inspections are as follows:

1. The implementation of policies, strategic plans and laws and regulations relating to competition activities;
2. The organizational structures and performance of the LCC and the Competition Administration Authority;
3. The responsibilities, practices and the working procedures of officials and the competition inspectors.

Article 85 Types of Competition Inspection

Types of competition inspections are as follows:

1. The regular inspection is an inspection which is carried out according to plans and at specific time;
2. The inspection following an advance notice is an ad hoc inspection deemed as necessary and shall notify the inspected parties at least twenty-four hours in advance;

3. Dawn raids inspection is an ad hoc inspection deemed as urgent and shall not be notify the inspected parties in advance.

Each time of competition inspection, documents and premises shall be inspected and the relevant laws and regulations must be followed strictly.

Part VIII

Reward for Persons with the Outstanding Achievement and Measures against Violators

Article 86 Reward for Persons with the Outstanding Achievement

Individuals, legal entities or organizations with the outstanding achievement in the enforcement of this Law such as providing information, reporting the competition violation shall be praised or granted other benefits according to regulations.

Article 87 Measures against Violators

Individuals, legal entities or organizations violating the Competition Law shall be educated, warned, disciplined, fined, subject to compensate for the damages or punished by relevant laws depending on the gravity of the violation.

Article 88 Education Measures

Individuals, legal entities or organizations violating the laws and regulations relating to competition, particularly the prohibitions as stipulated in this Law, deemed as a minor violation and first-time of violation which is the non-criminal offence shall be educated and warned.

Article 89 Disciplinary Measures

Competition inspectors and relevant government officials who violated this Law such as non-criminal prohibition, causing minor damages and dishonestly reporting and avoiding their offences shall be punished with the disciplinary measures as follows:

1. Shall be criticized, warned about the violation in accordance with regulations and record such offence in their biographical files;
2. Shall be suspended from receiving any promotion, salary level and praises;
3. Shall be demoted or shuffled to a lower-level position;
4. Shall be dismissed from civil service without receiving any welfares.

The disciplined person must return all properties acquired illegally to the relevant organization[s].

Article 90 Fine Measures

Individuals, legal entities or organizations violating this Law, particularly the prohibitions which deemed as non-criminal offence shall be fined.

The level of fines shall be stipulated in specific regulations.

Article 91 Civil Measures

Individuals, legal entities or organizations violating the prohibitions under this Law which cause damages to other persons shall compensate for the actual caused damages.

Article 92 Criminal Measures

Individuals violating this Law which constituted as the criminal offence shall be punished in accordance with the Penal Law or other laws that provide criminal liability.

Article 93 Additional Penalty Measures

In addition to measures against violators as stipulated in article 92 of this Law, the violator shall be subject to additional penalty measures such as suspension or withdrawal of an Enterprise Registration Certificate.

Part IX Final Provisions

Article 94 Implementation

The Government of the Lao People's Democratic Republic shall implement this Law.

Article 95 Effectiveness

This Law enters into force from the date of the promulgating decree signed by the President of the Lao People's Democratic Republic and after fifteen days of the notification of this Law in the Official Gazette.

Any provisions and regulations that conflict with this Law shall be abrogated.

President of the National Assembly

[Signature and Seal]

Pany YATHOTOU



MALAYSIA



LAWS OF MALAYSIA

Act 712

COMPETITION ACT 2010

Date of Royal Assent	2 June 2010
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LAWS OF MALAYSIA

Act 712

COMPETITION ACT 2010

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation
3. Application

PART II

ANTI-COMPETITIVE PRACTICES

Chapter 1

Anti-competitive agreement

4. Prohibited horizontal and vertical agreement
5. Relief of liability
6. Individual exemption
7. Cancellation or variation of individual exemption
8. Block exemption
9. Procedure for block exemption

Chapter 2

Abuse of dominant position

10. Abuse of dominant position is prohibited

Chapter 3

Market review

Section

11. Power to conduct market review
12. Determination of market review

Chapter 4

Exclusion

13. Exclusion

PART III

INVESTIGATION AND ENFORCEMENT

14. Investigation by the Commission
15. Complaint to the Commission
16. Close of an investigation
17. Power of investigation
18. Power to require provision of information
19. Commission may retain document
20. Access to records, *etc.*
21. Confidentiality
22. Privileged communication
23. Giving false or misleading information, evidence or document
24. Destruction, concealment, mutilation and alteration of records, *etc.*
25. Search and seizure with warrant
26. Search and seizure without warrant
27. Access to computerized data
28. Warrant admissible notwithstanding defect
29. List of record, book, account, *etc.*, seized
30. Release of record, book, account, *etc.*, seized
31. No cost or damages arising from seizure to be recoverable
32. Obstruction
33. Tipping off
34. Threat and reprisal is prohibited

PART IV

DECISION BY THE COMMISSION

Section

35. Interim measures
36. Proposed decision by the Commission
37. Oral representation
38. Conduct of hearings
39. Finding of non-infringement
40. Finding of an infringement
41. Leniency regime
42. Enforcement of direction or decision
43. Power to accept undertaking

PART V

COMPETITION APPEAL TRIBUNAL

44. Establishment of the Competition Appeal Tribunal
45. Constitution of the Competition Appeal Tribunal
46. Allowances
47. Resignation and revocation of appointment
48. Vacation of office and new or temporary appointment
49. Disclosure of interest
50. Secretary to the Competition Appeal Tribunal and other officers
51. Appeal to the Competition Appeal Tribunal
52. Record of decision of the Commission
53. Stay of decision pending appeal
54. Composition of the Competition Appeal Tribunal
55. Sitting of the Competition Appeal Tribunal
56. Procedure of the Competition Appeal Tribunal
57. Powers of the Competition Appeal Tribunal
58. Decision of the Competition Appeal Tribunal
59. Enforcement of decision of the Competition Appeal Tribunal
60. Protection against suit and legal proceedings

PART VI

GENERAL

Section

61. General penalty
62. Compounding of offences
63. Offences by body corporate
64. Rights of private action
65. Power to make regulations
66. Power to issue guidelines
67. Public Authorities Protection Act 1948

FIRST SCHEDULE

SECOND SCHEDULE

LAWS OF MALAYSIA**Act 712****COMPETITION ACT 2010**

An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith.

[]

WHEREAS the process of competition encourages efficiency, innovation and entrepreneurship, which promotes competitive prices, improvement in the quality of products and services and wider choices for consumers:

AND WHEREAS in order to achieve these benefits, it is the purpose of this legislation to prohibit anti-competitive conduct:

NOW, THEREFORE, IT IS ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Competition Act 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“agreement” means any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices;

“Chairman” means the Chairman of the Commission appointed under the Competition Commission Act 2010 [*Act 713*];

“Commission” means the Competition Commission established under the Competition Commission Act 2010;

“Commission officer” has the same meaning assigned to it in the Competition Commission Act 2010;

“concerted practice” means any form of coordination between enterprises which knowingly substitutes practical co-operation between them for the risks of competition and includes any practice which involves direct or indirect contact or communication between enterprises, the object or effect of which is either—

- (a) to influence the conduct of one or more enterprises in a market; or
- (b) to disclose the course of conduct which an enterprise has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“consumer” means any direct or indirect user of goods or services supplied by an enterprise in the course of business, and includes another enterprise that uses the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer;

“direction” means a direction given by the Commission under Part III or Part IV of this Act;

“document” has the same meaning assigned to it in the Evidence Act 1950 [*Act 56*];

“dominant position” means a situation in which one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors;

“enterprise” means any entity carrying on commercial activities relating to goods or services, and for the purposes of this Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market;

“goods” means property of every kind, whether tangible or intangible and includes—

- (a) all kinds of movable property;
- (b) buildings and other structures;
- (c) vessels and vehicles;
- (d) utilities;
- (e) minerals, trees and crops, whether on, under or attached to land or not;
- (f) animals, including fish; and
- (g) choses-in-action;

“horizontal agreement” means an agreement between enterprises each of which operates at the same level in the production or distribution chain;

“infringement” means an infringement of any prohibition under this Act;

“market” means a market in Malaysia or in any part of Malaysia, and when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services;

“Minister” means the Minister charged with the responsibility for domestic trade and consumer affairs;

“price” includes any form of consideration given in return for any goods or services of any kind, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such goods or services;

“prohibition” means any prohibition under this Act;

“publish”, where no mode is specified, means to publish in any form or manner as may be determined by the Commission;

“supply” includes—

- (a) in relation to goods, the supply and resupply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and
- (b) in relation to services, the provision by way of sale, grant or conferment of the services;

“this Act” includes any subsidiary legislation made under this Act;

“vertical agreement” means an agreement between enterprises each of which operates at a different level in the production or distribution chain.

Application

3. (1) This Act applies to any commercial activity, both within and subject to subsection (2), outside Malaysia.

(2) In relation to the application of this Act outside Malaysia, this Act applies to any commercial activity transacted outside Malaysia which has an effect on competition in any market in Malaysia.

(3) This Act shall not apply to any commercial activity regulated under the legislation specified in the First Schedule and the Minister may, by order published in the *Gazette*, amend the First Schedule.

(4) For the purposes of this Act, “commercial activity” means any activity of a commercial nature but does not include—

- (a) any activity, directly or indirectly in the exercise of governmental authority;
- (b) any activity conducted based on the principle of solidarity; and
- (c) any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.

PART II

ANTI-COMPETITIVE PRACTICES

Chapter 1

Anti-competitive agreement

Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;
- (b) share market or sources of supply;
- (c) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
- (d) perform an act of bid rigging,

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

Relief of liability

5. Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the following reasons:

- (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
- (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
- (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
- (d) the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services.

Individual exemption

6. (1) An enterprise may apply to the Commission for an exemption with respect to a particular agreement from the prohibition under section 4.

(2) The Commission may, by order published in the *Gazette*, grant the exemption if, in the opinion of the Commission, the agreement is one to which section 5 applies.

(3) An exemption granted under this section is referred to as an “individual exemption”.

(4) The individual exemption granted by the Commission may be—

- (a) subject to any condition or obligation as the Commission considers it appropriate to impose; and
- (b) for a limited duration as specified in the order.

(5) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

Cancellation or variation of individual exemption

7. (1) If the Commission is satisfied that—

- (a) there has been a material change of circumstance since it granted an individual exemption; or
- (b) an obligation has been breached,

the Commission may, by order published in the *Gazette*—

- (i) cancel the individual exemption;
- (ii) vary or remove any condition or obligation; or
- (iii) impose additional condition or obligation.

(2) If the Commission is satisfied that—

- (a) the information on which the Commission based its decision to grant an individual exemption is false or misleading in a material particular; or
- (b) any condition has been breached,

the Commission may, by order published in the *Gazette*, cancel the individual exemption.

(3) Any action taken by the Commission under subsection (1) shall have effect from the date the order is made.

- (4) An individual exemption which is cancelled—
- (a) by virtue of paragraph (2)(a) shall be void *ab initio*; or
 - (b) by virtue of paragraph (2)(b) shall have effect from the date the condition is breached.

Block exemption

8. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 5 applies, the Commission may, by order published in the *Gazette*, grant an exemption to the particular category of agreements.

(2) An exemption granted under this section is referred to as a “block exemption”.

(3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 4.

(4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.

- (5) A block exemption may provide that—
- (a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from the date of the breach;
 - (b) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;
 - (c) if the Commission considers that a particular agreement is not one to which section 5 applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;

- (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
- (e) the block exemption is to have effect from a date earlier than that on which the order is made.

Procedure for block exemption

9. The Commission shall, before granting a block exemption—
- (a) publish details of the Commission's proposed block exemption;
 - (b) give at least thirty days from the date of publication to allow any submission to be made by members of the public in relation to the proposed block exemption; and
 - (c) give due consideration to any submission made.

Chapter 2

Abuse of dominant position

Abuse of dominant position is prohibited

10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.

(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—

- (a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;
- (b) limiting or controlling—
 - (i) production;
 - (ii) market outlets or market access;

- (iii) technical or technological development; or
 - (iv) investment,
- to the prejudice of consumers;
- (c) refusing to supply to a particular enterprise or group or category of enterprises;
 - (d) applying different conditions to equivalent transactions with other trading parties to an extent that may—
 - (i) discourage new market entry or expansion or investment by an existing competitor;
 - (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or
 - (iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;
 - (e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;
 - (f) any predatory behaviour towards competitors; or
 - (g) buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.

(3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.

(4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

Chapter 3

Market review

Power to conduct market review

11. (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.

(2) The market review includes a study into—

(a) the structure of the market concerned;

(b) the conduct of enterprises in the market;

(c) the conduct of suppliers and consumers to the enterprises in the market; or

(d) any other relevant matters.

Determination of market review

12. (1) Upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations.

(2) The report of the Commission shall be made available to the public.

Chapter 4

Exclusion

Exclusion

13. (1) The prohibitions under Part II shall not apply to the matters specified in the Second Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

(3) The Minister shall, before making an amendment to the Second Schedule—

- (a) publish a notice of his intention to make the amendment and the proposed amendment;
- (b) give at least thirty days from the date of the notice to allow any submission to be made by members of the public in relation to the proposed amendment; and
- (c) give due consideration to any submission made.

PART III

INVESTIGATION AND ENFORCEMENT

Investigation by the Commission

14. (1) The Commission may conduct any investigation as the Commission thinks expedient where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under this Act or any person has committed or is committing any offence under this Act.

(2) The Commission shall, on the direction of the Minister, investigate any suspected infringement of any of the prohibition or commission of an offence under this Act.

Complaint to the Commission

15. (1) The Commission may, upon a complaint by a person, conduct an investigation on any enterprise, agreement or conduct that has infringed or is infringing any prohibition under this Act or against any person who has committed or is committing any offence under this Act.

(2) The complaint shall specify the person against whom the complaint is made and details of the alleged infringement or offence under this Act.

Close of an investigation

16. (1) If a complaint has been made to the Commission under section 15 in relation to an infringement, the Commission may make inquiries on the complainant for the purpose of deciding whether the Commission should, in its discretion, investigate the matter.

(2) If the Commission, after such inquiries mentioned in subsection (1), decides not to investigate such complaint, it shall as soon as practicable and in such manner as it thinks fit, inform the complainant of the decision and the reasons for the decision.

(3) Notwithstanding subsections (1) and (2), the Commission may, after deciding to investigate the complaints under section 15, at any time, decide to close an investigation of an infringement under this Act, if the Commission is of the opinion that—

- (a) it would be inappropriate to continue the investigation in view of the provision of an undertaking pursuant to section 43; or
- (b) in all the circumstances the continuation of the investigation would not constitute the making of the best use of the Commission's resources.

(4) When deciding to close an investigation, the Commission shall publish a statement that the investigation has been closed, and set out a brief summary of the Commission's reasons for closing that investigation.

Power of investigation

17. (1) A Commission officer shall have all the powers of investigation and enforcement under this Act.

(2) For the avoidance of doubt, it is declared that for the purposes of this Act, the Commission officer investigating any commission of an offence under this Act shall have all or any of the powers of a police officer in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code [*Act 593*].

Power to require provision of information

18. (1) The Commission may, by notice in writing, require any person whom the Commission believes to be acquainted with the facts and circumstances of the case—

- (a) to provide or produce to the Commission, within the period and in the manner specified in the notice, any information or document which is relevant to the performance of the Commission's powers and functions; or
- (b) to make a statement to the Commission providing an explanation on any information or document referred to in paragraph (a) within the period and in the manner specified in the notice.

(2) Where the Commission directs any person to produce any document under subsection (1) and the person is not in custody of the document, the person shall—

- (a) state, to the best of his knowledge and belief, where the document may be found; and
- (b) identify, to the best of his knowledge and belief, the last person who had custody of the document and to state, to the best of his knowledge and belief, where the last-mentioned person may be found.

(3) Any person required or directed to provide information under subsection (1) or (2) shall ensure that the information provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information which would make the information provided untrue or misleading.

Commission may retain document

19. (1) The Commission may take and retain for such duration as it deems necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the Commission is satisfied that the retaining of the document is no longer necessary, the Commission may, as soon as practicable, return the document to the person who provided the document.

Access to records, etc.

20. (1) A person shall, if at any time directed by the Commission, allow the Commission access to his records, books, accounts, or other things for the purposes of carrying out any of the Commission's functions or powers under this Act.

(2) Any person who fails to comply with the direction under subsection (1) commits an offence.

Confidentiality

21. (1) Any person who discloses or makes use of any confidential information with respect to a particular enterprise or the affairs of an individual obtained by virtue of any provision of this Act commits an offence.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where—

- (a) the disclosure is made with the consent of the person from whom the information was obtained;
- (b) the disclosure is necessary for the performance of the functions or powers of the Commission;
- (c) the disclosure is reasonably made during any proceedings under this Act provided that such disclosure is not made against any direction by the Commission or the Competition Appeal Tribunal before which the proceedings are taking place;

- (d) the disclosure is made in connection with an investigation of an infringement or an offence under this Act; or
- (e) the disclosure is made with the authorization of the Commission to any competition authority of another country in connection with a request by that country's competition authority for assistance.

(3) For the purposes of this section, "confidential information" means trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others.

Privileged communication

22. (1) No person shall be required, under any provision of this Part, to produce or disclose any communication between a professional legal adviser and his client which would be protected from disclosure in accordance with section 126 of the Evidence Act 1950.

(2) Where—

- (a) the Commission makes a requirement under section 18 of an advocate and solicitor in respect of any information or document; and
- (b) the information or document contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor,

the advocate and solicitor is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to the advocate and solicitor complying with the requirement, but where the advocate and solicitor so refuses to comply with the requirement, the advocate and solicitor shall forthwith furnish in writing to the Commission the name and address of the person to whom or by whom the communication was made.

Giving false or misleading information, evidence or document

23. A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, commits an offence.

Destruction, concealment, mutilation or alteration of records, etc.

24. A person who—

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record, book, account, document, computerized data or other thing kept or maintained with intent to defraud the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Commission under this Act commits an offence.

Search and seizure with warrant

25. (1) If it appears to a Magistrate, upon written information on oath from the Commission officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

(a) any premises has been used for; or

(b) there is in any premises evidence necessary to the conduct of an investigation into,

the infringement of any prohibition or the commission of an offence under this Act, the Magistrate may issue a warrant authorizing the Commission officer named in the warrant at any reasonable time by day or night and with or without assistance, to enter the premises and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of any record, book, account, document, computerized data or other thing which contains or is reasonably suspected to contain information as to any infringement or offence suspected to have been committed.

(3) A Commission officer conducting a search under subsection (1) may, for the purpose of investigating into the infringement or offence, search any person who is in or on the premises.

(4) A Commission officer making a search of a person under subsection (3) may seize or take possession of, and place in safe custody all things other than the necessary clothing found upon the person, and any of those things which there is reason to believe were the instruments or other evidence of the infringement or offence may be detained until the discharge or acquittal of the person.

(5) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any record, book, account, document, computerized data or other thing seized under this section, the Commission officer shall by any means seal such record, book, account, document, computerized data or other thing in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any record, book, account, document, computerized data or other thing under seal or attempts to do so commits an offence.

Search and seizure without warrant

26. If a Commission officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 25 the investigation would be adversely affected or evidence of the commission of an infringement or offence is likely to be tampered with, removed,

damaged or destroyed, the Commission officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 25 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to computerized data

27. (1) Any Commission officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, the Commission officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable the comprehension of the computerized data.

Warrant admissible notwithstanding defect

28. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any record, book, account, document, computerized data or other thing seized under such warrant shall be admissible in evidence in any proceedings under this Act.

List of record, book, account, etc., seized

29. (1) Except as provided in subsection (2), where any record, book, account, document, computerized data or other thing is seized pursuant to this Act, the Commission officer making the seizure—

(a) shall prepare—

- (i) a list of the record, book, account, document, computerized data or other thing seized and shall sign the list; and
- (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall, as soon as practicable, serve a copy of the list of the record, book, account, document, computerized data or other thing seized and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served pursuant to paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the Commission officer shall post a copy of the list of the record, book, account, document, computerized data or other thing seized conspicuously on the premises.

Release of record, book, account, etc., seized

30. If any record, book, account, document, computerized data or other thing has been seized under this Act, the Commission officer who effected the seizure may release the record, book, account, document, computerized data or other thing to the person he determines to be lawfully entitled to it, if the record, book, account, document, computerized data or other thing is not otherwise required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law, and in such event neither the Commission officer effecting the seizure, nor the Federal Government, the Commission or any person acting on behalf of the Federal Government or the Commission shall be liable to any proceedings by any person if the seizure and the release of the record, book, account, document, computerized data or other thing had been effected in good faith.

No cost or damages arising from seizure to be recoverable

31. No person shall, in any proceedings before any court in respect of any record, book, account, document, computerized data or other thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstruction

32. Any person who—

- (a) refuses any Commission officer access to any premises which the Commission officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (b) assaults, obstructs, hinders or delays any Commission officer in effecting any entry which the Commission officer is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act,

commits an offence.

Tipping off

33. (1) Any person who—

- (a) knows or has reasonable grounds to suspect that a Commission officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reasonable grounds to suspect that a disclosure has been made to a Commission officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

Threat and reprisal is prohibited

34. (1) No person shall—

- (a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or
- (b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of paragraph (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the cancellation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows:

- (a) making a complaint to the Commission under section 15; and
- (b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section commits an offence.

PART IV

DECISION BY THE COMMISSION

Interim measures

35. (1) This section applies if the Commission has commenced but not completed an investigation under section 14.

(2) If the Commission has reasonable grounds to believe that any prohibition under this Act has been infringed or is likely to be infringed and the Commission considers that it is necessary for it to act under this section as a matter of urgency for the purpose of—

- (a) preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or
- (b) protecting the public interest,

it may give such direction as it considers to be appropriate and proportionate for that purpose.

(3) A direction given under subsection (2) may include requiring or causing any person—

- (a) to suspend the effect of, and desist from acting in accordance with, any agreement which is suspected of infringing any prohibition under Part II;
- (b) to desist from any conduct which is suspected of infringing any prohibition under Part II; or
- (c) to do, or refrain from doing, any act, but which shall not require the payment of money.

(4) The Commission shall, before giving a direction under subsection (2)—

- (a) serve a written notice to the person to whom it proposes to give the direction; and
- (b) give that person an opportunity to make written representations within a period of at least seven days from the date of the written notice.

(5) A notice under subsection (4) shall indicate the nature of the direction which the Commission proposes to give and its reasons for giving the direction.

(6) The Commission may at any time withdraw a direction given under subsection (2).

(7) Without prejudice to subsection (6), any direction given under subsection (2) shall cease to have effect —

(a) on the date of the decision by the Commission upon completion of the investigation under section 14; or

(b) twelve months from the date the direction was given,

whichever is earlier.

Proposed decision by the Commission

36. (1) If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or is being infringed, the Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.

(2) The notice shall—

(a) set out the reasons for the Commission's proposed decision in sufficient detail to enable the enterprise to whom the notice is given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;

(b) set out any penalties or remedial action that the Commission proposes to apply; and

(c) inform each enterprise to whom the notice is given that the enterprise may, within such reasonable period as may be specified in the notice—

(i) submit written representations to the Commission; and

(ii) indicate whether it wishes to make an oral representation before the Commission.

Oral representation

37. If an enterprise informs the Commission, within the period specified in the notice given under section 36 that it wishes to make an oral representation, the Commission shall, before taking any relevant decision—

- (a) convene a session for the oral representation to be held at a date, time and place determined by the Commission; and
- (b) give written notice of the date, time and place to—
 - (i) the enterprise concerned;
 - (ii) any person who had lodged a complaint with the Commission concerning the practice that was the subject of the Commission's investigation; and
 - (iii) any other person whose presence at the session of the oral representation is considered necessary by the Commission.

Conduct of hearings

38. (1) Notwithstanding section 37, the Commission may at any time conduct a hearing for the purpose of determining whether an enterprise has infringed or is infringing any prohibition under Part II.

(2) If the Commission determines that a hearing is to be held, it shall give at least fourteen days notice in writing to the enterprise concerned and to other interested third parties—

- (a) recording its decision to convene the hearing;
- (b) specifying the date, time and place for the holding of the hearing; and
- (c) stipulating the matters to be considered at the hearing.

(3) When the Commission decides to hold a hearing, it shall also decide—

- (a) whether to hold individual hearings with each of the enterprises and any other interested third parties separately or to hold a single hearing attended by all the enterprises involved and the interested third parties; and

(b) whether to hold a hearing—

(i) in public; or

(ii) in a closed session, for the purpose of protecting confidential information.

(4) The hearing shall be governed by and conducted in accordance with the procedural rules for the time being in effect, as published by the Commission.

(5) The Commission shall keep a record of the hearing as is sufficient to set out the matters raised by any person participating in the hearing.

(6) An enterprise may be represented at a hearing by—

(a) any of its authorized officers or employees;

(b) any advocate and solicitor;

(c) any person falling within the description specified for that purpose in the Commission's procedural rules; or

(d) any other person, with the consent of the Chairman.

Finding of non-infringement

39. Where the Commission has made a decision that there is no infringement of a prohibition under Part II, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

Finding of an infringement

40. (1) If the Commission determines that there is an infringement of a prohibition under Part II, it—

(a) shall require that the infringement to be ceased immediately;

(b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;

(c) may impose a financial penalty; or

(d) may give any other direction as it deems appropriate.

(2) The Commission shall, within fourteen days of its making a decision under this Part, notify any person affected by the decision.

(3) The Commission shall prepare and publish reasons for each decision it makes under this section.

(4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.

Leniency regime

41. (1) There shall be a leniency regime, with a reduction of up to a maximum of one hundred percent of any penalties which would otherwise have been imposed, which may be available in the cases of any enterprise which has—

(a) admitted its involvement in an infringement of any prohibition under subsection 4(2); and

(b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises.

(2) A leniency regime may permit different percentages of reductions to be available to an enterprise depending on—

(a) whether the enterprise was the first person to bring the suspected infringement to the attention of the Commission;

(b) the stage in the investigation at which—

(i) an involvement in the infringement was admitted;
or

(ii) any information or other co-operation was provided;
or

- (c) any other circumstances which the Commission considers appropriate to have regard to.

Enforcement of direction or decision

42. (1) The Commission may bring proceedings before the High Court against any person who fails to comply with a direction given by the Commission under section 35 or a decision under section 40.

(2) If the High Court finds that the person referred to in subsection (1) has failed to comply with the direction or decision, the High Court shall make an order requiring the person to comply with the direction or decision.

(3) For the purposes of subsection (2), where the High Court finds that the failure to comply with the decision includes a failure to pay a penalty within the specified period, the High Court shall, in addition to ordering that person to pay the penalty, order the person to pay interest at the normal judgment rate running from the day following that on which the payment was due.

(4) Any breach of an order of the High Court made pursuant to this section shall be punishable as a contempt of court.

Power to accept undertaking

43. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 40.

PART V

COMPETITION APPEAL TRIBUNAL

Establishment of the Competition Appeal Tribunal

44. There is established a Competition Appeal Tribunal, which shall have exclusive jurisdiction to review any decision made by the Commission under sections 35, 39 and 40.

Constitution of the Competition Appeal Tribunal

45. (1) The Competition Appeal Tribunal shall consist of the following members:

(a) a President; and

(b) between seven and twenty other members appointed by the Prime Minister on the recommendation of the Minister.

(2) The Prime Minister shall, on the recommendation of the Minister, upon nomination by the Chief Justice of the Federal Court, appoint a judge of the High Court to be the President of the Competition Appeal Tribunal.

(3) The Prime Minister shall appoint persons who, in his opinion, have relevant expertise in industry, commerce, economics, law, accountancy or consumer affairs to be members of the Competition Appeal Tribunal.

(4) In recommending the members of the Competition Appeal Tribunal to the Prime Minister, the Minister shall consider proposals and recommendations by any Government agency or any other body having expertise in any matter referred to in subsection (3).

(5) The President and members of the Competition Appeal Tribunal shall hold office for a term not exceeding six years.

Allowances

46. The President and members of the Competition Appeal Tribunal appointed under section 45 may be paid—

- (a) a daily sitting allowance during the sitting of the Competition Appeal Tribunal;
- (b) a lodging, travelling and subsistence allowance; and
- (c) such fixed allowances or other allowances,

as the Minister may determine.

Resignation and revocation of appointment

47. (1) The President or any other member of the Competition Appeal Tribunal may resign his office by giving sixty days' written notice to the Prime Minister.

(2) The Prime Minister may, at any time, revoke the appointment of the President or any other member of the Competition Appeal Tribunal if—

- (a) he is of unsound mind or otherwise incapable of performing his duties or managing his affairs;
- (b) he becomes bankrupt or insolvent;
- (c) there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (d) he is guilty of serious misconduct in relation to his duties;
- (e) he fails to comply with his obligations under section 49; or
- (f) his performance has been unsatisfactory for a significant period of time.

Vacation of office and new or temporary appointment

48. (1) The office of the President or any other member of the Competition Appeal Tribunal shall be vacated if—

- (a) he dies;
- (b) he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) his appointment is revoked under section 47.

(2) The Prime Minister shall appoint another person in accordance with section 45 to replace the President or any other member of the Competition Appeal Tribunal during the vacancy in the office of the President or member of the Competition Appeal Tribunal.

(3) The Prime Minister may appoint temporarily another person in accordance with section 45 to act as the President or any other member of the Competition Appeal Tribunal—

- (a) during any period when the President or a member is absent from duty or from Malaysia; or
- (b) if the President or a member is, for any other reason, unable to perform the duties of his office temporarily.

(4) No act done or proceedings taken by the Competition Appeal Tribunal in exercise of its powers or the performance of its functions shall be affected on the ground of any vacancy in the membership of the Competition Appeal Tribunal.

Disclosure of interest

49. (1) A member of the Competition Appeal Tribunal shall disclose, as soon as practicable, to the President any interest, whether substantial or not, which may be in conflict with the member's duties as a member of the Competition Appeal Tribunal in a particular matter.

(2) If the President is of the opinion that the member's interest is in conflict with the member's duties as a member of the Competition Appeal Tribunal, the President shall inform all the parties to the matter of the conflict.

(3) If none of the parties to the matter objects to the conflict, the member may continue to execute duties as a member of the Competition Appeal Tribunal in relation to that matter.

(4) If a party to the matter objects to the conflict, the member of the Competition Appeal Tribunal shall not continue to execute his duties as a member of the Competition Appeal Tribunal in relation to that matter.

(5) If the member is prohibited from executing his duties under subsection (4), the President shall appoint another member of Competition Appeal Tribunal to execute the duty in relation to that matter.

(6) If the President has any interest, whether substantial or not, which may be in conflict with his duty as the President of the Competition Appeal Tribunal in a particular matter, he shall refrain from executing his duty as the President in relation to that matter.

(7) The failure of the President to refrain from executing his duty under subsection (6) or the failure of a member to disclose his interest shall—

- (a) invalidate the decision of the Competition Appeal Tribunal unless all parties agree to be bound by the decision; and
- (b) subject the President or the member to the revocation of his appointment under section 47.

Secretary to the Competition Appeal Tribunal and other officers

50. (1) The Minister shall appoint a Secretary to the Competition Appeal Tribunal.

(2) The Minister may designate such number of public officers as the Minister thinks fit to assist the Secretary.

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Competition Appeal Tribunal.

Appeal to the Competition Appeal Tribunal

51. (1) A person who is aggrieved or whose interest is affected by a decision of the Commission under section 35, 39 or 40 may appeal to the Competition Appeal Tribunal by filing a notice of appeal to the Competition Appeal Tribunal.

(2) A notice of appeal shall be made in writing to the Competition Appeal Tribunal within thirty days from the date of the decision of the Commission and the appellant shall give a copy of the notice to the Chairman of the Commission.

(3) The notice of appeal shall state in summary form the substance of the decision of the Commission appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate and shall be signed by the appellant or his advocate.

Record of decision of the Commission

52. (1) The aggrieved person or the person whose interest is affected referred to in section 51 may, on his own initiative, request in writing to the Commission for a statement of the grounds of the decision of the Commission.

(2) Subject to subsection (3), the Commission shall, upon receiving the written request under subsection (1), provide a copy of the statement of its grounds to the aggrieved person or the person whose interest is affected upon payment of the prescribed fee.

(3) When a notice of appeal has been filed with the Competition Appeal Tribunal under section 51, the Commission shall, if it had not already written its grounds for its decision on the matter stated in the notice as requested by the appellant under subsection (1), record in writing its grounds for its decision and the written grounds shall form part of the record of the proceedings before the Competition Appeal Tribunal.

Stay of decision pending appeal

53. (1) Pending the decision of an appeal by the Competition Appeal Tribunal, a decision of the Commission shall be valid, binding and enforceable except where a stay of the decision of the Commission has been applied for by the appellant and granted by the Competition Appeal Tribunal.

(2) An application for a stay of decision shall be in writing and shall be made to the Competition Appeal Tribunal on or after the day on which the notice of appeal has been filed with the Competition Appeal Tribunal.

Composition of the Competition Appeal Tribunal

54. Every proceeding of the Competition Appeal Tribunal shall be heard and disposed of by three members or such greater uneven number of members of the Competition Appeal Tribunal as the President may in any particular case determine.

Sitting of the Competition Appeal Tribunal

55. (1) The Competition Appeal Tribunal shall sit on such dates and at such places as the President may from time to time determine.

(2) The President may cancel or postpone any sitting of the Competition Appeal Tribunal and may change the place of the sittings which has been determined under subsection (1).

(3) Any change to the date or place of any sitting of the Competition Appeal Tribunal shall be informed to the parties to the appeal by a written notice.

Procedure of the Competition Appeal Tribunal

56. The Competition Appeal Tribunal shall decide its own procedure.

Powers of the Competition Appeal Tribunal

- 57.** (1) The Competition Appeal Tribunal shall have power—
- (a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;
 - (b) to procure and receive evidence on oath or affirmation, whether oral or documentary, and examine all such persons as witnesses as it considers necessary;
 - (c) where a person is so summoned, to require the production of any information, document or other thing in his possession or under his control which the Competition Appeal Tribunal considers necessary for the purposes of the appeal;
 - (d) to administer any oath, affirmation or statutory declaration, as the case may require;
 - (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
 - (f) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence; and
 - (g) to generally direct and do all such matters as may be necessary or expedient for the expeditious decision of the appeal.
- (2) The Competition Appeal Tribunal shall have the powers of a subordinate court under the Subordinate Courts Act 1948 [Act 92] with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt.

Decision of the Competition Appeal Tribunal

- 58.** (1) The decision of the Competition Appeal Tribunal, on any matter, shall be decided on a majority of the members.

(2) The Competition Appeal Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—

- (a) remit the matter to the Commission;
- (b) impose or revoke, or vary the amount of, a financial penalty;
- (c) give such direction, or take such other step as the Commission could itself have given or taken; or
- (d) make any other decision which the Commission could itself have made.

(3) A decision of the Competition Appeal Tribunal is final and binding on the parties to the appeal.

Enforcement of decision of the Competition Appeal Tribunal

59. A decision given by the Competition Appeal Tribunal may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the decision.

Protection against suit and legal proceedings

60. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

- (a) the Competition Appeal Tribunal;
- (b) the President or any member of the Competition Appeal Tribunal;
- (c) the Secretary or any other officer of the Competition Appeal Tribunal; or
- (d) any person authorized to act for and on behalf of the Competition Appeal Tribunal,

in respect of any act or omission done or omitted by him or it in good faith in such capacity.

PART VI

GENERAL

General penalty

61. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding five million ringgit, and for a second or subsequent offence, to a fine not exceeding ten million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding two million ringgit or to imprisonment for a term not exceeding five years or to both.

Compounding of offences

62. (1) The Minister may, by regulations, prescribe any offence to be a compoundable offence and may prescribe the manner in which offences may be compounded.

(2) The Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Commission of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Commission may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any record, book, account, document, computerized data or other thing seized in connection with the offence may be released by the Commission, subject to such terms and conditions as the Commission thinks fit to impose in accordance with the conditions of the compound.

(5) All sums of money received by the Commission under this section shall be paid into the Federal Consolidated Fund.

Offences by body corporate

63. (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;

- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Rights of private action

64. (1) Any person who suffers loss or damage directly as a result of an infringement of any prohibition under Part II shall have a right of action for relief in civil proceedings in a court under this section against any enterprise which is or which has at the material time been a party to such infringement.

(2) The action may be brought by any person referred to in subsection (1) regardless of whether such person dealt directly or indirectly with the enterprise.

Power to make regulations

65. (1) The Minister may make such regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Act;
- (b) carrying out or achieving the objects and purposes of this Act; and
- (c) providing for any supplemental, incidental or consequential matters in relation to this Act.

(2) The Minister may, before making such regulations—

- (a) publish a notice of his intention to make the proposed regulations;
- (b) give at least thirty days from the date of the notice to allow any submission to be made by members of the public in relation to the proposed regulations; and
- (c) give due consideration to any submission made.

(3) The regulations made under this section may prescribe for any act or omission in contravention of the regulations to be an offence and may prescribe for penalties of a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or to both.

Power to issue guidelines

66. (1) The Commission may issue and publish such guidelines as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may issue—

- (a) guidelines on the economic and legal analysis to be used in determining cases under this Act; and
- (b) guidelines on the principles to be used in determining any penalty or remedy imposed under this Act.

(3) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines issued under this section.

Public Authorities Protection Act 1948

67. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission, the Chairman, any Commission officer, any member, officer, servant or agent of the Commission, the President, the Secretary or any member, officer, servant or agent of the Competition Appeal Tribunal in respect of any act, neglect or default done or omitted by him or it in such capacity.

FIRST SCHEDULE

[Section 3]

1. Communications and Multimedia Act 1998 [*Act 588*]
2. Energy Commission Act 2001 [*Act 610*]

SECOND SCHEDULE

[Section 13]

Activities not subject to Chapters 1 and 2 of Part II

Chapters 1 and 2 of Part II of this Act shall not apply to—

- (a) an agreement or conduct to the extent to which it is engaged in an order to comply with a legislative requirement;

- (b) collective bargaining activities or collective agreements in respect of employment terms and conditions and which are negotiated or concluded between parties which include both employers and employees or organisations established to represent the interests of employers or employees;
- (c) an enterprise entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition under Chapter 1 and Chapter 2 of Part II would obstruct the performance, in law or in fact, of the particular tasks assigned to that enterprise.





MYANMAR

The Competition Law
(The Pyidaungsu Hluttaw Law No.9, 2015)
The 7th Waxing Day of Taboung, 1376 M.E
(24th February, 2015)

The Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I

Title, Enforcement and Definition

1. (a) This Law shall be called the Competition Law.
(b) This Law shall come into force from the date specified by the President with notification.
2. The expressions contained in this Law shall have the meanings given hereunder:
 - (a) **State** means the Republic of the Union of Myanmar.
 - (b) **Government** means the Union Government of the Republic of the Union of Myanmar.
 - (c) **Commission** means the Myanmar Competition Commission formed under this Law.
 - (d) **Ministry** means the ministry assigned duty by the Union Government.
 - (e) **Competition** means business related competition carried out by businesses among the businessmen in the market through competitive business activities to get more number of customers who consume by purchasing their goods and services, market share and market dominance.
 - (f) **Competition Policy** means policies laid down by the State to cause direct effect on production, services, trade, investment and

businesses in order to emerge fair competition in the market and protect the interests of the consumers from monopolization.

- (g) **Act of Restraint on Competition** means the act which reduces or hinders the competition among businesses in the market. In this expression, agreements of restraint on competition, taking chance on the abuse of the dominant market position and monopolization by any individual or group are also included.
- (h) **Unfair Competition** means competitive practices by businesses during the business process which cause or may cause damage to the interests of the State or the legitimate rights and interests of other businesses or of consumers.
- (i) **Business** means any business, such as manufactures, distributions, purchases, sells, imports, exports and exchanges the goods, or service.
- (j) **Businessman** means the person who carries out any business or service business. In this expression, an organization that operates business or service is also included.
- (k) **Goods** means materials that is traded or manufactured or consumed for the purpose of this Law. In this expression, debentures, stocks and shares are also included.
- (l) **Service** means business that is carried out by fee or remuneration or consideration for the purpose of this Law. In this expression, businesses that are specified as service by the Government from time to time are also included.

- (m) **Market** means an area where commercial dealings are conducted between persons desirous of selling and purchasing of goods and services.
- (n) **Market share** means the percentage or ratio of the sales or services provided by the businessman out of the total sale volume of the market.
- (o) **Price** means the amount specified in the sale of goods or services.
- (p) **Committee** means other committees including the Investigation Committee formed by the Commission in order to carry out the functions and duties of the Commission.
- (q) **Working group** means the working group formed by the committee in order to carry out functions and duties relating to competition.

Chapter II

Objective

3. The objectives of this Law are as follows:
 - (a) to protect and prevent acts that injure of public interests through monopolization or manipulation of prices by any individual or group with intent to endanger fair competition in economic activities, for the purpose of development of the national economy;
 - (b) to be able to control unfair market competition on the internal and external trade and economic development;
 - (c) to be able to prevent from abuse of dominant market power;
 - (d) to be able to control the restrictive agreements and arrangements among businesses.

Chapter III

Basic Principles

4. The basic principles of competition are as follows:
- (a) ensuring to lead to the economic developed community in the Region and State by creating free and fair competition environment in the market;
 - (b) ensuring the businesses to uniform development and enjoy equally rights through encouragement of fair competition in the market;
 - (c) enabling to protect from the detriment to the interests of the public by manipulation of price;
 - (d) ensuring to emerge free and fair competition in each area of business;
 - (e) ensuring to emerge economic community where it can carry out freely for international, regional and bilateral goods, services, investment, skilled labour and free flow of capital and to cooperate in competition network;
 - (f) implementing in the market in accordance with the competition policy;
 - (g) encouraging the innovative capability by protecting intellectual property rights of investors, inventors and producers.

Chapter IV

Formation of the Commission

5. The Government:
- (a) shall form the Myanmar Competition Commission comprising of an appropriate person of Union level as a Chairman, professionals

and suitable persons from the relevant Union Ministries, government departments, government organizations and non-governmental organizations as members.

- (b) shall, in forming the Commission, designate Vice-Chairman and Secretary out of the members and assign duty.
- (c) may reform the Commission formed under sub-section (a) as may be necessary.

6. The Commission members who are not civil service personnel are entitled to enjoy the salary, allowance and emolument allowed by the Ministry.

7. The Commission may independently administer and carry out its functions and duties in accordance with the economic policies laid down by the State.

Chapter V

Powers and Duties of the Commission

8. The powers and duties of the Commission are as follows:
- (a) cooperating and coordinating with international, regional organizations or bilateral countries on competition matters;
 - (b) exempting from the compliance of this Law to businesses essential for the benefit of the State and small and medium enterprises, if necessary;
 - (c) forming committees and working groups according to the necessity and specifying functions and duties thereof;
 - (d) making decision on the matters submitted by the committees and working groups;

- (e) specifying necessary forms, procedures and terms and conditions of application in order to obtain permission to cooperate businesses or to restrain competition;
- (f) specifying market share, supply, amount of capital, number of share and magnitude of owned property relating to business which can cause detriment to competition due to dominance, purchase, acquisition or merger among businesses of full or partial ownership of a business by another business;
- (g) specifying and determining market share, supply, amount of capital, number of share and magnitude of owned property relating to business which is assumed as monopolization by the Commission;
- (h) directing to a business or a group of businesses to reduce the specified magnitude of market share if the ownership of market share of such business or group of businesses exceeds or is assumed by the Commission to be exceeding, the stipulated magnitude that can cause detriment to competition in the market;
- (i) prohibiting by issuing notification of restriction on market share and sale promotion of any businessman who might monopolize assumed by the Commission;
- (j) assigning duty to investigate if the Commission suspects that there is a violation of any prohibitions contained in this Law or if a concrete complaint has received;
- (k) calling for necessary evidence and data related to competition from any businessman;

- (l) calling and inquiring persons concerned to make necessary inquires relating to competition;
- (m) inviting and discussing with professionals and experts in accord with the requirement to provide data, explanation, suggestions or opinions relating to competition;
- (n) seizing the necessary evidence and properties in accord with the stipulations as exhibits to inspect case by case, and passing permission order or refusing to return such evidence or property on bond or revoking the permission;
- (o) scrutinizing report on findings submitted by the Investigation Committee and directing to prosecute if necessary;
- (p) arranging to grant an accomplice a pardon with conditions if such accomplice testifies without any concealment before the Court that he has involved in committing the crime;
- (q) submitting advice to the Government through the Ministry in respect of matters relating to competition;
- (r) performing the duties relating to competition assigned by the Government from time to time.

9. The Commission shall report on accomplishment of its performance and situation of development to the Government quarterly.

10. The Commission shall submit its performance urgently if extraordinary situation arises.

Chapter VI

Formation of the Investigation Committee and Functions and Duties thereof

11. The Commission:

- (a) shall form the Investigation Committee comprising minimum of five members to maximum of nine members. It shall be assigned as Chairman of the Committee to a suitable person among them.
 - (b) in forming under sub-section (a), the Committee members shall be the persons who have experience and knowledge in economics, subject, legal subject, commercial subject and other respective subjects.
 - (c) in forming under sub-section (a), the Investigation Committee members shall not be a person who involved directly or indirectly in the business matters which shall be investigated.
 - (d) may reform the Investigation Committee formed under sub-section (a), as may be necessary.
12. The functions and duties of Investigation Committee are as follows:
- (a) calling and examining for necessary evidence, document, financial evidence and concrete statement of reasons and calling and inquiring necessary witnesses for investigation matters;
 - (b) in performing the matters contained in sub-section (a),submitting to the respective departments and organizations through the Commission for enabling to take an action if it fails to comply without concrete reason;
 - (c) entering , inspecting and searching, in accordance with Law, the building , land and workplace of any businessman or person being investigated or any other person who seems to be involved in connection with them;
 - (d) submitting report on findings of investigation and for enabling to take necessary action under this Law to the Commission;

- (e) forming necessary working groups and specifying functions and duties thereof;
- (f) receiving and vetting reports on findings of investigation by working groups.

Chapter VII

Act of Restraint on Competition

13. No person shall carry out any of the following acts which cause act of restraint on competition:

- (a) fixing the price directly or indirectly in purchase price or selling price or other commercial situation;
- (b) making agreement on restraint on competition in the market;
- (c) abusing by taking chance on the situation of dominance in the relevant market;
- (d) conducting restraint on market by individual or organization;
- (e) restraining and preventing to share market or resources provision;
- (f) restraining or controlling on production, market acquisition, technology and development of technology and investment;
- (g) collusion in tendering or auctioning;

14. The Commission may, by specifying a certain period, exempt in respect of agreement on restraint on competition which intends to lessen the expense of consumers if it is inclusive in any of the following matters;

- (a) reforming formation and type of any business to improve the capability of business;
- (b) upgrading of technology and technology level in order to improve the quality of goods and services;

- (c) ensuring to be uniform development of technological standards and quality level of different products;
- (d) ensuring to be uniform in the matters of carrying out business, distribution of goods and payment not concerned with price or facts related to price;
- (e) ensuring to raise competitiveness of small and medium enterprises;
- (f) ensuring to raise competitiveness of Myanmar businesses in the international market.

Chapter VIII

Monopolization on Market in Competition

15. No businessman shall carry out any of the following acts which cause monopolization on market:

- (a) controlling on purchase price or selling price of goods or fees of services;
- (b) restraining services or production or restricting of opportunities in purchase and sale of goods or specifying compulsory terms and conditions directly or indirectly for other businessmen, for the purpose of price controlling;
- (c) suspending or reducing or restraining services, production, purchasing, distribution, transfer or import without any appropriate reasons or destroying or causing damage the goods to reduce the quality in order to lessen under the demand;
- (d) controlling and restraining the area where goods or services are traded in order not to enter other businessmen into the market and to control market share;

- (e) interfering in carrying out business of other person without fairness.

16. The businessman may, with the permission of the Commission in order to have an effect on the maintenance of the situation of another business or creation of a new business, perform any of the following matters;

- (a) cooperating with producer, distributor and provider of any other business;
- (b) purchasing in full or in part of owned properties or shares of any other business.

Chapter IX

Unfair Competition

17. The acts for the purposes of unfair competition under this law include as follows;

- (a) misleading of consumers;
- (b) disclosing business secrets;
- (c) coercing of businessmen to each other;
- (d) defaming of the reputation of another business;
- (e) disturbing the operation of another business;
- (f) advertising and sale promotion for the purpose of unfair competition;
- (g) discriminating among businessmen;
- (h) selling goods at price lesser than production cost or cost, insurance and freight (CIF) in the market;
- (i) abusing influence of his business, inducing or instigating of a party under contract with other businesses to breach the contract;

- (j) exercising unfair competitive act in competition stipulated by the Commission for the interests of consumers when necessary.

18. No businessman shall carry out any of the following acts which mislead the consumers:

- (a) carrying out with intention to compete with the use of deceptive information which mislead the legally registered name of goods, business slogan, logo, packaging, geographical indication and other elements.
- (b) carrying out business such as production of goods and services by using the information contained in sub-section (a).

19. No businessman shall, in respect of disclosing secrets of any other business, carry out any of the following acts;

- (a) infringing security measures protected by the lawful owners of business secrets in accessing and collecting of business secrets and information related to such secret;
- (b) using or revealing information of business secret without permission of lawful owner of such business;
- (c) deceiving a person with an obligation to maintain secrets or abusing the confidence of such person in accessing, collecting, collecting or revealing of business secrets and information related to such secrets;
- (d) leaking business secrets and procedures of products distribution owned by other persons who conduct systematically in accordance with the Law;

- (e) leaking economic information by infringing security measures exercised by the State-owned organization;
 - (f) carrying out business activities or applying business licence or distributing goods by using information contained in sub-section(e).
20. No businessman shall coerce consumers or partners of other business by threatening or compelling them not to transact or to cease the transaction with such business.
21. No businessman shall broadcast false information directly or indirectly in order to damage the reputation, financial situation or business operation of other businesses.
22. No businessman shall obstruct or disrupt other businesses directly or indirectly.
23. No businessman shall, for the purpose of unfair competition, carry out any of the following advertising acts:
- (a) comparing directly goods or services of a business with those of the same type of other business;
 - (b) misleading customers by imitative advertising of the goods of others;
 - (c) broadcasting false or misleading information to the customers on one of the following matters;
 - (1) price, quantity, quality, utility, designs, varieties, packagings, date of manufacture, durability, origin, manufactures, place of manufacture, processors or place of processing;
 - (2) usage, service,warranty period;

(3) other false or misleading information;

(d) other advertising activities prohibited by any existing Law.

24. No businessman shall carry out any of the following acts which cause unfair competition;

(a) organizing a sale promotion with intend to mislead;

(b) discriminating among customers in the same promotional campaign;

(c) exercising other promotional ways prohibited by any existing Law.

25. No businessman shall carry out any of the following acts which causes discrimination:

(a) causing obstruction in competition by refusing of permission to join his organization or to leave a business although it meets the specified qualifications;

(b) restricting objectives and activities of a business involving in business organization without concrete reasons.

26. No businessman shall sell his goods competitively in the market at price lesser than production cost of such goods or at price lesser than cost, insurance and freight (CIF) if it is imported goods in order to lessen competitiveness of other businesses.

27. No businessman shall, by abusing influence in the market, carry out any of the following acts;

(a) selling the goods or providing services at price lesser than production cost or cost, insurance and freight (CIF) in order to cause competitors to leave the market;

- (b) causing to the detriment of consumers by sale or purchase the goods or services at unreasonable price to market price or by fixing sale price for retailers;
- (c) controlling the production, distribution of goods and providing services; restraining the market; obstructing the development of science and technology; and causing the detriment of consumers;
- (d) laying down non-uniform commercial terms and conditions within the same market in order to cause unfair competition;
- (e) laying down unfair terms and conditions upon other businesses in concluding contracts regarding goods and services or coercing to accept obligations which are not related directly to such contracts;
- (f) preventing entering of new competitors into market by unfair means;
- (g) refusing or allowing discriminately the use of main infrastructures or rare resources owned or utilized by oneself in order to prevent entry of new competitors into the market.

28. No businessman shall persuade or induce a person or a business who has concluded a contract with other businesses to breach such contract before the expiry of contract term.

29. No businessman shall import goods into market through unfair means and sell such goods at price lesser than market price.

Chapter X

Collaboration among Businesses

30. In collaboration among businesses the following acts are included:

- (a) merger of businesses;
- (b) consolidation of businesses;

- (c) purchasing or acquisition of other business by a business;
- (d) joint-venture of businesses;
- (e) performing other means of collaboration among businesses specified by the Commission.

31. No businessman shall, in performing the acts contained in section 30, collaborate which enable to cause the following situations;

- (a) collaboration intends to raise extremely the dominance over market within a certain period;
- (b) collaboration intends to decrease competition for acquiring the market which is a sole or minority of businesses.

32. No collaboration of businesses shall be carried out if the combined market share of business collaboration is exceeded to the market share specified by the Commission.

33. Any prohibited collaboration of businesses or prohibition under section 31 may be exempted in the following circumstances;

- (a) where the business, after collaboration as per section 30 is still in the size of small and medium enterprise specified under any existing law;
- (b) where one or more of businesses involved in business collaboration is or are at the risk of being collapsed or of becoming bankrupt;
- (c) where collaboration among businesses is in the circumstance that effect on the promotion of export or in the circumstance that supports the development of technique and technology or that establishes entrepreneurial business.

Chapter XI

Taking Administrative Action and Appeal

34. The Committee may take the following one action or more than one action upon a businessman who violates the orders, directives and procedures issued under this Law:

- (a) warning;
- (b) imposing specified fine;
- (c) coordinating with relevant Ministries to close the operation of business temporarily or permanently.

35. Any person who dissatisfies the order or decision passed by the Committee may appeal to the Commission within 60 days from the receiving date of such order or decision.

36. (a) The Commission may confirm, amend or cancel the decision of the Committee when it is appealed under section 35.

- (b) The decision of the Commission under sub-section (a) shall be final and conclusive.

37. In default of payment of fine specified under sub-section (b) of section 34, it shall be collected as arrears of income tax.

38. The administrative action passed under this Law shall not prohibit taking criminal action or civil action.

Chapter XII

Offences and Penalties

39. Any person who violates the prohibition contained in section 13 shall, on conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding Kyat one hundred and fifty lakhs or with both.

40. Any businessman who violates the prohibitions contained in section 23, section 24 or section 29 shall, on conviction, be punished with imprisonment for a term not exceeding three years or with fine not exceeding Kyat one hundred and fifty lakhs or with both.

41. Any person who violates the prohibitions contained in section 15, section 19, section 22, section 26, section 27, section 31 or section 32 shall, on conviction, be punished with imprisonment for a term not exceeding two years or with fine not exceeding Kyat one hundred lakhs or with both.

42. Any person who violates the prohibitions contained in section 18, section 20, section 21, section 25 or section 28 shall, on conviction, be punished with imprisonment for a term not exceeding one year or with fine not exceeding Kyat fifty lakhs or with both.

43. Any person who fails without any concrete reason to apply to the request of the Investigation Committee to submit any evidence, document or financial evidence or to appear for the examination as witness for investigation under this Law shall be punished, on conviction, with imprisonment for a term not exceeding three months or with fine not exceeding Kyat one hundred thousand.

44. Notwithstanding contained in any existing law, the matters related to any provision contained in this law regarding competition shall be carried out by this Law.

Chapter XIII

Miscellaneous

45. Commission shall hold the meetings in accord with the stipulations.

46. Any member of the Commission who is not a Civil Service Personnel or Investigation Committee shall be deemed as public servant defined in section 21 of the Penal Code when performing the duties contained in this Law.

47. In prosecuting under this Law, prior sanction of the Commission shall be obtained.

48. The Ministry may appoint and assign a suitable officer as a collector to collect the specified fine contained in sub-section (b) of section 34.

49. If a person prosecuted is a business organization under this Law, the responsible person of such organization shall be prosecuted together with such business organization if he is unable to prove that the offence is committed without his knowledge or with due diligence to prevent the offence and such responsible person shall be deemed as jointly guilty for such offence if such organization is convicted.

50. The offences contained in this Law are determined as the cognizable offences.

51. An aggrieved person may also sue any person being convicted in civil action for his loss under this law.

52. The Commission may coordinate with respective Courts and Law Offices in accord with the existing laws to grant a pardon to a person as a leniency who discloses that he participated in violation of section 13.

53. When granting leniency by the respective Court, the different leniency may be granted depending upon the cooperation time and cooperation condition of any businessman.

54. The Ministry shall:

- (a) take responsibility for the office work of the Commission, Committees and the Working Groups;
- (b) bear the expenses of the Commission, Committees and working groups.

55. Any member of the Commission or of the Investigation Committee or of the Working Group or a Civil Service Personnel shall not be sued in criminal or civil action or by any other means if it is a concrete evidence that he or she exercises the power conferred under this Law in good faith.

56. In implementing the provisions contained in this Law:

- (a) the Ministry may issue necessary rules, regulations and by-laws with the approval of the Government.
- (b) the Commission may issue necessary notifications, orders, directives and procedures and the Committee may issue necessary orders and directives.

I hereby sign under the Constitution of the Republic of the Union of Myanmar.

Sd/ Thein Sein

President

Republic of the Union of Myanmar



THE PHILIPPINES

S. No. 2282
H. No. 5286

Republic of the Philippines
Congress of the Philippines
Metro Manila

Sixteenth Congress

Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-eighth day
of July, two thousand fourteen.

— ■ —

[REPUBLIC ACT No. **10667**]

AN ACT PROVIDING FOR A NATIONAL COMPETITION
POLICY PROHIBITING ANTI-COMPETITIVE
AGREEMENTS, ABUSE OF DOMINANT POSITION
AND ANTI-COMPETITIVE MERGERS AND
ACQUISITIONS, ESTABLISHING THE PHILIPPINE
COMPETITION COMMISSION AND APPROPRIATING
FUNDS THEREFOR

*Be it enacted by the Senate and House of Representatives of the
Philippines in Congress assembled:*

CHAPTER I
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the
“Philippine Competition Act”.

SEC. 2. *Declaration of Policy.* – The efficiency of market
competition as a mechanism for allocating goods and services is a

generally accepted precept. The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged and the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed, the State shall:

(a) Enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its political agencies as a whole;

(b) Prevent economic concentration which will control the production, distribution, trade, or industry that will unduly stifle competition, lessen, manipulate or constrict the discipline of free markets; and

(c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

SEC. 3. *Scope and Application.* – This Act shall be enforceable against any person or entity engaged in any trade, industry and commerce in the Republic of the Philippines. It shall likewise be applicable to international trade having direct, substantial, and

reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.

This Act shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

SEC. 4. *Definition of Terms.* – As used in this Act:

(a) *Acquisition* refers to the purchase of securities or assets, through contract or other means, for the purpose of obtaining control by:

(1) One (1) entity of the whole or part of another;

(2) Two (2) or more entities over another; or

(3) One (1) or more entities over one (1) or more entities;

(b) *Agreement* refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral;

(c) *Conduct* refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;

(d) *Commission* refers to the Philippine Competition Commission created under this Act;

(e) *Confidential business information* refers to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures;

(f) *Control* refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;

(g) *Dominant position* refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;

(h) *Entity* refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;

(i) *Market* refers to the group of goods or services that are sufficiently interchangeable or substitutable and the object of competition, and the geographic area where said goods or services are offered;

(j) *Merger* refers to the joining of two (2) or more entities into an existing entity or to form a new entity;

(k) *Relevant market* refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and

(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

CHAPTER II PHILIPPINE COMPETITION COMMISSION

SEC. 5. *Philippine Competition Commission*. - To implement the national competition policy and attain the objectives and purposes of this Act, an independent quasi-judicial body is hereby

created, which shall be known as the Philippine Competition Commission (PCC), hereinafter referred to as the Commission, and which shall be organized within sixty (60) days after the effectivity of this Act. Upon establishment of the Commission, Executive Order No. 45 designating the Department of Justice as the Competition Authority is hereby amended. The Office for Competition (OFC) under the Office of the Secretary of Justice shall however be retained, with its powers and functions modified pursuant to Section 13 of this Chapter.

The Commission shall be an attached agency to the Office of the President.

SEC. 6. *Composition of the Commission*. - The Commission shall be composed of a Chairperson and four (4) Commissioners. The Chairperson and the Commissioners shall be citizens and residents of the Philippines, of good moral character, of recognized probity and independence and must have distinguished themselves professionally in public, civic or academic service in any of the following fields: economics, law, finance, commerce or engineering. They must have been in the active practice of their professions for at least ten (10) years, and must not have been candidates for any elective national or local office in the immediately preceding elections, whether regular or special: *Provided*, That at least one (1) shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of law, and at least one (1) shall be an economist. The Chairperson and the Commissioners who shall have the rank equivalent of cabinet secretary and undersecretary, respectively, shall be appointed by the President.

SEC. 7. *Term of Office*. - The term of office of the Chairperson and the Commissioners shall be seven (7) years without reappointment. Of the first set of appointees, the Chairperson shall hold office for seven (7) years and of the first four (4) Commissioners, two (2) shall hold office for a term of seven (7) years and two (2) for a term of five (5) years. In case a vacancy occurs before the expiration of the term of office, the appointment to such vacancy shall only be for the unexpired term of the predecessor.

The Chairperson and the Commissioners shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as provided by law.

SEC. 8. *Prohibitions and Disqualifications.* – The Commissioners shall not, during their tenure, hold any other office or employment. They shall not, during their tenure, directly or indirectly practice any profession, except in a teaching capacity, participate in any business, or be financially interested in any contract with, or any franchise, or special privileges granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned and -controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office: *Provided*, That the election mentioned hereof is not a Barangay election or a Sangguniang Kabataan election. *Provided*, they shall not be allowed to personally appear or practice as counsel or agent on any matter pending before the Commission for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree of any of the Commissioners, the Chairperson and the Executive Director of the Commission may appear as counsel nor agent on any matter pending before the Commission or transact business directly or indirectly therein during incumbency and within two (2) years from cessation of office.

SEC. 9. *Compensation and Other Emoluments for Members and Personnel of the Commission.* – The compensation and other emoluments for the members and personnel of the Commission shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the “Salary Standardization Act”. For this purpose, the salaries and other emoluments of the Chairperson, the Commissioners, and personnel of the Commission shall be set based on an objective classification system, taking into consideration the importance and responsibilities attached to the respective positions, and shall be submitted to the President of the Philippines for his approval.

SEC. 10. *Quorum.* – Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other acts of the Commission.

SEC. 11. *Staff.* – The Commission shall appoint, fix the compensation, and determine the status, qualifications, and duties

of an adequate staff, which shall include an Executive Director of the Commission. The Executive Director shall be appointed by the Commission and shall have relevant experience in any of the fields of law, economics, commerce, management, finance or engineering for at least ten (10) years. The members of the technical staff, except those performing purely clerical functions, shall possess at least a Bachelor’s Degree in any of the following lines of specialization: economics, law, finance, commerce, engineering, accounting, or management.

SEC. 12. *Powers and Functions.* – The Commission shall have original and primary jurisdiction over the enforcement and implementation of the provisions of this Act, and its implementing rules and regulations. The Commission shall exercise the following powers and functions:

(a) Conduct inquiry, investigate, and hear and decide on cases involving any violation of this Act and other existing competition laws *motu proprio* or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings;

(b) Review proposed mergers and acquisitions, determine thresholds for notification, determine the requirements and procedures for notification, and upon exercise of its powers to review, prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market;

(c) Monitor and undertake consultation with stakeholders and affected agencies for the purpose of understanding market behavior;

(d) Upon finding, based on substantial evidence, that an entity has entered into an anti-competitive agreement or has abused its dominant position after due notice and hearing, stop or redress the same, by applying remedies, such as, but not limited to, issuance of injunctions, requirement of divestment, and disgorgement of excess profits under such reasonable parameters that shall be prescribed by the rules and regulations implementing this Act;

(e) Conduct administrative proceedings, impose sanctions, fines or penalties for any noncompliance with or breach of this

Act and its implementing rules and regulations (IRR) and punish for contempt;

(f) Issue subpoena *duces tecum* and subpoena *ad testificandum* to require the production of books, records, or other documents or data which relate to any matter relevant to the investigation and personal appearance before the Commission, summon witnesses, administer oaths, and issue interim orders such as show cause orders and cease and desist orders after due notice and hearing in accordance with the rules and regulations implementing this Act;

(g) Upon order of the court, undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;

(h) Issue adjustment or divestiture orders including orders for corporate reorganization or divestment in the manner and under such terms and conditions as may be prescribed in the rules and regulations implementing this Act. Adjustment or divestiture orders, which are structural remedies, should only be imposed:

(1) Where there is no equally effective behavioral remedy; or

(2) Where any equally effective behavioral remedy would be more burdensome for the enterprise concerned than the structural remedy. Changes to the structure of an enterprise as it existed before the infringement was committed would only be proportionate to the substantial risk of a lasting or repeated infringement that derives from the very structure of the enterprise;

(i) Deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers and functions;

(j) Monitor compliance by the person or entities concerned with the cease and desist order or consent judgment;

(k) Issue advisory opinions and guidelines on competition matters for the effective enforcement of this Act and submit annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade, or industry;

(l) Monitor and analyze the practice of competition in markets that affect the Philippine economy; implement and oversee measures to promote transparency and accountability; and ensure that prohibitions and requirements of competition laws are adhered to;

(m) Conduct, publish, and disseminate studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers;

(n) Intervene or participate in administrative and regulatory proceedings requiring consideration of the provisions of this Act that are initiated by government agencies such as the Securities and Exchange Commission, the Energy Regulatory Commission and the National Telecommunications Commission;

(o) Assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in the preparation and formulation of a national competition policy;

(p) Act as the official representative of the Philippine government in international competition matters;

(q) Promote capacity building and the sharing of best practices with other competition-related bodies;

(r) Advocate pro-competitive policies of the government by:

(1) Reviewing economic and administrative regulations, *motu proprio* or upon request, as to whether or not they adversely affect relevant market competition, and advising the concerned agencies against such regulations; and

(2) Advising the Executive Branch on the competitive implications of government actions, policies and programs; and

(s) Charging reasonable fees to defray the administrative cost of the services rendered.

SEC. 13. *Office for Competition (OFC), Powers and Functions.* – The OFC under the Department of Justice (DOJ-OFC) shall only conduct preliminary investigation and undertake prosecution of all criminal offenses arising under this Act and other competition-related laws in accordance with Section 31 of Chapter VI of this Act. The OFC shall be reorganized and allocated resources as may be required therefor to effectively pursue such mandate.

CHAPTER III PROHIBITED ACTS

SEC. 14. *Anti-Competitive Agreements.* –

(a) The following agreements, between or among competitors, are *per se* prohibited:

(1) Restricting competition as to price, or components thereof, or other terms of trade;

(2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: *Provided*, Those which contribute to improving the production or distribution of goods and services

or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

SEC. 15. *Abuse of Dominant Position.* – It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: *Provided*, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: *Provided*, That the following shall be considered permissible price differentials:

(1) Socialized pricing for the less fortunate sector of the economy;

(2) Price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) Price changes in response to changing market conditions, marketability of goods or services, or volume;

(e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: *Provided*, That nothing contained in this Act shall prohibit or render unlawful:

(1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or

(2) Agreements protecting intellectual property rights, confidential information, or trade secrets;

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act:

Provided, That nothing in this Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition:

Provided, further, That any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position:

Provided, finally, That the foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in this Act.

CHAPTER IV MERGERS AND ACQUISITIONS

SEC. 16. *Review of Mergers and Acquisitions.* – The Commission shall have the power to review mergers and acquisitions based on factors deemed relevant by the Commission.

SEC. 17. *Compulsory Notification.* – Parties to the merger or acquisition agreement referred to in the preceding section wherein the value of the transaction exceeds one billion pesos (P1,000,000,000.00) are prohibited from consummating their

agreement until thirty (30) days after providing notification to the Commission in the form and containing the information specified in the regulations issued by the Commission: *Provided*, That the Commission shall promulgate other criteria, such as increased market share in the relevant market in excess of minimum thresholds, that may be applied specifically to a sector, or across some or all sectors, in determining whether parties to a merger or acquisition shall notify the Commission under this Chapter.

An agreement consummated in violation of this requirement to notify the Commission shall be considered void and subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

Should the Commission deem it necessary, it may request further information that are reasonably necessary and directly relevant to the prohibition under Section 20 hereof from the parties to the agreement before the expiration of the thirty (30)-day period referred. The issuance of such a request has the effect of extending the period within which the agreement may not be consummated for an additional sixty (60) days, beginning on the day after the request for information is received by the parties: *Provided*, That, in no case shall the total period for review by the Commission of the subject agreement exceed ninety (90) days from initial notification by the parties.

When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it. All notices, documents and information provided to or emanating from the Commission under this section shall be subject to confidentiality rule under Section 34 of this Act except when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction, or of a government or regulatory agency, including an exchange.

In the case of the merger or acquisition of banks, banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions

and other special corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing of the requirement for a favorable recommendation by the appropriate government agency under Section 79 of the Corporation Code of the Philippines.

A favorable recommendation by a governmental agency with a competition mandate shall give rise to a disputable presumption that the proposed merger or acquisition is not violative of this Act.

SEC. 18. *Effect of Notification.* – If within the relevant periods stipulated in the preceding section, the Commission determines that such agreement is prohibited under Section 20 and does not qualify for exemption under Section 21 of this Chapter, the Commission may:

- (a) Prohibit the implementation of the agreement;
- (b) Prohibit the implementation of the agreement unless and until it is modified by changes specified by the Commission;
- (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

SEC. 19. *Notification Threshold.* – The Commission shall, from time to time, adopt and publish regulations stipulating:

- (a) The transaction value threshold and such other criteria subject to the notification requirement of Section 17 of this Act;
- (b) The information that must be supplied for notified merger or acquisition;
- (c) Exceptions or exemptions from the notification requirement; and
- (d) Other rules relating to the notification procedures.

SEC. 20. *Prohibited Mergers and Acquisitions.* – Merger or acquisition agreements that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services as may be determined by the Commission shall be prohibited.

SEC. 21. *Exemptions from Prohibited Mergers and Acquisitions.* – Merger or acquisition agreement prohibited under Section 20 of this Chapter may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

(a) The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or likely to result from the merger or acquisition agreement; or

(b) A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets:

Provided, That an entity shall not be prohibited from continuing to own and hold the stock or other share capital or assets of another corporation which it acquired prior to the approval of this Act or acquiring or maintaining its market share in a relevant market through such means without violating the provisions of this Act:

Provided, further, That the acquisition of the stock or other share capital of one or more corporations solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction, or lessening of competition in the relevant market shall not be prohibited.

SEC. 22. *Burden of Proof.* – The burden of proof under Section 21 lies with the parties seeking the exemption. A party seeking to rely on the exemption specified in Section 21(a) must demonstrate that if the agreement were not implemented, significant efficiency gains would not be realized.

SEC. 23. *Finality of Rulings on Mergers and Acquisitions.* – Merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained on the basis of fraud or false material information, may not be challenged under this Act.

CHAPTER V DISPOSITION OF CASES

SEC 24. *Relevant Market.* – For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market and the geographic area delineating the boundaries of the market shall be considered:

(a) The possibilities of substituting the goods or services in question, with others of domestic or foreign origin, considering the technological possibilities, extent to which substitutes are available to consumers and time required for such substitution;

(b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;

(c) The cost and probability of users or consumers seeking other markets; and

(d) National, local or international restrictions which limit access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

SEC. 25. *Control of an Entity.* – In determining the control of an entity, the Commission may consider the following:

Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even

when an entity owns one half (1/2) or less of the voting power of another entity when:

- (a) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;
- (b) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;
- (c) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;
- (d) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;
- (e) There exists ownership over or the right to use all or a significant part of the assets of the entity;
- (f) There exist rights or contracts which confer decisive influence on the decisions of the entity.

SEC. 26. Determination of Anti-Competitive Agreement or Conduct. – In determining whether anti-competitive agreement or conduct has been committed, the Commission shall:

- (a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of this Chapter;
- (b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;
- (c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;

(d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and

(e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct including whether the entity's conduct was done with a reasonable commercial purpose such as but not limited to phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

SEC. 27. Market Dominant Position. – In determining whether an entity has market dominant position for purposes of this Act, the Commission shall consider the following:

- (a) The share of the entity in the relevant market and whether it is able to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The existence of barriers to entry and the elements which could foreseeably alter both said barriers and the supply from competitors;
- (c) The existence and power of its competitors;
- (d) The possibility of access by its competitors or other entities to its sources of inputs;
- (e) The power of its customers to switch to other goods or services;
- (f) Its recent conducts; and
- (g) Other criteria established by the regulations of this Act.

There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%), unless a new

market share threshold is determined by the Commission for that particular sector.

The Commission shall from time to time determine and publish the threshold for dominant position or minimum level of share in the relevant market that could give rise to a presumption of dominant position. In such determination, the Commission would consider the structure of the relevant market, degree of integration, access to end-users, technology and financial resources, and other factors affecting the control of a market, as provided in subsections (a) to (g) of this section.

The Commission shall not consider the acquiring, maintaining and increasing of market share through legitimate means not substantially preventing, restricting, or lessening competition in the market such as but not limited to having superior skills, rendering superior service, producing or distributing quality products, having business acumen, and the enjoyment and use of protected intellectual property rights as violative of this Act.

SEC. 28. *Forbearance.* – The Commission may forbear from applying the provisions of this Act, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

(a) Enforcement is not necessary to the attainment of the policy objectives of this Act;

(b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets; and

(c) Forbearance is consistent with public interest and the benefit and welfare of the consumers.

A public hearing shall be held to assist the Commission in making this determination.

The Commission's order exempting the relevant entity or group of entities under this section shall be made public. Conditions may be attached to the forbearance if the

Commission deems it appropriate to ensure the long-term interest of consumers.

In the event that the basis for the issuance of the exemption order ceases to be valid, the order may be withdrawn by the Commission.

CHAPTER VI FINES AND PENALTIES

SEC. 29. *Administrative Penalties.* –

(a) *Administrative Fines.* – In any investigation under Chapter III, Sections 14 and 15, and Chapter IV, Sections 17 and 20 of this Act, after due notice and hearing, the Commission may impose the following schedule of administrative fines on any entity found to have violated the said sections:

First offense: Fine of up to one hundred million pesos (P100,000,000.00);

Second offense: Fine of not less than one hundred million pesos (P100,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00).

In fixing the amount of the fine, the Commission shall have regard to both the gravity and the duration of the violation.

(b) *Failure to Comply With an Order of the Commission.* – An entity which fails or refuses to comply with a ruling, order or decision issued by the Commission shall pay a penalty of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies. Provided that these fines shall only accrue daily beginning forty-five (45) days from the time that the said decision, order or ruling was received.

(c) *Supply of Incorrect or Misleading Information.* – The Commission may likewise impose upon any entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or

submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

(d) Any other violations not specifically penalized under the relevant provisions of this Act shall be penalized by a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Provided that the schedule of fines indicated in this section shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.

SEC. 30. *Criminal Penalties.* – An entity that enters into any anti-competitive agreement as covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity.

When the entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

CHAPTER VII ENFORCEMENT

SEC. 31. *Fact Finding; Preliminary Inquiry.* – The Commission, *motu proprio*, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, shall have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of this Act based on reasonable grounds.

The Commission, after considering the statements made, or documents or articles produced in the course of the fact-finding or preliminary inquiry, shall terminate the same by:

(a) Issuing a resolution ordering its closure if no violation or infringement of this Act is found; or

(b) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation.

The Commission, after due notice and hearing, and on the basis of facts and evidence presented, may issue an order for the temporary cessation or desistance from the performance of certain acts by the respondent entity, the continued performance of which would result in a material and adverse effect on consumers or competition in the relevant market.

If the evidence so warrants, the Commission may file before the DOJ criminal complaints for violations of this Act or relevant laws for preliminary investigation and prosecution before the proper court. The DOJ shall conduct such preliminary investigation in accordance with the Revised Rules of Criminal Procedure.

The preliminary inquiry shall, in all cases, be completed by the Commission within ninety (90) days from submission of the verified complaint, referral, or date of initiation by the Commission, *motu proprio*, of the same.

Except as provided in Section 12(i) of Chapter II of this Act, no law enforcement agency shall conduct any kind of fact-finding, inquiry or investigation into any competition-related matters.

SEC. 32. *Relationship With Sector Regulators.* – The Commission shall have original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

The Commission shall still have jurisdiction if the issue involves both competition and noncompetition issues, but the concerned sector regulator shall be consulted and afforded reasonable opportunity to submit its own opinion and recommendation on the matter before the Commission makes a decision on any case.

Where appropriate, the Commission and the sector regulators shall work together to issue rules and regulations to promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors.

SEC. 33. *Power to Investigate and Enforce Orders and Resolutions.* – The Commission shall conduct inquiries by administering oaths, issuing subpoena *duces tecum* and summoning witnesses, and commissioning consultants or experts. It shall determine if any provision of this Act has been violated, enforce its orders and carry out its resolutions by making use of any available means, provisional or otherwise, under existing laws and procedures including the power to punish for contempt and to impose fines.

SEC. 34. *Confidentiality of Information.* – Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to this Act as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. Likewise, the Commission shall, to the extent possible, subject such information to the confidentiality rule provided under this section when it issues notices, bulletins, rulings and other documents: *Provided*, That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information to the Commission under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons.

Any violation of this provision shall be imposed a fine of not less than one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00).

SEC. 35. *Leniency Program.* – The Commission shall develop a Leniency Program to be granted to any entity in the form of immunity from suit or reduction of any fine which would otherwise be imposed on a participant in an anti-competitive agreement as provided in Section 14(a) and 14(b) of this Act in exchange for the voluntary disclosure of information regarding such an agreement which satisfies specific criteria prior to or during the fact-finding or preliminary inquiry stage of the case.

Immunity from suit will be granted to an entity reporting illegal anti-competitive activity before a fact-finding or preliminary inquiry has begun if the following conditions are met:

(a) At the time the entity comes forward, the Commission has not received information about the activity from any other source;

(b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation therein;

(c) The entity reports the wrongdoing with candor and completeness and provides full, continuing, and complete cooperation throughout the investigation; and

(d) The entity did not coerce another party to participate in the activity and clearly was not the leader in, or the originator of, the activity.

Even after the Commission has received information about the illegal activity after a fact-finding or preliminary inquiry has commenced, the reporting entity will be granted leniency, provided preceding conditions (b) and (c) and the following additional requirements are complied with:

(1) The entity is the first to come forward and qualify for leniency;

(2) At the time the entity comes forward, the Commission does not have evidence against the entity that is likely to result in a sustainable conviction; and

(3) The Commission determines that granting leniency would not be unfair to others.

Such program shall include the immunity from any suit or charge of affected parties and third parties, exemption, waiver, or gradation of fines and/or penalties giving precedence to the entity submitting such evidence. An entity cooperating or furnishing information, document or data to the Commission in connection to an investigation being conducted shall not be subjected to any form of reprisal or discrimination. Such reprisal or discrimination shall be

considered a violation of this Act subject to the sanctions provided in this Act.

Nothing in this section shall preclude prosecution for entities that report to the Commission false, misleading, or malicious information, data or documents damaging to the business or integrity of the entities under inquiry as a violation of said section. An entity found to have reported false, misleading or malicious information, data, or document may be penalized by a fine not less than the penalty imposed in the section reported to have been violated by the entity complained of.

The DOJ-OFC may likewise grant leniency or immunity as provided in this section in the event that there is already a preliminary investigation pending before it.

SEC. 36. *Nolo Contendere*. – An entity charged in a criminal proceeding pursuant to Section 14(a) and 14(b) of this Act may enter a plea of *Nolo Contendere*, in which he does not accept nor deny responsibility for the charges but agrees to accept punishment as if he had pleaded guilty. The plea cannot be used against the defendant entity to prove liability in a civil suit arising from the criminal action nor in another cause of action: *Provided*, That a plea of *Nolo Contendere* may be entered only up to arraignment and subsequently, only with the permission of the court which shall accept it only after weighing its effect on the parties, the public and the administration of justice.

SEC. 37. *Non-Adversarial Remedies*. – As an implementing and enforcement policy, the Commission shall, under such rules and regulations it may prescribe, encourage voluntary compliance with this Act and other competition laws by making available to the parties concerned the following and other analogous non-adversarial administrative remedies, before the institution of administrative, civil or criminal action:

(a) Binding Ruling. – Where no prior complaint or investigation has been initiated, any entity that is in doubt as to whether a contemplated act, course of conduct, agreement, or decision, is in compliance with, is exempt from, or is in violation of any of the provisions of this Act, other

competition laws, or implementing rules and regulations thereof, may request the Commission, in writing, to render a binding ruling thereon: *Provided*, That the ruling is for a specified period, subject to extension as may be determined by the Commission, and based on substantial evidence.

In the event of an adverse binding ruling on an act, course or conduct, agreement, or decision, the applicant shall be provided with a reasonable period, which in no case shall be more than ninety (90) days, to abide by the ruling of the Commission and shall not be subject to administrative, civil, or criminal action unless the applicant fails to comply with the provisions of this Act;

(b) Show Cause Order. – Upon preliminary findings *motu proprio* or on written complaint under oath by an interested party that any entity is conducting its business, in whole or in part in a manner that may not be in accord with the provisions of this Act or other competition laws, and it finds that the issuance of a show cause order would be in the interest of the public, the Commission shall issue and serve upon such entity or entities a written description of its business conduct complained of, a statement of the facts, data, and information together with a summary of the evidence thereof, with an order requiring the said entity or entities to show cause, within the period therein fixed, why no order shall issue requiring such person or persons to cease and desist from continuing with its identified business conduct, or pay the administrative fine therein specified, or readjust its business conduct or practices;

(c) Consent Order. – At any time prior to the conclusion by the Commission of its inquiry, any entity under inquiry may, without in any manner admitting a violation of this Act or any other competition laws, submit to the Commission a written proposal for the entry of a consent order, specifying therein the terms and conditions of the proposed consent order which shall include among others the following:

(1) The payment of an amount within the range of fines provided for under this Act;

(2) The required compliance report as well as an entity to submit regular compliance reports;

(3) Payment of damages to any private party/parties who may have suffered injury; and

(4) Other terms and conditions that the Commission deems appropriate and necessary for the effective enforcement of this Act or other Competition Laws:

Provided, That a consent order shall not bar any inquiry for the same or similar acts if continued or repeated;

(d) Monitoring of Compliance. – The Commission shall monitor the compliance by the entity or entities concerned, their officers, and employees, with the final and executory binding ruling, cease and desist order, or approval of a consent judgment. Upon motion of an interested party/parties, the Commission shall issue a certification or resolution to the effect that the entity or entities concerned have, or have not, as the case may be, complied with a final and executory ruling, order, or approval.

(e) Inadmissibility of Evidence in Criminal Proceedings. – The request for a binding ruling, the show cause order, or the proposal for consent order; the facts, data, and information therein contained or subsequently supplied by the entity or entities concerned; admissions, oral or written, made by them against their interest; all other documents filed by them, including their evidence presented in the proceedings before the Commission; and the judgment or order rendered thereon; shall not be admissible as evidence in any criminal proceedings arising from the same act subject of the binding ruling, show cause order or consent order against such entity or entities, their officers, employees, and agents.

SEC. 38. *Contempt*. – The Commission may summarily punish for contempt by imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P100,000.00), or both, any entity guilty of such misconduct in the presence of the Commission in its vicinity as to seriously interrupt any hearing, session or any proceeding before it, including cases in which an entity willfully fails or refuses, without just cause, to comply with a summons, subpoena or subpoena *duces tecum* legally issued by the Commission being present at a hearing, proceeding, session or investigation, refused to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so.

SEC. 39. *Appeals of the Decisions of the Commission*. – Decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal, the Commission shall be included as a party respondent to the case.

SEC. 40. *Writ of Execution*. – Upon the finality of its binding ruling, order, resolution, decision, judgment, or rule or regulation, collectively, the Commission may issue a writ of execution to enforce its decision and the payment of the administrative fines provided in the preceding sections.

SEC. 41. *Basic Necessities and Prime Commodities*. – If the violation involves the trade or movement of basic necessities and prime commodities as defined by Republic Act No. 7581, as amended, the fine imposed by the Commission or the courts, as the case may be, shall be tripled.

SEC. 42. *Immunity from Suit*. – The Chairperson, the Commissioners, officers, employees and agents of the Commission shall not be subject to any action, claim or demand in connection with any act done or omitted by them in the performance of their duties and exercise of their powers except for those actions and omissions done in evident bad faith or gross negligence.

SEC. 43. *Indemnity*. – Unless the actions of the Commission or its Chairperson, any of its Commissioners, officers, employees and agents are found to be in willful violation of this Act, performed with evident bad faith or gross negligence, the Commission, its Chairperson, Commissioners, officers, employees and agents are held free and harmless to the fullest extent permitted by law from any liability, and they shall be indemnified for any and all liabilities, losses, claims, demands, damages, deficiencies, costs and expenses of whatsoever kind and nature that may arise in connection with the exercise of their powers and performance of their duties and functions.

The Commission shall underwrite or advance litigation costs and expenses, including legal fees and other expenses of external counsel, or provide legal assistance to its Chairperson,

Commissioners, officers, employees, or agents in connection with any civil, criminal, administrative or any other action or proceeding, to which they are made a party by reason of, or in connection with, the exercise of authority or performance of duties and functions under this Act: *Provided*, That such legal protection shall not apply to any civil, criminal, administrative, or any action or proceeding that may be initiated by the Commission, against such Chairperson, Commissioners, officers, employees, or agents: *Provided, further*, That the Chairperson, Commissioners, officers, employees, or agents, who shall resign, retire, transfer to another agency or be separated from the service, shall continue to be provided with such legal protection in connection with any act done or omitted to be done by them in good faith during their tenure or employment with the Commission: *Provided, finally*, That in the event of a settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commission is advised by counsel that the persons to be indemnified did not commit any negligence or misconduct.

The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the Commission in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Chairperson, Commissioner, officer, employee, or agent to repay the amount advanced should it ultimately be determined by the Commission that one is not entitled to be indemnified as provided in this section.

SEC. 44. *Jurisdiction of the Regional Trial Court.* – The Regional Trial Court of the city or province where the entity or any of the entities whose business act or conduct constitutes the subject matter of a case, conducts its principal place of business, shall have original and exclusive jurisdiction, regardless of the penalties and fines herein imposed, of all criminal and civil cases involving violations of this Act and other competition-related laws. If the defendant or anyone is charged in the capacity of a director, officer, shareholder, employee, or agent of a corporation or other juridical entity who knowingly and willfully authorized the commission of the offense charged, the Regional Trial Court of the city or province where such corporation or juridical entity conducts its principal place of business, shall have jurisdiction.

SEC. 45. *Private Action.* – Any person who suffers direct injury by reason of any violation of this Act may institute a separate and independent civil action after the Commission has completed the preliminary inquiry provided under Section 31.

CHAPTER VIII OTHER PROVISIONS

SEC. 46. *Statute of Limitations.* – Any action arising from a violation of any provision of this Act shall be forever barred unless commenced within five (5) years from:

(a) For criminal actions, the time the violation is discovered by the offended party, the authorities, or their agents; and

(b) For administrative and civil actions, the time the cause of action accrues.

SEC. 47. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.* – Except for the Court of Appeals and the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Commission in the exercise of its duties or functions: *Provided*, That, this prohibition shall apply in all cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by entities or those claiming to have rights through such entities: *Provided, however*, That, this prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that the non-issuance of a temporary restraining order will result in grave injustice and irreparable injury to the public: *Provided, further*, That, the applicant shall file a bond, in an amount to be fixed by the Court, but in no case shall it exceed twenty percent (20%) of the imposable fines provided for under Chapter VI, Section 29 of this Act: *Provided, finally*, That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the Commission.

Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect. Any judge who violates this section shall be penalized by suspension of at

least one (1) year without pay in addition to other criminal, civil or administrative penalties.

SEC. 48. *Trade Associations.* – Nothing contained in this Act shall be construed to prohibit the existence and operation of trade associations organized to promote quality standards and safety issues: *Provided*, That, these associations shall not in any way be used to justify any violation of this Act: *Provided, however*, That it shall not be illegal to use the association as a forum to discuss or promote quality standards, efficiency, safety, security, productivity, competitiveness and other matters of common interest involving the industry: *Provided, further*, That such is done without any anti-competitive intent or effect.

SEC. 49. *Congressional Oversight Committee.* – To oversee the implementation of this Act, there shall be created a Congressional Oversight Committee on Competition (COCC) to be composed of the Chairpersons of the Senate Committees on Trade and Commerce, Economic Affairs, and Finance, the Chairpersons of the House of Representatives Committees on Economic Affairs, Trade and Industry, and Appropriations and two (2) members each from the Senate and the House of Representatives who shall be designated by the Senate President and the Speaker of the House of Representatives: *Provided*, That one (1) of the two (2) Senators and one (1) of the two (2) House Members shall be nominated by the respective Minority Leaders of the Senate and the House of Representatives. The Congressional Oversight Committee shall be jointly chaired by the Chairpersons of the Senate Committee on Trade and Commerce and the House of Representatives Committee on Economic Affairs. The Vice Chairperson of the Congressional Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Economic Affairs and the House of Representatives Committee on Trade and Industry.

The Secretariat of the COCC shall be drawn from the existing personnel of the Senate and House of Representatives committees comprising the Congressional Oversight Committee.

CHAPTER IX FINAL PROVISIONS

SEC. 50. *Implementing Rules and Regulations.* – Within one hundred eighty (180) days from the effectivity of this Act, the Commission, in consultation with the DOJ-OFC and concerned sector regulators shall promulgate the necessary implementing rules and regulations for the implementation of this Act: *Provided*, That, the Commission may revise such implementing rules and regulations as it deems necessary: *Provided, however*, That such revised implementing rules and regulations shall only take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

SEC. 51. *Appropriations and Use of Fees, Charges and Penalties.* – The initial budgetary requirements of the Commission of three hundred million pesos (P300,000,000.00) is hereby appropriated.

All fees, fines, penalties collected by the Commission shall not be retained by the Commission, but will be remitted to the National Treasury and shall accrue to the general funds.

Such funds necessary for the continuous and effective operation of the Commission shall be included in the annual General Appropriations Act.

SEC. 52. *Transparency Clause.* – Final decisions, orders and rulings of the Commission shall be published on the official website subject to Section 34 of this Act.

Records of public proceedings shall be made available to the public subject to Section 34 of this Act.

SEC. 53. *Transitional Clause.* – In order to allow affected parties time to renegotiate agreements or restructure their business to comply with the provisions of this Act, an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed herein only if it is not cured or is continuing upon the expiration of two (2) years after the effectivity of this Act: *Provided*, That this section shall not apply

to administrative, civil and criminal proceedings against anti-competitive agreement or conduct, abuse of dominant position, and anti-competitive mergers and acquisitions, initiated prior to the entry into force of this Act: *Provided, further*, That during the said two (2)-year period, the government shall undertake an advocac program to inform the general public of the provisions of this Act.

SEC. 54. Separability Clause. - If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

SEC. 55. Repealing Clause. - The following laws, and all other laws, decrees, executive orders and regulations, or part or parts thereof inconsistent with any provision of this Act, are hereby repealed, amended or otherwise modified accordingly:

(a) Article 186 of Act No. 3815, otherwise known as the Revised Penal Code: *Provided*, That violations of Article 186 of the Revised Penal Code committed before the effectivity of this Act may continue to be prosecuted unless the same have been barred by prescription, and subject to the procedure under Section 31 of this Act;

(b) Section 4 of Commonwealth Act No. 138;

(c) Section 43(u) on Functions of the ERC of Republic Act No. 9136, entitled "An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes", otherwise known as the "Electric Power Industry Reform Act of 2001", insofar as the provision thereof is inconsistent with this Act;


(d) Section 24 on Illegal Acts of Price Manipulation and Section 25 on Penalty for Illegal Acts of Price Manipulation of Republic Act No. 9502, entitled "An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose Republic Act No. 8293 or the Intellectual Property Code, Republic Act No. 6675 or the Generics Act of 1988, and Republic Act No. 5921 or the Pharmacy Law, and for Other Purposes", otherwise known as

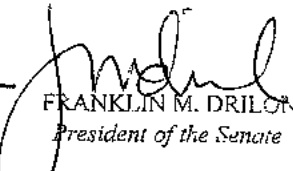
the "Universally Accessible Cheaper and Quality Medicines Act of 2008", insofar as the provisions thereof are inconsistent with this Act; and

(e) Executive Order No. 45, Series of 2011, Designating the Department of Justice as the Competition Authority, Department of Justice Circular 005 Series of 2015, and other related issuances, insofar as they are inconsistent with the provisions of this Act.

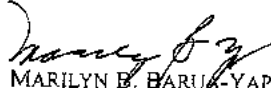
SEC. 56. Effectivity Clause. - This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or at least two (2) national newspapers of general circulation. Notwithstanding any provision herein, this Act shall have no retroactive effect.

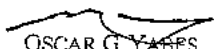
Approved,


FELICIANO BELMONTE JR.
*Speaker of the House
of Representatives*


FRANKLIN M. DRILON
President of the Senate

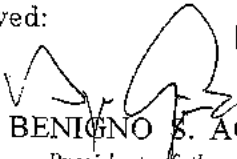
This Act which is a consolidation of Senate Bill No. 2282 and House Bill No. 5286 was finally passed by the Senate and the House of Representatives on June 10, 2015.

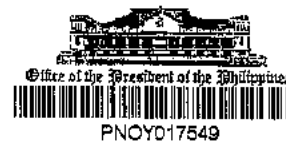

MARILYN B. BARUA-YAP
*Secretary General
House of Representatives*


OSCAR G. YABES
Secretary of the Senate

JUL 21 2015

Approved:


BENIGNO S. AQUINO III
President of the Philippines



CERTIFIED COPY:


MARIANITO M. DIMAANDAL
DIRECTOR IV
MALACARANG RECORDS OFFICE

7-27-2015



SINGAPORE



THE STATUTES OF THE REPUBLIC OF SINGAPORE

COMPETITION ACT

(CHAPTER 50B)

(Original Enactment: Act 46 of 2004)

REVISED EDITION 2006

(31st January 2006)

Prepared and Published by

THE LAW REVISION COMMISSION
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Competition Act

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

COMPETITION COMMISSION OF SINGAPORE

Division 1 — Establishment, incorporation and constitution of Commission

3. Establishment and incorporation of Competition Commission of Singapore
4. Common seal
5. Constitution of Commission

Division 2 — Functions, duties and powers of Commission

6. Functions and duties of Commission
7. Powers of Commission
8. Directions by Minister
9. Appointment of committees and delegation of powers

Division 3 — Provisions relating to staff

10. Appointment of Chief Executive and other employees, etc.

Division 4 — Financial provisions

11. Financial year
12. Annual estimates
13. Moneys recovered or collected by Commission
14. Grants-in-aid
15. Power to borrow
16. Issue of shares, etc.
17. Bank account
18. Application of moneys

Section

19. Investment
20. Accounts
21. Audit of accounts
22. Powers of auditor
23. Presentation of financial statements and auditor's report to Parliament

Division 5 — Transfer of property, assets, liabilities and employees

24. Transfer to Commission of property, assets and liabilities
25. Transfer of employees
26. Service rights, etc., of transferred employees to be preserved
27. No benefits in respect of abolition or reorganisation of office
28. Existing contracts
29. Continuation and completion of disciplinary proceedings and other legal proceedings
30. Misconduct or neglect of duty by employee before transfer

Division 6 — General

31. Annual report
32. Symbol or representation of Commission

PART III

COMPETITION

Division 1 — General

33. Application of Part

Division 2 — Agreements, etc., preventing, restricting or distorting competition

34. Agreements, etc., preventing, restricting or distorting competition
35. Excluded agreements
36. Block exemptions
37. Block exemption orders
38. Opposition to block exemptions
39. Procedure for block exemptions
40. Variation and revocation of block exemption orders
41. Criteria for block exemptions
42. Requests for Commission to examine agreements
43. Notification for guidance
44. Notification for decision

Section

- 45. Effect of guidance
- 46. Effect of decision that section 34 prohibition has not been infringed

Division 3 — Abuse of dominant position

- 47. Abuse of dominant position
- 48. Excluded cases
- 49. Requests for Commission to consider conduct
- 50. Notification for guidance
- 51. Notification for decision
- 52. Effect of guidance
- 53. Effect of decision that section 47 prohibition has not been infringed

Division 4 — Mergers

- 54. Mergers
- 55. Excluded mergers
- 56. Requests for Commission to consider anticipated mergers and mergers
- 57. Notification of anticipated merger
- 58. Notification of merger
- 58A. Interim measures in relation to notifications of anticipated mergers and mergers
- 59. Effect of decision that anticipated merger, if carried into effect, will not infringe section 54 prohibition
- 60. Effect of decision that merger has not infringed section 54 prohibition

Division 4A — Commitments

- 60A. Commitments
- 60B. Effect of commitments

Division 5 — Enforcement

- 61. Guidelines on enforcement of Part
- 61A. Power to require documents or information
- 62. Power to investigate
- 63. Power when conducting investigation
- 64. Power to enter premises without warrant
- 65. Power to enter premises under warrant
- 66. Self-incrimination and savings for professional legal advisers
- 67. Interim measures

Section

- 68. Decision of Commission upon completion of investigation
- 69. Enforcement of decision of Commission
- 70. Notification

PART IV

APPEALS

Division 1 — General

- 71. Appealable decisions

Division 2 — Competition Appeal Board

- 72. Competition Appeal Board
- 73. Powers and decisions of Board
- 74. Appeals to High Court and Court of Appeal

PART V

OFFENCES

- 75. Refusal to provide information, etc.
- 76. Destroying or falsifying documents
- 77. False or misleading information
- 78. Obstruction of officer of Commission, etc.
- 79. No costs or damages or other relief arising from seizure to be recoverable unless seizure without reasonable or probable cause
- 80. Powers of enforcement
- 81. Offences by bodies corporate, etc.
- 82. Jurisdiction of court
- 83. General penalty
- 84. Composition of offences

PART VI

MISCELLANEOUS

- 85. Enforcement of directions of Commission and commitments in District Court
- 86. Rights of private action
- 87. Co-operation between Commission and other regulatory authorities on competition matters
- 88. Co-operation between Commission and foreign competition bodies
- 89. Preservation of secrecy

Section

- 90. Protection from personal liability
 - 91. Public servants
 - 91A. Proceedings conducted by officers of Commission
 - 92. Amendment of Third and Fourth Schedules
 - 93. Regulations
 - 94. Transitional provisions
 - First Schedule — Constitution and proceedings of Commission
 - Second Schedule — Powers of Commission
 - Third Schedule — Exclusions from section 34 prohibition and section 47 prohibition
 - Fourth Schedule — Exclusions from section 54 prohibition
-

An Act to make provision about competition and the abuse of a dominant position in the market; and to establish the Competition Commission of Singapore, to provide for its functions and powers and for matters connected therewith.

[1st January 2005: Parts I and II and First and Second Schedules ; 1st September 2005: Part IV ; : Parts III (except Division 4)¹, V and VI and Third Schedule]

PART I**PRELIMINARY****Short title**

1. This Act may be cited as the Competition Act.

¹ Division 4 of Part III and the Fourth Schedule were repealed by Act 23 of 2007 on 30th June 2007. New Divisions 4 and 4A of Part III and the new Fourth Schedule were inserted by Act 23 of 2007 and were brought into operation on 1st July 2007.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“anticipated merger” means an arrangement that is in progress or contemplation and that, if carried into effect, will result in the occurrence of a merger referred to in section 54(2);

[23/2007 wef 01/07/2007]

“block exemption” has the meaning assigned to it in section 36(5);

“block exemption order” has the meaning assigned to it in section 36(3);

“Board” means the Competition Appeal Board established under section 72;

“Chairman” means the Chairman of the Commission and includes any temporary Chairman of the Commission;

“Chief Executive” means the Chief Executive of the Commission appointed under section 10 and includes any person acting in that capacity;

“Commission” means the Competition Commission of Singapore established under section 3;

“Deputy Chairman” means the Deputy Chairman of the Commission and includes any temporary Deputy Chairman of the Commission;

“document” includes information recorded in any form;

“goods” includes —

- (a) buildings and other structures;
- (b) ships, aircraft and hovercraft;
- (c) gas and electricity; and
- (d) choses in action;

“information” includes estimates and forecasts;

“inspector” means an inspector appointed by the Commission to conduct any investigation under section 62;

“investigating officer” has the meaning assigned to it in section 64(1);

“member” means a member of the Commission;

“party involved in a merger” means a person or an undertaking specified in section 54(2) and includes the merged entity;

[23/2007 wef 01/07/2007]

“party to an anticipated merger” means a person or an undertaking which would be a person or an undertaking specified in section 54(2) if the anticipated merger were carried into effect;

[23/2007 wef 01/07/2007]

“person” includes any undertaking;

“premises” does not include domestic premises unless —

(a) they are used in connection with the affairs of an undertaking; or

(b) documents relating to the affairs of an undertaking are kept there,

but includes any vehicle;

“public interest consideration” means national or public security, defence and such other considerations as the Minister may, by order published in the *Gazette*, prescribe;

“section 34 prohibition” means the prohibition referred to in section 34(1);

“section 47 prohibition” means the prohibition referred to in section 47(1);

“section 54 prohibition” means the prohibition referred to in section 54(1);

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

“undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other

entity, capable of carrying on commercial or economic activities relating to goods or services.

(2) The fact that to a limited extent the section 34 prohibition does not apply to an agreement, because of an exclusion provided by or under this Act, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Act, the power to require information, in relation to information recorded otherwise than in a legible form, includes the power to require a copy of it in a legible form.

(4) Any power conferred on any person by this Act to require information includes the power to require any document which he believes may contain that information.

[Canada Competition, ss. 2 (1) and 91; UK Competition 1998, s. 59 (1), (2) to (4); UK Enterprise 2002, s. 232 (2)]

PART II

COMPETITION COMMISSION OF SINGAPORE

Division 1 — Establishment, incorporation and constitution of Commission

Establishment and incorporation of Competition Commission of Singapore

3. There is hereby established a body to be known as the Competition Commission of Singapore which shall be a body corporate with perpetual succession and shall, by that name, be capable of —

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
- (c) doing and suffering such other acts or things as bodies corporate may lawfully do and suffer.

Common seal

4.—(1) The Commission shall have a common seal and such seal may from time to time be broken, changed, altered or made anew as the Commission thinks fit.

(2) All deeds and other documents requiring the seal of the Commission shall be sealed with the common seal of the Commission.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to any document and shall presume that it was duly affixed.

Constitution of Commission

5.—(1) The Commission shall consist of the following members:

- (a) a Chairman; and
- (b) such other members, not being less than 2 or more than 16, as the Minister may from time to time determine.

(2) The First Schedule shall have effect with respect to the Commission, its members and proceedings.

*Division 2 — Functions, duties and powers of Commission***Functions and duties of Commission**

6.—(1) Subject to the provisions of this Act, the functions and duties of the Commission shall be —

- (a) to maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore;
- (b) to eliminate or control practices having adverse effect on competition in Singapore;
- (c) to promote and sustain competition in markets in Singapore;
- (d) to promote a strong competitive culture and environment throughout the economy in Singapore;

- (e) to act internationally as the national body representative of Singapore in respect of competition matters;
 - (f) to advise the Government or other public authority on national needs and policies in respect of competition matters generally; and
 - (g) to perform such other functions and discharge such other duties as may be conferred on the Commission by or under any other written law.
- (2) In performing the functions and discharging the duties imposed on it by subsection (1), the Commission shall have regard to —
- (a) the differences in the nature of various markets in Singapore;
 - (b) the economic, industrial and commercial needs of Singapore; and
 - (c) maintaining the efficient functioning of the markets in Singapore.
- (3) The Commission may undertake such other functions and duties as the Minister may assign to the Commission and in so doing, the Commission shall be deemed to be fulfilling the purposes of this Act, and the provisions of this Act shall apply to the Commission in respect of such functions and duties.
- (4) Nothing in this section shall be construed as imposing on the Commission, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Commission

7.—(1) Subject to the provisions of this Act, the Commission may carry on such activities as appear to the Commission to be advantageous, necessary or convenient for it to carry on for or in connection with the performance of its functions and the discharge of its duties under this Act or any other written law and, in particular, the Commission may exercise any of the powers specified in the Second Schedule.

(2) This section shall not be construed as limiting any power of the Commission conferred by or under any other written law.

(3) The Commission shall furnish the Minister information with respect to its property and activities in such manner and at such times as the Minister may require.

Directions by Minister

8. The Minister may give such general directions, not inconsistent with the provisions of this Act, relating to the policy the Commission is to observe in the exercise of its powers, the performance of its functions and the discharge of its duties as the Minister considers necessary, and the Commission shall give effect to any such directions.

Appointment of committees and delegation of powers

9.—(1) The Commission may, in its discretion, appoint from among its own members or persons who are not members such number of committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Commission, would be better regulated and managed by means of such committees.

(2) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee or the Chairman, all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the powers to make regulations, prescribe or levy dues and rates and borrow money and the power of delegation conferred by this subsection.

(3) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any employee of the Commission or any person all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the powers to make regulations, prescribe or levy dues and rates and borrow money and the power of delegation conferred by this subsection; and any power, function or duty so delegated may be exercised, performed or discharged by the employee or person in the name and on behalf of the Commission.

(4) The Commission may continue to exercise a power conferred upon it, perform a function or discharge a duty under this Act or any other written law, notwithstanding the delegation of the power, function or duty under this section.

Division 3 — Provisions relating to staff

Appointment of Chief Executive and other employees, etc.

10.—(1) The Commission shall, with the approval of the Minister, appoint a Chief Executive on such terms and conditions as the Commission may determine.

(2) The Chief Executive shall —

- (a) be known by such designation as the Commission may determine;
- (b) be responsible to the Commission for the proper administration and management of the functions and affairs of the Commission in accordance with the policy laid down by the Commission; and
- (c) not be removed from office without the consent of the Minister.

(3) The Minister shall consult the Public Service Commission before granting his approval under subsection (1) or before giving his consent under subsection (2)(c).

(4) If the Chief Executive is temporarily absent from Singapore or temporarily incapacitated by reason of illness or for any other reason temporarily unable to discharge his duties, another person may be appointed by the Commission to act in the place of the Chief Executive during any such period of absence from duty.

(5) The Commission may, from time to time, appoint and employ on such terms and conditions as the Commission may determine such officers, employees, consultants and agents as may be necessary for the effective performance of its functions and discharge of its duties.

*Division 4 — Financial provisions***Financial year**

11. The financial year of the Commission shall begin on 1st April of each year and end on 31st March of the succeeding year, except that the first financial year of the Commission shall begin on 1st January 2005 and end on 31st March of the succeeding year.

Annual estimates

12.—(1) The Commission shall, in every financial year, prepare or cause to be prepared and shall adopt annual estimates of income and expenditure of the Commission for the ensuing financial year.

(2) Supplementary estimates may be adopted by the Commission at any of its meetings.

(3) A copy of all annual estimates and supplementary estimates shall, upon their adoption by the Commission, be sent immediately to the Minister.

(4) The Minister may approve or disallow any item or portion of any item shown in the estimates, and shall return the estimates as amended by him to the Commission, and the Commission shall be bound thereby.

(5) Notwithstanding any provision of this section, the Commission may transfer all or any part of moneys assigned to one item of expenditure to any item under the same head of expenditure in any estimates approved by the Minister.

Moneys recovered or collected by Commission

13.—(1) All moneys recovered or charges or composition sums collected under this Act, other than financial penalties, shall be paid into and form part of the moneys of the Commission.

(2) All financial penalties collected under this Act shall be paid into the Consolidated Fund.

Grants-in-aid

14. For the purpose of enabling the Commission to perform its functions and discharge its duties under this Act, the Minister may,

from time to time, make grants-in-aid to the Commission of such sums of money, as the Minister may determine, out of moneys to be provided by Parliament.

Power to borrow

15.—(1) For the performance of its functions or discharge of its duties under this Act or any other written law, the Commission may, from time to time, raise loans from the Government or, with the approval of the Minister, raise loans within or outside Singapore from such source as the Minister may direct by —

- (a) mortgage, overdraft or other means, with or without security;
- (b) charge, whether legal or equitable, on any property vested in the Commission or on any other revenue receivable by the Commission under this Act or any other written law; or
- (c) the creation and issue of debentures, bonds or any other instrument as the Minister may approve.

(2) For the purposes of this section, the power to raise loans shall include the power to make any financial agreement whereby credit facilities are granted to the Commission for the purchase of goods, materials or things.

Issue of shares, etc.

16. As a consequence of the vesting of any property, rights or liabilities of the Government in the Commission under this Act, or of any capital injection or other investment by the Government in the Commission in accordance with any written law, the Commission shall issue such shares or other securities to the Minister for Finance as that Minister may, from time to time, direct.

Bank account

17.—(1) The Commission shall open and maintain an account with such bank as the Commission thinks fit.

(2) Every such account shall be operated by such person as may, from time to time, be authorised in that behalf by the Commission.

Application of moneys

18. The moneys of the Commission shall be applied only in payment or discharge of the expenses, obligations and liabilities of the Commission and in making any payment that the Commission is authorised or required to make.

Investment

19. The Commission may, subject to the general or special direction of the Minister —

- (a) invest its moneys in such manner as it thinks fit; and
- (b) engage in any financial activity or participate in any financial arrangement for the purpose of managing or hedging against any financial risk that arises or is likely to arise from such investment.

Accounts

20. The Commission shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that —

- (a) all payments out of its moneys are correctly made and properly authorised; and
- (b) adequate control is maintained over the assets of, or in the custody of, the Commission and over the expenditure incurred by the Commission.

Audit of accounts

21.—(1) The accounts of the Commission shall be audited by the Auditor-General or such other auditor as may be appointed annually by the Minister in consultation with the Auditor-General (referred to in this Act as the auditor).

(2) A person shall not be qualified for appointment as an auditor under subsection (1) unless he is a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2).

(3) The Commission shall, as soon as practicable after the close of each financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them.

(4) The auditor shall in his report state —

- (a) whether the financial statements show fairly the financial transactions and the state of affairs of the Commission;
- (b) whether proper accounting and other records have been kept, including records of all assets of the Commission whether purchased, donated or otherwise;
- (c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Commission during the financial year were in accordance with the provisions of this Act; and
- (d) such other matters arising from the audit as he considers necessary.

(5) The auditor shall, as soon as practicable after the accounts have been submitted for audit, send a report of his audit to the Commission.

(6) The auditor shall submit such periodical and special reports to the Minister and to the Commission as may appear to him to be necessary or as the Minister or the Commission may require.

Powers of auditor

22.—(1) The auditor or any person authorised by him shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Commission.

(2) The auditor or any person authorised by him may make copies of, or take extracts from, any such accounting or other records.

(3) The auditor or any person authorised by him may require any person to furnish him with such information in the possession of that person or to which that person has access as the auditor or any duly authorised person considers necessary for the performance of his functions under this Act.

- (4) Any officer of the Commission who —
- (a) refuses or fails, without any reasonable cause, to allow the auditor or any person authorised by the auditor access to any accounting and other records of the Commission in his custody or power;
 - (b) refuses or fails, without any reasonable cause, to give any information possessed by him as and when required by the auditor or person authorised by the auditor; or
 - (c) hinders, obstructs or delays the auditor or any person authorised by the auditor in the performance of his functions,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part thereof during which the offence continues after conviction.

Presentation of financial statements and auditor's report to Parliament

23.—(1) The Commission shall, as soon as its accounts and financial statements have been audited in accordance with the provisions of this Act, send to the Minister a copy of the audited financial statements, signed by the Chairman, together with a copy of the auditor's report.

(2) Where the Auditor-General is not the auditor of the Commission, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Commission.

(3) The Minister shall, as soon as practicable, cause a copy of the audited financial statements and of the auditor's report referred to in subsection (1) to be presented to Parliament.

Division 5 — Transfer of property, assets, liabilities and employees

Transfer to Commission of property, assets and liabilities

24.—(1) As from 1st January 2005, such movable and immovable property vested in the Government as may be determined by the

Minister for Finance and used or managed by the Market Analysis Division of the Ministry of Trade and Industry (referred to in this Division as the transferred Division) and all assets, interests, rights, privileges, liabilities and obligations of the Government relating to the transferred Division shall be transferred to and shall vest in the Commission without further assurance, act or deed.

(2) If any question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Commission under subsection (1), a certificate under the hand of the Minister for Finance shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

(3) Any immovable property to be transferred to and vested in the Commission under subsection (1) shall be held by the Commission upon such tenure and subject to such terms and conditions as the President may determine.

(4) Every agreement relating to any of the transferred properties to which the Government was a party immediately before 1st January 2005, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date as if —

- (a) the Commission had been a party to such an agreement; and
- (b) for any reference to the Government there was substituted in respect of anything to be done on or after 1st January 2005 a reference to the Commission.

Transfer of employees

25.—(1) As from 1st January 2005, such persons or categories of persons as the Minister may determine who, immediately before that date, were employed by the Government and posted to the transferred Division shall be transferred to the service of the Commission on terms no less favourable than those enjoyed by them immediately prior to their transfer.

(2) If any question arises as to whether any person or any category of persons has been transferred to the service of the Commission

under subsection (1), a certificate under the hand of the Minister shall be conclusive evidence that the person or category of persons was or was not so transferred.

(3) Until such time as terms and conditions of service are drawn up by the Commission, the scheme and terms and conditions of service in the Government shall continue to apply to every person transferred to the service of the Commission under subsection (1) as if he were still in the service of the Government.

Service rights, etc., of transferred employees to be preserved

26.—(1) The terms and conditions to be drawn up by the Commission shall take into account the terms and conditions of service (including salaries and accrued rights to leave) enjoyed by the persons transferred to the service of the Commission under section 25 while in the employment of the Government.

(2) Any term or condition relating to the length of service with the Commission shall recognise the length of service of the persons so transferred while in the employment of the Government to be service with the Commission.

(3) Nothing in the terms and conditions of service to be drawn up by the Commission shall adversely affect the conditions that would have been applicable to persons transferred to the service of the Commission as regards any pension, gratuity or allowance payable under the Pensions Act (Cap. 225).

(4) Where a person has been transferred to the service of the Commission under section 25, the Government shall be liable to pay to the Commission such portion of any pension, gratuity or allowance payable to the person on his retirement as the same shall bear to the proportion which the aggregate amount of his pensionable emoluments during his service with the Government bears to the aggregate amount of his pensionable emoluments during his service under both the Government and the Commission.

(5) Where any person in the service of the Commission, whose case does not fall within the scope of any pension or other schemes established under this section, retires or dies in the service of the Commission or is discharged from such service, the Commission may

grant to him or to such other person wholly or partly dependent on him, as the Commission thinks fit, such allowance or gratuity as the Commission may determine.

No benefits in respect of abolition or reorganisation of office

27. Notwithstanding the provisions of the Pensions Act, no person who is transferred to the service of the Commission under section 25 shall be entitled to claim any benefit under that Act on the ground that he has been retired from the public service on account of abolition or reorganisation of office in consequence of the establishment and incorporation of the Commission.

Existing contracts

28. All deeds, contracts, schemes, bonds, agreements, instruments and arrangements subsisting immediately before 1st January 2005 to which the Government is a party and relating to the transferred Division or to any person transferred to the service of the Commission under section 25 shall continue in force on and after that date and shall be enforceable by or against the Commission as if the Commission had been named therein or had been a party thereto instead of the Government.

Continuation and completion of disciplinary proceedings and other legal proceedings

29.—(1) Where, on 1st January 2005, any disciplinary proceedings were pending against any employee of the Government transferred to the service of the Commission, the proceedings shall be carried on and completed by the Commission.

(2) Where, on 1st January 2005, any matter was in the course of being heard or investigated or had been heard or investigated by a committee acting under due authority but no order, ruling or direction had been made thereon, the committee shall complete the hearing or investigation and shall make such order, ruling or direction as it could have made under the authority vested in it before that date.

(3) Any order, ruling or direction made by a committee under this section shall be treated as an order, a ruling or a direction of the Commission and have the same force or effect as if it had been made

by the Commission pursuant to the authority vested in the Commission under this Act.

(4) Any proceedings or cause of action pending or existing immediately before 1st January 2005 by or against the Government, or any person acting on its behalf, in relation to —

- (a) the transferred Division;
- (b) any portion of the property, assets, interests, rights, privileges, liabilities and obligations transferred to the Commission under section 24; or
- (c) any employee transferred to the service of the Commission under section 25,

may be continued, completed and enforced by or against the Commission.

Misconduct or neglect of duty by employee before transfer

30. The Commission may reprimand, reduce in rank, retire, dismiss or punish in some other manner a person who had, whilst he was in the employment of the Government, been guilty of any misconduct or neglect of duty which would have rendered him liable to be reprimanded, reduced in rank, retired, dismissed or punished in some other manner if he had continued to be in the employment of the Government, and if this Act had not been enacted.

Division 6 — General

Annual report

31.—(1) The Commission shall, as soon as practicable after the end of each financial year, cause to be prepared and transmitted to the Minister a report dealing generally with the activities of the Commission during the preceding financial year and containing such information relating to the proceedings and policy of the Commission as the Minister may, from time to time, direct.

(2) The Minister shall, as soon as practicable, cause a copy of every such report to be presented to Parliament.

Symbol or representation of Commission

32.—(1) The Commission shall have the exclusive right to the use of such symbol or representation as the Commission may select or devise and thereafter display or exhibit such symbol or representation in connection with its activities or affairs.

(2) Any person who uses a symbol or representation identical with that of the Commission, or which so resembles the Commission's symbol or representation as to deceive or cause confusion, or to be likely to deceive or to cause confusion, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

PART III

COMPETITION

Division 1 — General

Application of Part

33.—(1) Notwithstanding that —

- (a) an agreement referred to in section 34 has been entered into outside Singapore;
- (b) any party to such agreement is outside Singapore;
- (c) any undertaking abusing the dominant position referred to in section 47 is outside Singapore;
- (d) an anticipated merger will be carried into effect outside Singapore;
- (e) a merger referred to in section 54 has taken place outside Singapore;
- (f) any party to an anticipated merger or any party involved in a merger is outside Singapore; or

- (g) any other matter, practice or action arising out of such agreement, such dominant position, an anticipated merger or a merger is outside Singapore,

this Part shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if —

- (i) such agreement infringes or has infringed the section 34 prohibition;
- (ii) such abuse infringes or has infringed the section 47 prohibition;
- (iii) such anticipated merger, if carried into effect, will infringe the section 54 prohibition; or
- (iv) such merger infringes or has infringed the section 54 prohibition,

as the case may be.

[23/2007 wef 01/07/2007]

(2) In so far as this Part applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority —

- (a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and
- (b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

(3) The Minister may make regulations for the purpose of co-ordinating the exercise of powers by the Commission under this Part and the exercise of powers by any other regulatory authority referred to in subsection (2), and may, in particular, make regulations to provide for the procedure to be followed —

- (a) in determining in a particular case or category of cases whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and

(b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.

(4) Nothing in this Part shall apply to any activity carried on by, any agreement entered into or any conduct on the part of —

(a) the Government;

(b) any statutory body; or

(c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.

(5) Notwithstanding subsection (4), this Part shall apply to —

(a) such statutory body or person acting on behalf of such statutory body; or

(b) such activity carried on, agreement entered into or conduct engaged in, by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct,

as the Minister may, by order published in the *Gazette*, prescribe.

(6) In this section, “statutory body” means a body corporate established by or under any written law.

[*India Competition 2002, s. 32*]

Division 2 — Agreements, etc., preventing, restricting or distorting competition

Agreements, etc., preventing, restricting or distorting competition

34.—(1) Subject to section 35, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) For the purposes of subsection (1), agreements, decisions or concerted practices may, in particular, have the object or effect of

preventing, restricting or distorting competition within Singapore if they —

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- (e) 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) Any provision of any agreement or any decision which is prohibited by subsection (1) shall be void on or after 1st January 2006 to the extent that it infringes that subsection.

(4) Unless the context otherwise requires, a provision of this Act which is expressed to apply to, or in relation to, an agreement shall be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

(5) Subsection (1) shall apply to agreements, decisions and concerted practices implemented before, on or after 1st January 2006.

[UK Competition 1998, s. 2 (1), (2), (4), (5) and (6)]

Excluded agreements

35. The section 34 prohibition shall not apply to such matter as may be specified in the Third Schedule.

[UK Competition 1998, s. 3 (1)]

Block exemptions

36.—(1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be

agreements referred to in section 41, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

(2) The Minister may make an order giving effect to such a recommendation —

- (a) in the form in which the recommendation is made; or
- (b) subject to such modifications as he considers appropriate.

(3) An order made under this section is referred to in this Part as a block exemption order.

(4) An agreement which falls within a category specified in a block exemption order shall be exempt from the section 34 prohibition.

(5) An exemption under this section is referred to in this Part as a block exemption.

[UK Competition 1998, s. 6]

Block exemption orders

37.—(1) A block exemption order may impose conditions or obligations subject to which a block exemption shall have effect.

(2) A block exemption order may provide —

- (a) that breach of a condition imposed by the order shall have the effect of cancelling the block exemption in respect of an agreement as from such date as the Commission may specify;
- (b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement as from such date as the Commission may specify; and
- (c) that if the Commission considers that a particular agreement is not one to which section 41 applies, it may cancel the block exemption in respect of that agreement as from such date as the Commission may specify.

(3) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

(4) A block exemption order may provide that the order shall cease to have effect at the end of a specified period.

(5) In this section, “specified” means specified in a block exemption order.

[UK Competition 1998, ss. 6 and 8 (6)]

Opposition to block exemptions

38.—(1) A block exemption order may provide that a party to an agreement which does not qualify for the block exemption created by the order, but satisfies specified criteria, may notify the Commission of the agreement for the purposes of subsection (2).

(2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) shall be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the Commission —

(a) is opposed to it being so treated; and

(b) gives notice in writing to the party concerned of its opposition before the end of that period.

(3) If the Commission gives notice of its opposition under subsection (2), the notification under subsection (1) shall be treated as a notification under section 44.

(4) In this section —

“notice period” means such period as may be specified with a view to giving the Commission sufficient time to consider whether to oppose under subsection (2);

“specified” means specified in a block exemption order.

[UK Competition 1998, s. 7]

Procedure for block exemptions

39.—(1) Before making a recommendation under section 36(1), the Commission shall —

(a) publish details of its proposed recommendation in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and

- (b) consider any representations made to the Commission regarding its proposed recommendation.

(2) If the Minister proposes to give effect to such a recommendation subject to modifications, he shall inform the Commission of the proposed modifications and take into account any comments made by the Commission.

[UK Competition 1998, s. 8 (1) and (2)]

Variation and revocation of block exemption orders

40.—(1) If, in the opinion of the Commission, it is appropriate to vary or revoke a block exemption order, the Commission may make a recommendation to that effect to the Minister.

(2) Section 39 shall apply to any proposed recommendation under subsection (1).

(3) Where there has been no recommendation under subsection (1), the Minister shall, before exercising his power to vary or revoke a block exemption order —

- (a) inform the Commission of the proposed variation or revocation; and
- (b) take into account any comments made by the Commission.

[UK Competition 1998, s. 8 (3) to (5)]

Criteria for block exemptions

41. Section 36 shall apply to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

but which does not —

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

[UK Competition 1998, s. 9]

Requests for Commission to examine agreements

42.—(1) Sections 43 and 44 provide for an agreement to be examined by the Commission on the application of a party to the agreement who thinks that it may infringe the section 34 prohibition.

(2) The Minister may make regulations to provide —

(a) for the procedure to be followed —

(i) by any person making an application under subsection (1); and

(ii) by the Commission, in considering such an application; and

(b) as to the application of sections 43 to 46 and the procedure referred to in paragraph (a), with such modifications (if any) as may be prescribed, in cases where the Commission —

(i) has given a direction withdrawing an exclusion; or

(ii) is considering whether to give such a direction.

[UK Competition 1998, s. 12]

Notification for guidance

43.—(1) A party to an agreement who applies for the agreement to be examined under this section shall —

(a) notify the Commission of the agreement; and

(b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the agreement is likely to infringe the section 34 prohibition.

(3) If the Commission considers that the agreement is likely to infringe the section 34 prohibition if it is not exempt, its guidance may indicate whether the agreement is likely to be exempt from the prohibition under a block exemption.

(4) If an agreement to which the section 34 prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

- (a) beginning with the date on which the notification was given; and
- (b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.

(5) The date specified in a notice under subsection (4)(b) shall not be earlier than the date on which the notice is given.

[UK Competition 1998, s. 13]

Notification for decision

44.—(1) A party to an agreement who applies for the agreement to be examined under this section shall —

- (a) notify the Commission of the agreement; and
- (b) apply to it for a decision.

(2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 34 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.

(3) If an agreement to which the section 34 prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

- (a) beginning with the date on which the notification was given; and
- (b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.

(4) The date specified in a notice under subsection (3)(b) shall not be earlier than the date on which the notice is given.

[UK Competition 1998, s. 14]

Effect of guidance

45.—(1) This section shall apply to an agreement if the Commission has determined an application under section 43 by giving guidance that —

- (a) the agreement is unlikely to infringe the section 34 prohibition, regardless of whether or not it is exempt; or
- (b) the agreement is likely to be exempt under a block exemption.

(2) The Commission shall take no further action in relation to the section 34 prohibition with respect to an agreement to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular;
- (c) one of the parties to the agreement applies to it for a decision under section 44 with respect to the agreement; or
- (d) a complaint about the agreement has been made to it by a person who is not a party to the agreement.

[23/2007 wef 01/07/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the agreement will infringe the section 34 prohibition; and
- (c) it gives notice in writing to the party on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

(a) on which it based its guidance; and

(b) which was provided to it by a party to the agreement,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

[UK Competition 1998, s. 15]

Effect of decision that section 34 prohibition has not been infringed

46.—(1) This section shall apply to an agreement if the Commission has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition.

(2) The Commission shall take no further action in relation to the section 34 prohibition with respect to the agreement unless —

(a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or

(b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

[23/2007 wef 01/07/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 34 prohibition by an agreement to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

(a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);

(b) it considers that it is likely that the agreement will infringe the section 34 prohibition; and

(c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

(a) on which it based its decision; and

(b) which was provided to it by a party to the agreement,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

[UK Competition 1998, s. 16]

Division 3 — Abuse of dominant position

Abuse of dominant position

47.—(1) Subject to section 48, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore is prohibited.

(2) For the purposes of subsection (1), conduct may, in particular, constitute such an abuse if it consists in —

(a) predatory behaviour towards competitors;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

(d) 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.

(3) In this section, “dominant position” means a dominant position within Singapore or elsewhere.

[UK Competition 1998, s. 18]

Excluded cases

48. The section 47 prohibition shall not apply to such matter as may be specified in the Third Schedule.

[UK Competition 1998, s. 19 (1)]

Requests for Commission to consider conduct

49.—(1) Sections 50 and 51 provide for conduct of a person to be considered by the Commission on the application of that person who thinks the conduct may infringe the section 47 prohibition.

(2) The Minister may make regulations to provide for the procedure to be followed —

(a) by any person making an application under subsection (1);
and

(b) by the Commission, in considering such an application.

[UK Competition 1998, s. 20]

Notification for guidance

50.—(1) A person who applies for conduct to be considered under this section shall —

(a) notify the Commission of the conduct; and

(b) apply to it for guidance.

(2) On an application under this section, the Commission may give the applicant guidance as to whether or not, in its view, the conduct is likely to infringe the section 47 prohibition.

[UK Competition 1998, s. 21]

Notification for decision

51.—(1) A person who applies for conduct to be considered under this section shall —

(a) notify the Commission of the conduct; and

(b) apply to it for a decision.

(2) On an application under this section, the Commission may make a decision as to —

- (a) whether the section 47 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is because of the effect of an exclusion.

[UK Competition 1998, s. 22]

Effect of guidance

52.—(1) This section shall apply to conduct if the Commission has determined an application under section 50 by giving guidance that the conduct is unlikely to infringe the section 47 prohibition.

(2) The Commission shall take no further action in relation to the section 47 prohibition with respect to the conduct to which this section applies, unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
- (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular; or
- (c) a complaint about the conduct has been made to it.

[23/2007 wef 01/07/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the conduct will infringe the section 47 prohibition; and
- (c) it gives notice in writing to the undertaking on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its guidance; and
- (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

[UK Competition 1998, s. 23]

Effect of decision that section 47 prohibition has not been infringed

53.—(1) This section shall apply to conduct if the Commission has determined an application under section 51 by making a decision that the conduct has not infringed the section 47 prohibition.

(2) The Commission shall take no further action in relation to the section 47 prohibition with respect to the conduct unless —

- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

[23/2007 wef 01/07/2007]

(3) No penalty may be imposed under this Part in respect of any infringement of the section 47 prohibition by conduct to which this section applies.

(4) The Commission may remove the immunity given by subsection (3) if —

- (a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
- (b) it considers that it is likely that the conduct will infringe the section 47 prohibition; and
- (c) it gives notice in writing to the undertaking on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(5) If the Commission has reasonable grounds for suspecting that information —

- (a) on which it based its decision; and
- (b) which was provided to it by an undertaking engaging in the conduct,

was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

[UK Competition 1998, s. 24]

Division 4 — Mergers

[23/2007 wef 01/07/2007]

Mergers

54.—(1) Subject to section 55, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are prohibited.

(2) For the purposes of this Part, a merger occurs if —

- (a) 2 or more undertakings, previously independent of one another, merge;
- (b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
- (c) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

(3) For the purposes of this Part, control, in relation to an undertaking, shall be regarded as existing if, by reason of rights, contracts or any other means, or any combination of rights, contracts

or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by —

- (a) ownership of, or the right to use all or part of, the assets of an undertaking; or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(4) For the purposes of this Part, control is acquired by any person or other undertaking if he or it —

- (a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(5) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger falling within subsection (2)(b).

(6) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(7) For the purposes of this Part, a merger shall not be deemed to occur if —

- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;
- (b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;
- (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or
- (d) control is acquired by an undertaking referred to in subsection (8) in the circumstances specified in subsection (9).

(8) The undertaking referred to in subsection (7)(d) is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(9) The circumstances referred to in subsection (7)(d) are that —

(a) the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and

(b) any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists —

(i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and

(ii) is not for the purpose of determining the manner in which any activity of the other undertaking, being an activity that could affect competition in markets for goods or services in Singapore, is carried on.

(10) In subsection (9), “specified period” means —

(a) the period of 12 months from the date on which control of the other undertaking was acquired; or

(b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

[23/2007 wef 01/07/2007]

Excluded mergers

55. The section 54 prohibition shall not apply to any merger specified in the Fourth Schedule.

[23/2007 wef 01/07/2007]

Requests for Commission to consider anticipated mergers and mergers

56.—(1) Section 57 provides for an anticipated merger to be considered by the Commission on the application of a party to that anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 54 prohibition.

(2) Section 58 provides for a merger to be considered by the Commission on the application of a party involved in that merger who thinks the merger may infringe the section 54 prohibition.

(3) The Minister may by regulations provide —

(a) that only such anticipated mergers as are prescribed may be notified to the Commission under section 57; and

(b) for the procedure to be followed —

(i) by any party making an application under section 57 or 58; and

(ii) by the Commission, in considering such an application.

[23/2007 wef 01/07/2007]

Notification of anticipated merger

57.—(1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section shall —

(a) notify the Commission of the anticipated merger; and

(b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 60A and 60B, on an application under this section, the Commission may make a decision as to —

(a) whether the section 54 prohibition will be infringed by the anticipated merger, if carried into effect; and

(b) if it will not be infringed, whether it is —

(i) because of the effect of an exclusion which will apply if the anticipated merger is carried into effect;

- (ii) because the anticipated merger, if carried into effect, is exempted from the application of the prohibition under subsection (3); or
- (iii) because a commitment has been accepted pursuant to section 60A.

(3) Where the Commission proposes to make a decision that the section 54 prohibition will be infringed by an anticipated merger, if carried into effect, the Commission shall give written notice to the party who applied for a decision on the anticipated merger and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 54 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) shall be final.

(5) Where the Minister exempts an anticipated merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of an anticipated merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(7) Subject to subsection (8), where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition, the Commission may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

(8) Before the expiry of the period referred to in subsection (7), if any, an application may be made by all parties to the anticipated merger who applied to the Commission for a decision on the anticipated merger under this section for that period to be extended.

(9) Where an application for an anticipated merger to be considered has been made to the Commission in accordance with subsection (1) and the anticipated merger is carried into effect before the

Commission makes a decision under subsection (2) in respect thereof, the application relating to the anticipated merger —

- (a) may be treated by the Commission as if it were an application for the resulting merger to be considered made in accordance with section 58; and
- (b) the Commission may make a decision under section 58 in respect of the resulting merger.

(10) For the purpose of subsection (9), the Commission may make a decision under section 58(2)(b)(ii) (read with section 58(5)) in respect of the merger referred to in subsection (9), notwithstanding the exemption was granted by the Minister under subsection (3) in respect of the anticipated merger.

(11) Notwithstanding subsection (9), the Commission may refuse to make any decision in respect of a merger referred to therein and require any party involved in the merger to apply to the Commission for the merger to be considered under section 58(1).

(12) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type prescribed by regulations made under section 56(3)(a).

[23/2007 wef 01/07/2007]

Notification of merger

58.—(1) A party involved in a merger which applies for the merger to be considered under this section shall —

- (a) notify the Commission of the merger; and
- (b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 60A and 60B, on an application under this section, the Commission may make a decision as to —

- (a) whether the section 54 prohibition has been infringed; and
- (b) if it has not been infringed, whether that is —
 - (i) because of the effect of an exclusion;

- (ii) because the merger is exempted from the prohibition under subsection (3); or
- (iii) because a commitment has been accepted pursuant to section 60A.

(3) Where the Commission proposes to make a decision that the section 54 prohibition has been infringed, the Commission shall give written notice to —

- (a) the party who applied for a decision on the merger; or
- (b) in a case where section 57(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

and the party or merged entity so notified by the Commission may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) shall be final.

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(7) A reference in any provision of this Act to an application or a notification under section 58 shall include a reference to an application or a notification under section 57 that the Commission treats as an application or a notification under section 58 pursuant to section 57(9).

[23/2007 wef 01/07/2007]

Interim measures in relation to notifications of anticipated mergers and mergers

58A.—(1) If, in respect of an application under section 57 or 58, the Commission has reasonable grounds for suspecting that —

(a) the section 54 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has been infringed by a merger, but has not completed its consideration of the matter, and the Commission considers that it is necessary for it to act under this section —

(i) for the purpose of preventing any action that may prejudice —

(A) the consideration of the anticipated merger or merger; or

(B) the giving of any direction under section 69; or

(ii) as a matter of urgency for the purpose —

(A) of preventing serious, irreparable damage to a particular person or category of persons; or

(B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(2) Before giving a direction under this section, the Commission shall —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(3) A notice under subsection (2) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(4) A direction given under this section shall have effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 69.

(5) Sections 69(2)(ba)(i) and (c)(i) and 85 shall also apply to directions given under this section.

[23/2007 wef 01/07/2007]

Effect of decision that anticipated merger, if carried into effect, will not infringe section 54 prohibition

59.—(1) This section shall apply to an anticipated merger in respect of which the Commission has determined an application under section 57 by making a decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

(2) The Commission shall take no further action in relation to the section 54 prohibition with respect to the anticipated merger (including where the anticipated merger is carried into effect, or if the Commission's decision is valid for a specified period, where the anticipated merger is carried into effect within that period) unless —

- (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or
- (b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the anticipated merger, if carried into effect, will not infringe the section 54 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by the anticipated merger to which this section applies, if carried into effect or, where the Commission's decision is valid for a specified period, if carried into effect within that period.

(5) The Commission may remove the immunity given by subsection (4) if —

- (a) it takes action under this Part with respect to one of the circumstances referred to in subsection (2);

- (b) it considers that it is likely that the anticipated merger, if carried into effect, or the resulting merger will infringe the section 54 prohibition; and
 - (c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.
- (6) If the Commission has reasonable grounds for suspecting that —
- (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party to the anticipated merger, was incomplete, false or misleading in a material particular; or
 - (b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

- (7) Where —
- (a) the Commission has made a decision that an anticipated merger, if carried into effect, will not infringe the section 54 prohibition; and
 - (b) the merger resulting from a purported carrying into effect of the anticipated merger is materially different from the anticipated merger,

nothing in this section shall prevent the Commission from taking any action in relation to the section 54 prohibition in respect of the merger.

[23/2007 wef 01/07/2007]

Effect of decision that merger has not infringed section 54 prohibition

60.—(1) This section shall apply to a merger if the Commission has determined an application under section 58 by making a decision that the merger has not infringed the section 54 prohibition.

(2) The Commission shall take no further action in relation to the section 54 prohibition with respect to the merger unless —

- (a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or
 - (b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.
- (3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the merger has not infringed the section 54 prohibition.
- (4) No penalty may be imposed under this Part in respect of any infringement of the section 54 prohibition by a merger to which this section applies.
- (5) The Commission may remove the immunity given by subsection (4) if —
- (a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);
 - (b) it considers that it is likely that the merger will infringe the section 54 prohibition; and
 - (c) it gives notice in writing to —
 - (i) the party on whose application the decision was made; or
 - (ii) in a case where section 57(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,that it is removing the immunity as from the date specified in its notice.
- (6) If the Commission has reasonable grounds for suspecting that —
- (a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party

involved in the merger, was incomplete, false or misleading in a material particular; or

- (b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

[23/2007 wef 01/07/2007]

Division 4A — Commitments

Commitments

60A.—(1) The Commission may, at any time before making a decision pursuant to an application under section 57 or 58 or an investigation under section 62(1)(c) or (d) as to whether —

- (a) the section 54 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has been infringed by a merger, accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which —

- (i) may be expected to result from the anticipated merger, if carried into effect; or

- (ii) has resulted or may be expected to result from the merger.

(2) A commitment shall come into force on the date specified by the Commission when it is accepted.

(3) The Commission may, at any time when a commitment is in force, accept —

- (a) a variation of the commitment; or

- (b) another commitment in substitution,

for the purpose referred to in subsection (1).

(4) A commitment may be released by the Commission where it has reasonable grounds for believing that the commitment is no longer necessary or appropriate for the purpose referred to in subsection (1).

(5) Before accepting, varying, substituting or releasing a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.

[23/2007 wef 01/07/2007]

Effect of commitments

60B.—(1) Where the Commission has accepted a commitment under section 60A, and subject to subsection (2), the Commission shall make a decision that —

(a) the section 54 prohibition will not be infringed by an anticipated merger, if carried into effect; or

(b) the section 54 prohibition has not been infringed by a merger, as the case may be.

(2) Nothing in subsection (1) shall prevent the Commission from revoking the decision already made, commencing or continuing any investigation, or making a decision or giving a direction, where —

(a) it has reasonable grounds for suspecting that any information on the basis of which it accepted a commitment was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) If the Commission revokes a decision referred to in subsection (1), the commitment shall be treated, unless otherwise stated, as released from the date of that revocation.

(4) The Commission may review the effectiveness of commitments it has accepted under section 60A in such circumstances as it considers appropriate.

[23/2007 wef 01/07/2007]

*Division 5 — Enforcement***Guidelines on enforcement of Part**

61.—(1) The Commission may, from time to time and with a view to enabling any person to order his affairs in compliance with the provisions of this Part, cause to be published in the *Gazette* guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part.

(2) For the purpose of preparing any guidelines under subsection (1), the Commission may consult with such persons as it thinks appropriate.

(3) Where the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission shall, in preparing those guidelines, consult with that regulatory authority.

(4) Guidelines published under this section shall not be binding on the Commission.

[UK Competition 1998, s. 52 (6)]

Power to require documents or information

61A.—(1) Where the Commission —

- (a) has reasonable grounds for suspecting that any feature, or combination of features, of a market in Singapore for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Singapore; or
- (b) in considering an application for decision filed pursuant to section 44, 51, 57 or 58, has reasonable grounds for suspecting that —
 - (i) the section 34 prohibition has been infringed by any agreement;
 - (ii) the section 47 prohibition has been infringed by any conduct;
 - (iii) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or

- (iv) the section 54 prohibition has been infringed by any merger,

the Commission may, by notice in writing to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.

(2) A notice under subsection (1) shall indicate —

- (a) the purpose for which the specified document or specified information is required by the Commission; and
- (b) the nature of the offences created by sections 75 to 78.

(3) The Commission may specify in the notice —

- (a) the time and place at which any document is to be produced or any information is to be provided; and
- (b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or
- (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) For the purposes of subsection (1)(a), any reference to a feature of a market in Singapore for goods or services shall be construed as a reference to —

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services, and, in this subsection, “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

(6) In subsections (1) and (2), “specified” means —

- (a) specified or described in the notice; or
- (b) falling within a category which is specified or described in the notice.

[23/2007 wef 01/07/2007]

Power to investigate

62.—(1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that —

- (a) the section 34 prohibition has been infringed by any agreement;
- (b) the section 47 prohibition has been infringed by any conduct;
- (c) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (d) the section 54 prohibition has been infringed by any merger.

[23/2007 wef 01/07/2007]

(2) For the purpose of subsection (1), the Commission may appoint an inspector to conduct the investigation.

[UK Competition 1998, s. 25]

Power when conducting investigation

63.—(1) For the purposes of an investigation under section 62, the Commission or the inspector may, by notice in writing to any person, require that person to produce to the Commission or the inspector a specified document, or to provide the Commission or the inspector with specified information, which the Commission or the inspector considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) shall indicate —

- (a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by sections 75 to 78.

(3) The Commission or the inspector may also specify in the notice —

(a) the time and place at which any document is to be produced or any information is to be provided; and

(b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

(a) if the document is produced —

(i) to take copies of it or extracts from it; and

(ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or

(b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) In subsection (1), “specified” means —

(a) specified, or described, in the notice; or

(b) falling within a category which is specified, or described, in the notice.

[UK Competition 1998, s. 26]

Power to enter premises without warrant

64.—(1) In connection with an investigation under section 62 —

(a) any officer of the Commission who is authorised by the Commission to do so (an investigating officer) and such other officers or persons as the Commission has authorised in writing to accompany the investigating officer (authorised person); and

(b) any inspector and such other person as the inspector may require,

may enter any premises.

[23/2007 wef 01/07/2007]

(2) No investigating officer or inspector, and no authorised person or person required by the inspector respectively, shall enter any premises in the exercise of the powers under this section unless the investigating officer or the inspector, as the case may be, has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by sections 75 to 78.

[23/2007 wef 01/07/2007]

(3) Subsection (2) shall not apply —

- (a) if the investigating officer or inspector has reasonable grounds for suspecting that the premises are, or have been, occupied by an undertaking which is being investigated in relation to —
 - (i) an agreement referred to in section 34;
 - (ii) conduct referred to in section 47; or
 - (iii) an anticipated merger, or a merger referred to in section 54; or

[23/2007 wef 01/07/2007]

- (b) if the investigating officer or inspector has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised —

- (a) in the case of an investigating officer and any authorised person, upon production of —
 - (i) evidence of the investigating officer's authorisation and the authorisation of every authorised person accompanying him; and

[23/2007 wef 01/07/2007]

- (ii) a document containing the information referred to in subsection (2)(b) and (c); and
[23/2007 wef 01/07/2007]
- (b) in the case of an inspector and any person required by him, upon production of —
 - (i) evidence of the inspector's appointment; and
[23/2007 wef 01/07/2007]
 - (ii) a document containing the information referred to in subsection (2)(b) and (c).
[23/2007 wef 01/07/2007]

(5) An investigating officer, an authorised person, an inspector or a person required by the inspector entering any premises under this section may —

- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises —
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible; and
[23/2007 wef 01/07/2007]
- (f) take any step which appears to be necessary for the purpose of preserving or preventing interference with any document

which he considers relates to any matter relevant to the investigation.

[40/2005]

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 27]

Power to enter premises under warrant

65.—(1) The Commission or any inspector may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that —

- (a) there are reasonable grounds for suspecting that there are on any premises documents —
 - (i) the production of which has been required under section 63 or 64; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that —
 - (i) there are on any premises documents which the Commission or the inspector has power under section 63 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
- (c) an investigating officer, an authorised person, an inspector or a person required by the inspector has attempted to enter the premises in the exercise of his powers under section 64 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

[23/2007 wef 01/07/2007]

(2) A warrant under this section shall authorise a named officer, and —

- (a) in the case of an investigation conducted by the Commission, such other officers or persons as the Commission has authorised in writing to accompany the named officer; and

- (b) in the case of an investigation conducted by an inspector, such other persons as the inspector may require,

to do all or any of the following:

- (i) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (ii) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;
- (iii) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (the relevant kind);
- (iv) to take possession of any document appearing to be of the relevant kind if —
 - (A) such action appears to be necessary for preserving the document or preventing interference with it; or
 - (B) it is not reasonably practicable to take copies of the document on the premises;
- (v) to take any other step which appears to be necessary for the purpose mentioned in paragraph (iv) (A);
- (vi) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (vii) to require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —
 - (A) in which it can be taken away; and
 - (B) in which it is visible and legible; and

[23/2007 wef 01/07/2007]

(viii) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation.

(3) If, in the case of a warrant under subsection (1)(b), the court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsection (2) to be taken in relation to any such document.

(4) Where possession of any document is taken under subsection (2)(iv) or (3), the named officer may, at the request of the person from whom possession of the document was taken, provide such person with a copy of the document.

(5) A named officer may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(viii) to be retained on those premises subject to such conditions as the named officer may require.

[23/2007 wef 01/07/2007]

(6) Any person who fails to comply with any condition imposed under subsection (5) shall be guilty of an offence.

(7) A warrant issued under this section shall indicate —

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offences created by sections 75 to 78,

and shall continue in force until the end of the period of one month beginning from the day on which it is issued.

(8) The powers conferred by this section shall not be exercised except upon production of a warrant issued under this section.

(9) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(10) If there is no one at the premises when the named officer proposes to execute such a warrant, he shall, before executing it —

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(11) If the named officer is unable to inform the occupier of the intended entry, he shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(12) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(13) Any document of which possession is taken under subsection (2)(iv) may be retained for a period of 3 months.

(14) In this section —

“named officer” means —

(a) an officer of the Commission named in the warrant; or

(b) the inspector named in the warrant,

as the case may be;

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

[UK Competition 1998, ss. 28 (1) to (5) and (7) and 29]

Self-incrimination and savings for professional legal advisers

66.—(1) A person is not excused from disclosing any information or document to the Commission or, as the case may be, to an investigating officer, such officer or person as the Commission has authorised in writing to accompany the investigating officer, an inspector or a person required by the inspector, under a requirement made of him under any provision of this Act on the ground that the disclosure of the information or document might tend to incriminate him.

[23/2007 wef 01/07/2007]

(2) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Act to the

Commission or, as the case may be, to an investigating officer, such officer or person as the Commission has authorised in writing to accompany the investigating officer, an inspector or a person required by the inspector, that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under Part V; but
- (b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings, including proceedings under this Act.

[23/2007 wef 01/07/2007]

(3) Nothing in this Part shall —

- (a) compel a professional legal adviser to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

(4) A professional legal adviser who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[40/2005]

[SFA 2002 Ed., s. 153]

Interim measures

67.—(1) If the Commission —

- (a) has reasonable grounds for suspecting that the section 34 prohibition or the section 47 prohibition has been infringed but has not completed its investigations into the matter; and

[23/2007 wef 01/07/2007]

- (b) considers that it is necessary for it to act under this section as a matter of urgency for the purpose —

- (i) of preventing serious, irreparable damage to a particular person or category of persons; or

(ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(1A) If the Commission has reasonable grounds for suspecting that the section 54 prohibition —

(a) will be infringed by an anticipated merger, if carried into effect; or

(b) has been infringed by a merger,

but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —

(i) for the purpose of preventing any action that may prejudice —

(A) the investigations; or

(B) the giving of any direction under section 69; or

(ii) as a matter of urgency for the purpose —

(A) of preventing serious, irreparable damage to a particular person or category of persons; or

(B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

[23/2007 wef 01/07/2007]

(2) Before giving a direction under this section, the Commission shall —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(3) A notice under subsection (2) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(4) A direction given under this section shall have effect while subsection (1) or (1A), as the case may be, applies, but may be replaced if the circumstances permit by a direction under section 69.

[23/2007 wef 01/07/2007]

(5) In the case of a suspected infringement of the section 34 prohibition, sections 69(2)(a) and 85 shall also apply to directions given under this section.

(6) In the case of a suspected infringement of the section 47 prohibition, sections 69(2)(b) and 85 shall also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 54 prohibition by an anticipated merger, if carried into effect, or a merger, sections 69(2)(ba)(i) and (c)(i) and 85 shall also apply to directions given under this section.

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 35]

Decision of Commission upon completion of investigation

68.—(1) Where —

- (a) after considering the statements made, or documents or articles produced, in the course of an investigation conducted by it under this Part; or
- (b) in the case of an investigation conducted by an inspector, after considering the report of the inspector,

the Commission proposes to make a decision that the section 34 prohibition has been infringed by any agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger, the Commission shall —

- (i) give written notice to the person likely to be affected by such decision; and
- (ii) give such person an opportunity to make representations to the Commission.

[23/2007 wef 01/07/2007]

(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(ii), the Commission may, as it thinks fit, make a decision that —

- (a) the section 34 prohibition has been infringed by any agreement;
- (b) the section 47 prohibition has been infringed by any conduct;
- (c) the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (d) the section 54 prohibition has been infringed by any merger.

[23/2007 wef 01/07/2007]

(3) Where —

- (a) in relation to an anticipated merger, the Commission proposes to make a decision that the section 54 prohibition will be infringed by the anticipated merger, if carried into effect; or
- (b) in relation to a merger, the Commission proposes to make a decision that the section 54 prohibition has been infringed by the merger,

and the Commission has given written notice under subsection (1)(i) to the parties to the anticipated merger or the parties involved in the merger, as the case may be, any such party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, or the merger to be exempted from the section 54 prohibition on the ground of any public interest consideration.

[23/2007 wef 01/07/2007]

(4) The decision of the Minister under subsection (3) shall be final.

(5) Where the Minister exempts an anticipated merger or a merger under subsection (3), the Commission may make a decision that —

- (a) the section 54 prohibition will not be infringed by the anticipated merger, if carried into effect; or
- (b) the section 54 prohibition has not been infringed by the merger.

[23/2007 wef 01/07/2007]

(6) The Minister may revoke the exemption of an anticipated merger or a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 31]

Enforcement of decision of Commission

69.—(1) Where the Commission has made a decision that —

- (a) any agreement has infringed the section 34 prohibition;
- (b) any conduct has infringed the section 47 prohibition;
- (c) any anticipated merger, if carried into effect, will infringe the section 54 prohibition; or
- (d) any merger has infringed the section 54 prohibition,

the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

[23/2007 wef 01/07/2007]

(2) A direction referred to in subsection (1) may, in particular, include provisions —

- (a) where the decision is that any agreement has infringed the section 34 prohibition, requiring parties to the agreement to modify or terminate the agreement;

[23/2007 wef 01/07/2007]

- (b) where the decision is that any conduct has infringed the section 47 prohibition, requiring the person concerned to modify or cease the conduct;

[23/2007 wef 01/07/2007]

- (ba) where the decision is that any anticipated merger, if carried into effect, will infringe the section 54 prohibition —

- (i) prohibiting the anticipated merger from being carried into effect;
 - (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46, as the case may be, that the agreement is unlikely to infringe, or has not infringed, the section 34 prohibition; and
 - (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53, as the case may be, that the conduct is unlikely to infringe, or has not infringed, the section 47 prohibition;
- [23/2007 wef 01/07/2007]*
- (c) where the decision is that any merger has infringed the section 54 prohibition —
- (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct;
 - (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, notwithstanding that the agreement is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 45 or 46, as the case may be, that the agreement is unlikely to infringe, or has not infringed, the section 34 prohibition; and

- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, notwithstanding that the conduct is excluded under paragraph 10 of the Third Schedule or the Commission has given guidance or a decision under section 52 or 53, as the case may be, that the conduct is unlikely to infringe, or has not infringed, the section 47 prohibition;

[23/2007 wef 01/07/2007]

- (d) where the decision is that any agreement has infringed the section 34 prohibition, any conduct has infringed the section 47 prohibition or any merger has infringed the section 54 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and

[23/2007 wef 01/07/2007]

- (e) in any case, requiring any party to an agreement that has infringed the section 34 prohibition, any person whose conduct has infringed the section 47 prohibition, any party to an anticipated merger which, if carried into effect, will infringe the section 54 prohibition or any party involved in a merger that has infringed the section 54 prohibition —

- (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
- (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and
- (iii) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

[23/2007 wef 01/07/2007]

(3) For the purpose of subsection (2)(d), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.

[23/2007 wef 01/07/2007]

(4) No financial penalty fixed by the Commission under this section may exceed 10% or such other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the *Gazette*, prescribe.

(5) The Commission shall, in any direction requiring the payment of a financial penalty, specify the date before which the financial penalty is to be paid, being a date not earlier than the end of the period within which an appeal against the direction may be brought under section 71.

(6) The Minister may, by order published in the *Gazette*, prescribe the interest payable on the outstanding amount of any financial penalty imposed under subsection (2)(d) and for payment by instalment (as may be directed by the Commission in its discretion) of any financial penalty imposed under subsection (2)(d).

[4/2010 wef 17/02/2010]

[*Canada Competition*, s. 92 (1) (e) (i) and (ii); *UK Competition 1998*, ss. 32, 33 and 36 (1), (2), (3), (6), (7) and (8)]

Notification

70. The Commission shall, within 14 days of its making any decision or direction under this Part, notify any person affected by such decision or direction.

[*Gas 2002 Ed.*, s. 79]

PART IV

APPEALS

Division 1 — General

Appealable decisions

71.—(1) Any party to an agreement in respect of which the Commission has made a decision, any person in respect of whose conduct the Commission has made a decision, any party to an

anticipated merger in respect of which the Commission has made a decision or any party involved in a merger in respect of which the Commission has made a decision, may appeal within the prescribed period to the Board against, or with respect to, that decision.

[23/2007 wef 01/07/2007]

(1A) Any person, other than a person referred to in subsection (1), to whom the Commission has given a direction under section 58A, 67 or 69 may appeal within the prescribed period to the Board against, or with respect to, that direction.

[40/2005]

[23/2007 wef 01/07/2007]

(2) Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the making of an appeal under this section shall not suspend the effect of the decision to which the appeal relates.

(3) In subsection (1), “decision” means a decision of the Commission as to —

- (a) whether the section 34 prohibition has been infringed by any agreement;
- (b) whether the section 47 prohibition has been infringed by any conduct;
- (c) whether the section 54 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (d) whether the section 54 prohibition has been infringed by any merger,

and includes a direction given under section 58A, 67 or 69 (including the imposition of any financial penalty under section 69 or as to the amount of any such financial penalty) and such other decision as the Minister may by regulations prescribe.

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 46]

*Division 2 — Competition Appeal Board***Competition Appeal Board**

72.—(1) For the purpose of hearing any appeal referred to in section 71(1), there shall be a Competition Appeal Board consisting of not more than 30 members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(2) Members of the Board shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

(3) The Minister may at any time remove any member of the Board from office without assigning any reason.

(4) A member of the Board may resign his office by notice in writing to the Minister.

(5) The Minister shall appoint to be Chairman of the Board a person who is qualified to be a Judge of the Supreme Court.

(6) The Chairman of the Board shall, when present, preside at every meeting of the Board, and in his absence such member of the Board as may be chosen by the members present shall preside.

(7) The Minister may appoint a secretary to the Board and such other officers and employees of the Board as may be necessary.

(8) All the powers, functions and duties of the Board may be exercised, performed and discharged by any committee of the Board consisting of not less than 3 members of the Board, one of whom may be the Chairman of the Board.

(9) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Board.

(10) The secretary shall, from time to time, summon such members of the Board as may be nominated by the Chairman of the Board, to constitute a committee of the Board for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

(11) Subject to subsection (12), where the Chairman of the Board is nominated under subsection (10) as a member of a committee, he shall preside at every meeting of the committee, and where the Chairman is not nominated as a member of a committee, the Chairman shall determine which member of the committee shall preside at every meeting of that committee.

(12) Where the Chairman of the Board or the member determined by the Chairman under subsection (11) (as the case may be) is absent at any committee meeting, such member of the committee as may be chosen by the members present shall preside.

(13) All matters coming before the Board or a committee of the Board at any sitting thereof shall be decided by a majority of votes of those members present and, in the event of an equality of votes, the Chairman of the Board or any other member presiding shall have a second or casting vote.

(14) Members of the Board may receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(15) The Minister may make regulations —

- (a) prescribing the period within which appeals may be made;
- (b) prescribing the manner in which appeals shall be made to the Board;
- (c) prescribing the procedure to be adopted by the Board in hearing appeals and the records to be kept by the Board;
- (d) prescribing the places where and the times at which appeals shall be heard by the Board;
- (e) prescribing the fees to be paid in respect of any appeal under this Part;
- (ea) permitting the Board to order interest to be paid on any financial penalty imposed, confirmed or varied by the Board;
[4/2010 wef 17/02/2010]
- (f) prescribing the award of costs of or incidental to any proceedings before the Board or the award of expenses, including any allowances payable to persons in connection with their attendance before the Board; and

- (g) generally for the better carrying out of the provisions of this Part.

[Income Tax 2004 Ed., s. 78]

Powers and decisions of Board

73.—(1) The Board shall, by notice to the Commission and the appellant, specify the date on and the place at which the appeal shall be heard.

(2) The Board shall have all the powers and duties of the Commission that are necessary to perform its functions and discharge its duties under this Act.

(3) The Board shall have the powers, rights and privileges vested in a District Court on the hearing of an action, including —

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise;
- (b) the compelling of the production of documents; and
- (c) the award of such costs or expenses as may be prescribed under section 72(15).

(4) A summons signed by such member of the Board as may be authorised by the Board shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(5) Where any person being duly summoned to attend before the Board does not so attend, that person shall be guilty of an offence.

(6) A witness before the Board shall be entitled to the same immunities and privileges as if he were a witness before a District Court.

(7) All appeals under this section shall be determined, having regard to the nature and complexity of the appeal, as soon as reasonably practicable.

(8) The Board may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may —

- (a) remit the matter to the Commission;

- (b) impose or revoke, or vary the amount of, a financial penalty;
- (c) give such direction, or take such other step, as the Commission could itself have given or taken; or
- (d) make any other decision which the Commission could itself have made.

(9) Any decision of the Board on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Commission.

(10) If the Board confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

(11) The Board shall notify the appellant of its decision in respect of his appeal and the reasons for its decision.

[Gas 2002 Ed., s. 85 (1) to (7) and (10); UK Competition 1998, Sch. 8 Part I, Para. 3 (2) to (4)]

Appeals to High Court and Court of Appeal

74.—(1) An appeal against, or with respect to, a decision of the Board made under section 73 shall lie to the High Court —

- (a) on a point of law arising from a decision of the Board; or
- (b) from any decision of the Board as to the amount of a financial penalty.

(2) An appeal under this section may be made only at the instance of a person who was a party to the proceedings in which the decision of the Board was made.

(3) The High Court shall hear and determine any such appeal and may —

- (a) confirm, modify or reverse the decision of the Board; and
- (b) make such further or other order on such appeal, whether as to costs or otherwise, as the Court may think fit.

(4) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.

[Income Tax 2004 Ed., s. 81 (4) to (5); UK Competition 1998, s. 49 (1)]

PART V
OFFENCES

Refusal to provide information, etc.

75.—(1) Any person who fails to comply with a requirement imposed on him under section 61A, 63, 64 or 65 shall be guilty of an offence.

[23/2007 wef 01/07/2007]

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it shall be a defence for him to prove that —

- (a) the document was not in his possession or under his control; and
- (b) it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement —

- (a) to provide information;
- (b) to provide an explanation of a document; or
- (c) to state where a document is to be found,

it shall be a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 61A, 63 or 64 shall not be an offence if the person imposing the requirement has failed to act in accordance with that section.

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 42 (1) to (4)]

Destroying or falsifying documents

76. Any person who, having been required to produce a document under section 61A, 63, 64 or 65 —

- (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or

- (b) causes or permits its destruction, disposal, falsification or concealment,

shall be guilty of an offence.

[23/2007 wef 01/07/2007]

[UK Competition 1998, s. 43 (1)]

False or misleading information

77.—(1) Any person who provides information to the Commission, an investigating officer or an inspector or any person authorised, appointed or employed to assist the Commission, investigating officer or inspector, in connection with any function or duty of the Commission, investigating officer or inspector under this Act shall be guilty of an offence if —

- (a) the information is false or misleading in a material particular; and
- (b) he knows that it is false or misleading in a material particular or is reckless as to whether it is.

(2) A person who —

- (a) provides an information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provides any information to another person which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Commission, an investigating officer or an inspector or any person authorised, appointed or employed to assist the Commission, investigating officer or inspector, in connection with any function or duty of the Commission, investigating officer or inspector under this Act, shall be guilty of an offence.

[UK Competition 1998, s. 44 (1) and (2)]

Obstruction of officer of Commission, etc.

78. Any person who refuses to give access to, or assaults, hinders or delays any member, officer, employee or agent of the Commission authorised to act for or assist the Commission, or any inspector or

person assisting an inspector, in the discharge of his duties under this Act shall be guilty of an offence.

No costs or damages or other relief arising from seizure to be recoverable unless seizure without reasonable or probable cause

79. No person shall, in any proceedings before any court in respect of any equipment, article or document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the equipment, article or document or the payment of their value unless the seizure was made without reasonable or probable cause.

Powers of enforcement

80.—(1) In addition to the powers conferred on him by this Act or any other written law, an officer or employee of the Commission may, in relation to any offence under this Act, on declaration of his office and production to the person against whom he is acting such identification card as the Chief Executive may direct to be carried by officers or employees of the Commission —

- (a) require any person whom he reasonably believes to have committed that offence to furnish evidence of the person's identity;
- (b) require any person to furnish any information or produce any document or copy thereof in the possession of that person, and may, without fee or reward, inspect, make copies or extracts from such document; and
- (c) require, by order in writing, the attendance before the officer or employee of any person being within the limits of Singapore who, from the information given or otherwise obtained by the officer or employee, appears to be acquainted with the circumstances of the case.

(2) Any person who —

- (a) wilfully mis-states or without lawful excuse refuses to give any information or produce any document or copy thereof

required of him by an officer or employee of the Commission under subsection (1); or

- (b) fails to comply with a lawful demand of an officer or employee of the Commission in the discharge of his duties by such officer or employee under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Offences by bodies corporate, etc.

81.—(1) Where an offence under this Act committed by a body corporate is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved —

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

- (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on his part, the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“officer” —

- (a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Commission may, with the approval of the Minister, make regulations to provide for the application of any provision of this section, with such modifications as may be appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Jurisdiction of court

82. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

General penalty

83. Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine

not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Composition of offences

84.—(1) Any offence under —

(a) this Act; or

(b) any subsidiary legislation made under this Act,

may be compounded under this section if the offence is prescribed as a compoundable offence.

(2) For the purpose of subsection (1), the Commission may, with the approval of the Minister, make regulations —

(a) to prescribe the offences under this Act or any subsidiary legislation made thereunder as offences that may be compounded under this section;

(b) to designate the person who may compound such offences; and

(c) to specify the maximum sum for which such offence may be compounded, except that the maximum sum so specified shall not exceed —

(i) one half of the amount of the maximum fine that is prescribed for the offence; or

(ii) \$5,000,

whichever is the lower.

(3) The person designated under subsection (2)(b) may compound any offence prescribed under subsection (2)(a) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (2)(c) in respect of that offence.

PART VI

MISCELLANEOUS

Enforcement of directions of Commission and commitments in District Court

85.—(1) For the purposes of enforcement of any direction made by the Commission under section 58A, 67 or 69, or any commitment accepted by the Commission under section 60A and which it has not released, the Commission may apply for the direction or commitment to be registered in a District Court in accordance with the Rules of Court and the District Court shall register the direction or commitment in accordance with the Rules of Court.

(2) From the date of registration of any direction or commitment under subsection (1), the direction or commitment shall be of the same force and effect, and all proceedings may be taken on the direction or commitment, for the purposes of enforcement as if it had been an order originally obtained in the District Court which shall have power to enforce it accordingly.

(3) A District Court shall have jurisdiction to enforce any direction or commitment in accordance with subsection (2) regardless of the monetary amount involved and may, for the purpose of enforcing such direction or commitment, make any order —

- (a) to secure compliance with the direction or commitment; or
- (b) to require any person to do any thing to remedy, mitigate or eliminate any effects arising from —
 - (i) any thing done which ought not, under the direction or commitment, to have been done; or
 - (ii) any thing not done which ought, under the direction or commitment, to have been done,

which would not have occurred had the direction or commitment been complied with.

(4) Nothing in this section shall be interpreted as conferring upon the District Court any power to order the winding up of a company.

[23/2007 wef 01/07/2007]

Rights of private action

86.—(1) Any person who suffers loss or damage directly as a result of an infringement of the section 34 prohibition, the section 47 prohibition or the section 54 prohibition shall have a right of action for relief in civil proceedings in a court under this section against any undertaking which is or which has at the material time been a party to such infringement.

(2) No action to which subsection (1) applies may be brought —

(a) until after a decision referred to in subsection (3) has established that the section 34 prohibition, the section 47 prohibition or the section 54 prohibition has been infringed; and

(b) during the period referred to in subsection (4).

(3) The decisions which may be relied upon for the purposes of an action under this section are —

(a) the decision by the Commission under section 68;

(b) the decision of the Board under section 73 (on an appeal from the decision of the Commission under section 71);

(c) the decision of the High Court under section 74 (on an appeal from the decision of the Board under that section); and

(d) the decision of the Court of Appeal under section 74 (on an appeal from the decision of the High Court under that section).

(4) The periods during which an action may not be brought under this section are —

(a) in the case of a decision of the Commission, the period during which an appeal may be made to the Board under section 71(1);

(b) in the case of a decision of the Commission which is the subject of an appeal to the Board as referred to in paragraph (a), the period following the decision of the Board during which a further appeal may be made under section 74 to the High Court; and

(c) in the case of a decision of the High Court which is the subject of a further appeal to the Court of Appeal, the period during which an appeal may be made under section 74 to the Court of Appeal.

(5) Where any appeal referred to in paragraph (a), (b) or (c) of subsection (4) is made, the period specified in that paragraph includes the period before the appeal is determined.

(6) No action to which subsection (1) applies may be brought after the end of 2 years after the relevant period specified in subsection (4).

(7) In determining a claim under this section, the court shall accept as final and conclusive any decision referred to in subsection (3) which establishes that the prohibition in question has been infringed.

(8) The court may grant to the plaintiff in an action under subsection (1) all or any of the following reliefs:

(a) relief by way of injunction or declaration;

(b) damages; and

(c) such other relief as the court thinks fit.

(9) Nothing in this section shall be construed as conferring on any party to an agreement which infringes the section 34 prohibition a right of action for relief.

[Ireland Competition 1991, s. 6 (1) and (3); UK Competition 1998, s. 47A (1), (5) to (7) and (9)]

Co-operation between Commission and other regulatory authorities on competition matters

87.—(1) The Commission may enter into any agreement with any regulatory authority for the purposes of —

(a) facilitating co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;

(b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and

- (c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.
- (2) An agreement that is entered into under subsection (1) is referred to in this section as a co-operation agreement.
- (3) A co-operation agreement may include —
 - (a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions;
 - (b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter; and
 - (c) a provision requiring each party to consult with any other party before performing any function in circumstances where the respective exercise by each party of the function concerned involves the determination of issues of competition between undertakings that are identical to one another or fall within the same category of such an issue, being a category specified in the agreement.
- (4) In this section —
 - “issue of competition between undertakings” includes an issue of competition between undertakings that arises generally in the sector of activity in relation to which the Commission or the regulatory authority may exercise powers and such an issue that falls, or could fall, to be the subject of the exercise by the Commission or the regulatory authority of powers in particular circumstances;
 - “party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a

reference to one or more of those other parties or each of them, as appropriate.

[Ireland Competition 2002, s. 34 (1), (3) and (12)]

Co-operation between Commission and foreign competition bodies

88.—(1) The Commission may, with the approval of the Minister, enter into arrangements with any foreign competition body whereby each party to the arrangements may —

- (a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and
- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

(2) The Commission shall not furnish any information to a foreign competition body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, including terms that correspond to the provisions of any other written law concerning the disclosure of that information by the Commission.

(3) The Commission may give an undertaking to a foreign competition body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where —

- (a) those terms correspond to the provisions of any law in force in the country or territory in which the body is established, being provisions which concern the disclosure by the body of the information referred to in paragraph (b); and
- (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Commission pursuant to the arrangements referred to in subsection (1).

(4) In this section, “foreign competition body” means a person in whom there are vested functions under the law of another country or

territory with respect to the enforcement or the administration of provisions of law of that country or territory concerning competition between undertakings (whether in a particular sector of the economy of that country or territory or throughout that economy generally).

[Ireland Competition 2002, s. 46]

Preservation of secrecy

89.—(1) Subject to subsection (5), every specified person shall preserve, and aid in the preserving of, 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 (3); and
- (c) all matters relating to the identity of persons furnishing information to the Commission,

that may come to his knowledge in the performance of his functions and discharge of his duties under this Act and shall not communicate any such matter to any person, except in so far as such communication —

- (i) is necessary for the performance of any such function or discharge of any such duty; or
- (ii) is lawfully required by any court or the Board, or lawfully required or permitted under this Act or any other written law.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

(3) Any person, when furnishing any information to the Commission, may identify information that he claims to be confidential information.

(4) Every claim made under subsection (3) shall be supported by a written statement giving reasons why the information is confidential.

(5) Notwithstanding subsection (1), the Commission may disclose any information relating to any matter referred to in subsection (1) in any of the following circumstances:

- (a) where the consent of the person to whom the information relates has been obtained; or
- (b) for the purposes of —
 - (i) a prosecution under this Act;
 - (ii) subject to subsection (6), enabling the Commission to give effect to any provision of this Act;
 - (iii) enabling the Commission, an investigating officer or an inspector to investigate a suspected offence under this Act or to enforce a provision thereof; or
 - (iv) complying with such provision of an agreement between Singapore and a country or territory outside Singapore (referred to in this section as a foreign country) as may be prescribed, where the conditions specified in subsection (7) are satisfied.

(6) If the Commission is considering whether to disclose any information under subsection (5)(b)(ii), the Commission shall have regard to —

- (a) the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
- (b) the need for excluding, so far as is practicable —
 - (i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and
- (c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

- (7) The conditions referred to in subsection (5)(b)(iv) are —
- (a) the information or documents requested by the foreign country are available to the Commission;
 - (b) unless the Government otherwise allows, the foreign country undertakes to keep the information given confidential at all times; and
 - (c) the disclosure of the information is not likely to be contrary to the public interest.
- (8) In this section, “specified person” means a person who is or has been —
- (a) a member, an officer, an employee or an agent of the Commission;
 - (b) a member of a committee of the Commission or any person authorised, appointed or employed to assist the Commission;
 - (c) an inspector or a person authorised, appointed or employed to assist an inspector; or
 - (d) a member of the Board or any person authorised, appointed or employed to assist the Board.

[Imports and Exports 1996 Ed., s. 31 (1), (5) and (6); UK Competition 1998, s. 56]

Protection from personal liability

90. No action, suit or other legal proceedings shall lie personally against —

- (a) the Commission;
- (b) any member, officer, employee or an agent of the Commission;
- (c) any member of the Board or any person authorised, appointed or employed to assist the Board;
- (d) any person who is on secondment or attachment to the Commission;
- (e) any person authorised, appointed, employed or directed by the Commission to exercise the Commission’s powers, perform the Commission’s functions or discharge the

Commission's duties or to assist the Commission in the exercise of its powers, the performance of its functions or the discharge of its duties under this Act or any other written law; or

- (f) any inspector or any person authorised, appointed or employed to assist him in connection with any function or duty of the inspector under this Act,

for anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with —

- (i) the exercise or purported exercise of any power under this Act or any other written law;
- (ii) the performance or purported performance of any function or the discharge or purported discharge of any duty under this Act or any other written law; or
- (iii) the compliance or purported compliance with this Act or any other written law.

Public servants

91. All members, officers and employees of the Commission, all inspectors and all members of the Board shall be deemed to be public servants for the purposes of the Penal Code (Cap. 224).

Proceedings conducted by officers of Commission

91A.—(1) Proceedings in respect of an offence under this Act may, with the authorisation of the Public Prosecutor, be conducted by an officer of the Commission who is authorised in writing in that behalf by the Chief Executive.

[15/2010 wef 02/01/2011]

(2) Notwithstanding the provisions of any written law, a legal officer of the Commission who has been admitted as an advocate and solicitor under the Legal Profession Act (Cap. 161) may —

- (a) appear in any civil proceedings involving the Commission in the performance of its functions or duties under any written law; and

- (b) make and do all acts and applications in respect of the civil proceedings on behalf of the Commission.

[40/2005]

[ACRA 2005 Ed., s. 33]

Amendment of Third and Fourth Schedules

92. The Minister may at any time, by order published in the *Gazette*, amend the Third and Fourth Schedules.

Regulations

93.—(1) The Commission may, with the approval of the Minister, make regulations for any purpose for which regulations are required to be made under this Act and generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may, with the approval of the Minister, make regulations for or with respect to all or any of the following matters:

- (a) the manner of appointment, conduct and discipline and the terms and conditions of service of the employees of the Commission;
- (b) the establishment of funds for the payment of gratuities and other benefits to employees of the Commission;
- (c) the form and manner in which a notification under section 38(1) is to be made;
- (d) the form and manner in which complaints that the section 34 prohibition has been infringed by any agreement, the section 47 prohibition has been infringed by any conduct, the section 54 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 54 prohibition has been infringed by any merger, are to be submitted to the Commission;

[23/2007 wef 01/07/2007]

- (da) the acceptance of commitments, and the variation, substitution or release of commitments, including the parties that may apply for the variation, substitution or release of commitments and the form and manner in which

applications for the variation, substitution or release of any commitment are to be submitted to the Commission;

[23/2007 wef 01/07/2007]

- (e) the form and manner in which notices of decisions and directions of the Commission are to be given, and the persons to whom such notices are to be given;
- (f) the fees to be charged in respect of anything done or any services rendered by the Commission under or by virtue of this Act, including the calculation of the amount of fees by reference to matters including —
 - (i) the turnover of all or any party to an agreement (determined in such manner as may be prescribed);
 - (ii) the turnover of any person whose conduct the Commission is to consider (determined in such manner as may be prescribed);
 - (iia) the turnover of all or any party to an anticipated merger (determined in such manner as may be prescribed);
and

[23/2007 wef 01/07/2007]

 - (iii) the turnover of all or any party involved in a merger (determined in such manner as may be prescribed);
and
- (g) anything which may be prescribed or is required to be prescribed under this Act.

[UK Competition 1998, s. 53 (2) (a)]

Transitional provisions

94. The Minister may make regulations to provide for —

- (a) the repeal or amendment of any written law which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act; and
- (b) such transitional, savings and other consequential, incidental and supplemental provisions as he considers necessary or expedient, including providing —

- (i) for any transitional period (whether granted upon an application or otherwise), and any extension or early termination thereof;
- (ii) for different transitional periods to apply —
 - (A) to different provisions of this Act; or
 - (B) to different activities, agreements or conduct or different categories of activity, agreement or conduct, to which such provisions relate; and
- (iii) that any provision of this Act shall not apply, or shall apply in a modified form, for the purpose of or in connection with the transitional period, whether generally or in relation to any specific activity, agreement or conduct or category of activity, agreement or conduct.

FIRST SCHEDULE

Section 5(2)

CONSTITUTION AND PROCEEDINGS OF COMMISSION

Appointment of Chairman and members

1.—(1) The Chairman and other members of the Commission shall be appointed by the Minister.

(2) The Minister may appoint the Chief Executive as a member.

(3) The persons to be appointed under this paragraph shall be chosen for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

Appointment of Deputy Chairman

2.—(1) The Minister may, in his discretion, appoint any member of the Commission to be the Deputy Chairman of the Commission.

(2) The Deputy Chairman so appointed may, subject to such direction as may be given by the Chairman, exercise all or any of the powers exercisable by the Chairman under this Act.

(3) If for any reason the Chairman is unable to act or the office of the Chairman is vacant, the Deputy Chairman may exercise all or any of the powers conferred, or discharge all or any of the duties imposed, on the Chairman under this Act.

FIRST SCHEDULE — *continued***Tenure of office of members of Commission**

3. A member of the Commission shall hold office on such conditions and for such term of not less than 3 years and not more than 5 years as the Minister may determine, and shall be eligible for re-appointment.

Temporary Chairman, Deputy Chairman or member

4. The Minister may appoint any person to be a temporary Chairman, Deputy Chairman or member during the temporary incapacity from illness or otherwise, or during the temporary absence from Singapore, of the Chairman, Deputy Chairman or any member, as the case may be.

Revocation of appointment

5. The Minister may, at any time, revoke the appointment of the Chairman, Deputy Chairman or any member if he considers such revocation necessary in the interest of the effective and economical performance of the functions of the Commission under this Act or in the public interest.

Resignation

6. A member may resign from his office at any time by giving not less than one month's notice to the Minister.

Chairman may delegate function

7. The Chairman may, in writing, authorise any member of the Commission to exercise any power or perform any function conferred on the Chairman under this Act.

Vacation of office

8. The seat of a member shall become vacant —

- (a) on his death;
- (b) if he fails to attend 3 consecutive meetings of the Commission without sufficient cause (the sufficiency thereof to be decided by the Commission);
- (c) if he becomes in any manner disqualified from membership of the Commission;
- (d) if he resigns from his office; or
- (e) if his appointment is revoked.

FIRST SCHEDULE — *continued***Filling of vacancies**

9. If a vacancy occurs in the membership of the Commission, the Minister may, subject to paragraph 1, appoint any person to fill the vacancy, and the person so appointed shall hold office for the remainder of the term for which the vacating member was appointed.

Disqualification from membership

10. No person shall be appointed or shall continue to hold office as a member if he —

- (a) is an undischarged bankrupt or has made any arrangement with his creditors;
- (b) has been sentenced to imprisonment for a term exceeding 6 months and has not received a free pardon;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a member.

Disclosure of interest by members

11.—(1) A member who is in any way, directly or indirectly, interested in a transaction or project of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under sub-paragraph (1) shall be recorded in the minutes of the meeting of the Commission and, after the disclosure, that member —

- (a) shall not take part in any deliberation or decision of the Commission with respect to that transaction or project; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for such deliberation or decision.

(3) For the purposes of this paragraph, a member whose spouse, parent, step-parent, son, adopted son, step-son, daughter, adopted daughter, step-daughter, brother, half-brother, step-brother, sister, half-sister or step-sister has an interest in the transaction or project referred to in sub-paragraph (1) shall be deemed to be interested in such transaction or project.

Sealing of documents

12.—(1) All deeds and other documents requiring the seal of the Commission shall be sealed with the common seal of the Commission in the presence of any 2

FIRST SCHEDULE — *continued*

officers of the Commission duly authorised by the Commission to act in that behalf and shall be signed by those officers.

(2) Such signing shall be sufficient evidence that the common seal of the Commission has been duly and properly affixed and that the seal is the lawful common seal of the Commission.

(3) The Commission may by resolution or otherwise appoint an officer or employee of the Commission or any other agent, either generally or in a particular case, to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission.

(4) Section 12 of the Registration of Deeds Act (Cap. 269) shall not apply to any instrument purporting to have been executed under sub-paragraph (1).

Salaries, fees and allowances payable to members of Commission

13. There shall be paid to the members of the Commission, out of the funds of the Commission, such salaries, fees and allowances as the Minister may from time to time determine.

Quorum

14.—(1) At every meeting of the Commission, one half of the number of members shall constitute a quorum.

(2) The Chairman, or in his absence the Deputy Chairman, shall preside at meetings of the Commission, and if both the Chairman and Deputy Chairman are absent from any meeting or part thereof, such member as the members present may elect shall preside at that meeting or part thereof.

(3) A decision at a meeting of the Commission shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman or any other member presiding shall have a casting vote in addition to his original vote.

(4) Where not less than 4 members of the Commission request the Chairman by notice in writing signed by them to convene a meeting of the Commission for any purpose specified in the notice, the Chairman shall, within 7 days from the receipt of the notice, convene a meeting for that purpose.

Vacancies

15. The Commission may act notwithstanding any vacancy in its membership.

FIRST SCHEDULE — *continued***Procedure at meetings**

16.—(1) The Chairman or any other officer authorised by him shall, subject to such standing orders as may be made by the Commission under sub-paragraph (2), summon all meetings of the Commission for the despatch of business.

(2) Subject to the provisions of this Act, the Commission may make standing orders to regulate its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and auditing of accounts.

Validity of act or proceeding

17. No act or proceeding of the Commission shall be questioned on the ground —

- (a) of any vacancy in, or defect in the constitution of, the Commission;
- (b) of any defect in the appointment of any person acting as the Chairman or as a member;
- (c) of any omission, defect or irregularity in the procedure of the Commission not affecting the merits of the case; or
- (d) that any member has contravened paragraph 11.

SECOND SCHEDULE

Section 7(1)

POWERS OF COMMISSION

1. To conduct such investigations as may be necessary for enforcing this Act.
2. To require any person to furnish such returns and information as may be necessary for implementing the provisions of this Act.
3. To issue or make arrangements for approving codes of practice relating to competition and to give approval to or withdraw approval from such codes of practice.
4. To publish educational materials or carry out other educational activities relating to competition; or to support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.
5. To carry out research and studies and to conduct seminars, workshops and symposia relating to competition, or to support (financially or otherwise) the carrying out by others of such activities.

[23/2007 wef 01/07/2007]

SECOND SCHEDULE — *continued*

6. With the approval of the Minister, to form or participate in the formation of any company, partnership or joint venture as a shareholder or partner or in any capacity.
7. To enter into such contracts as may be necessary or expedient for the purpose of performing its functions or discharging its duties.
8. To become a member or an affiliate of any international body, the functions, objects or duties of which are similar to those of the Commission.
9. To acquire and hold property, both movable and immovable, and to sell, lease, mortgage or otherwise dispose of the property.
10. To grant loans to officers or employees of the Commission for such purposes specifically approved by the Commission as are likely to increase the efficiency of the officers or employees.
11. To grant or guarantee loans to any officer or employee of the Commission for the purchase of a house, land or a flat or for the renovation of a house or a flat for the use or occupation of the officer or employee and his family (if any).
12. To make provision for gratuities, pensions, allowances or other benefits for employees or former employees of the Commission or its predecessors.
13. To make provision for the specialised training of any employee of the Commission and, in that connection, to offer scholarships to intending trainees or otherwise pay for the cost of the training and all expenditure incidental thereto.
14. To offer bursaries and scholarships for study at any school or institution of higher learning to members of the public and officers or employees of the Commission and members of their families.
15. To do anything incidental to any of its functions under this Act or any other written law.

THIRD SCHEDULE

Sections 35, 48 and 92 and paragraph 2
of Fourth Schedule

EXCLUSIONS FROM SECTION 34 PROHIBITION AND SECTION 47
PROHIBITION**Services of general economic interest, etc.**

1. Neither the section 34 prohibition nor the section 47 prohibition shall apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

THIRD SCHEDULE — *continued***Compliance with legal requirements**

2.—(1) The section 34 prohibition shall not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The section 47 prohibition shall not apply to conduct to the extent to which it is engaged in order to comply with a legal requirement.

(3) In this paragraph, “legal requirement” means any requirement imposed by or under any written law.

Avoidance of conflict with international obligations

3.—(1) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Singapore, it would be appropriate for the section 34 prohibition not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part III and an international obligation of Singapore, it would be appropriate for the section 47 prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) An international arrangement relating to civil aviation and designated by an order made by the Minister is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph, “specified” means specified in the order.

THIRD SCHEDULE — *continued***Public policy**

4.—(1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 34 prohibition ought not to apply to —

- (a) a particular agreement; or
- (b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 34 prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the section 34 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 47 prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the section 47 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) In this paragraph, “specified” means specified in the order.

Goods and services regulated by other competition law

5. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.

Specified activities

6.—(1) The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to any specified activity.

(2) In this paragraph, “specified activity” means —

- (a) the supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Cap. 237A);
- (b) the supply of piped potable water;
- (c) the supply of wastewater management services, including the collection, treatment and disposal of wastewater;

THIRD SCHEDULE — *continued*

- (d) the supply of bus services by a licensed bus operator under the Bus Services Industry Act 2015;
[Act 30 of 2015 wef 22/01/2016]
- (e) the supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Cap. 263A); and
- (f) cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Cap. 170A).

Clearing houses

7. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct which relates to —

- (a) the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations (Cap. 19, Rg 1); or
- (b) any activity of the Singapore Clearing Houses Association in relation to its activities regarding the Automated Clearing House.

Vertical agreements

8.—(1) The section 34 prohibition shall not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

(2) In this paragraph, “vertical agreement” means any agreement entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

[UK Competition 1998, Sch. 3 Paras. 4, 5, 6 and 7]

Agreements with net economic benefit

9. The section 34 prohibition shall not apply to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

THIRD SCHEDULE — *continued*

but which does not —

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Provisions directly related and necessary to implementation of mergers

10. The section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger.

[23/2007 wef 01/01/2006]

Mergers

11.—(1) The section 34 prohibition shall not apply to any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger.

(2) The section 47 prohibition shall not apply to any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

[23/2007 wef 01/01/2006]

FOURTH SCHEDULE

Sections 55 and 92

EXCLUSIONS FROM SECTION 54 PROHIBITION

1. The section 54 prohibition shall not apply to any merger —

- (a) approved by any Minister or regulatory authority (other than the Commission) pursuant to any requirement for such approval imposed by any written law;
- (b) approved by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186) pursuant to any requirement for such approval imposed under any written law; or
- (c) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition issued under any written law.

2. The section 54 prohibition shall not apply to any merger involving any undertaking relating to any specified activity as defined in paragraph 6(2) of the Third Schedule.

FOURTH SCHEDULE — *continued*

3. The section 54 prohibition shall not apply to any merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Singapore.

[23/2007 wef 01/07/2007]

LEGISLATIVE SOURCE KEY

COMPETITION ACT (CHAPTER 50B)

Notes:—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

ACRA 2005 Ed.	:	Singapore Accounting and Corporate Regulatory Authority Act (Chapter 2A, 2005 Revised Edition)
AML 1999 Ed.	:	Singapore Administration of Muslim Law Act (Chapter 3, 1999 Revised Edition)
Canada Competition	:	Canada Competition Act (Chapter 34)
Gas 2002 Ed.	:	Singapore Gas Act (Chapter 116A, 2002 Revised Edition)
Imports and Exports 1996 Ed.	:	Singapore Regulation of Imports and Exports Act (Chapter 272A, 1996 Revised Edition)
Income Tax 2004 Ed.	:	Singapore Income Tax Act (Chapter 134, 2004 Revised Edition)
India Competition 2002	:	India Competition Act 2002 (No. 12 of 2003)
Ireland Competition 1991	:	Ireland Competition Act 1991 (No. 24 of 1991)
Ireland Competition 2002	:	Ireland Competition Act 2002 (No. 14 of 2002)
SFA 2002 Ed.	:	Singapore Securities and Futures Act (Chapter 289, 2002 Revised Edition)
UK Competition 1998	:	UK Competition Act 1998 (Chapter 41)
UK Enterprise 2002	:	UK Enterprise Act 2002 (Chapter 40)

LEGISLATIVE HISTORY

COMPETITION ACT

(CHAPTER 50B)

This Legislative History is provided for the convenience of users of the Competition Act. It is not part of the Act.

1. Act 46 of 2004 — Competition Act 2004

Date of First Reading	:	21 September 2004 (Bill No. 44/2004 published on 22 September 2004)
Date of Second and Third Readings	:	19 October 2004
Dates of commencement	:	1 January 2005 (Parts I and II and First and Second Schedules)

2. Act 46 of 2004 — Competition Act 2004

Date of First Reading	:	21 September 2004 (Bill No. 44/2004 published on 22 September 2004)
Date of Second and Third Readings	:	19 October 2004
Date of commencement	:	1 September 2005 (Part IV)

3. Act 46 of 2004 — Competition Act 2004

Date of First Reading	:	21 September 2004 (Bill No. 44/2004 published on 22 September 2004)
Date of Second and Third Readings	:	19 October 2004
Dates of commencement	:	1 January 2006 (Parts III (except Division 4), V and VI and Third Schedule)

4. Act 40 of 2005 — Competition (Amendment) Act 2005

Date of First Reading	:	17 October 2005 (Bill No. 32/2005 published on 18 October 2005)
Date of Second and Third Readings	:	21 November 2005
Date of commencement	:	1 January 2006

5. G. N. No. S 870/2005 — Competition Act (Amendment of Third Schedule) Order 2005

Date of commencement : 1 January 2006

6. 2006 Revised Edition — Competition Act

Date of operation : 31 January 2006

7. Act 23 of 2007 — Competition (Amendment) Act 2007

Date of First Reading : 9 April 2007
(Bill No. 11/2007 published on 10 April 2007)

Date of Second and Third Readings : 21 May 2007

Date of commencement : 1st January 2007
(Section 23)

8. Act 23 of 2007 — Competition (Amendment) Act 2007

Date of First Reading : 9 April 2007
(Bill No. 11/2007 published on 10 April 2007)

Date of Second and Third Readings : 21 May 2007

Date of commencement : 30th June 2007
(Sections 8 (1) and 24 (1))

9. Act 23 of 2007 — Competition (Amendment) Act 2007

Date of First Reading : 9 April 2007
(Bill No. 11/2007 published on 10 April 2007)

Date of Second and Third Readings : 21 May 2007

Date of commencement : 1st July 2007

10. Act 4 of 2010 — Statutes (Miscellaneous Amendments) Act 2010

Date of First Reading : 23 November 2009
(Bill No. 26/2009 published on 23 November 2009)

Date of Second and Third Readings : 12 January 2010

Date of commencement : 17 February 2010

11. Act 15 of 2010 — Criminal Procedure Code 2010

(Consequential amendments made to Act by)

Date of First Reading : 26 April 2010
(Bill No. 11/2010 published on
26 April 2010)

Date of Second and Third Readings : 19 May 2010

Date of commencement : 2 January 2011

12. Act 30 of 2015 — Bus Services Industry Act 2015

Date of First Reading : 13 July 2015 (Bill No. 26/2015
published on 13 July 2015)

Date of Second and Third Readings : 18 August 2015

Date of commencement : 22 January 2016



THAILAND

TRADE COMPETITION ACT
B.E. 2560*

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun
Endorsed by Royal Prerogative on 2 July B.E. 2560
in the Second Year of the Current Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun decrees that:
as it is appropriate to improve the law on trade competition,

His Majesty King has therefore gracefully endorsed this Act, on the advice and approval of the National Legislative Assembly performing its parliamentary duty, as follows:

Section 1: This Act is entitled the “Trade Competition Act B.E. 2560”.

Section 2: This Act shall be effective 90 days from the date of its publication in the Government Gazette.

Section 3: The Trade Competition Act B.E. 2542 shall be repealed.

Section 4: This Act shall not apply to the operation of the followings:

- (1) central, regional, or local administrations;
- (2) state-owned enterprises, public organizations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities;
- (3) groups of farmers, cooperatives, or cooperative groups recognized under the law and having the aim in their business operations to benefit the vocation of farming;
- (4) businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters.

Section 5: Under this Act:

“business” means an operation carried out for benefit of trade in agriculture, industry, commerce, finance, insurance, and services, and shall include other operations as prescribed in any ministerial regulation(s);

* This unofficial English translation of the Trade Competition Act B.E. 2560 has been prepared by the Office of Trade Competition Commission and does not have any legal effect. The OTCC publishes it only for the purpose of reaching to the wider public. Any interpretation and implementation of the Trade Competition Act shall be based on the Thai-language version.

“business operator” means a vendor, producer for sale, person who places an order or imports products into the Kingdom for sale, buyer for production or resale of goods, or service provider in the business;

“good” means an object used for commodity or consumption, including a document demonstrating rights in such object;

“service” means a procurement of work by way of commission, grant of any right or permission to use or take benefits of any property or any operation in return for monetary remuneration or other benefit, but shall not include labor employment;

“price” means a price of a good and shall include a remuneration for service provision;

“market” means a relevant market of goods or services which are of the same type or substitutable when considering qualifications, prices, or purposes of use of the goods or services and the area where such goods are sold or such services are provided;

“business operator with a dominant position of market power” means one or more business operators in a market who have a market share and sales revenue in excess of the thresholds prescribed in the Commission’s notification and one or more factors on competition conditions, as the case may be, shall be taken into consideration. The Commission shall review the market shares and sales revenue thresholds at least once every three years from the date of issuance of the notification.

In determining the market share and sales revenue of a business operator with a dominant position of market power, the market shares and sales revenue of all the business operators related to each other due to a policy or commanding power as prescribed in the Commission’s notification shall be taken into consideration. Such business operators having market shares and sales revenues, as per above, shall be considered business operators with a dominant position of market power;

“Factors on competition conditions” means the number of business operators in the market, an amount of investment money, accessibility to important production factors, distribution channels, business operation networks, necessary infrastructure for the business operation, governmental rules and regulations, and other factors prescribed in the Commission’s notification;

“Commission” means the Trade Competition Commission;

“Commissioner” means a Trade Competition Commissioner;

“Office” means the Office of the Trade Competition Commission;

“Secretary-General” means the Secretary-General of the Trade Competition Commission;

“Officer” means the Secretary-General, and official of the Office holding a position not lower than a civil servant at the practitioner level and appointed by the Commission in order to perform duties under this Act;

“Minister” means the Minister in charge of this Act.

Section 6: The Minister of Commerce shall be the Minister in charge of this Act and shall have the power to issue ministerial regulations to fix fees not exceeding the amounts indicated in the Annex to this Act. The Minister shall also have the power to reduce or exempt fees and determine any other operational requirements in order to implement this Act.

Such ministerial regulations shall be effective on publication in the Government Gazette.

CHAPTER 1 TRADE COMPETITION COMMISSION

Section 7: There shall be a Commission called the “Trade Competition Commission” consisting of a Chairperson, a Deputy Chairperson, and other five Commissioners, appointed by the Prime Minister from persons chosen in a selection process and approved by the Cabinet.

The Secretary-General shall be the secretary to the Commission.

Section 8: Each Commissioner shall be a person who has achievements or has performed duties that demonstrate that he or she has requisite knowledge and has expertise and/or experience of not less than ten years in one or more of the following fields including, law, economics, finance, accounting, industry, business administration, consumer protection, or other fields which benefit competition regulation. The period of experience in these fields may be considered cumulatively.

Section 9: Each Commissioner shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be forty years of age or more, but not exceeding seventy years of age;
- (3) not hold any political position;
- (4) not hold any position in a political party;
- (5) be of sound mind;
- (6) be free of drug addiction;
- (7) not be bankrupt or not have any prior bankruptcy due to corruption;
- (8) not be incapacitated or person under disability;
- (9) not be under any sentence of imprisonment, or in custody based on a court order;
- (10) not have been sentenced to imprisonment, or have been acquitted less than five years prior to the date his or her name is submitted to the Cabinet for an approval under Section 12(3), except for an offense committed with recklessness or a petty offence;

(11) not have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or an abnormal increase of properties;

(12) not have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(13) not be a Justice in the Constitutional Court, an Election Commissioner, an Ombudsman, a National Anti-Corruption Commissioner, an Auditor General Commissioner, or a National Human Rights Commissioner;

(14) not have been removed from a position under any organic law created under the Constitution for the prevention and suppression of corruption.

Section 10: In addition to the qualifications under Section 9, each Commissioner shall:

(1) not hold any position in a business entity, nor be a partner with management power in a partnership, nor hold more than five-percent share in the total capital of any company;

(2) not hold a position as a civil servant with a title or a regular salary;

(3) not hold a position as an official or employee of a government agency or local administration, or be a committee member or advisor to a government agency which operates a business;

(4) not hold any position in an institution or association as a group of business operators with common objectives or joint benefits in trade.

In case that a person chosen under Section 12 is a person holding any position under paragraph 1, the Prime Minister shall appoint that person only when he or she resigns from such position, which shall be done within 30 days from the date of selection. If that person does not resign within the time period required, it shall be deemed that such person has never been selected as a Commissioner. The selection of a Commissioner to replace such person under Section 12 shall then be undertaken.

Section 11: In the process of appointing Commissioners, there shall be a Selection Committee comprising the following nine members whose duty is to choose suitable persons among candidates to be proposed as Commissioners:

(1) Permanent Secretary of the Ministry of Finance;

(2) Permanent Secretary of the Ministry of Agriculture and Cooperatives;

(3) Permanent Secretary of the Ministry of Commerce;

(4) Permanent Secretary of the Ministry of Justice;

(5) Permanent Secretary of the Ministry of Industry;

(6) Secretary-General of the National Economic and Social Development Board;

(7) Secretary-General of the Consumer Protection Board;

(8) Chairperson of the Thai Chamber of Commerce; and

(9) Chairperson of the Federation of Thai Industries.

The Selection Committee shall select one Selection Committee member to be Chairperson of the Selection Committee.

The Chairperson of the Selection Committee and Selection Committee members shall have no right to apply for a Commissioner position.

The Office shall act as an administrative unit for any operational support required in the Commissioner selection process.

The Chairperson and other Selection Committee members shall be entitled to a remuneration and other expenses in their performance of duties as prescribed by the Cabinet.

Section 12: The selection and appointment of Commissioners shall be performed as follows:

(1) The Selection Committee shall call for applications from persons who have achievements or performed any duties that demonstrate that he or she possesses the requisite knowledge and has the required expertise or experience in accordance with Section 8, including having the qualifications specified under Sections 9 and 10. The call for applications shall be announced to the general public for no less than 30 days continuously.

(2) After the time period under (1) has passed, the Selection Committee shall consider choosing applicants with the required qualifications to become Commissioners to fill the number of available Commissioner positions in accordance with Section 7 and shall propose a list of selected persons to the Minister with the details concerning such persons indicating clearly or containing grounds to demonstrate that those persons are suitable in one of the areas listed under Section 8, as well as qualifying under Sections 9 and 10.

(3) The Minister shall submit the names of selected persons with details as specified in (2) to the Cabinet within 15 days from the date on which he receives the candidates' names from the Selection Committee for approval.

(4) When the Cabinet approves persons to fill the positions of Commissioners, it shall submit names to the Prime Minister for an appointment order for the Commissioners.

In the case where the Cabinet approves Commissioners but does not meet the required number of Commissioners to be appointed, the Selection Committee shall consider selecting persons to fill in such open positions by proceeding under (1), (2), (3), and (4) until all the positions are filled.

On appointing Commissioners for the first Commission, after the Cabinet has approved the names of persons to fill all the available positions, it shall be required that those persons then convene and choose among themselves a Chairperson and a Deputy

Chairperson for the Commission before a submission to the Prime Minister for an appointment order is made!

The time period, rules, procedure, and conditions for selecting Commissioners shall be prescribed in a ministerial regulation.

Section 13: Each Commissioner shall hold office for a four-year term and shall only hold office for two terms.

After two years, three Commissioners shall resign their positions in the first Commission by means of a draw. Such resignations by means of a draw shall be deemed resignations and end the terms of the positions.

The Commissioners who are resigned at the end of term of their office shall hold their positions in order to perform their duties until the appointment of new Commissioners is made.

Not less than 90 days before end of term of the office of a Commissioner, the Selection Committee shall rapidly proceed to select a person appropriate to be appointed as a new Commissioner.

Section 14: Other than resignation at the end of term of an office, a Commissioner shall be removed from the position due to one of the following reasons:

- (1) death;
- (2) resignation during a term;
- (3) the Cabinet's resolution to remove a Commissioner due to failure to fulfill his or her duty, atrocious behavior, or lack of capacity to perform duties;
- (4) deemed unqualified under Section 9;
- (5) violating Section 10.

When a Chairperson, a Deputy Chairperson, or a Commissioner is removed from their position due to any one of the situations as stipulated under paragraph one, the process of selection and appointment of a Chairperson, a Deputy Chairperson, or a Commissioner, in accordance with Section 12, shall be undertaken in order to fill that vacant position. The person appointed to fill that position shall serve in the office for the remaining term of the Commissioner being replaced. If the remaining office term is fewer than 90 days, the appointment process of a replacement commissioner for the remaining period of the office may be disregarded.

During the period wherein a Chairperson, a Deputy Chairperson, or a Commissioner under paragraph two has not been replaced, the other serving Commissioners shall perform their duties, and it shall be deemed that the Commission consists of a Chairperson, a Deputy Chairperson, or Commissioner as remained unless the remaining in the Commission is less than four persons.

Section 15: In case a Chairperson or a Deputy Chairperson resigns from his or her position under Section 13 and there is a new Commissioner appointed, or in case a

Chairperson or a Deputy Chairperson resigns from his or her position under Section 14, the Commission shall select one Commissioner to be Chairperson or Deputy Chairperson and shall submit this recommendation to the Prime Minister to request the issuance of an order to appoint such recommended person as Chairperson or Deputy Chairperson, as the case may be.

Section 16: The person resigning from the position of Chairperson, Deputy Chairperson, or Commissioner shall not take any position in any limited company, public limited company, or any other business which is a party under the consideration of the Commission for any matter, unless he or she has resigned from the position for not less than two years.

Section 17: The Commission shall have the following powers and duties:

- (1) to make recommendations to the Minister in issuing ministerial regulations pursuant to this Act;
- (2) to issue regulations or notifications for the performance of duties under this Act;
- (3) to regulate business operations and impose guidelines to maintain free and fair competition;
- (4) to consider complaints and make inquiries regarding offences under this Act;
- (5) to consider and make decisions on requests under Section 59;
- (6) to impose regulations on investigation and inquiry undertaken by sub-committees of inquiry;
- (7) to notify the appointment of officers to perform duties under this Act;
- (8) proceed with criminal cases according to a complaint of injured persons under Section 78;
- (9) to consider and impose administrative fines under Section 80, Section 81, Section 82, and Section 83, as well as to file lawsuits in administrative courts;
- (10) to invite any person to provide factual information, explanation, recommendations, or opinions;
- (11) to propose opinions and recommendations to the Minister and the Cabinet with regard to the government's policies on competition;
- (12) to give recommendations to government agencies on rules, regulations, or orders which are obstacles to competition and causing obstruction, restriction, or reduction of competition, and that may result in unfairness between business operators;
- (13) to determine plans, strategies, and guidelines on management of the Office;
- (14) to issue regulations or rules regarding organizational structure, personnel management, budgeting, finance, and property and other operations of the Office;
- (15) to perform other duties as the law prescribes as powers and duties of the Commissioners.

Generally applicable regulations or notifications shall take effect when they are published in the Government Gazette.

Section 18: The Commission shall provide for a procedure for receiving opinions from interested persons and the general public. These opinions shall be considered before the issuing of regulations or notifications on competition that are to be generally applicable. Information on matters and issues open for public opinion shall be provided. The period for receiving opinions shall not be less than 30 days, unless there is an emergency or an urgent necessity, for which the Commission may impose a time period of less than 30 days.

The Office shall provide a record summarizing the opinions received, consisting of information on opinions received, and a resolution or outcome of the Commission's considerations that responds to the received opinions as well as reasoning and further guidelines on the matter. Such a record shall be made available through the information network of the Office.

Section 19: Meetings of the Commission shall be attended by no less than half of the entire number of Commissioners, to establish a quorum.

In meetings of the Commission, if the Chairperson does not attend a meeting or is unable to perform his or her duties, the Deputy Chairperson shall chair the meeting. If the Deputy Chairperson does not attend the meeting or is unable to perform his or her duties, the meeting shall select one Commissioner to chair the meeting.

The decisions of meetings shall be based on a majority vote and each Commissioner shall have one vote. If the voting ends in an equal number of votes for and against a matter under consideration, the Chair of the meeting shall have a deciding vote to make a final decision.

Section 20: The Commission shall have the power to appoint a sub-committee to consider or implement any task assigned by the Commission.

Section 21: The Commission shall appoint one or more sub-committees of inquiry. Each sub-committee shall consist of persons with knowledge and experience related to criminal cases to be appointed, including a person who is or was a district attorney, a person who is or was a policeman, a person who is or was a government officer with knowledge and experience in economics, law, commerce, accounting, or other fields deemed necessary to be members of the sub-committee of inquiry being created. An officer shall be assigned as a member of and secretary to any sub-committee of inquiry. Any sub-committee of inquiry created shall have an initial meeting to select one member to be its Chairperson.

Sub-committees of inquiry shall have powers and duties to investigate and inquire about matters regarding an offence under this Act. When a sub-committee of inquiry considers that the inquiry process has been completed, it shall provide for an opinion along with a report to be submitted to the Commission within twelve months from the date the

Commission appoints that sub-committee. In any case of justified necessity, an extension shall be given for no more than six months by the Commission. The reasons underlying the necessity for such an extension shall be recorded.

Section 22: Section 19 shall apply, *mutatis mutandis*, to meetings of sub-committees and sub-committees of inquiry.

Section 23: The Chairperson, Deputy Chairperson, and Commissioners shall work full-time with remuneration, expenses for performing duties, and other benefits, as prescribed by the Cabinet. In determining remuneration, the prohibition on holding particular positions after a term of office under Section 20 and Section 21 shall be taken into account.

Remuneration and other expenses incurred in the performance of duties of the chairpersons of sub-committees and members of sub-committees under Section 20 and Section 21 shall be prescribed by the Cabinet.

Section 24: In performing duties under this Act, the Chairperson, Deputy Chairperson, Commissioners, and members of any sub-committees of inquiry shall be officers under the Criminal Code and shall have the powers and duties of inquiry held by officers under the Criminal Procedure Code.

Section 25: In a case where the Commission has reached an opinion that it should file a criminal suit and has submitted its opinion with its inquiry report to a district attorney, but the district attorney issues a non-prosecution order, the Commission may oppose the district attorney's non-prosecution order pursuant to the Criminal Procedure Code, and the Chairperson shall utilize the powers of the Commissioner General or a governor of a province, as the case may be.

In a case where the Chairperson opposes the district attorney's order, the inquiry report along with its opinion shall be submitted to the Attorney-General to consider. If the Attorney-General considers that the inquiry report along with the opinion that the Chairperson submits is not sufficiently complete to proceed with the case, the Attorney-General shall notify the Commission for its further consideration by indicating the areas where the details are incomplete at one time. In this case, the Chairperson and the Attorney-General shall jointly establish a working group, consisting of an equal number of representatives from each side with powers and duties to consider any incomplete evidence and gather additional evidence in order to make it complete to proceed with its submission to the Attorney-General to order a prosecution.

The Office shall operate as the secretariat of the working group under paragraph two.

Section 26: Criminal lawsuits and civil lawsuits for damages under this Act shall be under the jurisdiction of the intellectual property and international courts.

CHAPTER 2

OFFICE OF TRADE COMPETITION COMMISSION

Section 27: The Office of Trade Competition Commission shall be established as a government agency, which is not part of the civil service, nor a state-owned enterprise, but shall have the status of a legal person.

The operation of the Office shall not be subject to labor protection law, labor relations law, social welfare law, or workmen's compensation law. However, officials and employees of the Office shall receive benefits no less than those prescribed in the labor protection law, social welfare law, and compensation money law.

Section 28: The Office shall have its headquarter in Bangkok or other nearby provinces, and may establish branch offices in any other places.

Section 29: The Office shall have the following powers and duties:

(1) be responsible for the administrative work of the Commission and its sub-committees;

(2) to monitor business operators for violations of this Act and report the same to the Commission;

(3) to study, research, analyze, and research goods, services and working conducts in business operations, as well as to make recommendations on trends and provide opinions to promote, develop, and assist to regulate business operations;

(4) to establish a database on the size of goods or service markets that have a tendency to create market monopolies, as prescribed by the Commission, and make such database available to the general public;

(5) to receive complaints in which a person alleges that there is a violation of this Act. Then, it shall seek all factual information and gather evidence on such complaint to a sufficient degree in order to submit that matter to the Commission. This shall be conducted in accordance with a regulation prescribed by the Commission;

(6) to hold a title, possessory right, or other rights in properties;

(7) to establish a right or enter into any legal act with regard to property;

(8) to exchange information, participate in negotiations, make an agreement and cooperate with other entities or agencies both in and outside the country with regard to matters related to the Office's operation;

(9) to provide for or cooperate with other entities on training and knowledge development with regard to competition matters;

(10) to coordinate and cooperate with other civil service offices and government agencies relevant to the performance of duties under this Act;

(11) to receive fees, as prescribed by the law, as well as remunerations, service charges, or income from its operation;

(12) to disseminate the outcome of matters considered by the Commission to the general public;

(13) to produce an annual report demonstrating the results achieved and challenges met by the Commission and the Office, which shall be provided to the Cabinet and disseminated to the general public;

(14) to perform duties pursuant to notifications, regulations, the Commission's resolutions, and duties assigned by the Commission or its sub-committees;

(15) to perform any other function that the law prescribes as powers and duties of the Office.

Section 30: The Office shall have a Secretary-General who is responsible for the operation of the Office, and he or she shall report directly to the Chairperson, and shall be a supervisor of all officials and employees of the Office.

The Secretary-General shall be the representative of the Office in external matters related to the Office's operation. The Secretary-General may assign his or her power to any person to act on his or her behalf. This shall be pursuant to a regulation prescribed by the Commission.

Section 31: The Chairperson, by the Commission's approval, shall be the person with the power to appoint and/or remove the Secretary-General from the Office.

The criteria and method for opening applications, selection, and appointment of the Secretary-General shall be in accordance with a notification prescribed by the Commission.

Section 32: A person to be appointed as the Secretary-General shall possess the following qualifications:

- (1) possess Thai nationality;
- (2) be no more than sixty-five years of age;
- (3) be able to work full-time for the Office;
- (4) have knowledge and expertise in the field of law, economics, finance, accounting, industry, business administration, consumer protection, or other related fields as prescribed in the Commission's notification;
- (5) other qualifications as prescribed in the Commission's notification.

Section 33: A person falling into one of the following categories shall be prohibited to from appointment as Secretary-General:

- (1) be bankrupt or have any prior bankruptcy due to corruption;
- (2) be incapacitated or person under disability;
- (3) be under any sentence of imprisonment, or in custody based on a court's order;
- (4) have been sentenced to imprisonment except for an offense committed with recklessness or a petty offence;

(5) be a member of a board of directors, manager, or authorized person in an administrative or management role of a limited company or public limited company or other business governed by this Act;

(6) be a government officer, official, or employee in the civil service, a state-owned enterprise, or other government agency, or local administration;

(7) be or have been a person holding a political position, except if he or she resigned from such a position no less than one year;

(8) be or have been a committee member or holding other positions in a political party or be an official of a political party, unless he or she resigned from such position or positions no less than one year;

(9) have been fired, discharged or dismissed from duty in the civil service, a government agency, a state-owned enterprise, or a private agency due to corruption in performing duties, or severely atrocious conduct, or for reasons related to a corrupt action or unlawful conduct in government service;

(10) have been sentenced or deemed by a court order to have his or her properties vested in the State due to irregular wealth or abnormal increase of properties;

(11) be a person holding any position in an institution or association which is a group of business operators with common objectives or joint benefits in trade.

Section 34: The Secretary-General shall receive a salary and other remunerations as prescribed by the Commission. In determining the salary, the prohibition on holding particular positions after resigning from the Secretary-General's position under Section 43 shall be taken into account.

Section 35: The Secretary-General shall hold a term of four years.

A Secretary-General that resigns from the position in accordance with the end of the term, may be reappointed; however, he or she shall not hold the position for more than two terms.

Section 36: Other than resigning from the position in accordance with the end of the term, the Secretary-General may be removed from the position due to the following situations:

(1) death;

(2) voluntary resignation;

(3) lack of qualifications under Section 32, or falling into a prohibited category under Section 33;

(4) have a conflict of interest as set out in Section 41;

(5) be subject of a Commission's resolution to remove the Secretary-General due to failing to perform his or her duties, unfit conduct, or lack of capacity.

Section 37: There shall be deputy secretary generals according to the number the Commission prescribes in order to assist the Secretary-General's performance of duties, as assigned by the Secretary-General.

Section 38: The Secretary-General shall have the following powers and duties:

(1) to assign, appoint, remove, promote, demote, reduce a salary or wage of, punish officials and employees under disciplinary rules as well as discharge them from their positions as officials or employees. This shall be in accordance with rules prescribed by the Commission. If the matter involves an official at the level of Deputy Secretary-General, or high-level executives, or an internal auditor, an approval from the Commission shall be required;

(2) to set regulations on the operation of the Office that are not in conflict or in contradiction with rules or resolutions prescribed by the Commission;

(3) to perform any other function that the law prescribes as a power and/or duty of the Office.

Section 39: In performing his or her duties, the Secretary-General may assign powers to an official to act on his or her behalf pursuant to a rule prescribed by the Commission.

The person assigned under paragraph one shall have the same powers and duties as those of the Secretary-General in the matter assigned to him or her.

Section 40: In case there is no person holding the position of Secretary-General or such person cannot perform his or her duties, the Commission shall appoint a Deputy Secretary-General to be the acting Secretary-General. In case there is no Deputy Secretary-General or such person cannot perform his or her duties, the Commission shall appoint an official of the Office to be the acting Secretary-General.

An acting Secretary-General under paragraph one shall have the same powers and duties as those of the Secretary-General.

Section 41: The Secretary-General shall not have a conflict of interest in legal acts carried out by the Office or in a business operation carried out for the Office, whether directly or indirectly, except for the case where he or she is a shareholder for benefits of a good faith investment in limited companies or public limited companies that have undertaken such acts with a conflict of interest. Such shareholding shall not exceed the rates imposed in the Commission's rules.

In any case where the Secretary-General's parents, spouse, children, or spouse's parents undertakes such shareholdings under paragraph one, the Secretary-General shall be deemed to have a conflict of interest under paragraph one.

Section 42: Any legal act or business operation not conducted in accordance with Section 41 shall not be binding for the Office.

Section 43: A person resigning from his or her position as Secretary-General shall not take any position in any limited company, public limited company, or any other businesses which is a party in a matter being considered by the Commission, unless he or she has resigned from the position for not less than two years.

Section 44: Money and properties for the operation of the Office shall be comprised of the followings:

- (1) money and assets transferred to the Office under Section 91;
- (2) money the Government allocates as initial capital;
- (3) general subsidized money allocated by the Government;
- (4) fees, compensation, service charges, or other income from the operation;
- (5) donated money and assets or subsidized money from a foreign country as well as international organizations. There shall not be any condition or commitment agreed that may affect the operation of the Commission or the Office;
- (6) interest or other benefits accruing from the Office's money or assets.

Section 45: All the income that the Office receives from its operation each year shall be vested in the Office for its operating expenses and other appropriate charges, such as maintenance and other charges to offset depreciation, benefits to the Commission and its sub-committees, and money to be held in reserve for the operation or for use for other matters relevant to the functioning of the Office.

Income under paragraph one shall not be transferred to the Ministry of Finance as the State's income.

In the case that Office's income is insufficient to cover its expenses and ensure the efficient operation of the Office and cover other appropriate charges, and funds from other sources are unavailable, the Government shall allocate government budget to the Office in the necessary amount, as general subsidized money under Section 44(3).

Section 46: The Office shall transfer administrative fines collected under this Act to the Ministry of Finance as the State's income immediately after the statute of limitation ends for filing a lawsuit or after the court has issued a final judgment, whichever the case may be.

Section 47: For the benefit of allocating the government's budget to the Office under Section 44(3), the Office shall propose a budget for the fiscal year for which the Office seeks support to the Cabinet in order to seek an allocation of general subsidized money for the Office in the draft Annual Expense Budget or the draft Additional Expense Budget, as the case may be.

Section 48: Properties of the Office shall not be subject to any liability under compulsory executions, and no person may raise a statute of limitation against the Office on matters relating to properties of the Office.

Section 49: The Office shall establish a financial statement and accounts for the operation of the Office to be submitted to an account auditor within 120 days from the end date of the fiscal year.

In every fiscal year, the Office of the Auditor-General of Thailand shall be an account auditor and assessor of expenses of money and properties of the Office with an analysis of effectiveness of the expenses and an opinion as to whether such expenses are in accordance with as well as are used to achieve the purposes and objectives of the Office. A report shall be made and submitted to the Commission, the Cabinet, and the Parliament.

The Office shall be an audited unit under the organic law to the Constitution on the auditing and control of public finance.

CHAPTER 3

PREVENTION OF MONOPOLY AND UNFAIR TRADE

Section 50: A business operator shall not apply its dominant position in a market in any of following ways:

(1) by unfairly fixing or maintaining the level of purchasing or selling price of a good or service;

(2) by imposing an unfair condition for another business operator which is its trading partner in order to limit services, production, purchase, or sale of goods, or to limit an opportunity in purchasing or selling goods, receiving or providing services, or seeking credits from other business operators;

(3) by suspending, reducing, or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason, or destroying or damaging goods for the purpose of reducing the quantity to be lower than demand of the market;

(4) by intervening in the business operation of others without any appropriate reason.

Section 51: Any business operator conducting a merger which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification shall notify the outcome of such merger to the Commission within 7 days from the date of merging.

Any business operator planning to conduct a merger which may cause a monopoly or result in a dominant position in a market, shall seek permission from the Commission.

The notification under paragraph one shall indicate the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets to which business operators shall be subject.

Mergers shall include:

(1) Mergers among producers, sellers, producers and sellers, or service providers, resulting in one business remaining and the others' business terminating, or a new business coming into existence;

(2) Acquisition of all or part of the assets of other business in order to control its policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

(3) Acquisition of all or part of the stocks of the other business, whether directly or indirectly, in order to control policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

Notification of outcome of a merger under paragraph one, and a request for permission, and the permission for a merger under paragraph two, shall be in accordance with the criteria, procedure, and conditions prescribed in the Commission's notification.

The provisions under paragraph one and paragraph two shall not apply to a merger conducted in order to adjust the internal structure of a business operator related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 52: In consideration of granting a permission under Section 51 paragraph two, the Commission shall complete the procedure within 90 days from the request's receipt date. In case by necessity, such consideration is not completed within the period, an extension of not more than 15 days shall be given and the reasons and necessity for an extension of the consideration shall be recorded.

The Commission shall consider granting a permission in recognition of valid business-related necessity, benefit in supporting a business operator, not causing severe damage to the economy, and no impact on the essential benefits consumers are entitled to as a whole.

In a case where a permission order is granted, the Commission may set a time period or any other condition for the business operator which is granted the permission to follow.

The Commission shall indicate reasons for granting or not granting a permission to merge covering both factual and legal aspects of the case. The Commissioners shall sign the order and Article 61 paragraph two shall apply *mutatis mutandis*.

The business operator receiving a notification of such order, if in disagreement with it, may file a lawsuit in an administrative court within 60 days from the date the order is notified.

Section 53: A business operator granted permission to merge shall undertake it in accordance with the time period and conditions set out in the permission, as prescribed by the Commission.

In case there is a violation or conduct not in accordance with paragraph one, the Commission shall have the power to withdraw the permission order in whole or in part and may impose a time period for the business operator to take action accordingly.

Section 54: Any business operators competing with each other in the same market shall not jointly undertake any conduct which monopolizes, reduces, or restricts competition in that market in one of the following ways:

(1) to fix, whether direct or indirectly, purchasing or selling price, or any trading conditions that affect the price of goods or services;

(2) to limit the quantity of goods or services that each business operator will produce, purchase, sell, or provide, as agreed;

(3) to knowingly establish an agreement or conditions in order for one side to win an auction or to win in a bid of goods or services or in order for another side not to enter an auction or a bid of goods or services;

(4) to allocate areas in which each business operator will sell, or reduce a sale or purchase goods or services, or allocate purchasers or sellers to or from which each business operator will sell or purchase goods or services under the condition that other business operators shall not purchase or sell those goods or services.

The provisions under paragraph one shall not apply to the conduct of business operators related to each other due to a policy or commanding power as prescribed in the Commission's notification.

Section 55: Business operators shall not jointly undertake conduct which monopolizes, reduces or restricts competition in a market in one of the following ways:

(1) to establish conditions referred to under Section 54 (1), (2), or (4) among business operators which are not competitors in the same market;

(2) to reduce the quality of goods or services to a condition lower than that previously produced, sold, or provided;

(3) to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type;

(4) to set conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed;

(5) to enter joint agreements in other manners as prescribed in the Commission's notification.

Section 56: The provisions under Section 55 shall not apply to one of the following situations, where:

(1) the conduct of business operators is related to each other due to a policy or commanding power as prescribed in the Commission's notification;

(2) the joint business agreement is for the purpose of developing production, distribution of goods, and promotion of technical or economic progress;

(3) the joint agreement is in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted;

(4) the agreement type or business format is prescribed in a ministerial regulation on the Commissions' advice.

A joint agreement under paragraphs (2) and (3) shall not result in any limitation exceeding what is the necessary in order to achieve the benefits mentioned above, shall not cause a monopoly power or substantially restrict competition in a market, and impact on consumers shall be considered.

Section 57: No business operator shall undertake any conduct resulting in damage on other business operators in one of the following ways:

- (1) by unfairly obstructing the business operation of other business operators;
- (2) by unfairly utilizing superior market power or superior bargaining power;
- (3) by unfairly setting trading conditions that restrict or prevent the business operation of others;
- (4) by conduct in other ways prescribed in the Commission's notification.

Section 58: No business operator shall carry out a legal act or enter a contract with a business operator in a foreign country without appropriate justification, where that action will result in a monopoly conduct or unfairly restrict trade, as well as cause serious harm to the economy and consumers' benefits as a whole.

Section 59: In order to facilitate business operations, a business operator may submit a request to the Commission to consider the following matters:

- (1) the conduct of a business operator that has a dominant power in a market under Section 50;
- (2) the business operation having a nature pursuant to Section 54, Section 55, Section 57 or Section 58;

Submission of a request under paragraph one shall be in accordance with criteria and methods prescribed in the Commission's notification.

In consideration of a request under paragraph one, the Commission may impose any condition which the business operator must follow in order to comply with this Act.

The Commission's decision shall be binding only on the requester and in the scope and time period as prescribed by the Commission. If, afterwards, it appears to the Commission that the information received from the requester which is used in the Commission's consideration, is not substantially accurate nor complete, or the requesting business operator does not comply with the conditions prescribed by the Commission under paragraph three, the Commission shall withdraw its decision and notify the business operator.

Section 60: In a case where the Commission has sufficient evidence to believe that a business operator has violated or will violate Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57 or Section 58, the Commission shall have the power to make an order in writing to instruct that business operator to suspend, stop, or correct or change such conduct. This shall be in accordance with criteria, methods, conditions, and the time period prescribed by the Commission.

In issuing an order under paragraph one, the Commission may impose any necessary conditions required in order to achieve the purposes of this Act.

The business operator receiving the notification of such order under paragraph one, who disagrees with such order, shall have a right to file a lawsuit in an administrative court within 60 days from the date of order's receipt.

Section 61: In issuing an order under Section 60, the Commission shall indicate the reasons for such order covering both factual information and legal issues along with the endorsement of the Commissioners who considered such matters.

Notification of the order under paragraph one shall be carried out within 7 days from the date of the Commission's having issued the order. The provisions under Section 66 shall apply *mutatis mutandis*.

Section 62: Any person receiving an order under Section 60 shall act according to such order, unless the administrative court issues a judgment or an order of stay of execution or order to withdraw the Commission's order.

CHAPTER 4 OFFICERS

Section 63: In performing their duties under this Act, officers shall have the following powers:

(1) to issue a subpoena for any person to give an oral presentation and provide factual information or provide an explanation in writing or to send accounts, registrations, documents or any evidence for examination or consideration;

(2) to enter places and venues of operation, production, sale, purchase, storage of goods, service provision of a business operator or any person, or other places where it is reasonably believed that there is a violation of provisions under this Act in order to conduct an examination under this Act to search and seize, or gather documents, accounts, registrations, or other evidence for the benefit of examination and proceeding with a case under this Act;

In this case, officers shall have the power to inquire into factual information or call for accounts, registrations, documents or other evidence from business operators or relevant persons, as well as instruct any person on the premises to act as necessary.

(3) to collect or bring a good in the required quantity as a sample for examination or analysis without paying for the good. This shall be carried out in accordance with the criteria prescribed in the Commission's notification.

In case of (2), if it is a search pursuant to the Criminal Procedure Code, there shall be a search warrant unless there is another cause to believe that the process of getting a search warrant may be too slow and documents or such evidence may be removed, hid, destroyed or transformed, in which case the officers shall proceed to search, seize, or gather documents or evidence related to an offence without a prior search warrant. However, the Criminal Procedure Code shall be followed. Beginning a search at night shall be prohibited unless it is an operational time relevant to the place being searched.

Section 64: In performing the duties of officers, relevant persons shall facilitate those officers as appropriate.

Section 65: In performing their duties, an officer shall present his or her identification card to relevant persons.

The identification card shall conform to the format prescribed in the Commission's notification.

Section 66: In sending a letter pursuant to Section 63(1), the provisions regarding notifications under the Administrative Procedural Law shall apply *mutatis mutandis*.

Section 67: In performing duties under this Act, officers shall be officers under the Criminal Code.

Section 68: In performing duties under this Act, officers shall have the same powers as those of administrative officers or police officers under the Criminal Procedure Code.

CHAPTER 5

FILING OF LAWSUITS FOR DAMAGE

Section 69: A person receiving damages due to a violation of Section 50, Section 51 paragraph two, Section 54, Section 55, Section 57, or Section 58, shall have a right to file a lawsuit for damage from a violator of the law.

In filing a lawsuit for damage under paragraph one, the Consumer Protection Commission, or associations or foundations that the Consumer Protection Commission recognizes under the law on consumer protection, shall have a right to file a lawsuit for damage on behalf of consumers or members of the associations or foundations, as the case may be.

Section 70: In filing a lawsuit for damage under Section 69, if the lawsuit has not been filed within the time period of one year from the date the person suffering damage

knows or should have known the cause of such damage, the right to bring the case to the court shall lapse.

CHAPTER 6
PUNISHMENTS
PART 1
CRIMINAL PUNISHMENTS

Section 71: Any person violating Section 16 or Section 43 shall be subject to a term of imprisonment of not more than one year or a fine of not more than 100,000 Baht or both.

Section 72: Any person violating Section 50 or Section 54 shall be subject to a term of imprisonment of not more than two years or a fine of not more than ten percent of the turnover in the year of the offence, or both.

In a case where it is an offence committed in the first year of the business operation, the person shall be subject to a term of imprisonment of not more than two years and a fine of not more than 1 million Baht, or both.

Section 73: Any person not complying with a summons document from officers under Section 63(10) shall be subject to a term of imprisonment of not more than three months or a fine of not more than 5,000 Baht, or both.

Section 74: Any person obstructing officers in the performance of their duties under Section 63(2) or (3) shall be subject to a term of imprisonment of not more than one year or a fine of not more than 20,000 Baht, or both.

Section 75: Any person not facilitating officers under Section 64 shall be subject to a term of imprisonment of not more than one month or a fine of not more than 2,000 Baht, or both.

Section 76: Any person revealing factual information regarding the business or operation of a business operator that is factual information normally reserved and not revealed by a business operator and was received or known due to performance of duties under this Act, shall be subject to an imprisonment of not more than one year or a fine of not more than 100,000 Baht, or both. There is an exception to this case when the disclosure is in accordance with the performance of government duty or for the benefit of investigations, inquiries, case proceedings, or the operation of the Office.

Any person receiving or knowing any factual information from the person under paragraph one and revealing that information in a manner that will likely damage any person, shall be subject to the same penalties.

Section 77: In the case where an offender is a legal person and if such offence of that legal person is committed under instruction or through the conduct of a director,

manager, or any person responsible for the operation of such legal person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 78: Any person suffering damage has the right to file a complaint of an offence under Section 72 to the Commission for its consideration of the matter under this Act, however, no right is provided to the person suffering damage to file a criminal lawsuit directly by himself or herself.

Section 79: For all offences under this Act, the Commission shall have the power to settle cases. In executing such power, the Commission may assign the Secretary-General to act on the Commission's behalf.

When the alleged person pays the fine for the amount of settlement within the required period, it shall be deemed that the case is terminated under the provisions of the Criminal Procedure Code.

The amount of fine to settle cases shall be determined according to criteria, methods, and conditions prescribed in the Commission's notification.

PART 2

ADMINISTRATIVE PUNISHMENTS

Section 80: Any person violating Section 51 paragraph one, shall be subject to an administrative fine of not more than 200,000 Baht and a further fine of not more than 10,000 Baht per day for the duration or the period the violation occurred.

Section 81: Any person violating Section 51 paragraph two or not complying with Section 53 shall be subject to an administrative fine of not more than 0.5 percent of transaction value of the merger.

Section 82: Any person violating Section 55, Section 57, or Section 58, shall be subject to an administrative fine of not more than 10 percent of the turnover in the year of offence.

In a case where it is an offence committed in the first year of the business operation, the person committing the offence shall be subject to an administrative fine of not more than 1 million Baht.

Section 83: Any person violating Section 60 shall be subject to an administrative fine of not more than 6 million Baht and a further fine of not more than 300,000 Baht per day when the violation continues.

Section 84: In cases where an offender subject to an administrative fine is a legal person, if such offence of that legal person is committed under instruction or through the conduct of a director, manager, or any person responsible for the operation of such legal

person, or in a case where that person has the duty to instruct or perform some conduct but fails to instruct or perform the conduct causing that legal person to commit an offence, such person shall also be subject to a punishment as prescribed for that particular offence.

Section 85: In considering the issuance of an order to impose an administrative fine the Commission shall consider the seriousness of the offense first.

In a case where the person subject to an administrative fine does not pay that fine, the provisions related to an administrative order's execution under the Law on Administrative Procedure shall apply *mutatis mutandis*. In a case where there is no officer to execute such an order, or there is a person but he or she is unable to proceed with the execution of the order, the Commission shall have the power to file a lawsuit in an administrative court in order to enforce the payment of the fine. In this case, if the administrative court views that such an order for the payment of the fine is lawful, the administrative court shall have the power to consider and make a judgment and enforce seizure or take hold of properties to sell by auction to pay for the fine imposed.

TRANSITIONAL CHAPTER

Section 86: The Trade Competition Commission under the Trade Competition Act B.E. 2542 which holds its position on the day before the date this Act is effective, shall perform its duties under this Act until the appointment of the Trade Competition Commission under this Act. The process of application and selection of the Trade Competition Commission under this Act shall be completed within 270 days from the date this Act is effective.

Section 87: The Director-General of the Department of Internal Trade shall perform the duties of the Secretary-General until the appointment of the Secretary-General under this Act. The process of appointing the Secretary-General shall be completed within 180 days from the date of the first appointment of the Trade Competition Commission.

Section 88: For the work of the Office to proceed efficiently, the Minister may approve for government officers in the Ministry of Commerce to assist with the work of the Office temporarily for not more than two terms, and each term for not more than two years. All government officers shall receive salaries from their original office.

Section 89: Subject to Section 90, government officers performing their duties in the Office of the Trade Competition Commission under the Trade Competition Act B.E. 2542 holding their positions on the date after the period determined under Section 90, shall be government officers of the Department of Internal Trade, Ministry of Commerce, and shall perform duties in the Office. Such performance of duties shall be considered the performance of civil service duties for the Department of Internal Trade, Ministry of Commerce.

Government officers performing duties in the Office under paragraph one shall receive a salary or wage, as well as others rights and benefits previously received, until he or she is assigned and appointed for a position in the Office. Such government officer shall not be appointed and receive a salary or wage lower than the amount previously received.

Section 90: Government officers under Section 89 who are willing to transfer to become an official of the Office shall exercise the right by informing of their intention in writing to their supervisor within 60 days from the date this Act take effects. Those who do not inform of their intention within such period shall return to perform their duties in the Department of Internal Trade, Ministry of Commerce.

Assignments and appointments of government officers who are willing to transfer to become an official in any position in the Office under paragraph one, shall be in accordance with the capacity, qualification, and salary or wage rates, prescribed by the Commission.

The budget for salaries and wages of government officers of the Department of Internal Trade, Ministry of Commerce, who are assigned and appointed as officials of the Office under paragraph two, shall be transferred to the Office from the date of assignment and appointment.

Government officers who are willing to transfer to become an official under paragraph one shall be deemed resigned from the civil service due to termination or dissolution of such position under the law on government pensions or the law on the government pension fund, as the case may be.

Section 91: Operations, properties, rights, duties, debts, and the budget of the Department of Internal Trade, Ministry of Commerce that are related to the work of the Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, shall be transferred to the Office.

Section 92: All the ministerial regulations, notifications, criteria, or regulations issued under the Trade Competition Act B.E. 2542 that are effective on the date before this Act takes effect, shall still remain effective as long as they do not conflict or contradict this Act and until ministerial regulations, notifications, or regulations issued under this Act are effective.

The process of issuing ministerial regulations, notifications, or regulations under paragraph one shall be completed within 365 days from the date this Act becomes effective. If this process is not completed within the specified time, the Minister shall report reasons of non-completion to the Cabinet.

Countersigning the Royal Command
General Prayut Chan-o-cha
Prime Minister

Rates of Fees

- | | | |
|--|--------------|---------------|
| (1) Request for a permission to conduct a merger under Section 51 paragraph two | 250,000 Baht | per a request |
| (2) Request for a consideration under Section 59 | 50,000 Baht | per a request |
| (3) Fee for copying or certifying a copy of orders under Section 52, considerations under Section 59, or orders under Section 60 | 100 Baht | per page |

Unofficial Translation

Notes:- The reasons to pass this Act are: the Trade Competition Act B.E. 2542, is due to its having been in force for a long time resulting in some provisions being inconsistent with the pattern and conduct of business which has changed over time. In addition, regulation regarding competition at present is under the power of the Office of Trade Competition Commission, an office established inside the Department of Internal Trade, Ministry of Commerce, making the work process inflexible and lacking independence, rendering the regulations on business operation to have free and fair competition are not as efficient as it should be. Therefore, it is appropriate to improve measures in regulating competition to become more efficient under an authority that is flexible and independent, consistent with development of patterns and behaviors in business operations which have been changing over time. It is thus necessary to pass this Act.

Unofficial Translation



VIETNAM

NATIONAL ASSEMBLY
No. 27-2004-QH11

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

LAW ON COMPETITION

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and added to by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law governs competition.

CHAPTER I

General Provisions

Article 1 *Scope of governance*

This Law governs practices in restraint of competition, unfair competitive practices, the order and procedures for resolution of competition cases, and measures for dealing with breaches of the laws on competition.

Article 2 *Applicable entities*

This Law shall apply to:

1. Organizations and individuals conducting business (hereinafter together referred to as *enterprises*), including enterprises engaged in production or supply of public utility products or services, enterprises conducting business in State monopoly industries and sectors and overseas enterprises operating in Vietnam.
2. Industry associations operating in Vietnam.

Article 3 *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

1. *Relevant market* consists of relevant product market and relevant geographical market.

Relevant product market means a market comprising goods or services which may be substituted for each other in terms of characteristics, use purpose and price.

Relevant geographical market means a specific geographical area in which goods or services may be substituted for each other with similar competitive conditions and which area is significantly different from neighbouring areas.

2. *Industry associations* consist of trade associations and professional associations.
3. *Practices in restraint of competition* means practices of enterprises which reduce, distort or hinder competition in the market, including practices being agreements in restraint of competition, abuse of dominant market position, abuse of monopoly position and economic concentration.
4. *Unfair competitive practices* means competitive practices by an enterprise during the business process which are contrary to general standards of business ethics and which cause or may cause damage to the interests of the State and/or to the legitimate rights and interests of other enterprises or of consumers.
5. *Market share* of an enterprise with respect to a certain type of goods or services means the percentage of turnover from sales of such enterprise over the total turnover of all enterprises conducting business in such type of goods or services in the relevant market or the percentage of turnover of inwards purchases of such enterprise over the total turnover of inwards purchases of all enterprises conducting business in such type of goods or services in the relevant market for a month, quarter or year.
6. *Combined market share* means the total market share in the relevant market of the enterprises participating in an agreement in restraint of competition or in an economic concentration.
7. *Total prime cost* of goods and services comprises:
 - (a) Prime cost of producing products and services; prime cost of purchasing goods;
 - (b) Expenses of circulating goods and services to consumers.

8. *Competition cases* means cases with an indication of a breach of this Law which are investigated by the competent State body and dealt with in accordance with the provisions of law.
9. *Competition legal proceedings* means activities of bodies, organizations and individuals in accordance with the order and procedures for resolving and/or dealing with competition cases in accordance with the provisions of this Law.
10. *Business secret* means information which satisfies all of the following conditions:
 - (a) It is not common knowledge;
 - (b) It is able to be applied in business and when used will create an advantage for the information holder over an entity which does not have or use such knowledge;
 - (c) It is protected by its owner by necessary means in order that such information will not be disclosed and will be difficult to access.
11. *Multi-level selling of goods* means a marketing method in order to conduct a retail sale of goods which satisfies the following conditions:
 - (a) Marketing in order to conduct a retail sale of goods is implemented via a network of participants comprising a number of different levels and branches;
 - (b) A participant markets goods directly to a consumer at the residence or working location of the consumer or at some other place which is not the regular retail sales location of the enterprise or participant;
 - (c) A participant in the network for multi-level selling of goods will receive commissions, bonuses or other economic benefits from the results of marketing sales of goods by himself or herself and by other persons below the participant in the network organized by such participant and approved by the enterprise engaged in multi-level selling of goods.

Article 4 *Right to compete in business*

1. All enterprises shall be entitled to compete freely within the framework of the law. The State shall protect the right to compete lawfully in business.
2. Competition must be undertaken on the principles of honesty; non-infringement of the interests of the State, the public interest, and the lawful

rights and interests of enterprises and consumers; and compliance with the provisions of this Law.

Article 5 *Application of this Law, other relevant laws and international treaties*

1. Where there is any difference between the provisions of this Law and the provisions of another law with respect to a practice in restraint of competition or unfair competitive practice, the provisions of this Law shall apply.
2. Where an international treaty which the Socialist Republic of Vietnam has signed or acceded to contains provisions which are different from those in this Law, the provisions of such international treaty shall prevail.

Article 6 *Practices of State administrative bodies which are prohibited*

State administrative bodies shall not be permitted to perform the following acts in order to hinder competition in the market:

1. Force an enterprise, organization or individual to purchase or sell goods or services with an enterprise appointed by such body, except for goods and services belonging to State monopoly sectors or in cases of emergency as stipulated by law;
2. Discriminate between enterprises;
3. Force industry associations or enterprises to associate with each other aimed at excluding, restraining or hindering other enterprises from competing in the market;
4. Other practices which hinder the lawful business activities of enterprises.

Article 7 *Responsibility for State administration of competition*

1. The Government shall exercise uniform State administration of competition.
2. The Ministry of Trade shall be responsible before the Government for the exercise of State administration of competition.
3. Ministries, ministerial equivalent bodies and people's committees of provinces and cities under central authority shall, within the scope of their respective duties and powers, be responsible to co-ordinate with the Ministry of Trade in the exercise of State administration of competition.

CHAPTER II

Control of Practices in Restraint of Competition

SECTION 1

Agreements in Restraint of Competition

Article 8 *Agreements in restraint of competition*

Agreements in restraint of competition shall comprise:

1. Agreements either directly or indirectly fixing the price of goods and services;
2. Agreements to share consumer markets or sources of supply of goods and services;
3. Agreements to restrain or control the quantity or volume of goods and services produced, purchased or sold;
4. Agreements to restrain technical or technological developments or to restrain investment;
5. Agreements to impose on other enterprises conditions for signing contracts for the purchase and sale of goods and services or to force other enterprises to accept obligations which are not related in a direct way to the subject matter of the contract;
6. Agreements which prevent, impede or do not allow other enterprises to participate in the market or to develop business;
7. Agreements which exclude from the market other enterprises which are not parties to the agreement;
8. Collusion in order for one or more parties to win a tender for supply of goods and services.

Article 9 *Prohibited agreements in restraint of competition*

1. The agreements stipulated in clauses 6, 7 and 8 of article 8 of this Law shall be prohibited.
2. The agreements in restraint of competition stipulated in clauses 1, 2, 3, 4 and 5 of article 8 of this Law shall be prohibited when the parties to the agreement have a combined market share of thirty (30) per cent or more of the relevant market.

Article 10 *Exemptions for prohibited agreements in restraint of competition*

1. An agreement in restraint of competition stipulated in clause 2 of article 9 of this Law shall be entitled to exemption for a definite period if it satisfies one of the following criteria aimed at reducing prime costs and benefiting consumers:
 - (a) It rationalizes an organizational structure or a business scale or increases business efficiency;
 - (b) It promotes technical or technological progress or improves the quality of goods and services;
 - (c) It promotes uniform applicability of quality standards and technical ratings of product types;
 - (d) It unifies conditions on trading, delivery of goods and payment, but does not relate to price or any pricing factors;
 - (dd) It increases the competitiveness of medium and small sized enterprises;
 - (e) It increases the competitiveness of Vietnamese enterprises in the international market.
2. The order, procedures and duration of exemptions shall be implemented in accordance with the provisions in Section 4 of this Chapter.

SECTION 2**Abuse of Dominant Market Position and Monopoly Position****Article 11** *Enterprises and groups of enterprises in dominant market position*

1. An enterprise shall be deemed to be in a dominant market position if such enterprise has a market share of thirty (30) per cent or more in the relevant market or is capable of substantially restraining competition.
2. A group of enterprises shall be deemed to be in a dominant market position if they act together in order to restrain competition and fall into one of the following categories:
 - (a) Two enterprises have a market share of fifty (50) per cent or more in the relevant market;
 - (b) Three enterprises have a market share of sixty five (65) per cent or more in the relevant market;

- (c) Four enterprises have a market share of seventy five (75) per cent or more in the relevant market.

Article 12 *Enterprises in monopoly position*

An enterprise shall be deemed to be in a monopoly position if there are no enterprises competing in the goods and services in which such enterprise conducts business in the relevant market.

Article 13 *Practices constituting abuse of dominant market position which are prohibited*

Any enterprise or group of enterprises in a dominant market position shall be prohibited from carrying out the following practices:

1. Selling goods or providing services below total prime cost of the goods aimed at excluding competitors;
2. Fixing an unreasonable selling or purchasing price or fixing a minimum re-selling price goods or services, thereby causing loss to customers;
3. Restraining production or distribution of goods or services, limiting the market, or impeding technical or technological development, thereby causing loss to customers;
4. Applying different commercial conditions to the same transactions aimed at creating inequality in competition;
5. Imposing conditions on other enterprises signing contracts for the purchase and sale of goods and services or forcing other enterprises to agree to obligations which are not related in a direct way to the subject matter of the contract;
6. Preventing market participation by new competitors.

Article 14 *Practices constituting abuse of monopoly position which are prohibited*

Any enterprise in a monopoly position shall be prohibited from carrying out the following practices:

1. Practices stipulated in article 13 of this Law;
2. Imposing disadvantageous conditions on customers;
3. Abuse of monopoly position in order to change or cancel unilaterally a signed contract without legitimate reason.

Article 15 *Control of enterprises operating in State monopoly sectors and of enterprises engaged in production or supply of public utility products or services*

1. The State shall control enterprises which operate in State monopoly sectors by taking the following measures:
 - (a) Deciding the selling price or purchasing price of goods and services in State monopoly sectors;
 - (b) Deciding the quantity, volume, price and market scope of goods and services in State monopoly sectors.
2. The State shall control enterprises which produce or supply public utility products or services by the method of placing orders, assigning plans or conducting tendering in accordance with prices or fees stipulated by the State.
3. When conducting business activities outside State monopoly sectors and other than production or supply of public utility products or services, enterprises shall not be subject to the controls stipulated in clauses 1 and 2 of this article but shall be governed by the other provisions of this Law.

SECTION 3

Economic Concentration

Article 16 *Economic concentration*

Economic concentration means conduct of enterprises comprising:

1. Merger of enterprises;
2. Consolidation of enterprises;
3. Acquisition of an enterprise;
4. Joint venture between enterprises;
5. Other forms of economic concentration as stipulated by law.

Article 17 *Merger, consolidation, acquisition and joint venture between enterprises*

1. Merger of enterprises means the transfer by one or more enterprise(s) of all of its lawful assets, rights, obligations and interests to another enterprise and at the same time the termination of the existence of the merging enterprise(s).

2. Consolidation of enterprises means the transfer by two or more enterprises of all of their lawful assets, rights, obligations and interests to form one new enterprise and at the same time the termination of the existence of the consolidating enterprises.
3. Acquisition of an enterprise means the purchase by one enterprise of all or part of the assets of another enterprise sufficient to control or govern the activities of one or all of the trades of the acquired enterprise.
4. Joint venture between enterprises means two or more enterprises together contribute a portion of their lawful assets, rights, obligations and interests to form a new enterprise.

Article 18 *Prohibited cases of economic concentration*

Any economic concentration shall be prohibited if the enterprises participating in the economic concentration have a combined market share in the relevant market of more than fifty (50) per cent, except in the cases stipulated in article 19 of this Law or where the enterprise after the economic concentration still falls within the category of medium and small sized enterprises as stipulated by law.

Article 19 *Cases of exemption for prohibited economic concentration*

A prohibited economic concentration as stipulated in article 18 of this Law may be considered for exemption in the following cases:

1. One or more of the parties participating in the economic concentration is or are at risk of being dissolved or of becoming bankrupt;
2. The economic concentration has the effect of extension of export or contribution to socio-economic development and/or to technical and technological progress.

Article 20 *Notification of economic concentration*

1. In the case where enterprises participating in an economic concentration have a combined market share in the relevant market of from thirty (30) per cent to fifty (50) per cent, the legal representative of such enterprises must notify the administrative body for competition prior to carrying out the economic concentration.

If the enterprises participating in the economic concentration have a combined share in the relevant market of less than thirty (30) per cent or if, after the economic concentration, the enterprise still falls within the category of medium and small sized enterprise as stipulated by law, they shall not be required to provide notification.

2. Enterprises participating in an economic concentration and entitled to exemption pursuant to article 19 of this Law shall submit a file for request of exemption in accordance with the provisions in Section 4 of this Chapter, instead of providing notification of the economic concentration.

Article 21 *File for notification of economic concentration*

1. A file for notification of an economic concentration shall comprise:
 - (a) Written notification of the economic concentration in the form issued by the administrative body for competition;
 - (b) Valid copy of the certificate of business registration of all of the enterprises participating in the economic concentration;
 - (c) Financial statements for the last two consecutive years of all of the enterprises participating in the economic concentration, certified by an auditing organization as stipulated by law;
 - (d) List of the enterprises which are subsidiary entities of the enterprises participating in the economic concentration;
 - (dd) List of all types of goods and services in which the enterprises participating in the economic concentration and their subsidiaries are currently conducting business;
 - (e) Report on market share in the relevant market of the enterprises participating in the economic concentration for the last two consecutive years.
2. The enterprise submitting a file for notification of an economic concentration shall be responsible for the truthfulness of the file.

Article 22 *Acceptance of jurisdiction over file for notification of economic concentration*

The administrative body for competition shall be responsible, within a time-limit of seven working days from the date of receipt of a file, to provide written notice to the enterprise submitting the file on the completeness and validity of the file. If a file is incomplete, the administrative body for competition shall be responsible to specify what items are required to be supplemented.

Article 23 *Time-limit for reply to notification of economic concentration*

1. The administrative body for competition shall be responsible, within a time-limit of forty five (45) days from the date of receipt of a complete file for notification of an economic concentration, to provide a written reply to the enterprise which submitted the file. The written reply of the administrative body for competition must confirm that the economic concentration belongs to one of the following categories:
 - (a) The economic concentration does not fall within the prohibited category;
 - (b) The economic concentration is prohibited pursuant to article 18 of this Law. The reasons for the prohibition must be specified in the written reply.
2. In complex cases of economic concentration, the head of the administrative body for competition may issue a decision extending the time-limit for a reply as stipulated in clause 1 of this article, but on not more than two occasions and each extension may not exceed thirty (30) days, and there must be written notice to the enterprise which submitted the file, specifying the reason for the extension, at least three working days prior to expiry of the time-limit for a reply to a notification.

Article 24 *Carrying out economic concentrations*

The legal representative of enterprises participating in an economic concentration in the category required to provide notification as stipulated in clause 1 of article 20 of this Law may conduct procedures for the economic concentration at the authorized State body in accordance with the laws on enterprises only after having received a written reply from the administrative body for competition that the economic concentration is not within the prohibited category.

SECTION 4

Procedures for Obtaining Exemption**Article 25** *Authority to make decision on exemption*

1. The Minister of Trade shall consider and make a written decision on exemptions stipulated in article 10 and clause 1 of article 19 of this Law.
2. The Prime Minister of the Government shall consider and make a written decision on exemptions stipulated in clause 2 of article 19 of this Law.

Article 26 *Subjects submitting file for request of exemption*

Subjects submitting a file for request of exemption shall be the parties intending to enter an agreement in restraint of competition or to participate in an economic concentration.

Article 27 *Legal representative of parties to agreement in restraint of competition or to economic concentration*

1. Parties intending to enter an agreement in restraint of competition or to participate in an economic concentration may appoint a representative to conduct the procedures for request of exemption. This appointment must be in writing and certified by all of the parties.
2. The rights and obligations of the representative shall be agreed and regulated by the parties.
3. All of the parties shall be responsible for the acts of the representative within the scope of authorization.

Article 28 *File for request of exemption for agreement in restraint of competition*

1. A file for request of exemption for an agreement in restraint of competition shall comprise:
 - (a) Application in the form issued by the administrative body for competition;
 - (b) Valid copy of certificate of business registration of each of the enterprises participating in the agreement in restraint of competition; if an association intends to participate, the charter of the association;
 - (c) Financial statements for the last two consecutive years of each of the enterprises participating in the agreement in restraint of competition, certified by an auditing organization in accordance with law;
 - (d) Report on market share in the relevant market for the last two consecutive years of the enterprises participating in the agreement in restraint of competition;
 - (dd) Detailed explanatory report on how the conditions for exemption as stipulated in article 10 of this Law are satisfied;

- (e) Power of attorney to the representative from all parties participating in the agreement in restraint of competition.
2. The party submitting the application file and all of the parties participating in the agreement shall be responsible for the truthfulness of the file.

Article 29 *File for request of exemption for economic concentration*

1. A file for request of exemption for an economic concentration shall comprise:
 - (a) Application in the form issued by the administrative body for competition;
 - (b) Valid copy of certificate of business registration of each of the enterprises participating in the economic concentration;
 - (c) Financial statements for the last two consecutive years of each of the enterprises participating in the economic concentration, certified by an auditing organization in accordance with law;
 - (d) Report on market share in the relevant market for the last two consecutive years of each of the enterprises participating in the economic concentration;
 - (dd) Detailed explanatory report on how the conditions for entitlement to exemption as stipulated in article 19 of this Law are satisfied;
 - (e) Power of attorney to the representative from all of the parties participating in the economic concentration.
2. The party submitting the application file and all of the parties participating in the economic concentration shall be responsible for the truthfulness of the file.

Article 30 *Acceptance of jurisdiction over file for request of exemption*

1. The administrative body for competition shall be responsible to accept jurisdiction over files for request of exemption and to forward its opinion to the Minister of Trade for decision or to submit same to the Prime Minister for his decision.
2. Within a time-limit of seven working days from the date of receipt of a file for request of exemption, the administrative body for competition shall be responsible to provide written notice to the party which submitted the file on the completeness of the file. If a file is incomplete, the administrative

body for competition shall be responsible to specify what items are required to be supplemented.

3. The party submitting a file must pay a fee for evaluation of the file for request of exemption in accordance with law.

Article 31 *Request to supplement file for request of exemption*

The administrative body for competition shall have the right to require the party which submitted the file for request of exemption to add necessary documents and information relating to the proposed agreement in restraint of competition or economic concentration and to provide additional explanation of any unclear matters.

Article 32 *Provision of information by related parties*

1. The administrative body for competition shall have the right to require organizations and individuals concerned to provide information about agreements in restraint of competition and economic concentrations over which the administrative body for competition has accepted jurisdiction.
2. Within a time-limit of fifteen (15) days from the date of receipt of a request from the administrative body for competition, an organization or individual concerned shall be responsible to provide a written reply on the matters requested.

Article 33 *Withdrawal of request of exemption*

1. A party wishing to withdraw its request of exemption after submission must provide written notice to the administrative body for competition.
2. The administrative body for competition shall not refund fees for evaluation of a file for request of exemption in the case stipulated in clause 1 of this article.

Article 34 *Time-limits for issuance of decision*

1. The Minister of Trade shall, within a time-limit of sixty (60) days from the date of receipt of a complete file for request of exemption, issue one of the following decisions:
 - (a) Agree that the parties are entitled to an exemption;
 - (b) Not agree that the parties are entitled to an exemption.
2. In complex cases, the Minister of Trade may extend the time-limit for issuance of the decision stipulated in clause 1 of this article, but on not

more than two occasions and each extension may not exceed thirty (30) days.

3. Where an economic concentration case falls within the authority of the Prime Minister of the Government to grant an exemption, the time-limit for issuance of a decision agreeing or not agreeing to grant of exemption shall be ninety (90) days from the date of receipt of a complete file, and one hundred and eighty (180) days in complex cases.
4. If the time-limit for issuance of a decision is extended, the administrative body for competition shall provide a written notice to the party which submitted the file, specifying the reasons, at least three working days prior to expiry of the time-limit for issuance of a decision.

Article 35 *Decisions granting exemption*

1. A decision granting exemption must contain the following main particulars:
 - (a) Names and addresses of the parties permitted to carry out the practice;
 - (b) Contents of the permitted practice;
 - (c) Duration of effectiveness of the exemption, conditions on and obligations of the parties.
2. The administrative body for competition shall be responsible to make public any decision granting exemption in accordance with regulations of the Government.

Article 36 *Carrying out agreement in restraint of competition or economic concentration in cases granted exemption*

1. Parties participating in an agreement in restraint of competition which are granted exemption may perform such agreement only after they have a decision granting exemption from the Minister of Trade.
2. The legal representative of enterprises participating in an economic concentration which are granted exemption may conduct procedures for the economic concentration at the authorized State body in accordance with the laws on enterprises only after they have a decision granting exemption from the Prime Minister of the Government or the Minister of Trade.

Article 37 *Revocation of decision granting exemption*

1. Any entity authorized to issue a decision granting exemption shall also have the right to revoke such decision.
2. A decision granting exemption shall be revoked in the following circumstances:
 - (a) Upon discovery of fraud during application for exemption;
 - (b) When an enterprise granted exemption fails to fulfil the conditions and discharge the obligations within the time-limit stipulated in the decision granting exemption;
 - (c) When the conditions for exemption no longer exist.

Article 38 *Complaint about granting of entitlement to exemption*

Any enterprise which disagrees with a decision granting exemption or not granting exemption or a decision revoking a decision granting exemption shall have the right to complain in accordance with the laws on complaints and denunciations.

CHAPTER III

Unfair Competitive Practices

Article 39 *Unfair competitive practices*

Unfair competitive practices in this Law comprise:

1. Misleading instructions;
2. Infringement of business secrets;
3. Coercion in business;
4. Defamation of another enterprise;
5. Causing disruption to the business activities of another enterprise;
6. Advertisement aimed at unfair competition;
7. Promotion aimed at unfair competition;
8. Discrimination by an association;

9. Illegal multi-level selling of goods;
10. Other unfair competitive practices stipulated by the Government determined in accordance with the criteria stipulated in clause 4 of article 3 of this Law.

Article 40 *Misleading instructions*

1. Enterprises shall be prohibited from using instructions which contain misleading information about commercial names, business slogans, business logos, packaging, geographical indications and other elements in accordance with regulations of the Government in order to mislead customers in their understanding of goods and services for competitive purposes.
2. Conducting business in goods and services which use misleading instructions as prescribed in clause 1 of this article shall be prohibited.

Article 41 *Infringement of business secrets*

Enterprises shall be prohibited from conducting the following practices:

1. Accessing or collecting information in the category of business secret by countering the security measures taken by the lawful owner of such business secret;
2. Disclosing or using information in the category of business secret without permission from the lawful owner of such business secret;
3. Breaching a confidentiality contract or cheating or abusing the confidence of a person with an obligation to maintain confidentiality, aimed at accessing, collecting and disclosing information in the category of business secret of the owner of such business secret;
4. Accessing or collecting information in the category of business secret of an entity which conducts procedures stipulated by law in relation to business or conducts procedures to circulate products by countering security measures taken by State bodies, or using such information for business objectives or for the objective of applying for the issuance of a business-related permit or a permit to circulate products.

Article 42 *Coercion in business*

Enterprises shall be prohibited from coercing customers or business partners of another enterprise by threatening or coercive conduct in order to compel them not to transact or to cease a transaction with such other enterprise.

Article 43 *Defamation of another enterprise*

Enterprises shall be prohibited from defaming another enterprise by any direct or indirect act of providing untruthful information which adversely impacts on the reputation, financial position or business activities of such other enterprise.

Article 44 *Causing disruption to business activities of another enterprise*

Enterprises shall be prohibited from causing disruption to the lawful business activities of another enterprise by any direct or indirect act which hinders or interrupts the business activities of another enterprise.

Article 45 *Advertisement aimed at unfair competition*

Enterprises shall be prohibited from conducting the following advertising activities:

1. Comparing directly their own goods and services with those of the same type of another enterprise;
2. Imitating another advertising product in order to mislead customers;
3. Providing false or misleading information to customers about one of the following matters:
 - (a) Price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor or place of processing;
 - (b) Manner of use, method of service, warranty period;
 - (c) Other false or misleading information;
4. Other advertising activities prohibited by law.

Article 46 *Promotions aimed at unfair competition*

Enterprises shall be prohibited from conducting the following promotional activities:

1. Holding a promotion providing false information about prizes;
2. A promotion which is untruthful or misleading about goods and services in order to deceive customers;

3. Discriminating between similar customers in different promotional areas within the same promotional campaign;
4. Offering free goods to customers for trial use but requiring exchange of goods of the same type produced by another enterprise which the customer is currently using in order that the customer will use the goods of the promoting enterprise;
5. Conducting other promotional activities which are prohibited by law.

Article 47 *Discrimination by associations*

Industry associations shall be prohibited from acting as follows:

1. Refusing admission to or refusing withdrawal from the association by any organization or individual satisfying the conditions for admission or withdrawal, if such refusal constitutes discriminatory treatment and places such organization or individual at a competitive disadvantage;
2. Unreasonably restricting the business activities or other activities involving a business objective of member enterprises.

Article 48 *Illegal multi-level selling of goods*

Enterprises shall be prohibited from conducting the following acts aimed at obtaining illegal profit from recruitment of new participants to a multi-level sales network:

1. Requiring persons who wish to participate to pay a deposit, to purchase an initial fixed quantity of goods, or to pay an amount of money in order to have the right to participate in multi-level selling of goods;
2. Failing to undertake to re-acquire the goods sold to the participant for resale at at least ninety (90) per cent of their original price;
3. Allowing participants to receive commissions, bonuses and/or other economic benefits essentially only from enticing other persons to participate in the multi-level sales network;
4. Providing untruthful information about the benefits of participation in the multi-level sales network or untruthful information about the quality and use purpose of goods in order to entice other persons to participate.

CHAPTER IV

**Administrative Body for Competition
and Competition Council**

SECTION 1

Administrative Body for Competition**Article 49** *Administrative body for competition*

1. The Government shall issue a decision on establishment and shall regulate the organizational structure and staffing of the administrative body for competition.
2. The administrative body for competition shall have the following duties and powers:
 - (a) To control the process of economic concentration in accordance with this Law;
 - (b) To accept jurisdiction over files for request of exemption; to forward its opinion to the Minister of Trade for decision or to submit same to the Prime Minister for his decision;
 - (c) To investigate competition cases concerning practices in restraint of competition and unfair competitive practices;
 - (d) To deal with and impose fines in respect of unfair competitive practices;
 - (dd) To fulfil other duties in accordance with law.

Article 50 *Head of administrative body for competition*

1. The Prime Minister of the Government shall appoint and dismiss the head of the administrative body for competition on the proposal of the Minister of Trade.
2. The head of the administrative body for competition shall be responsible to organize and direct the administrative body for competition to fulfil the duties and powers stipulated in clause 2 of article 49 of this Law.

Article 51 *Investigators of competition cases*

1. An investigator of a competition case (hereinafter referred to as an *investigator*) shall be appointed by the Minister of Trade on the proposal of the head of the administrative body for competition.
2. Investigators shall undertake the task of investigating specific competition cases in accordance with the decision of the head of the administrative body for competition.

Article 52 *Standards for investigators*

Persons who satisfy the following standards may be appointed to act as investigators:

1. Having good ethics and being honest and objective;
2. Having a bachelor degree in law or in economics or in finance;
3. Having five or more years work experience in one of the sectors stipulated in clause 2 of this article;
4. Having undertaken training in professional investigations.

SECTION 2

Competition Council**Article 53** *Competition Council*

1. The Competition Council shall be a body established by the Government.

The Competition Council shall consist of from eleven (11) to fifteen (15) members appointed and dismissed by the Prime Minister of the Government on the proposal of the Minister of Trade.
2. The Competition Council shall have the duty to organize dealing with competition cases concerning practices in restraint of competition and resolution of complaints in accordance with this Law.

Article 54 *Chairman of Competition Council*

1. The Prime Minister of the Government shall appoint from amongst the members of the Council, and dismiss, the chairman of the Competition Council on the proposal of the Minister of Trade.
2. The chairman of the Competition Council shall be responsible to organize the activities of the Competition Council.

3. The chairman of the Competition Council shall make a decision on establishment of a council to deal with a competition case, consisting of at least five of the members of the Competition Council, one of whom shall act as chairman of the investigative hearing, in order to resolve a specific competition case.

Article 55 *Standards for members of Competition Council*

1. Persons who satisfy the following standards may be appointed as members of the Competition Council:
 - (a) Having good ethics, being honest and objective, and having the spirit of protecting the socialist legal system;
 - (b) Having a bachelor degree in law or in economics or in finance;
 - (c) Having at least nine or more years work experience in one of the sectors stipulated in clause 1(b) of this article;
 - (d) Having the ability to complete the tasks assigned.
2. The term of office of a member of the Competition Council shall be five years, and the term may be renewed.

CHAPTER V

Investigations and Dealing With Competition Cases

SECTION 1

General Provisions

Article 56 *Principles of competition legal proceedings*

1. The resolution of competition cases concerning practices in restraint of competition shall be carried out in accordance with this Law.
2. The resolution of competition cases concerning unfair competitive practices shall be carried out in accordance with this Law and the laws on dealing with administrative offences.
3. During the course of competition legal proceedings, investigators, the head of the administrative body for competition and members of the Competition Council shall, within the scope of their respective responsibilities, maintain the confidentiality of the business secrets of

enterprises and respect the lawful rights and interests of the organizations and individuals concerned.

Article 57 *Spoken and written language used in competition legal proceedings*

The written and spoken language used in competition legal proceedings shall be Vietnamese. Parties participating in competition legal proceedings shall have the right to use their native written and spoken language, and in such case an interpreter shall be required.

Article 58 *Complaints about competition cases*

1. Organizations and individuals considering that their lawful rights and interests have been infringed as a result of a breach of the provisions of this Law (hereinafter referred to as *complainants*) shall have the right to lodge a complaint at the administrative body for competition.
2. The time-limit for lodging a complaint shall be two years from the date on which the conduct indicating a breach of this Law was carried out.
3. A complaint file must contain the following main documents:
 - (a) Complaint application in the form issued by the administrative body for competition;
 - (b) Evidence of the offending practice.
4. Complainants shall be responsible for the truthfulness of the evidence that they submit to the administrative body for competition.

Article 59 *Acceptance of jurisdiction over complaint files*

1. The administrative body for competition shall be responsible to accept jurisdiction over complaint files.
2. Within a time-limit of seven working days from the date of receipt of a complaint file, the administrative body for competition shall be responsible to provide written notice to a complainant about acceptance of jurisdiction.
3. Complainants must pay provisional costs for dealing with competition cases in accordance with law.

Article 60 *Evidence*

1. Evidence means things which are true and are used by investigators and councils dealing with competition cases as grounds for determining whether or not a practice is in breach of this Law.
2. Evidence shall be determined from the following sources:
 - (a) Physical evidence, including things used as tools or means of breach, money and other things which have value in proving a breach of this Law;
 - (b) Declarations of witnesses and explanatory statements of organizations or individuals concerned;
 - (c) Original documents, or copies or translations of original documents which are notarized or lawfully certified or which are provided or authenticated by a competent body or organization;
 - (d) Expert conclusions.

Article 61 *Application of administrative preventive measures*

1. The head of the administrative body for competition and the chairman of the Competition Council shall have the right to apply a number of administrative preventive measures in accordance with the laws on dealing with administrative offences in the circumstances stipulated in clause 6 of article 76 and clause 4 of article 79 of this Law.

The Government shall provide specific regulations on administrative preventive measures which the head of the administrative body for competition and the chairman of the Competition Council have the right to apply.

2. The following persons shall have the right to recommend application of administrative preventive measures:
 - (a) A complainant shall have the right to make a recommendation to the head of the administrative body for competition or the chairman of the Competition Council;
 - (b) An investigator shall have the right to make a recommendation to the head of the administrative body for competition;
 - (c) The chairman of an investigative hearing shall have the right to make a recommendation to the chairman of the Competition Council.

3. In the case of application of administrative preventive measures at the request of a complainant, the complainant shall be responsible to deposit a security sum in accordance with regulations of the Government.

In the event of incorrect application of administrative preventive measures causing loss to the party subject to investigation due to the fault of the complainant, the complainant must pay compensation. The amount of compensation shall be agreed by the complainant and the party subject to investigation; where the parties fail to reach an agreement, there shall be the right to institute court proceedings requesting compensation for loss in accordance with civil laws.

4. In the event of incorrect application of administrative preventive measures at the request of an investigator or the chairman of an investigative hearing causing loss to the party subject to investigation, the administrative body for competition or the Competition Council must pay compensation. The amount of compensation shall be agreed by the party subject to investigation and the administrative body for competition or the Competition Council; where the parties fail to reach an agreement, the party subject to investigation shall have the right to institute court proceedings requesting compensation for loss in accordance with civil laws. In this case, the administrative body for competition or the Competition Council must determine the liability, including material liability, of the applicant¹ and of related persons in order that appropriate disciplinary action may be taken, and the administrative body for competition or the Competition Council shall be indemnified for the amount of compensation which has been paid to the party subject to investigation.
5. Any party against which administrative preventive measures are applied shall have the right to lodge a complaint about the decision on application of such measures in accordance with the laws on complaints and denunciations.

Article 62 *Fees for dealing with competition cases*

Fees for dealing with a competition case shall be used to conduct such case. The Government shall provide regulations on the rates, payment, management and use of fees for dealing with competition cases in accordance with the laws on fees and charges.

1 *Allens Arthur Robinson Note: Here, "applicant" refers to the person requesting application of administrative preventive measures.*

Article 63 *Liability for payment of fees for dealing with competition cases*

1. The party which is concluded to be in breach of this Law must pay the fees for dealing with the competition case.
2. If the party subject to investigation is not in breach of this Law, the complainant must pay the fees for dealing with the competition case.
3. In the case of an investigation into a competition case conducted pursuant to clause 2 of article 65 of this Law, if the party subject to investigation is not in breach of this Law, the administrative body for competition must bear the fees for dealing with the case.

SECTION 2

Participants in Competition Legal Proceedings**Article 64** *Participants in competition legal proceedings*

Participants in competition legal proceedings shall comprise:

1. Complainant;
2. Party(ies) subject to investigation;
3. Lawyers;
4. Witnesses;
5. Experts;
6. Interpreters;
7. Persons with related interests and obligations.

Article 65 *Party subject to investigation in competition case*

A party subject to investigation in a competition case (hereinafter referred to as the *party subject to investigation*) means any organization or individual against which or whom the administrative body for competition issues a decision to investigate in the following circumstances:

1. A complaint is lodged against such party pursuant to article 58 of this Law;
2. The administrative body for competition discovers that such party has been or is currently conducting a practice with indications of a breach of the laws on competition within two years from the date on which the

practice with indications of a breach of the laws on competition was conducted.

Article 66 *Rights and obligations of parties*

1. Parties subject to investigation shall have the following rights:
 - (a) To lead their own evidence and documents, and to know about² the documents and evidence which the complainant or the administrative body for competition leads;
 - (b) To participate in investigative hearings;
 - (c) To request that an investigator or a member of a council dealing with a competition case be replaced if it is discovered that such investigator or member falls within one of the categories stipulated in article 83 of this Law;
 - (d) To authorize a lawyer to participate in the competition legal proceedings;
 - (dd) To request that a witness be invited;
 - (e) To propose that the administrative body for competition seek an expert opinion;
 - (g) To recommend replacement of the persons conducting and participating in the competition legal proceedings in accordance with this Law.
2. Complainants shall have the following rights:
 - (a) The rights stipulated in clause 1 of this article;
 - (b) To request the head of the administrative body for competition or the chairman of the Competition Council to apply administrative preventive measures relating to the competition case.
3. Parties subject to investigation and complainants shall have the following obligations:
 - (a) To provide fully, truthfully, accurately and promptly the necessary evidence relating to their claims or requests;

2 *Allens Arthur Robinson Note: This is the literal translation. The right "to know about" is understood to encompass the right of access to documents and evidence.*

- (b) To attend in accordance with a summons issued by the administrative body for competition or the council dealing with the case. In the event of failure to attend without a legitimate reason despite service of a summons to attend, the council dealing with the case shall proceed to deal with the matter on the basis of the information available;
- (c) To implement any decision of the administrative body for competition or the council dealing with the case.

Article 67 *Lawyers for complainant and for party subject to investigation*

1. Any lawyer who satisfies the conditions to participate in legal proceedings as stipulated by the laws on lawyers and is authorized by a complainant or by a party subject to investigation shall have the right to participate in competition legal proceedings in order to protect the lawful rights and interests of the party represented by such lawyer.
2. Lawyers shall have the following rights and obligations when they participate in competition legal proceedings:
 - (a) To participate in the stages of competition legal proceedings;
 - (b) To verify and collate evidence and to lead evidence in order to protect the lawful rights and interests of the represented party;
 - (c) To investigate documents in the file of a competition case and to copy by hand or photocopy necessary documents in such file in order to take action to protect the lawful rights and interests of the represented party;
 - (d) To request, on behalf of the represented party, replacement in accordance with this Law of a person conducting or persons participating in competition legal proceedings;
 - (dd) To assist the represented party with the laws relating to protection of the lawful rights and interests of such party;
 - (e) To respect the truth and the law; and not to bribe, compel or entice others to give false testimony or to provide false documents;
 - (g) To attend in accordance with a summons from the council dealing with the competition case;
 - (h) Not to disclose investigation secrets learned during the course of participation in competition legal proceedings; not to use documents copied from files of competition cases for the purpose

of infringing the interests of the State or the lawful rights and interests of organizations and individuals.

Article 68 *Witnesses*

1. A council dealing with a competition case may summons as a witness a person with knowledge of circumstances relating to contents of a competition case, or the administrative body for competition may invite such person to act as a witness at the request of concerned parties. A person lacking civil capacity may not act as a witness.
2. Witnesses shall have the following rights and obligations:
 - (a) To provide all documents and other things in their possession relating to resolution of a competition case; to testify directly or in writing before the administrative body for competition or the council dealing with a competition case about all incidents relating to resolution of a competition case that they know;
 - (b) To participate in investigative hearings and to testify before the council dealing with a competition case;
 - (c) To be entitled to leave from work when summonsed by or providing evidence to the administrative body for competition or the council dealing with a competition case, if the witness works for a State body or for an organization or enterprise;
 - (d) To be entitled to travelling expenses and other regimes provided by law;
 - (dd) To be entitled to refuse to testify if the evidence of the witness involves State secrets, professional secrets or private life secrets, or if the testimony would adversely impact on or cause harm to the interests of a complainant or a party subject to investigation having a close relationship with the witness;
 - (e) To provide truthful testimony about all incidents relating to resolution of a competition case that they know;
 - (g) To pay compensation and to be responsible before the law for any false testimony causing loss to a complainant, to a party subject to investigation or to another person;
 - (h) To attend an investigative hearing in accordance with a summons issued by the council dealing with a competition case, if the testimony of such witness must be given publicly in the investigative hearing;

- (i) To warrant to the administrative body for competition or the council dealing with a competition case that rights will be exercised and obligations will be discharged, except in cases where the witness is a minor.
3. Except in the cases stipulated in clause 2(dd) of this article, any witness who refuses to testify, who provides false testimony or documents, or who is summonsed by the council dealing with a competition case but fails to attend without a legitimate reason shall be liable in accordance with law.
4. Witnesses shall be protected in accordance with law.

Article 69 *Experts*

1. An expert means a person with essential knowledge in a sector in which expertise is required and who is called by the head of the administrative body for competition or the council dealing with a competition case, or whom the parties concerned suggest be called and the head of the administrative body for competition or the council dealing with the competition case so agrees in accordance with law.
2. Experts shall have the following rights and obligations:
 - (a) To read documents in the file of a competition case relating to the matter on which their expertise is sought; to request the body which called them to provide documents required for the provision of an expert opinion;
 - (b) To put questions to persons participating in the competition legal proceedings on issues relating to the matters on which their expertise is sought;
 - (c) To attend in accordance with a summons issued by the body calling them; to answer questions relating to the matters on which their expertise is sought and to provide their conclusions honestly and objectively and stating the grounds therefor;
 - (d) To notify in writing the body calling them if they are unable to act as an expert because the matters on which their expertise is sought are beyond their professional expertise or because the documents sent to them are inadequate or unable to be used as a basis for an expert opinion;

- (dd) To preserve any documents received by them and to return [*such documents*]³ together with their conclusions to the body requesting expertise or a notice that they are unable to provide an expert opinion;
 - (e) Not to collate their own documents to provide an expert opinion, not to make private contact with other persons participating in the competition legal proceedings if such contact would affect the objectivity of the expert conclusion; not to disclose confidential information learned during the course of providing an expert opinion, and not to notify their expert conclusion to any person other than the person signing the decision calling the expert;
 - (g) In the case where a number of experts are called to provide a joint opinion, to provide their conclusions if they differ from that of the other experts provided in the joint opinion;
 - (h) To be entitled to travelling expenses and other regimes provided by law.
3. Any expert who refuses to provide his or her conclusion without a legitimate reason, whose conclusion contains false testimony, or who is summonsed by the body calling the expert but fails to attend without a legitimate reason shall be liable in accordance with law.
4. An expert shall refuse to act as an expert or shall be replaced in the following circumstances:
- (a) He or she belongs to one of the categories stipulated in article 83 of this Law;
 - (b) He or she has already participated in the same competition case as a lawyer for one of the parties, as a witness or as an interpreter;
 - (c) He or she has already participated in the same competition case as a member of the council dealing with the competition case.

Article 70 *Interpreters*

1. An interpreter means a person with the ability to translate into the Vietnamese language from another language and *vice versa* in the case where a person participating in the competition case is unable to speak the Vietnamese language. Interpreters shall be selected by agreement between the parties concerned and approved by the council dealing with the

3 *Allens Arthur Robinson Note: Inserted to aid comprehension.*

competition case or shall be appointed by the council dealing with the competition case.

2. Interpreters shall have the following rights and obligations:
 - (a) To attend in accordance with a summons from the council dealing with the competition case;
 - (b) To interpret truthfully, objectively and correctly;
 - (c) To request additional explanation of matters to be interpreted from persons conducting and participating in the competition case;
 - (d) Not to make contact with other persons participating in the competition legal proceedings if such contact would affect the truthfulness, objectivity and correctness of their interpretation;
 - (dd) To be entitled to travelling expenses and other regimes provided by law;
 - (e) To warrant to the council dealing with the competition case that they will exercise their rights and discharge their obligations.
3. If an interpreter deliberately interprets incorrectly, or is summonsed by the council dealing with the competition case but fails to attend without a legitimate reason, he or she shall be liable in accordance with law.
4. An interpreter shall refuse to act as an interpreter or shall be replaced in the following circumstances:
 - (a) He or she belongs to one of the categories stipulated in article 83 of this Law;
 - (b) He or she has already participated in the same competition case as a lawyer for the complainant or the party subject to investigation, as a witness or as an expert;
 - (c) He or she has already participated in the same competition case as a member of the council dealing with the competition case.
5. The provisions in this article shall also apply to a person understanding the sign language of a deaf person or a dumb person participating in a competition case.

If the only person competent in the sign language of a deaf person or a dumb person participating in a competition case is the representative or relative of such deaf person or dumb person, the council dealing with the

competition case may approve such representative or relative to act as interpreter for the deaf person or dumb person.

Article 71 *Persons with related interests and obligations in competition cases*

1. Persons with related interests and obligations may request to participate in competition legal proceedings independently or with the complainant or with the party subject to investigation.
2. A person with related interests and obligations who makes a request to participate in competition legal proceedings independently or with the complainant or who only has interests shall have the rights and obligations of the complainant stipulated in article 66 of this Law.
3. A person with related interests and obligations who participates in competition legal proceedings with the party subject to investigation or who only has obligations shall have the rights and obligations of the party subject to investigation stipulated in article 66 of this Law.

Article 72 *Procedures for refusal to act as expert or interpreter and for request of replacement of expert or interpreter*

1. Any refusal to act as an expert or interpreter or any request for replacement of an expert or interpreter prior to opening of an investigative hearing must be made in writing and shall specify the reasons therefor.
2. Any refusal to act as an expert or interpreter or any request for replacement of an expert or interpreter during an investigative hearing must be recorded in the minutes of the investigative hearing.

Article 73 *Decision on replacement of expert or interpreter*

1. Prior to opening of an investigative hearing, the chairman of the Competition Council shall make a decision on replacement of an expert or interpreter.
2. During an investigative hearing, the council dealing with the competition case shall make a decision on replacement of an expert or interpreter after hearing the opinions of the person proposed to be replaced and of other persons participating in the competition legal proceedings.

If an expert or interpreter must be replaced, the council dealing with the competition case shall issue a decision on adjournment of the investigative hearing, and the calling of another expert or interpreter shall be implemented in accordance with articles 69 and 70 of this Law.

SECTION 3

**Bodies Conducting Competition Legal Proceedings and
Persons Conducting Competition Legal Proceedings****Article 74** *Bodies conducting competition legal proceedings*

Bodies conducting competition legal proceedings shall comprise the administrative body for competition and the Competition Council.

Article 75 *Persons conducting competition legal proceedings*

Persons conducting competition legal proceedings shall comprise members of the Competition Council, the head of the administrative body for competition, investigators, and secretaries to investigative hearings.

Article 76 *Duties and powers of head of administrative body for competition when conducting competition legal proceedings*

The head of the administrative body for competition shall have the following duties and powers when conducting competition legal proceedings:

1. To make decisions assigning investigators to specific competition cases;
2. To supervise the activities of an investigator of a competition case;
3. To make decisions on amendment or revocation of decisions of investigators conducting competition cases when the latter decisions are without grounds or contrary to law;
4. To make decisions on replacement of the investigator conducting a competition case;
5. To make decisions calling for expert opinions;
6. To make decisions on application, amendment or revocation of administrative preventive measures prior to transferring a file on a competition case to the Competition Council for resolution;
7. To make decisions on preliminary investigations, on stay of investigations, and on opening of an official investigation into a competition case within the authority of the administrative body for competition;
8. To invite witnesses at the request of parties during the investigative stage;
9. To sign conclusions of an investigation of a competition case when submitted by the assigned investigator;

10. To transfer files on competition cases to the Competition Council where such competition cases concern practices in restraint of competition;
11. To resolve complaints and denunciations within the authority of the administrative body for competition.

Article 77 *Rights of investigators when conducting competition legal proceedings*

Investigators shall have the following rights when conducting competition legal proceedings:

1. To require organizations and individuals concerned to provide all necessary information and documents relating to the competition case;
2. To require the party subject to investigation to provide documents and/or explanatory statements relating to the case which is the subject of investigation;
3. To recommend that the head of the administrative body for competition seek an expert opinion;
4. To recommend that the head of the administrative body for competition apply administrative preventive measures relating to the competition case.

Article 78 *Obligations of investigators when conducting competition legal proceedings*

Investigators shall have the following obligations when conducting competition legal proceedings:

1. To serve the decision to conduct an investigation as issued by the head of the administrative body for competition on the party subject to investigation;
2. To maintain the confidentiality of the business of enterprises;
3. To keep the documents provided in safe custody;
4. To conduct the investigation into the competition case as assigned by the head of the administrative body for competition;
5. To write a report upon completion of a preliminary investigation and official investigation into the competition case;
6. To be responsible to the head of the administrative body for competition and before the law for the exercise of their duties and powers.

Article 79 *Duties and powers of chairman of Competition Council when conducting competition legal proceedings*

1. To establish a council to deal with a competition case pursuant to clause 3 of article 54 of this Law;
2. To make decisions on replacement of members of a council dealing with a competition case, secretary to an investigative hearing, experts or interpreters prior to opening of an investigative hearing pursuant to clause 1 of article 73, article 83 and clause 1 of article 85 of this Law;
3. To make decisions on appointment of replacement members of a council dealing with a competition case or secretary to an investigative hearing pursuant to clause 2 of article 85 of this Law;
4. To make decisions on application, amendment or revocation of administrative preventive measures as from receipt of the file on a competition case.

Article 80 *Councils dealing with competition cases*

1. When resolving competition cases, councils dealing with competition cases shall act independently and shall obey the law only.
2. Any decision dealing with a competition case passed by the council dealing with such case shall be on the principle of a majority vote and, in the case of a tied vote, the decision shall be that of the side of the chairman of the investigative hearing.

Article 81 *Duties and powers of chairman of investigative hearing*

The chairman of an investigative hearing shall have the following duties and powers:

1. To arrange research into the file on a competition case;
2. On the basis of the decision of the council dealing with the competition case, to sign a recommendation to the chairman of the Competition Council to apply, amend or revoke administrative preventive measures; to make a decision on return of the file on a competition case to the administrative body for competition and to request an additional investigation; or to make a decision on suspension of dealing with a competition case;
3. On the basis of the decision of the council dealing with the competition case, to sign a decision on opening of an investigative hearing;

4. To make a decision on summons of persons to participate in the investigative hearing;
5. To sign and issue decisions on dealing with competition cases and other decisions of the council dealing with a competition case;
6. To conduct other activities within his or her authority in accordance with this Law when dealing with competition cases.

Article 82 *Secretary to investigative hearing*

1. A secretary to an investigative hearing shall have the following duties and powers:
 - (a) To prepare the necessary technical matters prior to opening of the investigative hearing;
 - (b) To disseminate the rules on investigative hearings;
 - (c) To report to the council dealing with the competition case on who is in attendance and who is not in attendance amongst the persons summonsed to attend;
 - (d) To prepare minutes of the investigative hearing;
 - (dd) To undertake other work assigned by the chairman of the investigative hearing.
2. A secretary to an investigative hearing must refuse to so act or shall be replaced if he or she belongs to one of the categories stipulated in article 83 of this Law.

Article 83 *Cases of compulsory refusal by and replacement of investigators, members of councils dealing with competition cases, secretaries to investigative hearings, experts and interpreters*

A member of a council dealing with a competition case, an investigator, the secretary to an investigative hearing, an expert or an interpreter must refuse to carry out their duties and shall be replaced in any of the following circumstances:

1. He or she is a relative of a complainant or of a party subject to investigation;
2. He or she is a person with rights or interests related to the competition case;

3. There are other clear grounds to demonstrate that he or she is not impartial in the exercise of his or her duties.

Article 84 *Procedures for refusal to conduct proceedings or for replacement of members of councils dealing with competition cases or secretaries to investigative hearings*

1. Any refusal to conduct proceedings or any request for replacement of a member of a council dealing with a competition case or the secretary to an investigative hearing prior to opening of an investigative hearing must be made in writing and shall specify the reasons therefor.
2. Any refusal to conduct proceedings or any request for replacement of a member of a council dealing with a competition case or the secretary to an investigative hearing during an investigative hearing shall be recorded in the minutes of the investigative hearing.

Article 85 *Decision on replacement of members of councils dealing with competition cases or secretaries to investigative hearings*

1. Prior to opening of an investigative hearing, the chairman of the Competition Council shall make a decision on replacement of a member of the council dealing with the competition case or of the secretary to the investigative hearing.
2. During an investigative hearing, the council dealing with the competition case shall make a decision on replacement of a member of such council or of the secretary to an investigative hearing after hearing the opinions of the person sought to be replaced and of other persons participating in the proceedings. The council dealing with the competition case shall deal with such matter *in camera*⁴ and shall reach a majority decision thereon.

If a member of the council dealing with the competition case or the secretary to an investigative hearing must be replaced, the council shall issue a decision on adjournment of the investigative hearing. The chairman of the Competition Council shall make a decision on the person to replace the member of the council dealing with the competition case or the secretary to an investigative hearing.

4 *Allens Arthur Robison Note: "Not in public".*

SECTION 4

Investigation of Competition Cases**Article 86** *Preliminary investigation*

A preliminary investigation of a competition case shall be conducted pursuant to a decision of the head of the administrative body for competition in the following circumstances:

1. After the administrative body for competition has accepted jurisdiction over a complaint file of a competition case;
2. After the administrative body for competition discovers there is an indication of a breach of the provisions of this Law.

Article 87 *Time-limit for preliminary investigation*

1. The time-limit for a preliminary investigation shall be thirty (30) days from the date of a decision to conduct a preliminary investigation.
2. Within the time-limit stipulated in clause 1 above, the investigator assigned to investigate the case must complete the preliminary investigation and make a recommendation to the head of the administrative body for competition to either issue a decision to conduct an official investigation or to stay the investigation.

Article 88 *Decision to stay investigation or decision to conduct official investigation*

The head of the administrative body for competition shall, based on the result of the preliminary investigation and the recommendation of the investigator, issue one of the following decisions:

1. A decision to stay the investigation if the results of the preliminary investigation reveal that there is no practice in breach of the provisions of this Law;
2. A decision to conduct an official investigation if the results of the preliminary investigation reveal that there are indications of a breach of the provisions of this Law.

Article 89 *Contents of official investigation*

1. In respect of an investigation of an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or a case of economic concentration, the following issues shall be investigated:
 - (a) Verification of the relevant market;
 - (b) Verification of the relevant market share of the party subject to investigation;
 - (c) Collation and analysis of evidence of the practice in breach.
2. In respect of an unfair competition case, the investigator must identify the grounds for concluding that the party subject to investigation has engaged or is currently engaging in an unfair competitive practice.

Article 90 *Time-limit for official investigation*

The time-limit for an official investigation shall be provided for as follows:

1. The time-limit for an investigation of an unfair competitive case shall be ninety (90) days from the date of the decision to conduct an official investigation. In necessary cases, the head of the administrative body for competition may extend this time-limit, but not by more than sixty (60) days.
2. The official time-limit for an investigation of an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or a case of economic concentration shall be one hundred and eighty (180) days from the date of the decision to conduct an official investigation. In necessary cases, the head of the administrative body for competition may extend this time-limit, but on not more than two occasions and each extension may not exceed sixty (60) days.
3. An investigator must notify any extension of the time-limit for an investigation to all parties concerned at least seven working days prior to expiry of the time-limit.

Article 91 *Minutes of investigation*

1. When conducting an investigation, the investigator must prepare minutes, specifying the location, dates and times when the investigation is conducted, the persons carrying out the investigation, the party subject to investigation, the contents being investigated, the complaints, and the requests of the party subject to investigation.

2. The investigator of a competition case must read out the minutes to the party subject to investigation prior to all of them signing the minutes.
3. Where the party subject to investigation refuses to sign the minutes, the investigator must record the refusal in the minutes and specify the reasons therefor.

Article 92 *Request for witnesses during investigation*

1. During the process of an investigation, the parties shall have the right to request that the administrative body for competition invite witnesses. The party requesting that a witness be invited shall be obliged to present the reasons why it is necessary to invite such witness in order that the administrative body for competition may make a decision.
2. The invitation letter for witnesses issued by the administrative body for competition shall specify the full name and place of residence of the invitee, the location and time for providing testimony, the parties and the subject matter of the case.
3. The testimony of the witness shall be minuted and read out by the investigator to the witness prior to both parties signing the minutes.

Article 93 *Report on investigation*

1. Upon completion of an investigation, the head of the administrative body for competition must send a report on the investigation together with the whole of the file on the competition case to the Competition Council.
2. A report on an investigation shall contain the following main particulars:
 - (a) Summary of the case;
 - (b) Features of the case and the evidence which was verified;
 - (c) Suggestions on measures for dealing with the case.

Article 94 *Transfer of files on competition cases with indications of criminal offences*

If indications of a criminal offence are identified during investigation of a competition case, the investigator must make an immediate recommendation to the head of the administrative body for competition to consider the transfer of the file to the State body with authority to institute a criminal prosecution.

Article 95 *Return of file when no grounds for instituting criminal prosecution*

If the State body with authority to institute a criminal prosecution considers that there are no grounds for instituting a criminal prosecution pursuant to the *Criminal Procedure Code*, such body shall return the file to the administrative body for competition to continue the investigation in accordance with this Law. The time-limit for an investigation stipulated in article 90 of this Law shall be calculated from the date of receipt of the returned file.

Article 96 *Additional investigation and time-limit for conducting additional investigation*

1. The investigator of a competition case must conduct an additional investigation at the written request of the council dealing with the competition case.
2. The time-limit for conducting an additional investigation shall be sixty (60) days calculated from the date of the written request of the council dealing with the competition case.

Article 97 *Responsibility to co-ordinate and assist with investigations*

Local authorities, police authorities and other bodies and organizations shall be responsible to co-ordinate and assist with investigations at the request of the head of the administrative body for competition.

SECTION 5

Investigative Hearings**Article 98** *Competition cases which must be considered and dealt with by way of investigative hearing*

Competition cases within the authority for resolution of the Competition Council must be considered and dealt with by way of an investigative hearing.

Article 99 *Preparation for conducting investigative hearing*

1. Upon receipt of the investigation report and the complete file of a competition case forwarded by the head of the administrative body for competition, the chairman of the Competition Council shall issue a decision on establishment of a council to deal with the competition case.

2. Within a time-limit of thirty (30) days from the date of receipt of the file on the competition case, the council dealing with the competition case must issue one of the following decisions:
 - (a) To conduct an investigative hearing;
 - (b) To return the file for additional investigation;
 - (c) To stay resolution of the competition case.
3. Within a period of fifteen (15) days from the date of a decision to conduct an investigative hearing, the council dealing with the competition case must open the investigative hearing.
4. Where the file has been returned for additional investigation, within fifteen (15) days from the date of receipt of the returned file⁵, the council dealing with the competition case shall issue one of the decisions stipulated in clause 2 of this article.

Article 100 *Return of file for additional investigation*

If the council dealing with the competition case considers that the evidence collected is insufficient to determine whether or not there has been a practice in breach of the provisions of this Law, it shall issue a decision returning the file and requesting additional investigation.

Article 101 *Stay of resolution of case within authority for resolution of Competition Council*

1. The council dealing with the competition case shall issue a decision to stay resolution of a case within the authority for resolution of the Competition Council in the following circumstances:
 - (a) Where the head of the administrative body for competition proposes a stay of resolution of a case because there is insufficient evidence to prove a practice in breach of the provisions of this Law and the council dealing with the competition case agrees that such proposal is legitimate;
 - (b) The parties subject to investigation have terminated voluntarily the practice in breach, remedied the consequences caused, and the complainant has withdrawn voluntarily the complaint;

⁵ *Allens Arthur Robinson Note: This is a reference to the file returned after additional investigation.*

- (c) Where the investigation of the competition case is carried out in accordance with clause 2 of article 65 of this Law, the parties subject to investigation have terminated voluntarily the practice in breach and remedied the consequences caused, and the head of the administrative body for competition proposes a stay of resolution of the case.
2. The decision to stay resolution of a competition case shall be sent to the party subject to investigation, the complainant (if any) and the administrative body for competition.

Article 102 *Decision to conduct investigative hearing*

1. The decision to conduct an investigative hearing must be delivered to the parties stated in the decision no later than ten (10) days prior to opening of the hearing.
2. The decision to conduct an investigative hearing shall specify the following particulars:
 - (a) Party(ies) subject to investigation;
 - (b) Complainant, or administrative body for competition when the investigation of the competition case is conducted pursuant to clause 2 of article 65 of this Law;
 - (c) Specific articles and clauses of this Law being breached;
 - (d) Time and location where the investigative hearing is to be opened;
 - (dd) Whether the hearing is to be conducted in public or not in public;
 - (e) Full name of members of the council dealing with the competition case;
 - (g) Full name of the investigator who has already investigated the competition case and of the secretary of the investigative hearing;
 - (h) Full name of lawyers;
 - (i) Full name of interpreters;
 - (k) Full name of witnesses;
 - (l) Full name of experts;
 - (m) Any person with related rights and obligations.

Article 103 *Summons to persons who must attend investigative hearing*

The council dealing with the competition case shall, on the basis of the decision to conduct an investigative hearing, send a summons to persons who must attend such hearing no later than ten (10) days prior to opening of the hearing.

Article 104 *Investigative hearing*

1. An investigative hearing shall be conducted in public. If the matters investigated concern national security or business secrets, the investigative hearing shall be conducted *in camera*.
2. The following persons shall participate in a hearing:
 - (a) Members of the council dealing with the competition case and the secretary of the investigative hearing;
 - (b) Party(ies) subject to investigation;
 - (c) Complainant;
 - (d) Lawyers;
 - (dd) Investigator who has already investigated the competition case;
 - (e) Other persons as stated in the decision to conduct the investigative hearing.
3. After hearing the opinions of and the exchange of arguments by all participants, the council dealing with the competition case shall hold its own discussion and reach a majority decision by secret ballot.

SECTION 6

Effectiveness of Decision on Resolution of Competition Case**Article 105** *Decision on resolution of competition case*

1. A decision on resolution of a competition case must contain the following main particulars:
 - (a) Summary of the facts of the case;
 - (b) Analysis of the case;
 - (c) Conclusion on how to deal with the case.

2. The chairman of the investigative hearing shall sign the decision on resolution of a competition case.
3. The decision on resolution of a competition case must be sent to the parties concerned within seven working days of the date of signing of such decision.

Article 106 *Effectiveness of decision on resolution of competition case*

A decision on resolution of a competition case shall become effective after thirty (30) days from the date of its signing, unless a complaint is lodged within such period pursuant to article 107 of this Law.

SECTION 7

Dealing With Complaints Against Decisions on Resolution of Competition Cases Which Have Not Yet Become Legally Effective

Article 107 *Complaining against decision on resolution of competition case*

1. In the case of disagreement with a part or all of a decision on resolution of a competition case made by the council dealing with such case, the parties shall have the right to lodge a complaint with the Competition Council.
2. In the case of disagreement with a part or all of a decision on resolution of a competition case made by the head of the administrative body for competition, the parties shall have the right to lodge a complaint with the Minister of Trade.

Article 108 *Complaint against decision on resolution of competition case*

1. A complaint against a decision on resolution of a competition case must contain the following main particulars:
 - (a) Full date of the complaint;
 - (b) Name and address of the complainant;
 - (c) Number and full date of the decision on resolution of the competition case which is the subject of complaint;
 - (d) Reasons for the complaint and requests of the complainant;
 - (dd) Signature and seal (if any) of the complainant.
2. A complaint must be lodged with the body which issued the decision on resolution of the competition case, together with any additional evidence proving that there are grounds for the complaint and the complaint is legal.

Article 109 *Acceptance of jurisdiction over complaint against decision on resolution of competition case*

Within a time-limit of five working days from the date of receipt of a complaint against a decision on resolution of a competition case, the body which issued the decision must verify the validity of the complaint pursuant to article 108 of this Law.

Article 110 *Consequences of complaint against decision on resolution of competition case*

1. Any part of a complaint against a decision on resolution of a competition case which is the subject of complaint shall not be transferred for enforcement.
2. Within a time-limit of fifteen (15) days from the date of receipt of a complaint against a decision on resolution of a competition case, the body which accepted jurisdiction to resolve the complaint shall consider it and then transfer the complaint, the whole of the file on the competition case and the recommendations of such body to the Competition Council or to the Minister of Trade in accordance with the provisions of article 107 of this Law.

Article 111 *Time-limit for resolution of complaint against decision on resolution of competition case*

Within a time-limit of thirty (30) days from the date of receipt of a complaint file, the Competition Council or the Minister of Trade shall be responsible to resolve the complaint in accordance with their authority. In especially complex cases, this time-limit may be extended but not for more than thirty (30) days.

Article 112 *Powers of Competition Council when resolving complaint against decision on resolution of competition case by council dealing with competition case*

When the Competition Council considers resolution of a complaint against a decision on resolution of a competition case by a council dealing with a competition case, the Competition Council shall have the following rights:

1. If it considers that there are insufficient grounds for the complaint, to uphold the original decision;
2. If it considers that the original decision was not correct in accordance with law, to amend a part or the whole of the original decision;

3. To revoke the original decision and transfer the file on the competition case to the council dealing with it for reconsideration in the following circumstances:
 - (a) Evidence has not been sufficiently collected and verified;
 - (b) Membership of the council did not comply with the provisions of this Law or there was some other serious breach of the provisions on competition legal proceedings.

Article 113 *Powers of Minister of Trade when resolving complaint against decision on resolution of competition case by administrative body for competition*

When the Minister of Trade considers resolution of a complaint against a decision on resolution of a competition case made by the administrative body for competition, the Minister of Trade shall have the rights stipulated in clauses 1 and 2 of article 112 of this Law; and if evidence has not been sufficiently collected and verified, the Minister of Trade shall have the right to revoke the original decision and request that the administrative body for competition reconsider its original decision in accordance with the procedures stipulated in this Law.

Article 114 *Effectiveness of decision on resolution of complaint*

A decision on resolution of a complaint against a decision on resolution of a competition case shall be legally effective as from the date of its signing.

Article 115 *Instituting proceedings in relation to decision on resolution of complaint*

1. If any party concerned disagrees with a decision on resolution of a complaint against a decision on resolution of a competition case, such party shall have the right to institute administrative proceedings with respect to a part or the whole of such decision at the people's court of a province or city under central authority which has jurisdiction.
2. If a court accepts jurisdiction over proceedings as stipulated in clause 1 of this article, the Minister of Trade or the chairman of the Competition Council shall be responsible to direct that the file on the complaint against the decision on resolution of a competition case must be transferred to the court within a time-limit of ten (10) working days from the date of receipt of a request from the court.

Article 116 *Consequences of instituting proceedings*

Any part of a decision on resolution of a competition case which is not the subject of court proceedings shall continue to be transferred for enforcement.

SECTION 8

Dealing With Breaches of Laws on Competition**Article 117** *Forms of penalties to be imposed for breaches of laws on competition and measures for remedying consequences*

1. For each practice in breach of the laws on competition, the individual or organization in breach must be subject to one of the following main forms of penalty:
 - (a) A warning;
 - (b) A fine.
2. Depending on the nature and seriousness of the breach, one or more of the following additional forms of penalty may also be applied to an individual or organization in breach of the laws on competition:
 - (a) Withdrawal of business registration certificate; revocation of the right to use a licence or practising certificate;
 - (b) Confiscation of exhibits and facilities used to commit the breach of the laws on competition.
3. In addition to the forms of penalty stipulated in clauses 1 and 2 of this article, one or more of the following measures for remedying consequences may also be applied to an individual or organization in breach of the laws on competition:
 - (a) Restructure of an enterprise which abuses its dominant market position;
 - (b) Division or separation of enterprises which merged or consolidated; compulsory re-sale of that part of an enterprise which was acquired;
 - (c) Public rectification;
 - (d) Removal of illegal terms and conditions from a contract or business transaction;

- (dd) Other measures necessary to remedy the effects of the restraint on competition caused by the practice in breach.
4. Where a practice in breach causes loss to the interests of the State or to the lawful rights and interests of other individuals or organizations, compensation must be paid for such loss in accordance with law.

Article 118 *Level of fines for breach of laws on competition*

1. A body authorized to impose penalties may impose a fine up to no more than ten (10) per cent of the total turnover of the organization or individual in breach in the financial year preceding the year in which the prohibited practice took place where the breach involves an agreement in restraint of competition, an abuse of dominant market position or monopoly position, or an economic concentration.
2. The body authorized to impose penalties shall deal with unfair competitive practices and other conduct in breach of this Law outside the cases stipulated in clause 1 of this article in accordance with the laws on dealing with administrative offences or in accordance with relevant laws.
3. The Government shall provide detailed regulations on the level of fines applicable to practices in breach of this Law.

Article 119 *Authority to impose fines and deal with breaches of laws on competition*

1. A council dealing with a competition case and the Competition Council shall have the following powers:
 - (a) To issue a warning;
 - (b) To impose a fine as stipulated in clause 1 of article 118 of this Law;
 - (c) To confiscate exhibits and facilities used to commit the breach of the laws on competition;
 - (d) To apply the measures stipulated in sub-clauses (c), (d) and (dd) of clause 3 of article 117 of this Law;
 - (dd) To request the competent State body to withdraw the business registration certificate or to revoke the right to use a licence or practising certificate;
 - (e) To request the competent State body to apply the measures stipulated in sub-clauses (a) and (b) of clause 3 of article 117 of this Law.

2. The administrative body for competition shall have the right to apply the measures stipulated in sub-clause (a) of clause 1, sub-clause (b) of clause 2 and sub-clause (c) of clause 3 of article 117 and clause 2 of article 118 of this Law.
3. Other bodies authorized to impose penalties for unfair competitive practices relating to intellectual property shall do so in accordance with the laws on dealing with administrative offences.

Article 120 *Dealing with breaches by State employees and officials*

Any State employee or official who commits a breach of the laws on competition shall, depending on the nature and seriousness of the breach, be disciplined or be subject to criminal prosecution; and if loss is caused, he or she must pay compensation for it in accordance with law.

Article 121 *Enforcement of decisions on resolution of competition cases*

1. After a time-limit of thirty (30) days from the date of effectiveness of a decision on resolution of a competition case, if one of the parties fails to implement voluntarily the decision and has not instituted proceedings before the court pursuant to Section 7 of this Chapter, the judgment creditor shall have the right to lodge a request with a competent State administrative body to enforce the decision pursuant to the functions, duties and powers of such body.
2. If the decision on resolution of the competition case relates to assets of a judgment debtor, the judgment creditor shall have the right to request the civil judgment enforcement office of the city or province under central authority where the judgment debtor has its head office or resides or where there are assets of the judgment debtor to enforce the decision on resolution of the competition case.

CHAPTER V

Implementing Provisions

Article 122 *Effectiveness*

This Law shall be of full force and effect as of 1 July 2005.

Article 123 *Implementing guidelines*

The Government and the People's Supreme Court shall provide detailed regulations for implementation of this Law.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 6th Session on 3 December 2004.

The Chairman of the National Assembly

NGUYEN VAN AN

