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Handbook on Competition Legislation

Note by the UNCTAD secretariat

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INTRODUCTION

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (also known as the United Nations Set of Principles and Rules on Competition) provides in section F.6(c) for the compilation of a *Handbook on Restrictive Business Practices Legislation*.

The **Fifth** United Nations Conference to Review All Aspects of the Set, held in **Antalya, Turkey from 14 to 18 November 2005**, as well as the Intergovernmental Group of Experts on Competition Law and Policy at its **sixth** session, held in Geneva from **8 to 10 November 2004**, requested the UNCTAD secretariat to publish further issues of the *Handbook on Competition Legislation*, including the text of **bilateral**, regional and international instruments complemented **with** a summary of the main provisions **of the competition laws or of the instruments**, on the basis of inputs to be submitted by member States **parties to these instruments**. (See the resolution adopted by the Review Conference (TD/RBP/CONF.6/14) and the Agreed Conclusions of the Intergovernmental Group of Experts at its **sixth** session (TD/B/COM.2/CLP/48).)

Accordingly, the secretariat has prepared this note, which contains commentaries on and/or the texts of competition legislation of **Czech Republic (new law) and the United Republic of Tanzania**.¹

To date, the UNCTAD secretariat has reproduced **in its Handbooks competition legislation of 49 countries**: Algeria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Côte d'Ivoire, Croatia, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, Indonesia, Italy, Jamaica, Japan, Kenya, Lithuania, Malawi, Mexico, Morocco, New Zealand, Norway, Pakistan, Poland, Portugal, the Republic of Korea, Romania, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, **the United Republic of Tanzania**, Venezuela, Zambia and Zimbabwe.

The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States that had so far not done so, or that had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the latter with their relevant legislation, court decisions and comments, using the indicated format (see following section). (However, the commentary may not necessarily follow the format.) To facilitate reproduction of the texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

The UNCTAD secretariat is grateful to the States that have contributed the requested material for this issue of the Handbook, and it once again requests States that have not yet done so to comply with the above-mentioned request of the Secretary-General of UNCTAD.

¹ The contributions are reproduced in the language and form in which they were submitted to the secretariat.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

- A. Description of the reasons for the introduction of the legislation
- B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation
- C. Description of the practices, acts or behaviour subject to control, indicating for each:
 - (1) The type of control – for example, outright prohibition, prohibition in principle or examination on a case-by-case basis; and
 - (2) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection – for example, controls concerning misleading advertising.
- D. Description of the scope of application of the legislation, indicating:
 - (1) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;
 - (2) Whether it applies to all practices, acts or behaviour having effects on the country in question, irrespective of where they occur; and
 - (3) Whether it is dependent on the existence of an agreement, or on such agreement being put into effect.
- E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements as well as the principal powers or body(-ies)
- F. Description of any parallel or supplementary legislation, including treaties or undertakings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices
- G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered
- H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof

COMPETITION LEGISLATION

I. CZECH REPUBLIC

Commentary by the Government of Czech Republic on Act on the Protection of Competition

In 2001 the new Act No. 143/2001 Coll., on the Protection of Competition (hereinafter referred to as “the Act”) came into force as of 1 July 2001 replacing the former Act No. 63/1991. The basic aim of the new legal regulation was to achieve compatibility of the Act with the competition law of the European Communities in all the areas of the public competition law, i.e. in the area of the prohibited agreements distorting competition, abuse of dominant position and control of concentrations of undertakings. The most important changes to the competition law of the Czech Republic introduced by this act are as follows:

- The Act explicitly regulates the application of the competition rules on undertakings, which provide the services of general economic interest. The Act fully applies to these undertakings with the exception of cases, when the application of the Act would obstruct the performance of the special tasks assigned to them.
- The undertakings, i.e. the subjects to which the Act applies may be not only the natural and legal persons, but also the associations of these persons regardless if it is an association with legal subjectivity or without, on the condition that they are participating in competition in the market or are able to influence the competition by their activities. The Act newly explicitly defines the concept of the relevant market as the market of a product, which is from the view of its characteristic, price and intended use identical, comparable and mutually interchangeable, on the territory where the conditions of competition are sufficiently homogenous and clearly distinguishable from the neighbouring territories.
- In the area of the agreements distorting competition the new Act maintains a general clause prohibiting all agreements between undertakings, decisions of their associations and concerted practices which lead or may lead to the distortion of competition, with a possibility of exemption in case conditions stipulated by the Act are fulfilled. Furthermore, a general (block) exemption may be granted by way of a decree of the Czech competition authority – the Office for the Protection of Competition (hereinafter referred to as “the Office”). In line with the EC legislation horizontal and vertical agreements are explicitly distinguished. This difference is important in particular in connection with the definition of the de minimis agreements, for which new thresholds are set, whereas under the fulfilment of the conditions provided for by the Act these agreements are not subject to the prohibition. The exemption from the prohibition for the de minimis agreements, nevertheless, does not apply to some hard-core restrictions defined by the Act.
- Conditions for individual exemption from the prohibition of anticompetitive agreements are exclusively of based on competition principles and mirror the conditions for exemption under Article 81(3) of the Treaty establishing European Community.
- In the area of abuse of dominance, dominant position is newly defined on the principle of market power of undertakings, which is based on more criteria than just the market share. Thus the market share still remains important, but not the only criterion for the assessment of the position of the undertaking on the market. The broader concept of

“market power” also comprises in particular economic and financial power of undertaking, barriers to entry into the market, the market structure etc. The Act newly introduces into the Czech competition law the institute of collective (joint) dominance of several subjects in line with the EC competition law.

- As regards the concentration of undertakings, the concept of concentration is newly defined. As one of its forms the Act explicitly stipulates the establishment of a new undertaking jointly controlled by several undertakings (jointly venture) provided that the undertaking in the long term performs all the functions of individual economic unit and the concentration does not aim at co-ordination of competitive behaviour of the founders of joint venture.

- The Act newly established the amount of turnover as the criterion whether the given concentration is subject to the approval by the Office. The Act is based on the principle that only such concentrations are subject to approval, which may significantly affect effective functioning of competition. The Act also defines the concept of net turnover and the method of calculating the combined net turnover of the undertakings.

The new Act has introduced a two phase proceeding on approval of concentration of undertakings: the first phase lasts one month and the eventual second phase of investigation, undertaken in complicated cases, lasts another four months. It means that maximum period for issuing a decision in case of concentration of undertakings is five months from the day of initiation of proceeding. Newly established is also the prohibition for undertakings to implement the concentration before the decision of the office on approval of concentration enters into force. The Act at the same time provides for the exemptions from this principle as well as for the fines in case of breach of this rule.

- According to the new Act the Office can impose a fine within three years from the day when it learned about the infringement of the Act (the deadline pursuant to the former act was 1 year). In line with the EC law the Act allows imposition of fine only on the basis of intentional or negligent behaviour of the undertaking.

In 2004, **the Act was amended as of 2 June 2004 by the Act No. 340/2004 Coll.**, which aimed in particular at ensuring implementation of principles of the modernised EC competition law after 1 May 2004 and enabling the Office to engage in the decentralised enforcement of the EC competition law within the framework of the European Competition Network. Apart from that, its objective was also to strengthen the Czech competition law compliance with the current EC competition rules and to respond to the changes in the Community law since the enactment of the competition act in 2001. This amendment to the Act includes in particular the following changes to the Czech competition law:

- The Office is empowered to apply Articles 81 and 82 of the EC Treaty in compliance with the Council Regulation 1/2003 and procedural rules for such proceedings before the Office are provided for.

- The effective co-operation of the Office with the European Commission and national competition authorities of the EU Member States within the framework of the European Competition Network is ensured, including the assistance by the Office to the European Commission during its investigation in the territory of the Czech Republic.

- The rules for acquiring court permission for carrying out investigation in other than business premises are set.

- A system of notifications for agreements distorting competition is replaced by a direct applicability of the provisions concerning exemption from the prohibition of agreements. Similarly to the EC law undertakings need not ask the Office any more for issuing a decision on permission of exemption in the framework of administration

proceedings but if their agreements fulfil conditions for exemption stipulated by the Act, they are exempted automatically.

- Maximum market shares for so-called de minimis agreements are increased to the level of 10% as far as horizontal agreements are concerned and 15% as far as vertical agreements are concerned (original thresholds were 5 and 10% respectively).
- A so-called negative clearance procedure relating to agreements and abuse of a dominant position is abolished.
- A new legal institute is introduced in the form of the decision that makes binding commitments offered by the participants to the proceedings. Such commitment decision enables termination of the proceedings and removal of competition concerns without being necessary to issue a decision on existence of a prohibited agreement or abuse of dominant position.
- The definition of an abuse of dominant position in the form of rejection of access to so-called essential facilities is made more precise and it newly includes not only cases where transmission networks and infrastructures are in ownership, but also under other type of control by a dominant undertaking.
- Merger notification thresholds are changed so that local nexus of the concentrations to be notified to the territory of the Czech Republic is strengthened.
- Time-limits for proposal of remedies in merger cases are introduced as well as an extension of deadlines for issuing decisions in case of mergers where remedies were proposed.

Furthermore, by the **Act was amended as of 7 September 2004 also by Act No. 484/2004 Coll.** adopted on the basis of an initiative of a member of the House of Deputies of the Parliament of the Czech Republic. This amendment, which was not recommended by the Office, concerned the application of the Act to the production of and trade in agricultural products and contains the following changes to the Czech competition law:

- The Act newly does not apply to actions of undertakings in the field of production of and trade in agricultural products provided they act in compliance with the law of the European Communities (the footnote to the relevant provision refers explicitly to the Regulation No. 26/62 applying certain rules of competition to production of and trade in agricultural products).
- The de minimis rule newly contains, besides the exemption for horizontal and vertical agreements below specified market share thresholds, also a provision exempting from the prohibition agreements of sales organizations and associations of agricultural producers on sale of unprocessed agricultural commodities (again referring to Regulation No. 26/62). This exemption nevertheless does not apply to the hard-core restrictions specified in Article 6(2) of the Act.
- In the provision prohibiting abuse of dominance a new example of such an abuse is added consisting in direct or indirect requirement of pecuniary or non-pecuniary performance in exchange for listing by an undertaking in the position of a purchaser, for placement of goods in the business premises of an undertaking in the position of a purchaser, or direct or indirect requirement of special discounts and financial advantages in connection with opening of business premises or various promotional activities by an undertaking in the position of a purchaser.

In 2004, the Office also elaborated a **draft of another amendment to the Act** which was approved by the Government in January 2005. This draft amendment aims at ensuring further convergence of the Czech competition law with the Community law in particular

in connection with adoption of the Council Regulation No. 139/2004 on the control of concentrations. It also proposes to incorporate the Community block exemptions directly into the Czech competition law so that they would be applied in the Czech Republic also to agreements with no effect on trade but falling under the prohibition pursuant to the national competition rules. The draft Amendment to the Act on the Protection of Competition will be discussed by the Parliament of the Czech Republic during the year 2005.

Block exemptions

The Act on the Protection of Competition empowered the Office to adopt a complex system of so-called block exemptions applied in the EU. On 5 June 2001 the Office has issued eight decrees (No. 198-205/2001 Coll.) on approval of general exemption from the prohibition of agreements distorting competition. These decrees have come into force on the same day as the new Act, i.e. on 1 July 2001. The general exemptions cover certain categories of vertical agreements, agreements on research and development, agreements on transfer of technologies, specialisation agreements, agreements in the area of insurance, agreements concerning consultations on prices allocation of slots in passenger air transport, agreements on distribution and servicing of motor vehicles and agreements in the area of rail, road and inland waterway transport. The block exemption concerning agreements on distribution and servicing of motor vehicles was revised in 2003 (decree of the Office No. 31/2003 Coll.) in order to incorporate changes made to the relevant EC block exemption.

Leniency programme

With the aim to strengthen its instruments to fight cartel agreements, the Office adopted on 1 July 2001 Communication on non-imposition or reduction of fines in cartel cases (so-called leniency programme), which was inspired by the successful leniency notice of the European Commission. The level of reduction of fine always depends on the time of providing the co-operation to the Office and importance of the information provided by the undertaking – the party to collusive cartel agreement. In March 2002 the Office has revised its leniency programme in order to follow the principles of the new leniency programme of the European Commission.

Decree stipulating the details of requisites of the application for approval of the concentration of undertakings

Proceeding on approval of concentration pursuant to the Act is always initiated on the basis of an application (also called notification). The Act defines general requisites of the application and explicitly refers to the decree of the Office, which should stipulate these requisites in detail. The Office issued a Decree No. 368/2001 Coll., stipulating the details of the requisites of the application for approval of concentration of undertakings, which came into force as of 17 October 2001. Integral part of the decree is the questionnaire, which contains questions concerning the detailed information on the intended concentration.

CONSOLIDATED ACT ON THE PROTECTION OF COMPETITION

**ACT No. 143/2001 Coll.
of 4 April 2001**

**on the Protection of Competition
and on Amendment to Certain Acts
(Act on the Protection of Competition)**

**as amended by
Act No. 340/2004 Coll. of 4 May 2004
and
Act No. 484/2004 Coll. of 5 August 2004**

The Parliament has enacted the following Act of the Czech Republic:

**PART ONE
PROTECTION OF COMPETITION**

**SECTION I
INTRODUCTORY PROVISIONS**

**Article 1
Object of the Act**

(1) This Act regulates the protection of competition in the market of products and services (hereinafter referred to as “goods”) against its elimination, restriction, other distortion, or imperilment (hereinafter referred to as “distortion”) by:

- a) agreements between undertakings (Article 3 (1)),
- b) abuse of dominant position of undertakings, or
- c) concentration of undertakings.

(2) This Act further regulates the procedure for application of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter referred to as “the Treaty”) by the authorities of the Czech Republic and certain issues of cooperation of these authorities with the Commission of the European Communities¹⁾ (hereinafter referred to as “the Commission”) and with the authorities of other Member States of the European Community in procedure pursuant to the Council Regulation (EC) on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty^{1a)} (hereinafter referred to as “the Regulation”).

¹⁾ Article 211 et seq. of the Treaty establishing the European Community.

^{1a)} Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

(3) This Act shall apply to undertakings which provide, on the basis of a special act or on the basis of a decision issued pursuant to a special act, services of general economic interest^{1b)} in so far as its application does not obstruct the provision of these services.

(4) This Act shall be applied similarly also to the proceedings in cases of undertakings, whose actions may affect trade between Member States of the European Community pursuant to the Articles 81 and 82 of the Treaty.

(5) This Act shall also apply to actions of undertakings, occurred abroad, which distort or may distort competition in the territory of the Czech Republic.

(6) This Act shall not apply to actions pursuant to paragraph 1, whose effects take place solely in a foreign market, unless international treaty, binding on the Czech Republic, provides otherwise.

(7) This Act shall further not apply to the protection of competition against unfair competition²⁾.

(8) This Act shall further not apply to actions of undertakings in the field of production of and trade in agricultural products provided they act in compliance with the law of the European Communities.^{3a)}

Article 2

Definition of certain terms

(1) Undertakings under this Act shall be deemed to mean natural or legal persons, their associations, associations of such associations and other groupings, including where such associations and groupings are not legal persons, provided they take part in competition or may influence competition by their activities, although they are not entrepreneurs.

(2) Relevant market shall be deemed to mean the market of goods, which are identical, comparable or mutually interchangeable from the point of view of its characteristics, price and their intended use in the area, where the competition conditions are sufficiently homogenous and which can be clearly distinguished from neighbouring areas.

^{1b)} For instance the Act No. 29/2000 Coll., on Postal Services and on amendments to several Acts (the Postal Services Act), Article 23 of the Act No. 6/1993 Coll., on the Czech National Bank, as amended by the Act No. 442/2000 Coll., Article 9 of the Act No. 468/1991 Coll., on Operation of Radio and Television Broadcasting, as amended, the Act No. 151/2000 Coll., on Telecommunications and on amendment to other Acts.

²⁾ Article 44 and et seq. of the Commercial Code, as amended by the Act. No. 370/2000 Coll.

^{3a)} Regulation No. 26 applying certain rules of competition to production of and trade in agricultural products

SECTION II
AGREEMENTS DISTORTING COMPETITION

Article 3

(1) All agreements between undertakings, decisions by associations of undertakings and concerted practices (hereinafter referred to as “agreements”) which result or may result in the distortion of competition shall be prohibited and null and void, ⁴⁾ unless this Act or a special act provides otherwise, or unless the Office for the Protection of Competition (hereinafter referred to as “the Office”) grants an exemption from this prohibition by its implementing regulation.

(2) Prohibited within the meaning of paragraph 1 shall be in particular agreements that result or may result in the distortion of competition due to the fact that they contain provisions on:

- a) direct or indirect fixing of prices or other business terms and conditions,
- b) limitation or control of production, sales, research and development or investments,
- c) division of markets or sources of supply,
- d) making the conclusion of a contract subject to acceptance of further performance, which by its nature or according to commercial usage and fair business practices has no connection with the object of such contracts,
- e) application of dissimilar conditions to identical or equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage,
- f) obligation of the parties to the agreement to refrain from trading or other economic co-operation with undertakings not being party to the agreement, or to otherwise harm such undertakings (group boycott).

(3) If the reason for prohibition relates only to a part of the agreement, only that particular part thereof shall be prohibited and null and void. Provided that it may be inferred from the nature, contents or purpose of the agreement, or the circumstances in which the agreement was concluded, that such part may not be severed from its remaining content, the whole such agreement shall be prohibited and null and void.

(4) The prohibition pursuant to paragraph 1 shall not apply to agreements, which
a) contribute to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit,
b) do not impose on the undertakings restrictions which are not indispensable to the attainment of the objectives pursuant to letter a),
c) do not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the market of goods, the supply or purchase of which constitutes the object of the agreement

⁴⁾ Article 39 of the Civil Code, as amended by the Act No. 509/1991 Coll.

Article 5

Horizontal and vertical agreements

- (1) Agreements between undertakings operating at the same level of the goods market shall be horizontal agreements.
- (2) Agreements between undertakings operating at different levels of the goods market shall be vertical agreements.
- (3) Mixed agreements between undertakings operating at the same horizontal level as well as at different vertical levels of the goods market shall be deemed to constitute horizontal agreements; in case of doubts, any such agreement shall be deemed to be a horizontal agreement.

Article 6

- (1) The prohibition of agreements pursuant to Article 3(1) shall not apply to:
 - a) a horizontal agreement where the combined share in the relevant market of the parties to the agreement does not exceed 10%,
 - b) a vertical agreement where the combined share in the relevant market of the parties to the agreement does not exceed 15%,
 - c) agreements of sales organizations and associations of agricultural producers on sale of unprocessed agricultural commodities.^{3a)}
- (2) The exemption from the prohibition of agreements pursuant to paragraph 1 shall not apply to the following agreements, even though they fulfil conditions laid down in paragraph 1:
 - a) horizontal agreements on direct or indirect price fixing, division of market or sources of supply,
 - b) vertical agreements on direct or indirect price fixing relating to resale of goods by the purchaser or granting the purchaser full protection for such resale in a defined market,
 - c) individual agreements, forming a part of system of agreements pertaining to identical, comparable or substitutable goods, provided that
 1. the aggregate share in the relevant market of the parties to agreements forming such system, where at least one and the same undertaking is party to all these agreements, exceeds percentage limits set in paragraph 1 above, or
 2. the system of vertical or mixed agreements restricts access to the relevant market for undertakings which are not parties to such agreements and the competition in the relevant market is significantly restricted by the cumulative effect of parallel networks of similar vertical or mixed agreements entered into for the purpose of distribution of identical, comparable or substitutable goods.

Article 7

- (1) **If the Office finds within the framework of proceedings concerning the matters pursuant to Articles 3 to 6, that a prohibited agreement has been concluded,**

it shall declare such fact in a decision, by means of which it shall prohibit performance of the agreement for the future.

(2) In proceedings pursuant to paragraph 1 the Office may impose on the parties the duty to fulfil measures, which they have jointly proposed, if such measures are sufficient for the protection of competition and if the harmful situation is eliminated by their fulfilment. Should the Office find such measures not sufficient, it shall communicate the reasons for such finding to the undertakings in writing and it shall continue with the proceedings; otherwise it shall impose fulfilment of such measures and terminate the proceedings.

(3) The parties to the proceedings may propose the measures pursuant to paragraph 2 to the Office in writing within 15 days following the day, on which the Office delivered to them its objections to the agreement; any proposal or changes in the proposed measures made after this period shall be taken into account by the Office only in cases deserving special attention. The parties to the proceedings are bound by their proposal vis-à-vis the Office and vis-à-vis each other, or vis-à-vis third parties, and following the proposal, until the decision of the Office pursuant to paragraph 2 is issued, they must not perform the agreement in its original wording.

(4) The Office may not issue a decision pursuant to paragraph 2, if the prohibited agreement has already been performed and if it resulted or could have resulted in a substantial distortion of competition.

(5) Following the termination of the proceedings pursuant to paragraph 2, the Office may reopen the proceedings pursuant to paragraph 1, where

- a) there has been a substantial change in circumstances on which the decision pursuant to paragraph 2 was based,
- b) the undertakings act contrary to the imposed measures, or
- c) the decision was issued on the basis of incorrect or incomplete documents, data or information.

SECTION III DOMINANT POSITION AND ITS ABUSE

Article 10

(1) One or more undertakings jointly (joint dominance) shall be deemed to have a dominant position in the relevant market, if their market power enables them to behave to a significant extent independently of other undertakings or consumers.

(2) The Office shall assess the market power pursuant to paragraph 1 above on the basis of the amount of ascertained volume of sales or purchases in the relevant market for the goods in question (market share), achieved by the relevant undertaking or undertakings in joint dominant position during the period examined pursuant to this Act, and on the basis of other indices, in particular the economic and financial power of the undertakings, legal or other barriers to entry into the market by other undertakings, level of vertical integration of the undertakings, market structure and size of the market shares of their immediate competitors.

(3) Unless proven contrary by means of the indices pursuant to paragraph 2 above, an undertaking or undertakings in joint dominance shall be deemed not to be in dominant position, if its/their share in the relevant market achieved during the examined period does not exceed 40%.

Article 11

(1) Abuse of dominant position to the detriment of other undertakings or consumers shall be prohibited. Abuse of dominant position shall consist particularly of:

- a) direct or indirect enforcement of unfair conditions in agreements with other participants in the market, especially enforcement of performance, which is at the time of conclusion of contract conspicuously inadequate to the counter-performance provided,
- b) making the conclusion of contracts subject to acceptance by the other party of supplementary performance, which by its nature or according to commercial usage has no connection with the object of such contracts,
- c) application of dissimilar conditions to identical or equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- d) termination or limitation of production, sales or research and development to the prejudice of consumers,
- e) consistent offer and sale of goods for unfairly low prices, which results or may result in distortion of competition,
- f) refusal to grant other undertakings access, for a reasonable reimbursement, to own transmission grids or similar distribution networks or other infrastructure facilities, which are owned or used on other legal grounds by the undertaking in dominant position, if other undertakings are unable for legal or other reasons to operate in the same market as the dominant undertakings without being able to jointly use such facilities, and such dominant undertakings fail to prove, that such joint use is unfeasible for operational or other reasons or that they cannot be reasonably requested to enable such use; the same proportionately applies also to the refusal of access, for a reasonable reimbursement, of other undertakings to the use of the intellectual property or access to the networks owned or used on other legal grounds by the undertaking in a dominant position, if such use is necessary for participation in competition in the same market as the dominant undertakings or in any other market,**
- g) direct or indirect requirement of pecuniary or non-pecuniary performance in exchange for listing by an undertaking in the position of a purchaser, for placement of goods in the business premises of an undertaking in the position of a purchaser, or direct or indirect requirement of special discounts and financial advantages in connection with opening of business premises or various promotional activities by an undertaking in the position of a purchaser.**

(2) If the Office finds within the framework of proceedings concerning the matters pursuant to paragraph 1 that an abuse of a dominant position has been committed, it shall declare such fact in a decision and it shall by this decision prohibit such action for the future.

(3) In proceedings pursuant to paragraph 2 the Office may impose on the parties the duty to fulfil measures, which they have jointly proposed, if such measures are sufficient for the protection of competition and if the harmful situation is eliminated by their fulfilment. Should the Office find such measures not sufficient, it shall communicate the reasons for such finding to the undertakings in writing and it shall continue with the proceedings; otherwise it shall order fulfilment of such measures and terminate the proceedings.

(4) The parties to the proceedings may propose the measures pursuant to paragraph 3 to the Office in writing within 15 days following the day, on which the Office delivered to them its objections to their behaviour; any proposal or changes in the proposed measures made after this period shall be taken into account by the Office only in cases deserving special attention. The parties to the proceedings are bound by their proposal vis-à-vis the Office and vis-à-vis each other, or vis-à-vis third parties, and following the proposal, until the decision of the Office pursuant to paragraph 3 is issued, they must not perform the agreement in its original wording.

(5) The Office may not issue a decision pursuant to paragraph 3, if the abuse of dominant position has resulted in a substantial distortion of competition.

(6) Following the termination of the proceedings pursuant to paragraph 3, the Office may reopen the proceedings pursuant to paragraph 2, where
a) there has been a substantial change in circumstances on which the decision pursuant to paragraph 3 was based,
b) the undertakings act contrary to the imposed measures, or
c) the decision was issued on the basis of incorrect or incomplete documents, data or information.

SECTION IV CONCENTRATIONS OF UNDERTAKINGS

Article 12 Definition of terms

(1) A concentration of undertakings shall originate from the transformation ⁶⁾ of one or more undertakings previously independently operating in the market.

(2) A concentration of undertakings pursuant to this Act shall include the acquisition of an enterprise⁷⁾ of another undertaking or a substantial part thereof by means of a contract on the sale of an enterprise.

(3) As a concentration of undertakings pursuant to this Act shall further be regarded a situation, when one or more persons who are not entrepreneurs, but already control at least one enterprise, or if one or more entrepreneurs acquire the possibility to control directly or indirectly another enterprise, in particular:

⁶⁾ Article 69 of the Commercial Code, as amended by the Act No. 370/2000 Coll.

⁷⁾ Article 5 of the Commercial Code, as amended by the Act No. 370/2000 Coll.

- a) by acquisition of equity shares, business or membership interests, or
- b) by a contract or by any other means, allowing them to determine or influence the behaviour of the controlled undertaking.

(4) A concentration within the meaning of paragraph 3 shall be constituted also by establishment of a joint control over an undertaking (hereinafter referred to as “joint venture”) that performs on a lasting basis all functions of an autonomous economic entity.

(5) Establishment of a joint control over a joint venture, the purpose of which is coordination of competition behaviour of the persons controlling the undertaking, which remain independent competitors in the market, shall be assessed as an agreement of undertakings pursuant to Section II.

(6) A qualified stake held by a bank in a legal entity by virtue of payment of the issue price of shares by a set-off of the bank’s receivables from such legal entity shall not be deemed to constitute a concentration of undertakings pursuant to paragraph 2 above, where such qualified stake is held for the duration of the rescue operation or financial restructuring of such legal entity for a maximum of 1 year. A situation where undertakings, whose business involves trading in securities, acquire temporarily, for a period of up to 1 year, interests in another undertaking for the purpose of the sale thereof, provided they do not exercise the voting rights attached to such interests in order to determine or influence the competitive behaviour of such controlled undertaking, shall not be deemed to constitute a concentration between undertakings pursuant to paragraph 2 above. The Office may extend the aforementioned period by a reasonable time at the request of a bank or an undertaking trading in securities.

(7) Further, delegation of certain powers of the statutory bodies of undertakings to persons engaged in activities pursuant to special legal regulations, e.g., a liquidator⁸⁾ or a bankruptcy trustee⁹⁾, shall not be deemed to constitute a concentration between undertakings pursuant to paragraph 2 above.

Article 13

Concentrations of undertakings subject to approval by the Office

A concentration shall be subject to the approval of the Office, if:

- a) **the total net turnover of all undertakings concerned achieved in the last accounting period in the market of the Czech Republic exceeds CZK 1.5 billion and each of at least two of the undertakings concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding CZK 250 million, or**
- b) **the net turnover achieved in the last accounting period in the market of the Czech Republic**
 - 1. in case of a concentration pursuant to Article 12(1) at least by one of the parties to the transformation,**

⁸⁾ Article 70 et seq. of the Commercial Code, as amended by the Act No. 370/2000

⁹⁾ Article 14 et seq. of the Act No. 328/1991 Coll., on Bankruptcy and Settlement, as amended

2. in case of a concentration pursuant to Article 12(2) by the acquired enterprise or a substantial part thereof,
3. in case of a concentration pursuant to Article 12(3) by the undertaking, over whose enterprise the control is acquired, or
4. in case of a concentration pursuant to Article 12(4) by at least one of the undertakings establishing a joint venture is higher than CZK 1 500 000 000 and at the same time the worldwide net turnover achieved in the last accounting period by another undertaking concerned exceeds CZK 1 500 000 000.

Article 14 Calculation of turnover

- (1) The net turnover¹⁰⁾ of undertakings concerned shall be deemed to mean the net turnover achieved by the individual undertakings solely by means of the activity, which constitutes their object of business. Where the undertakings are not entrepreneurs, the net turnover shall be deemed to mean solely the turnover achieved by means of the activity, for which they were founded or which they usually practice.
- (2) Aggregate net turnover shall include net turnovers achieved by:
- a) all the undertakings concerned,
 - b) persons, which will be controlling undertakings concerned after implementation of the given concentration and persons, which are controlled by the undertakings concerned,
 - c) persons controlled by the person, which will control the undertakings concerned after implementation of the given concentration, and**
 - d) persons controlled jointly by two or more persons referred to in (a) to (c) above.
- (3) The joint net turnover of the undertakings concerned shall not include the part of the turnover, which was achieved by sale of goods between the undertakings concerned and the persons referred to in paragraph 2, letters b),c) and d).
- (4) If only a part of an undertaking is subject to the concentration, only the portion of turnover achieved by such part shall be included in net turnover.
- (5) If within a two-year period two or more concentrations take place between the same undertakings, consisting in the transfer of a part of an enterprise to another undertaking, such concentrations shall be treated as one and the same concentration.
- (6) As regards banks¹¹⁾, net turnover shall be deemed to mean the sum of income items, especially interest income, income from securities and asset shares, fees and commissions and profits from financial operations. As regards insurance companies¹²⁾, net turnover shall be deemed to mean the sum of insurance premiums prescribed pursuant to all the insurance contracts concluded.

¹⁰⁾ Article 20(2)(a) of the Act No. 563/1991 Coll., on Accountancy, as amended

¹¹⁾ Article 1(1) of the Act No. 21/1992 Coll., on Banks, as amended

¹²⁾ Article 2 (a) of the Act No. 363/1999 Coll., on the Insurance Sector and amendments to certain related Acts (the Insurance Act)

Article 15

Initiation of proceedings

- (1) Concentration approval proceedings shall be initiated on the basis of a notification.
- (2) In cases within the meaning of Article 12(1), (2) and (4), a concentration notification shall be filed jointly by the parties to the concentration, who intend to realise a concentration by the transformation or by the acquisition of an enterprise or a substantial part thereof on the basis of a contract, or acquire control over a joint venture; in cases within the meaning of Article 12(3), the undertaking which is to acquire the possibility to control directly or indirectly another enterprise shall be obliged to file a concentration notification.
- (3) The concentration notification:
 - a) may be filed also prior to conclusion of the agreement establishing the concentration or prior to acquisition of control over another undertaking in any other way,
 - b) shall contain substantiation, documents certifying the facts decisive for the concentration and the requisites set out by the implementing legal regulation (Article 26(3)).
- (4) The concentration approval proceedings shall be initiated on the day when the Office receives the concentration notification containing all requisites pursuant to paragraph 3. In case the notification does not contain such requisites, the Office may, on the basis of information received, issue only a written opinion specifying whether the concentration is subject to approval pursuant to this act and whether the notification is to be completed.

Article 16

Decision on approval of concentration

- (1) The Office shall without delay announce the initiation of concentration approval proceedings in the Commercial Bulletin and it shall stipulate therein a deadline for submission of objections against this concentration.
- (2) After initiation of the proceedings, the Office shall assess whether the concentration is subject to its approval. If the concentration is not subject to approval by the Office, the Office shall issue a decision to that effect within 30 days of the initiation of proceedings. In cases, where the concentration is subject to approval and does not create or strengthen a dominant position of the undertakings concerned or any of them, as a result of which competition would be significantly impeded, the Office shall issue a decision approving the concentration within the aforementioned deadline. In the event that the Office finds that the concentration raises serious concerns as to a significant impediment to competition, the Office shall inform the parties to the proceedings of this fact within the stipulated deadline and inform them that it is continuing the proceedings.
- (3) If the Office does not issue a decision on the concentration notification within the deadline stipulated in paragraph 2, or fails to inform the parties in writing that it is continuing the proceedings for reasons pursuant to paragraph 2 above, the Office shall be

deemed to have approved the concentration upon the elapse of the aforementioned deadline.

(4) If the Office informs in writing the parties to the proceedings pursuant to paragraph 2 above that it is continuing the proceedings, it shall be obliged to issue a decision within 5 months of the initiation of proceedings, or, where the concentration is to have the form of a public bid, within 2 months of the initiation of proceedings. In the event that the Office fails to issue a decision on the concentration within the stipulated deadlines, the Office shall be deemed to have approved the concentration upon the elapse of the aforementioned deadlines.

(5) The Office may request the party to the proceedings in writing to supply further facts necessary for issuing a decision on the concentration approval or to supply further evidence of such facts. The deadlines pursuant to paragraphs 2 and 4 shall be suspended for the period between the day on which the party to the proceedings receives such a request and the day on which this obligation is fulfilled. In the event that the concentration decision of the Office is annulled by the Court, the deadlines pursuant to paragraphs 2 and 4 shall start again from the date on which the Court judgement comes into force.

(6) The concentration may be registered in the Commercial Register only after the decision of the Office approving the concentration comes into force.

Article 17 **Appraisal of concentrations**

(1) When deciding on concentration notification, the Office shall in particular assess the necessity of preservation and further development of effective competition, the structure of all markets affected by the concentration, the shares of the parties to the concentration in such markets, their economic and financial power, legal and other barriers to entry by other undertakings into the relevant markets, the alternatives available to suppliers and customers of the parties to the concentration, the development of supply and demand in the affected markets, the needs and interests of consumers and research and development provided that it is to the consumers' advantage and does not form an obstacle to effective competition.

(2) The Office shall by its decision refuse to approve a concentration if the concentration significantly impedes competition in the relevant market.

(3) The Office may make the concentration approval subject to fulfilment of commitments that are proposed by the undertakings concerned in favour of preservation of effective competition before initiation of the concentration approval proceedings or during its course, but not later than 15 days of the day when the last of the parties to the proceedings is informed pursuant to Article 16(2) that the Office continues the proceedings. Proposals of commitments made on a later date or changes to their content shall be taken into consideration by the Office only in cases deserving special attention, if they are submitted to the Office within 15 days following termination of the deadline pursuant to the first sentence of this paragraph. In case the parties to the proceedings propose these commitments within the first 30 days of the proceedings, the deadline

pursuant to Article 16(2) shall be extended by 15 days. In case the parties to the proceedings propose these commitments after the information of the Office about continuation of the proceedings pursuant to Article 16(2), the deadline for issuing a decision pursuant to Article 16(4) shall be extended by 15 days.

Article 18 **Suspension of implementation of concentrations**

(1) The undertakings shall not determine or influence competitive behaviour of the controlled undertaking, in particular by execution of voting rights attached to the holding of equity shares, business or membership interests or otherwise acquired control, before the day of entry into force of the Office's decision on the concentration approval. The undertaking shall also not take any measures that would lead to irreversibility of the implemented concentration and change the market structure on a lasting basis.

(2) Where the Office finds that the undertakings have implemented the concentration without notification of the concentration, it may impose on the undertakings a duty to sell the interests, transfer the enterprise acquired by the concentration or a part thereof, terminate an agreement or take any other measures that may be necessary for restoring effective competition in the relevant market.

(3) The Office may, upon application of the undertakings, decide on an approval of an exemption from the prohibition of implementation of the concentration pursuant to paragraph 1, where there is a threat that the undertakings or third parties sustain a considerable damage or any other significant detriment. The undertakings may file the application for approval of an exemption together with the concentration notification or anytime during the proceedings. The application shall be substantiated and made in writing.

(4) The Office shall decide on the application for approval of an exemption pursuant to paragraph 3 without delay, not later than 30 days of the receipt thereof. In deciding on the application, the Office shall take into account, besides the damage or any other detriment, the consequences of such exemption on competition in the relevant market. In the event that the Office fails to issue a decision within the stipulated period of time, the exemption shall be deemed to have been approved.

Article 19 **Revocation of decision on concentration approval**

(1) The Office may revoke the decision on concentration approval where it finds that the concentration approval was based on documents, data and information for the completeness, correctness and truthfulness of which the parties to the proceedings are responsible and which turn out to be incorrect or incomplete, in full or in part, or where the approval has been obtained by deceit or where the parties to the proceedings fail to fulfil the conditions, restrictions or commitments subject to which the Office made the approval.

(2) The Office may initiate proceedings for revocation of a decision on concentration approval within 1 year of learning about the facts referred to in paragraph 1, but not later than 5 years after such facts have occurred.

SECTION V THE OFFICE

Article 20

(1) The scope of competencies of the Office is governed by a special legal regulation¹⁴⁾. In addition to the powers stipulated by the other provisions of this Act, the Office:

- a) supervises whether and how the undertakings fulfil the obligations arising for them from this Act or the decisions of the Office adopted on the basis of this Act,
- b) publishes concentration notifications and its decisions which has come into force.

(2) When performing the supervision pursuant to paragraph 1(a), the Office may initiate proceedings of its own initiative. Article 21(5) to (9) shall apply mutatis mutandis to the performance of supervision by the Office.

Article 20a

(1) The Office shall be empowered to apply Articles 81 and 82 of the Treaty in individual cases, if the behaviour of undertakings may affect trade between Member States within the meaning of Articles 81 and 82 of the Treaty. For this purpose, it shall be entitled to:

- a) require that an infringement be brought to an end,
- b) order interim measures,
- c) accept commitments,
- d) impose fines.

(2) The Office may withdraw the benefit resulting from one of the exemption regulations within the meaning of Article 81(3) of the Treaty if the agreements have in a particular case effects incompatible with Article 81(3) of the Treaty in a territory of the Czech Republic or in a part thereof, which has all characteristics of a distinct geographic market.

(3) The Office shall furthermore be empowered

- a) to request the Commission to provide it with copies of documents necessary for the assessment of a case,
- b) to consult the Commission on any case involving the application of Community law,
- c) to exchange with the Commission and other competition authorities of the Member States and to use in evidence any matter of fact or of law, including confidential information,
- d) to request the Commission to include on the agenda of the Advisory Committee on Restrictive Practices a case it deals with,

¹⁴⁾ Act No. 273/1996 Coll., on the Scope of Activities of the Office, as amended by the Act No. 187/1999 Coll.

- e) to submit to courts observations on issues relating to the application of Articles 81 and 82 of the Treaty and to request the relevant court to transmit any documents necessary for the assessment of the case,
 - f) to conduct investigations on the basis of a request of a competition authority of any other Member State.
- (4) The Office shall be obliged
- a) to provide the Commission with all necessary information so that the Commission is able to carry out the duties assigned to it by the Regulation,
 - b) to afford the Commission the necessary assistance in case an undertaking opposes or obstructs an inspection;
 - c) to inform in writing the Commission and the competition authorities of other Member States about initiation of proceedings on the basis of Articles 81 or 82 of the Treaty,
 - d) to provide the Commission, no later than 30 days before the adoption of a decision, with a summary of the case, the envisaged decision and any other documents necessary for the assessment of the case; the information may be also made available to the competition authorities of the other Member States,
 - e) to appoint its representative in the Advisory Committee on Restrictive Practices,
 - f) to conduct, at the request of the Commission, investigations which they consider to be necessary.

SECTION VI PROCEEDINGS BEFORE THE OFFICE

Article 21

- (1) A party to the proceedings shall be deemed to mean any person on whose rights or obligations stipulated by this Act a decision is to be taken within the proceedings.
- (2) In proceedings concerning agreements distorting competition due to a cumulative effect of parallel networks of similar vertical agreements entered into with the purpose of the distribution of identical, comparable or substitutable goods pursuant to Article 6(2)(c), where one of the parties to such agreement is always one and the same undertaking who proposes conclusion of the contract to the other undertakings, the Office may limit the status of a party to the proceedings to this undertaking only.
- (3) An application for initiation of proceedings against undertakings who are parties to the agreements distorting competition or undertakings who abuse dominant position or against the bodies of public administration, or an application filed with respect to matters falling outside the scope of this Act, shall be deemed to be an application for investigation about whose acceptance, rejection or referral to another body the Office shall inform the applicant in writing without issuing a decision. When the Office initiates proceedings of its own initiative in a matter forming the object of the application, the Office shall inform the applicant of the results of investigation or issuance of a decision only if such applicant is not party to proceedings pursuant to paragraph 1.

(4) The parties to the proceedings and the applicant, in case it is not a party to the proceedings, shall be obliged to specify the evidence proving the claimed facts in accordance with the directly binding legal act of the European Communities^{14a}).

(5) In proceedings conducted by the Office pursuant to this Act, undertakings shall be obliged to submit to investigation by the Office. For the purpose of such investigations, the Office shall be authorised to request that undertakings and, unless a special legal regulation states otherwise, the bodies of public administration provide it with documents and information the Office needs for its activities, and to ascertain their completeness, truthfulness and correctness. For this purpose the Office's officials shall be empowered to enter any land, premises, rooms and means of transport, which are used by the undertakings in their business activities (hereinafter referred to as "business premises"), examine the books and other business records, take copies or extracts therefrom and ask for oral explanation on the spot. If a reasonable suspicion exists that books or other business records are being kept in other than business premises, including the homes of natural persons that are statutory bodies or their members or employees (hereinafter referred to as "other than business premises"), the investigation may be, with a prior authorisation from the court¹⁵), conducted also in these premises.

(6) For the purpose of investigation in business or other than business premises, the Office shall be empowered to obtain access to these premises or to open any closed cabinets or cases. Any person, in the estate of which the business or other than business premises are situated, shall be obliged to abide the investigation in these premises; in case it fails to fulfil this obligation the Office's officials shall be empowered to obtain access to the business or other than business premises.

(7) The undertakings shall be obliged to provide the Office at its request with complete, correct and truthful documents and information within the deadline stipulated by the Office and enable the Office to verify the same pursuant to paragraph 4. This obligation shall be applied mutatis mutandis also to the bodies of public administration unless a special legal regulation states otherwise.

(8) When requesting documents and information, the Office shall state the legal ground and purpose of the investigation and advise that the failure to provide them or to enable their verification may be subject to a fine imposed by the Office pursuant to Article 22.

(9) On the proposal of the party to the proceedings or where it seems to be necessary with regard to the subject matter of the case, the Office shall order an oral hearing. The Office may also call to witness at the oral hearing other persons whose information may contribute to a complete, actual and reliably established state of affairs.

^{14a}) Article 2 of the Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

¹⁵) Article 200h of the Act No. 99/1963 Coll., Civil Court Proceedings Code, as amended

Article 21a
Proceedings with a Community element

(1) In case the Office initiates proceedings concerning infringement of Article 81 or 82 of the Treaty, it shall proceed with its investigations pursuant to Article 21(5) to (9) and it shall take decisions pursuant to Articles 7 and 11(2) to (6).

(2) In case the Office conducts investigations pursuant to Articles 20(5), 21(4) or 22(1) or (2) of the Regulation, it shall proceed pursuant to Article 21(5) to (9).

(3) In case the Office has initiated proceedings concerning infringement of Article 81 or 82 of the Treaty and the Commission initiates in the same matter proceedings for adoption of a decision under Chapter III of the Regulation, the Office shall terminate its proceedings.

(4) In case the Office has initiated proceedings concerning infringement of Article 81 or 82 of the Treaty and the same matter is already dealt with or begins to be dealt with by a competition authority of another Member State, the Office shall suspend or terminate its proceedings until the adoption of a decision by this competition authority.

(5) When imposing fines in investigations or proceedings pursuant to paragraphs 1 and 2, the Office shall proceed pursuant to Article 22.

Article 21b
Investigations conducted by the Commission

In case the Commission by its decision orders an investigation to be conducted pursuant to Article 21 of the Regulation, the Commission or the Office shall apply to the court for initiation of proceedings in matters of the protection of competition¹⁵).

SECTION VII
FINES AND REMEDIES

Article 22

- (1) The Office may by its decision impose fines
- a) of up to 300 000 CZK on anyone who intentionally or negligently fails to provide the Office with the requested documents and information within the stipulated period of time, or provides incomplete, untruthful or incorrect documents and information, fails to submit requested books and other business records or fails to enable their review pursuant to Article 21(5), or otherwise refuses to submit to investigations pursuant to this Act,
 - b) of up to CZK 100 000 on anyone who intentionally or negligently without serious reasons fails to appear at a scheduled oral hearing, refuses to testify or otherwise obstructs the proceedings.
- (2) The Office may impose on undertakings fines of up to CZK 10 000 000 or up to 10% of the net turnover achieved in the preceding calendar year where, either intentionally or

negligently, they infringed the prohibitions stipulated in Article 3(1), Article 11(1) and Article 18(1), or fail to fulfil commitments accepted pursuant to Article 7(2) or Article 11(3). When deciding on the amount of the fine, the Office shall take into account in particular the gravity, possible recurrence and duration of the infringement of this Act.

(3) The Office may impose a fine of up to CZK 1 000 000 on undertakings that fail to comply with an enforceable decision.

(4) The fines provided for in paragraphs 1 and 3 may be imposed by the Office repeatedly.

(5) The fines provided for in paragraphs 1 to 3 may be imposed no later than 3 years following the day on which the Office learned about the infringement of the prohibition or the nonfulfilment of the obligations stipulated pursuant to this Act, however, no later than 10 years after the infringement of the prohibition or nonfulfilment of the obligation occurred.

(6) When collecting and enforcing the fines, the Office shall proceed pursuant to a special legal regulation¹⁷⁾. The revenues from fines are an income of the state budget.

Article 23

(1) When the Office establishes an infringement of the prohibitions or nonfulfilment of the obligations provided for in Article 22(2), it may, within the deadline stipulated in Article 22(5), decide, according to the subject matter of the case, to impose remedial measures and to set a reasonable deadline for the compliance therewith.

(2) The content and scope of the remedial measures shall not exceed the purpose of this Act. The imposition of a remedial measure does not preclude the concurrent imposition of a fine pursuant to Article 22(2).

(3) The provision of Article 22(3) shall apply *mutatis mutandis* to the imposition of a fine for a failure to comply with an enforceable decision on the imposition of a remedial measure.

SECTION VIII PROFESSIONAL SECRECY AND THE PROTECTION OF BUSINESS SECRET

Article 24

A person employed by or in any other relationship with the Office, on the basis of which it performs an activity for the Office, shall not disclose any and all the facts which he/she learned during this activity and which constitute a business secret or a confidential information; this obligation shall continue after the termination of this relationship.

¹⁷⁾ Act No. 337/1992 Coll., on Administration of Taxes and Charges, as amended

SECTION X
GENERAL, EMPOWERING, TRANSITIONAL AND REPEALING ROVISIONS

Article 25a
Use of the Administrative Proceedings Code

Unless otherwise specified by this Act, the Administrative Proceedings Code¹⁸⁾ shall be used in proceedings before the Office.

Article 26
Empowering provisions

(1) The Office shall permit by its implementing legal regulation further general exemptions from the prohibition pursuant to Article 3(1) for certain categories of agreements, when it finds that the distortion of competition resulting from such general exemption is outweighed by benefits to other participants in the market, in particular consumers.

(2) The Office shall by a decision addressed to an individual undertaking withdraw the benefits of a general exemption in the event that due to developments in the market, the agreement covered by the general exemption fails to meet the conditions laid down by Article 3(4).

(3) The Office shall stipulate by its implementing legal regulation details concerning requisites of the concentration notifications.

Article 27
Transitory provision

(1) The exemptions granted pursuant to the hitherto legal regulation are considered as the exemptions granted pursuant to this Act.

(2) Proceedings initiated prior to the entry into force of this Act shall be completed in accordance with the hitherto regulations.

Article 28
Repealing provisions

The following legal regulations shall be repealed:

1. Act No. 63/1991 Coll., on the Protection of Competition.
2. Act No 495/1992 Coll., amending the Act No. 63/1991 Coll., on the Protection of Competition.

¹⁸⁾ Act No. 71/1967 Coll., on Administrative Proceedings (the Administrative Proceedings Code), as amended

PART FOUR
Entry into force

Article 31

The Act shall enter into force on 1 July 2001.

* * *

The Act No. 340/2004 Coll., amending the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition), and some other acts, has entered into force on the day of its publication (2 June 2004).

The Act No. 484/2004 Coll., amending the Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition) as amended by the Act 340/2004 Coll., the Act No. 513/1991 Coll., Commercial Code, as amended, and the Act No. 526/1990 Coll., on Prices, as amended, has entered into force on the day of its publication (7 September 2004).

II. UNITED REPUBLIC OF TANZANIA

Commentary of the Government of the United Republic of Tanzania on the Fair Competition Act, 2003 (Act No. 8 of 2003)

Explanatory Notes on the Fair Competition Act, 2003 (Act No. 8 of 2003)

1. The Fair Competition Act, 2003 is a replacement of the previous Fair Trade Practices Act of 1994 (Act No. 4 of 1994) which was passed by Parliament and assented by the President on May 23, 2003. The main object of the Act is to (“.....promote and protect competition...” in the economy.
2. The main role of competition policy and law in the economy is to create, promote, and protect economic environment in order to minimize costs, to improve quality and other services through availability of many competing goods and services providers. The Act outlaws anti-competitive agreements and misuse of market power.
3. However, competition policy cannot succeed where monopolies are predominant. The Act, therefore, also outlaws misuse of monopoly powers and prevents creation of monopolies through mergers and acquisitions which are likely to reduce competition in the particular market.
4. Out of realization that there are natural monopolies and therefore competition is not the suitable method for disciplining them, Tanzania has enacted other laws parallel to the Fair Competition Act. These parallel laws provide for administrative economic regulation to cater for natural monopolies. While the operating methods used by competition and economic regulation authorities are differ, the ultimate aims are same. Both sets of institutions aim at lowering costs in the economy while ensuring quality and other attributes which consumers want. Also the basic requirements in their administrations i.e. accountability, independence, due process, and transparency, and code of conduct are similar in both sets of institutions. The economic regulatory Acts which cater for natural monopolies in utility and infrastructural services provision in the economy are as follows:
 - 4.1 The Energy and Water Utilities Regulatory Authority Act of 2001
 - 4.2 The Surface and Maritime Transport Regulatory Authority Act of 2001
 - 4.3 The Civil Aviation Regulatory Authority of 2003
 - 4.4 The Communication Regulatory Authority of 2003
5. The salient attributes of the Fair Competition Act, 2008 are:
 - 5.1 The implementing institutions of the Act are the Competition Commission and the Fair Competition Tribunal
 - 5.2 The Act provides for appeals against decisions by the Commission to the Fair Competition Tribunal which is chaired by a High court judge and whose jurisdiction on relevant issues is equivalent to that of the High Court.
 - 5.3 While the main Act deals with competition in the economy, it also contains provisions for regulating fair business practices and consumer

- protection in the economy. In particular it deals with misleading and deceptive conduct, unfair business practices, unconscionable conduct, implied conditions in consumer contracts, manufacturers' obligations, product safety and product information, and product recall. However the adjudication of all these direct consumer protection related issues is neither dealt by the Commission nor the Tribunal. It is dealt by the normal courts.
- 5.4 The Act allows for the co-existence with economic multi-sector regulatory laws
 - 5.5 The crucial attributes of competition laws of; accountability, independence, due process and transparency are clearly spelt out in the Act.
 - 5.6 The need to raise consumers' organizational capacity and awareness has been taken into account by making provision for the establishment of a National Consumer Advocacy Council.
 - 5.7 Given the need of encouraging SMEs to grow, their merger and acquisition requirements have been allowed for by establishing a threshold provision below which mergers and acquisitions of SMEs can take place without notifying the Commission.
 - 5.8 The Act provides room for anti-competitive conduct and actions under certain conditions. This allows for developmental and environmental requirements of a country to be taken into account, if need be.
 - 5.9 The Act provides for action against anti-competitive action or conduct from foreign companies or foreign persons that may affect the economy.
 - 5.10 The Act also emphasizes the role of advocacy in competition policy and law especially for Tanzania, a developing country where deregulation, privatization and trade liberalization and therefore the private sector is at its infancy.
6. The draft Bill took into account the core principles as contained in the Model laws of UNCTAD and the OECD. Thereafter, the Bill was submitted twice to meetings with stakeholders for comments before it was submitted to the Government Committees for normal processing. The Investment and Trade Parliamentary Committee called a public hearing during its deliberation and scrutiny of the Bill in order to give the public another chance before it was submitted to the full parliamentary session. In all these stages agreeable changes were incorporated into the Bill.
 7. The recruitment process that is also provided for in the Act is about to begin. It is expected the initial complement of staff of the Fair Competition Commission and Fair Competition Tribunal shall be in place by the end of the year.

Godfrey Mkocha
Commissioner
Fair Competition Commission

THE FAIR COMPETITION ACT, 2003

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FIRST SCHEDULE

THE NOMINATION COMMITTEE

SECOND SCHEDULE

QUALIFICATIONS AND FUNCTIONS OF
THE DIRECTOR-GENERAL

THE UNITED REPUBLIC OF TANZANIA



No.8 OF 2003
I ASSENT,
BENJAMIN W. MKAPA,
President
23RD MAY, 2003

**An Act to promote and protect effective competition
in trade and commerce, to protect consumers
from unfair and misleading market conduct
and to provide for other related matters.**

ENACTED by the Parliament of the United Republic of
Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title
and
commence
ment

1.-(1) This Act may be cited as the Fair
Competition Act, 2003.

(2) This Act shall come into operation upon such
date as the Minister may, by notice published in the Gazette
appoint.

(3) The Minister may appoint different dates for the
commencement of different parts or provisions.

Definitions

2. In this Act, unless the context requires otherwise:
“acquire” includes:

(a) acquire by purchase, exchange, lease, hire, hire-
purchase or gift; and

(b) in relation to services, accept,

and “acquirer” has a corresponding meaning.

“acquisition” in relation to shares or assets means
acquisition, either alone or jointly with another person, of
any legal or equitable interest in such shares or assets but
does not include acquisition by way of charge only.

“agreement” means any agreement, arrangement or
understanding between two or more persons, whether or not
it is:

(a) formal or in writing; or

(b) intended to be enforceable by legal proceedings,
and includes a decision of an association.

“asset” includes any real or personal property, whether tangible or intangible, intellectual property, goodwill, chose in action, right, licence, cause of action or claim and any other asset having a commercial value.

“association” means a body or person (whether incorporated or not) which is formed for the purposes of furthering the interests of its members or of persons represented by its members.

“commission” means the Fair Competition Commission established by section 62;

“competition” has the meaning provided in section 5.

“competition”, “market” and “dominant position in a market” are economic concepts and, subject to the provisions of this Act, shall be interpreted accordingly.

“competitor” has the meaning provided in section 5.

“conduct” includes doing or refusing to do any act, refraining (otherwise than inadvertently) from doing any act, making it known an act will not be done, making an agreement or giving effect to an agreement.

“consumer” includes any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale.

“customer” includes any person who purchases or offers to purchase goods or services unless the context indicates otherwise.

“Council” means the National Consumer Advocacy Council established by section 92.

“Director General” means the Director General appointed under section 62(7);

“dominant position in a market” has the meaning provided in section 5 and “dominance” has a corresponding meaning.

“EWURA” means the Energy and Water Utilities Regulatory Authority.

Act No.11
of 2001

“EWURA Act” means the Energy and Water Utilities Regulatory Authority Act, 2001.

“give effect to”, in relation to an agreement, includes do an act or thing in pursuance of or in accordance with or enforce or purport to enforce.

“goods” include but not limited to;

- (a) ships, aircraft and vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under, or attached to land or not; and
- (d) gas and electricity.

“intermediate goods” means goods used as inputs in

manufacturing.

“licence” means a licence, permit or authority that allows the licensee to supply or acquire goods or services or to carry on any other activity.

“local government body” means a body established by or under a law for the purposes of local government.

“make”, in connection with an agreement, means make, enter into or arrive at.

“manufacture” or “manufacturing” includes any artificial process which transforms goods in order to add value to them for the purpose of resale and any operation of packing or repacking not linked to a form of transportation within a single enterprise.

“market” has the meaning provided in section 5.

“member”, in connection with the Commission, means the Chairman and any other member of the Commission.

“merger” means an acquisition of shares, a business or other assets, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business in Tanzania.

“Minister” means the Minister for the time being responsible for the Commission.

“person” means any natural or legal person, irrespective of its legal status.

“public register” means the public register required to be kept by the Commission under section 77.

“regulatory body” means any one of EWURA, SUMATRA, the Tanzania Communications Regulatory Authority, the Civil Aviation Authority or such other utility or transport regulatory authorities;

“sale” includes an agreement to sell or offer for sale, and an “offer for sale” shall be deemed to include the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification whatsoever by which willingness to enter into any transaction for sale is expressed.

“service” includes any rights (including interests in, and rights in relation to, real or personal property), benefits, privileges or facilities and, without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities provided, granted or conferred under any contract for or in relation to:

- (a) the performance of work, including work of a professional nature, whether with or without the supply of goods;
- (b) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation, education or instruction;
- (c) insurance;
- (d) banking;

(e) the lending of money, and any right, benefit or privilege for which remuneration is payable in the form of a royalty, tribute, levy or similar charge, but does not include the performance of work or the supply of goods under a contract of employment .

“State” means Mainland Tanzania.

“state body” means:

(a) a body corporate established by or under a law for a purpose of the State; or

(b) a body corporate in which the State or a body corporate referred to in (a) has a controlling interest.

“SUMATRA” means the Surface and Marine Transport Regulatory Authority.

Act No.9
of 2001

“SUMATRA Act” means the Surface and Marine Transport Regulatory Authority Act, 2001.

“supply” includes:

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

(b) in relation to services, provide, grant or confer, and “supplier” has a corresponding meaning.

“trade” includes commerce.

“Tribunal” means the Fair Competition Tribunal established by section 83.

Object of
the Act

3. The object of this Act is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Tanzania in order to:

(a) increase efficiency in the production, distribution and supply of goods and services;

(b) promote innovation;

(c) maximise the efficient allocation of resources; and

(d) protect consumers.

Bodies
corporate
under
common
control to
be regarded
as a single
person for
the
purposes of
sections 8,
9, and 10

4.-(1) For the purposes of sections 8, 9 and 10, if a body corporate controls another body corporate, the bodies corporate shall be regarded as a single person.

(2) A body corporate shall control another body corporate within the meaning of sub-section (1) if the first-mentioned body corporate:

(a) owns or controls a majority of the shares carrying the right to vote at a general meeting of the other body corporate;

(b) has the power to control the composition of a majority of the board of directors or other governing organ of the other body corporate; or

(c) has the power to make decisions in respect of the conduct of the affairs of the other body corporate.

Competition in markets and dominant position in a market

5.-(1) The expressions referred to under Part II in accordance to this section shall be interpreted in accordance with this section.

(2). "Competition" means competition in a market in Tanzania and refers to the process whereby two or more persons:

- (a) supply or attempt to supply the same or substitutable goods or services to the persons in the same relevant geographical market; or
- (b) acquire or attempt to acquire the same or substitutable goods or services from the persons in the same relevant geographical market.

(3) A person is a "competitor" of another person if they are in competition with each other or would, but for an agreement to which the two persons are parties, be likely to be in competition with each other.

(4) "Market" means a market in Tanzania or a part of Tanzania and refers to the range of reasonable possibilities for substitution in supply or demand between particular kinds of goods or services and between suppliers or acquirers, or potential suppliers or acquirers, of those goods or services.

(5) In defining markets, assessing effects on competition or determining whether a person has a dominant position in a market, the following matters, in addition to other relevant matters, shall be taken into account:

(a) competition from imported goods and services supplied by persons not resident or carrying on business in Tanzania; and

the economic circumstances of the relevant market including the market shares of persons supplying or acquiring goods or services in the market, the ability of those persons to expand their market shares and the potential for new entry into the market.

(6) A person has a dominant position in a market both (a) and (b) apply:

- (a) acting alone, the person can profitably and materially restrain or reduce competition in that market for a significant period of time; and
- (b) the person's share of the relevant market exceeds 35 per cent.

Application of the Act to the State, State bodies and local

6.-(1) This Act shall apply to Mainland Tanzania, State bodies and local government bodies in so far as they engage in trade.

(2) Notwithstanding the provisions of sub-sections (1), the State shall not be liable to any fine or penalty under this Act or be liable to be prosecuted for an offence against

government bodies this Act.

(3) For the purposes of this section, without affecting the meaning of “trade ” in other respects -

(a) the sale or acquisition of a business, part of a business or an asset of a business carried on by the State, a State body or a local government body constitutes engaging in trade; and

(b) the following do not constitute engaging in trade:

(i) the imposition or collection of taxes;

(ii) the grant or revocation of licences, permits and authorities;

(iii) the collection of fees for licences, permits and authorities;

(iii) internal transactions within the Government, a State body or a local government body.

Extra-territorial operation

7. This Act shall apply to conduct outside mainland Tanzania:

(a) by a citizen of Tanzania or a person ordinarily resident in Tanzania;

(b) by a body corporate incorporated in Tanzania or carrying on business within Tanzania;

(c) by any person in relation to the supply or acquisition of goods or services by that person into or within Tanzania; or

(d) by any person in relation to the acquisition of shares or other assets outside Tanzania resulting in the change of control of a business, part of a business or an asset of a business, in Tanzania.

PART II RESTRICTIVE TRADE PRACTICES

Anti-competitive agreements

8.-(1) A person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is to appreciably prevent, restrict or distort competition.

(2) An agreement in contravention of this section is unenforceable except to the extent the provisions of the agreement causing it to be in contravention of the section are severable from the other provisions of the agreement

(3) Unless proved otherwise, it shall be presumed that an agreement does not have the object, effect or likely effect of appreciably preventing, restricting or distorting competition if none of the parties to the agreement has a dominant position in a market affected by the agreement and either (a) or (b) applies:

(a) the combined shares of the parties to the agreement of each market affected by the agreement is 35 per cent or

less; or

(b) none of the parties to the agreement are competitors.

(4) For the purposes of this section in determining whether the effect or likely effect of an agreement is to appreciably prevent, restrict or distort competition, the fact that similar agreements are widespread in a market affected by the agreement shall be taken into account.

(5) This section does not apply to an agreement to the extent it provides for a merger.

(6) For the purposes of sub-section (1), an object is the object of an agreement if it is a significant object of the agreement even if it is only one of a number of objects of the agreement.

(7) Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence under this Act.

Prohibition
of certain
agreements
irrespective
of their
effect on
competition

9.(1) A person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is:

price fixing between competitors;

a collective boycott by competitors;

output restrictions between competitors; or

(d) collusive bidding or tendering.

(2) In this section:

(a) “price fixing between competitors” means to fix, restrict or control the prices, tariffs, surcharges or other charges for, or the terms or conditions upon which, a party to an agreement supplies or acquires, or offers to supply or acquire, goods or services, in competition with any other party to the agreement;

(b) “collective boycott by competitors” means:

(i) to prevent a party to an agreement from supplying goods or services to particular persons, or acquiring goods or services from particular persons, in competition with any other party to the agreement; or

(ii) to restrict or control the terms and conditions on which, or the circumstances in which, a party to an agreement supplies goods or services to particular persons, or acquires goods or services from particular persons, in competition with any other party to the agreement;

(c) “output restrictions between competitors” means to prevent, restrict or control the production by a party to an agreement of goods or services to be supplied in competition with any other party to the agreement;

(d) “collusive bidding or tendering” means:

(i) to fix or control the prices or terms or conditions of any bid or tender by any of the parties to an agreement at an auction or in any tender or other form of bidding, in competition with any other party to the agreement; or

(ii) to prevent a party to an agreement from making a bid or tender at an auction or in any tender or other form of bidding, in competition with any other party to the agreement.

(3) An agreement in contravention of this section is unenforceable except to the extent the provisions of the agreement causing it to be in contravention of the section are severable from the other provisions of the agreement.

(4) Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence, under this Act.

Misuse of
market
power

10.-(1) A person with a dominant position in a market shall not use his position of dominance if the object, effect or likely effect of the conduct is to appreciably prevent, restrict or distort competition.

(2) If the Commission has granted an exemption under section 12 for an agreement, conduct of a person in making or giving effect to that agreement is not prohibited by this section during the period of the exemption.

(3) For the purposes of sub-section (1), an object is the object of conduct if it is a significant object of the conduct even if it is only one of a number of objects.

(4) Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence.

Mergers
and
acquisitions

11.-(1) A merger is prohibited if it creates or strengthens a position of dominance in a market.

(2) A merger is notifiable under this section if it involves turnover or assets above threshold amounts the Commission shall specify from time to time by Order in the Gazette, calculated in the manner prescribed in the Order.

(3) If, within 14 days after receipt of a notification of a merger under sub-section (2), the Commission determines that the proposed merger should be examined, the merger shall be prohibited for a period of 90 days thereafter or such further period as the Commission determines under sub-section (4), unless the Commission earlier determines the merger should not be prohibited.

(4) The Commission may extend the period of 90 days referred to in sub-section (3) -

(a) for such further period not exceeding 30 days as the Commission sees fit; and

(b) in addition, where the Commission determines its consideration of the merger has been delayed in obtaining information from any of the parties to the proposed merger, for such further period as the Commission considers it has been so delayed.

(5) Without limiting the operation of sub-section (1), a person shall not give effect to a notifiable merger unless it has, at least 14 days before doing so, filed with the Commission a notification of the proposed merger supplying such information as the Commission may by Order require to be included in such notification.

(6) Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence under this Act.

Exemption
of
agreements
by the
Commission

12.-(1) The Commission may, upon the application of a party to an agreement, grant an exemption for that agreement, either unconditionally or subject to such conditions as the Commission sees fit, if the Commission is satisfied in all the circumstances that both paragraph (a) and (b) apply:

(a) the agreement either contravenes section 9 or has, or is likely to have, the effect of appreciably preventing, restraining or distorting competition; and

(b) the agreement results or is likely to result in benefits to the public in one or more of the following ways:

(i) by contributing to greater efficiency in production or distribution;

(ii) by promoting technical or economic progress;

(iii) by contributing to greater efficiency in the allocation of resources; or

and the agreement:

(v) prevents, restrains or distorts competition no more than is reasonably necessary to attain the benefits; and

(vi) the benefits to the public resulting from the agreement outweigh the detriments caused by preventing, restraining or distorting competition.

(2) The Commission may grant block exemption, either unconditionally or subject to such conditions as the Commission sees fit, for all agreements falling within a class of agreements if the Commission is satisfied in all the circumstances that paragraph (a) of sub-section (1) shall not apply to the class of agreements.

(3) When granting an exemption under this section the Commission shall fix a period, not exceeding 5 years from the date the exemption is granted, as the period of the exemption.

(4) An agreement exempted under this section is not prohibited by section 8 or section 9 during the period of the exemption.

(5) For the purposes of this section, "agreement" includes proposed agreement and 'party' includes party to a proposed agreement.

(6) The Commission may revoke or vary an exemption at any time during the period of the exemption if

it is satisfied that circumstances since the grant of the exemption have materially changed or the exemption was granted wholly or partly on the basis of false, misleading or incomplete information.

Exemption
of mergers

13.-(1) The Commission may, upon the application of a party to a merger, grant an exemption for that merger, either unconditionally or subject to such conditions as the Commission sees fit, if the Commission is satisfied in all the circumstances that paragraph (a) and either paragraph (b) or (c) applies:

(a) the merger is likely to create or strengthen a position of dominance in a market;

(b) the merger results or is likely to result in benefits to the public in one or more of the following ways:

(i) by contributing to greater efficiency in production or distribution;

(ii) by promoting technical or economic progress;

(iii) by contributing to greater efficiency in the allocation of resources; or

(iv) by protecting the environment;

and the merger:

(v) prevents, restrains or distorts competition no more than is reasonably necessary to attain those benefits; and

(vi) the benefits to the public resulting from the merger outweigh the detriments caused by preventing, restraining or distorting competition;

(c) in the case of a merger resulting in the change of control of a business, the business faces actual or imminent financial failure and the merger offers the least anti-competitive alternative use of the assets of the business.

(2) When granting an exemption under this section the Commission shall fix a period, not exceeding one year from the date the exemption is granted, as the period of the exemption.

(3) A merger exempted under this section is not prohibited by section 11 during the period of the exemption.

(4) The Commission may revoke or vary an exemption at any time during the period of the exemption if it is satisfied that circumstances since the grant of the exemption have materially changed or the exemption was granted wholly or partly on the basis of false, misleading or incomplete information.

Exceptions

14.-(1) This Part shall not prohibit an agreement to the extent it relates to the remuneration, conditions of employment, hours of work or working conditions of employees.

(2) This Part shall not prohibit an agreement to the extent it provides for compliance with or application of

standards of dimension, design, quality or performance prepared or approved by the Tanzania Bureau of Standards or any other association, institution or body prescribed by regulations.

(3) This Part shall not prohibit an agreement to the extent it relates to the export of goods from Tanzania or the supply of services outside Tanzania if such particulars of the agreement as the Commission may by Order require are filed with the Commission within 21 days after it is made.

(4) Sub-section (3) shall cease to apply to an agreement if the Commission decides the agreement may have an effect on competition in Tanzania and notifies the parties to the agreement of that decision.

(5) If it is necessary to do so in order to comply with the obligations of the United Republic under an agreement with the government of another country, the particular agreement or conduct, or agreements or conduct of particular kind, shall be excluded from the prohibitions in this Part.

PART III

MISLEADING AND DECEPTIVE CONDUCT

Misleading or deceptive conduct 15.-(1) No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Part shall be taken as limiting by implication the generality of subsection (1).

False or misleading representations 16. No person shall, in connection with supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use;
- (b) falsely represent that services are of a particular standard quality or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) represent that he has a sponsorship, approval or affiliation he does not have;
- (g) make a false or misleading representation with respect to the price of goods or services;
- (h) make a false or misleading representation concerning the availability of facilities for the repair of

goods or of spare parts for goods;

(i) make a false or misleading representation concerning the place of origin of goods;

(j) make a false or misleading representation concerning the need for any goods; or

(k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee right or remedy.

Cash price to be stated in certain circumstances

17. No person shall, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless he also specifies the cash price for the goods or services.

Misleading conduct in relation to goods

18. No person shall, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

Misleading conduct in relation to services

19. No person shall engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Misleading representations about certain business activities

20.-(1) No person shall, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that he has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

(2) Where a person, invites, whether by advertisement or otherwise, persons to, engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the persons concerned of work, or the investment of moneys by the persons concerned and the performance by them of work associated with the investment, he shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in the material particular.

Application of provisions of Part III to prescribed

21.-(1) This Part does not apply to a prescribed publication of matter by a prescribed information provider, other than:

(a) a publication of matter in connection with:

(i) the supply or possible supply of goods or services; or

information providers (ii) the promotion by any means of the supply or use of goods or services, where:

(iii) the goods or services were relevant goods or services, in relation to the prescribed information provider; or

(iv) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:

(a) a person who supplies goods or services of that kind; or

(b) body corporate that is related to a body corporate that supplies goods or services of that kind; or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:

(a) in any case - the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or

(b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of prescribed information provider in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition) - the publication was by way of radio or television broadcast by the prescribed information provider.

(3) In this section:

“prescribed information provider” means a person who carries on a business of providing information.

“relevant goods or services” in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

PART IV UNFAIR BUSINESS PRACTICES

Bait Advertising 22.-(1) No person shall advertise goods or services for supply at a specified price if there are reasonable grounds, of which he is aware, or ought reasonably to be aware, for believing that he will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(2) Any person who has, in trade, advertised goods or services for supply at a specified price shall offer

such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(3) In a prosecution of a person in relation to a failure to offer goods or services to a person (in this subsection referred to as the ‘customer’) in accordance with sub-section (2), it is a defence for that person if he establishes that:

(a) he offered to supply or to procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or

(b) he offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned “goods” or “services” were advertised, and, in either case, where the offer was accepted by the customer, he has so supplied, or procured another person to supply, goods or services.

Accepting
payment
without
intending
or being
able to
supply as
ordered

23. No person shall accept payment or other consideration for goods or services where, at the time of the acceptance:

he intends:

(i) not to supply the goods or services; or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or

(b) there are reasonable grounds, of which he is aware or ought reasonably to be aware, for believing that he will not be able to supply the goods or services within the period specified by him or, if no period is specified, within a reasonable time.

Harassment
and
coercion

24. No person shall use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

PART V UNCONSCIONABLE CONDUCT

Unconscionable
conduct

25.-(1) No person shall, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the Court may have regard for the purpose of

determining whether a person has contravened sub-section (1) in connection with the supply or possible supply of goods or services to a person (in this sub-section referred to as the 'consumer'), the Court may have regard to:

- (a) the relevant strengths of the bargaining positions of the person and the consumer;
- (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the person in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than a body corporate.

(3) A person shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that he institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purposes of determining whether a person has contravened sub-section (1) in connection with the supply or possible supply of goods or services to a person:

- (a) the Court shall not have regard to any circumstances that were not reasonably forceable at the time of the alleged contravention; and
- (b) the Court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section

(5) A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

PART VI
IMPLIED CONDITIONS IN CONSUMER CONTRACTS

Conflict of laws 26.-(1) Where:

(a) the proper law of a contract for the supply by any person of goods or services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of the United Republic; or

(b) a contract for the supply by any person of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of this Part.

(2) This Part shall apply to any type of contract made or entered between parties under this Act..

Application of provisions not to be excluded or modified

27.-(1) Any term of a contract (including term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Part;

(b) the exercise of a right conferred by such a provision;

(c) any liability of the person for breach of a condition or warranty implied by such a provision; or

(d) the application of section 35, is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Part or the application of section 35 unless the term does so expressly or is inconsistent with that provision or section.

Limitation of liability for breach of certain conditions or warranties

28.-(1) Subject to this section, a term of a contract for the supply by a person of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under this section by reason only that the term limits his liability for a breach of a condition or warranty (other than a condition or warranty implied by section 29) to:

(a) in the case of goods:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(iii) the payment of the cost of having the goods

repaired; or

(b) in the case of services:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(2) The provisions of sub-section (1) does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the supplier to rely on that term of the contract.

(3) In determining for the purposes of sub-section (2) whether or not reliance on a term of a contract is fair or reasonable, a court shall have regard to all the circumstances of the case and in particular to the following matters:

(a) the strength of the bargaining positions of the supplier and the person to whom the goods or services were supplied, in this sub-section referred to as 'the buyer' relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term, having regard, among other things, to any custom of the trade and any previous course of dealing between the parties; and

(d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

Implied
undertaking
as to title,
encumbrances
and
quiet
possession

29.-(1) Where in a contract for the supply of goods by a supplier to a consumer, other than a contract to which sub-section (3) applies, there is:

(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and

(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the

consumer-implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

(2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in paragraph (c) of subsection (1) by reason only of the existence of a floating charge over assets of the supplier unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) In a contract for the supply of goods by the supplier to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as he or a third person may have, there is:

(a) an implied warranty that all charges of encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and

(b) an implied warranty that:

(i) the supplier;

(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have - that person; and

(iii) any one claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made,

will not disturb the consumer's quiet possession of the goods.

Supply by
description

30.-(1) Where there is a contract for the supply, otherwise than by way of sale, by auction, by a person in the course of a business of goods to a consumer by description, there is an implied condition that goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

Implied
undertakings
as to
quality and
fitness

31.-(1) Where a person supplies, otherwise than by way of sale, by auction, goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such

condition by virtue only of this section:

- (a) as regards defects specifically drawn to the consumer's attention before the contract is made; or
- (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(2) Where a person supplies otherwise than by way of sale, by auction goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of that person.

(3) Sub-sections (1) and (2) shall apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another person as they apply to a contract for the supply of goods made by a person in the course of a business, except where that person is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.

Supply by
sample

32. Where in a contract for the supply, otherwise than by way of supply by sale by auction by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample:

- (a) there is an implied condition that the bulk will correspond with the sample in quality;
- (b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

Liability
for loss or
damage
from
breach of
certain
contracts

33.-(1) Where:

- (a) a person, in this section referred to as the 'supplier' supplies goods, or causes goods to be supplied, to a linked certain credit provider of the supplier and a contracts consumer enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire purchase of the goods to

the consumer; or

(b) a consumer enters into a contract with a linked credit provider of a supplier for the provisions of credit in respect of the supply by the supplier of goods or services, or goods and services, to the consumer;

and the consumer suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, or as a result of a breach of a condition that is implied in the contract by virtue of sections 30, 31 and 32 or of a warranty that is implied in the contract by virtue of section 34, the supplier and the linked credit provider are, subject to this section; jointly and severally liable to the consumer for the amount of the loss or damage, and the consumer may recover that amount by action in accordance with this section in a court of competent jurisdiction.

(2) Where:

(a) a supplier supplies goods, or causes goods to be supplied, to a credit provider who is not a linked credit provider of the supplier;

(b) a consumer enters into a contract with the credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer;

(c) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of the supplier; and

(d) the credit provider did not take physical possession of the goods before they were delivered to the consumer;

or where a consumer enters into a contract with a credit provider for the provision of credit in respect of the supply of services to the consumer by a supplier of which the credit provider is not a linked credit provider, and the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of section 30, 31 and 32 or of a warranty that is implied in the contract by virtue of section 34, the credit provider is not under any liability to the consumer for the amount of the loss or damage but the consumer may recover that amount by action in a court of competent jurisdiction against the supplier.

(3) A linked credit provider of a particular supplier is not liable to a consumer by virtue of sub-section (1) in proceedings arising under that sub-section if the credit provider establishes:

(a) that the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer that was not induced by the supplier;

(b) where the proceedings relate to the supply by way of lease, hire or hire-purchase of goods by the linked credit

provider to the consumer, that:

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the suppliers financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier the credit provider had not had cause to suspect that:

(aa) the consumer might be entitled to recover an amount of loss or damage suffered as a result of misrepresentation or breach of a condition or warranty referred to in sub-section (1); and

(bb) the supplier might be unable to meet the liabilities of the supplier liabilities as and when they fall due;

(c) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies, that:

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that:

(aa) the consumer might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as result of misrepresentation, breach of contract or failure of consideration in relation to the contract or as a result of a breach of a sub-section (1); and

(bb) the supplier might be unable to meet the liabilities of the suppliers as and when they fall due; or

(d) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies, that, having regard to:

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case;

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale, whichever the linked credit provider first became aware of, had no cause to suspect that a person entering into such a contract with the supplier might be entitled to claim damages against, or recover a sum of money from, the supplier for misrepresentation, breach of contract, failure of consideration, breach of a condition or breach of a warranty as referred to in sub-section (1).

(4) Subject to sub-section (5), in any proceedings in relation to a contract referred to in paragraph

(a) or (b) of subsection (1) in which a credit provider claims damages or an amount of money from a consumer, the consumer may set up the liability of the credit provider under sub-section (1) in diminution or extinction of the consumers liability.

(5) Subject to sub-section (6), a consumer may not, in respect of a liability for which, by reason of this section, a supplier and a linked credit provider are jointly and severally liable:

(a) bring proceedings to recover an amount of loss or damage from the credit provider; or

(b) where proceedings are brought against the consumer by the credit provider, make a counter claim or exercise the right conferred by sub-section (4) against the credit provider:

unless the consumer brings the action against the supplier and the credit provider jointly or, in the case of a counter claim or right conferred by sub-section (4), claims in the proceedings against the supplier in respect of the liability by third party proceedings or otherwise.

(6) Sub-section (5), paragraph (a) of subsection (8) and (9)(a) do not apply in relation to proceedings where:

(a) the supplier has been dissolved or is commenced to be wound up; or

(b) in the opinion of the court in which the proceedings are taken, it is not reasonably likely that a judgement obtained against the supplier would be satisfied and the court has, on the application of the consumer, declared that sub-section (5) and paragraphs (a) of sub-section (8) and paragraph (a) of sub-section (9) do not apply in relation to the proceedings.

(7) The liability of a linked credit provider to a consumer for damages or a sum of money in respect of a contract referred to in sub-section (1) does not exceed the sum of:

(a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire purchase;

(b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and

(c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

(8) Where in proceedings arising under sub-section (1), judgement is given against a supplier and a linked credit provider, the judgement:

(a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgement has remained unsatisfied for not less than thirty days; and

(b) may be enforced against the linked credit provider only to the extent of:

(i) the amount calculated in accordance with sub-section (7); or

(ii) so much of the judgement debt as has not been satisfied by the supplier;

whichever is the lesser.

(9) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's liability under sub-section (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

(10) Notwithstanding any other law, where in proceedings arising under sub-section (1), judgement is given against a supplier and a linked credit provider or against a linked credit provider for an amount of loss or damage, the court in which the proceedings are taken shall, on the application of the consumer, unless good cause is shown to the contrary, award interest to the consumer against the supplier and credit provider or against the credit provider, as the case may be, upon the whole or part of the amount, from the time when the consumer became entitled to recover the amount until the date on which the judgement is given, at whichever of the following rates is the greater:

(a) where the amount payable by the consumer to the credit provider for the reason of obtaining credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum – that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;

(b) eight percent or such other rate as is prescribed.

(11) In determining whether good cause is shown against awarding interest under sub-section (10) on the whole or part of an amount of loss or damage, the court shall take into account any payment made into court by the supplier or credit provider.

(12) Where a judgement given in proceedings arising under sub-section (1) is enforced against a linked credit provider of a particular supplier, the credit provider is subrogated to the extent of the judgement so enforced to any rights that the consumer would have had but for the judgement against the supplier or any other person.

(13) In this section:

“credit provider” means a person, providing, or proposing to provide, in the course of a business carried on by him, credit to consumers in relation to the acquisition of goods or

services;

“linked credit provider”, in relation to a supplier, means a credit provider:

(a) with whom the supplier has a contract, arrangement or understanding relating to:

(i) the supply to the supplier of goods in which the supplier deals;

(ii) the business carried on by the supplier of supplying goods or services; or

(iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services;

(b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;

(c) whose forms of contract or forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which contracts or applications or offers for credit from the credit provider may be signed by persons at premises of the supplier.

“tied continuing credit contract” means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider;

“tied loan contract” means a loan contract entered into between a credit provider and a consumer where:

(a) the credit provider knows or ought reasonably to know that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and

(b) at the time the loan contract is entered into the credit provider as a linked credit provider of the supplier.

Warranties
in relation
to the
supply of
services

34.-(1) In every contract for the supply by a supplier in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connection on or with those services will be reasonably fit for the purpose for which are supplied.

(2) Where a person supplies services, other than services of a professional nature provided by a qualified architect or engineer, to a consumer in the course of a business and the consumer, expressly or by implication, makes known to him any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the

services and any materials supplied in connection with those services will be reasonably fit or are of such a nature and quality that they, for that purpose, might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely on, the person's skill or judgment.

(3) A reference in this section to services does not include a reference to services that are, or are to be, provided, granted or conferred under:

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

Rescission
of contracts

35.-(1) Where:

- (a) a person supplies goods to a consumer in the course of a business; and
- (b) there is a breach of a condition that is, by virtue of a provision in this Part, implied in the contract for the supply of the goods, the consumer is, subject to this section, entitled to rescind the contract by:
 - (i) causing to be served on the supplier a notice in writing signed by him giving particulars of the breach; or
 - (ii) causing the goods to be returned to the supplier and giving to him either orally or in writing, particulars of the breach.

(2) Where a consumer purports to rescind under this section a contract for the supply of goods by any person, the purported rescission does not have any effect if:

- (a) the notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;
- (b) in the case of a rescission effected by services of a notice after the delivery of the goods to the consumer but before the notice is served:
 - (i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods;
 - (ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
 - (iii) the goods were damaged by abnormal use; or
- (c) in the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer:

- (i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent

the goods from becoming unmerchantable; or

(ii) the goods were damaged by abnormal use.

(3) Where a contract for the supply of goods by any person to a consumer has been rescinded in accordance with this section:

(a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to him, the property in the goods re-vests in the supplier upon the service of the notice or the return of the goods; and

(b) the consumer may recover from the supplier as a debt, the amount or value of any consideration paid or provided by him for the goods.

(4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other Act.

Standard
form
contracts

36. Whenever the terms and conditions which are to govern any consumer transaction are to be included, whether wholly or in part, in a standard form contract the terms and conditions shall be registered with the Commission in accordance with the regulations under this Act.

PART VII MANUFACTURER'S

OBLIGATIONS

Definitions

37.-(1) In this Part:

“express warranty” in relation to goods, means an undertaking, assertion or representation in relation to:

(a) the quality, performance or characteristics of the goods;

(b) the provision of services that are or may at any time be required in respect of the goods;

(c) the supply of parts that are or may at any time be required for the goods; or

(d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part;

given or made in connection with the supply of the goods or in connection with the goods or in connection with the promotion. by any means of the supply or use of the goods, the natural tendency of which is to induce persons to acquire the goods

“manufactured” includes grown, extracted, produced, processed and assembled.

(2) For the purposes of this Part, where a person makes a representation with respect to any future matter, including doing of or the refusing to do, any act, and the

person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(3) For the purposes of the application of sub-section (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person shall, unless he adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

(4) Sub-section (1) shall be deemed not to limit by implication the meaning of a reference in this Part to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

(5) In this Part:

(a) a reference to goods shall, unless the contrary intention appear, be read as a reference to goods of a kind ordinarily acquired for personal, domestic or household use or consumption;

(b) a reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply;

(c) a reference to the quality of goods includes a reference to the state or condition of the goods; and

(d) a reference to antecedent negotiations in relation to the acquisition of goods by a consumer shall be read as a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of business carried on by the other person whereby the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer.

(6) A person shall be deemed, for the purposes of this Part, to be the manufacturer of goods, if -

(a) the person holds himself out to the public as the manufacturer of those goods;

(b) the person supplies those goods and causes or permits his name, a name by which he carries on business or his brand or mark to be applied to those goods; or

(c) the person causes or permits another person, in connection with the supply or possible supply of those goods by that other person, or in connection with the promotion by that other person by any means of the supply or use of those goods, to hold out the person to the public as the manufacturer of the goods.

(7) A person shall be deemed, for the purposes of this Part, to be the manufacturer of goods if he imports into the country goods of which he is not the manufacturer provided that at the time of the importation the

manufacturer of the goods does not have a place of business in the country.

(8) For the purposes of paragraph (b) of sub-section (6):

(a) a name, brand or mark shall be deemed to be applied to goods if:

(i) it is woven in, impressed on, worked into or annexed or affixed to the goods; or

(ii) it is applied to a covering, label, reel or thing in or with which the goods are supplied; and

(b) where a person's name in which he carries on business or his brand or mark is applied to goods, it shall be presumed, unless the contrary is established, that he caused or permitted the name brand or mark to be applied to the goods.

(9) The reference in sub-section (8) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that sub-section to a label includes a reference to a brand or ticket.

(10) If goods are imported into the country on behalf of a person, such person shall be deemed, for the purposes of this Part, to have imported the goods into the country.

(11) For the purposes of this Part, goods shall to a consumer notwithstanding that, at the time of the supply, they are affixed to land or premises.

Actions in respect of unsuitable goods

38.-(1) Where:

(a) a person, supplies goods manufactured by him to another person who acquires the goods for resupply;

(b) a person, whether or not the person who acquired the goods from another person supplies the goods otherwise than by way of sale by auction, to a consumer;

(c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the person, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connection with the acquisition of the goods were conducted;

(d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and

(e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose, he has little to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation

by action against him in a court of competent jurisdiction.

(2) Sub-section (1) does not apply:

(a) if the, goods are not reasonably fit for the purpose referred to in that sub-section by reason of:

(i) an act or default of any person, not being the person or a servant or agent of the person; or

(ii) a cause independent of human control;

occurring after the goods have left the control of the person; or

(b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the person.

Actions in
respect of
false
descriptions

39.-(1) Where:

(a) a person supplies goods manufactured by the person to another person who acquires the goods for resupply;

(b) a person (whether or not the person who acquired the goods from the person) supplies the goods (otherwise than by way of sale by auction) to a consumer by description;

(c) the goods do not correspond with the description; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, suffers loss or damage by reason that the goods do not correspond with the description,

he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Sub-section (1) does not apply if the goods do not correspond with the description referred to in that sub-section by reason of -

(a) an act or default of a person;

(b) a cause independent of human control,

occurring after the goods have left the control of that person.

(3) A person is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods:

(a) by or on behalf of him; or

(b) with his consent, whether express or implied.

(4) If the goods referred to in sub-section (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(5) A supply of goods is not prevented from being a supply by description for the purposes of sub-section (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

- Actions in respect of goods of unmerchantable quality
- 40.-(1) Where:
- a person supplies goods manufactured by him to another person who acquires the goods for resupply;
 - a person (whether or not the person acquired the goods from him) supplies the goods (otherwise than by way of sale by auction) to a consumer;
 - the goods are not of merchantable quality; and
 - the consumer or a person who acquires the goods from, or derives title to the goods thorough or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality,
- such person is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.
- (2) Sub-section (1) does not apply -
- (a) if the goods are not of merchantable quality by reason of:
 - (i) an act or default of any person; or
 - (ii) a cause independent of human control, occurring after the goods have left the control of the person;
 - (b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer; or
 - (c) if the consumer examines the goods before that contract is made, as regards defects that the examination ought to reveal.
- (3) Goods of any kind are of merchantable quality within the meaning of this section if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to -
- (a) any description applied to the goods by him;
 - (b) the price received by him for the goods (if relevant);
 - and
 - (c) all the other relevant circumstances.

- Actions in respect of non-correspondence with samples etc
- 41.-(1) Where:
- (a) a person, supplies goods manufactured by him to another person who acquires the goods for re-supply;
 - (b) a person (whether or not the person who acquired the goods from the other person) supplies the goods (otherwise than by way of sale by auction) to a consumer;

- (c) goods are supplied to the consumer by reference to a sample;
 - (d) the bulk of the goods does not correspond with the sample in quality or the goods have a defect, rendering them unmerchantable, that is not, or would not be, apparent on reasonable examination of the sample; and
 - (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect,
he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the loss or damage by action against him in a court of competent jurisdiction.
- (2) Sub-section (1) does not apply where -
- (a) the sample is not supplied by the person;
 - (b) the supply by sample is made without the express or implied concurrence of the person; or
 - (c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to:
 - (i) default of any person or a cause independent of human control, occurring after the goods have left the control of the person; or
 - (ii) other circumstances that were beyond the control of him and that he could not reasonably be expected to have foreseen.

Actions in respect of failure to provide facilities for repairs or parts

42.-(1) Where:

- (a) a person supplies goods (otherwise than by way of sale by auction) manufactured by him to a consumer;
- (b) a person, supplies goods manufactured by him to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from him) supplies the goods (otherwise than by way of sale by auction) to a consumer; and
- (c) at a time (in this section referred to as the “relevant time”) after the acquisition of the goods by the consumer:
 - (i) the goods required to be repaired but facilities for their repair are not reasonably available to the consumer or a person who acquires the goods from or derives title to the goods through or under, the consumer; or
 - (ii) a part is required for the goods but the part is not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer;
- (d) the person acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the

part was, reasonably available to the consumer or that other person at the relevant time; and

(e) the consumer or that other person suffers loss or damage by reason of the failure of the supplier to ensure that facilities for the repair of goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time,

he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Sub-section (1) does not apply where the person took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he acquired the goods that:

(a) he did not promise that facilities for the repair of the goods, or that parts for the goods, would be available; or

(b) he did not promise that facilities for the repair of the goods, or that parts for the goods, would be available after a specified period, being a period that expired before the relevant time.

(3) Where the person took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he acquired the goods that he did not promise that:

(a) facilities for the repair of the goods, being facilities of a kind specified in the notice, would be available;

(b) parts for the goods, being parts of a kind specified in the notice, would be available; or

(c) facilities for the repair of the goods would be available at, or parts for the goods would be available from, a place or places specified in the notice,

he is not liable to compensate the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person by reason of the failure of person to ensure that facilities or parts of the kind specified in the notice, were available, or that facilities for the repair of the goods were available at, or parts for the goods were available from a place or places specified in the notice, as the case may be.

(4) In determining whether a person acted unreasonably in failing to ensure that facilities for the repair of goods were, or that a part was, reasonably available to a person at the relevant time, a court shall have regard to all the circumstances of the case, and in particular to the existence, at the relevant time, of circumstances that prevented those facilities or that part being so available, being circumstances beyond the control of the person.

<p>Actions in respect of non-compliance with express warranty</p>	<p>43.-(1) Where-</p> <p>a person supplies goods (otherwise than by way of sale by auction) manufactured by him to a consumer; or</p> <p>a person supplies goods manufactured by him to another person who acquires the goods for re-supply and a person (whether or not the person acquired the goods from him) supplies the goods (otherwise than by way of sale by auction) to a consumer; and:</p> <p>(c) a person fails to comply with an express warranty given or made by him in relation to the goods; and</p> <p>(d) the consumer who acquires the goods from him suffers loss or damage by reason of the failure, he is liable to compensate the consumer for the loss or damage and the consumer may recover the amount of the compensation by action against him in a court of competent jurisdiction.</p> <p>(2) For the purposes of any action instituted by a person against a person under this section, where:</p> <p>(a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods; and</p> <p>(b) the undertaking, assertion or representation would, if it had been given or made by him or a person acting on his behalf, have constituted an express warranty in relation to the goods,</p> <p>it shall be presumed that the undertaking, assertion or representation was given or made by him or a person acting on his behalf unless he proves that he did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.</p>
<p>Right of seller to recover against manufacturer or importer</p>	<p>44. Where -</p> <p>(a) a person (in this section referred to as the “seller”) is under a liability to another person in respect of loss or damage suffered by the consumer as a result of a breach of a condition or warranty implied by a provision of this Part in a contract for the supply of goods (whether or not the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption) by the seller to the consumer; and</p> <p>(b) a third person (in this section referred to as the “manufacturer”):</p> <p>(i) is liable to compensate the consumer in respect of the same loss or damage by reason of the provisions of this Part; or</p> <p>(ii) in a case where the goods referred to in paragraph (a) are not of a kind ordinarily acquired for personal, domestic or household use or consumption would, if the provisions of sections 38, 39, 40 and 41 applied in relation</p>

to those goods, be liable to compensate the consumer in respect of the same loss or damage by reason of any of those provisions,

the manufacturer is liable to indemnify the seller in respect of the liability of the seller to the consumer and the seller may, in respect of the manufacturer's liability to indemnify the seller, institute an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the seller could have obtained if the liability of the manufacturer to indemnify the seller had arisen under a contract of indemnity made between the manufacturer and the seller.

Time for
commencing
actions

45.-(1) Subject to this section, an action under a provision of this Part may be commenced at any time within three years after the day on which the cause of action accrued.

(2) For the purposes of this section, a cause of action shall be deemed to have accrued -

(a) in the case of an action other than an action under section 44, on the day on which the consumer or a person who acquired the goods from or derived title to the goods through or under, consumer first became aware, or ought reasonably to have become aware:

(i) in the case of an action under section 44, that the goods were not reasonably fit for the purpose referred to in that section;

(ii) in the case of an action under section 39, that the goods did not correspond with the description referred to in that section;

(iii) in the case of an action under section 40, that the goods were not of merchantable quality;

(iv) in the case of an action under section 41, that the bulk of the goods did not correspond with the sample in quality or the goods had the defect referred to in the section;

(v) in the case of an action under section 42 that the goods required to be repaired or that the part was required for the goods, as the case may be; or

(vi) in the case of an action under section 43, of the failure of the corporation to comply with the express warranty referred to in that section; or

(b) in the case of an action under section 44, on

(i) the day, or the first day, as the case may be, on which the seller referred to in that section made a payment in respect of, or otherwise discharged in whole or in part, the liability of that seller to the consumer or that other person; or

(ii) the day on which a proceeding was instituted by the consumer or that other person against that seller in respect of that liability or, if more than one such proceeding was

instituted, the day on which the first such proceeding was instituted,
whichever was the earlier.

(3) In an action under a provision of this Part, it is a defence if the defendant proves that the action was not commenced within ten years after the time of the first supply to consumer of the goods to which the action relates.

Application
of this Part
not to be
excluded or
modified

46.-(1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any liability of a person to compensate or indemnify another person that may arise under this Part, is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provisions of this Part unless the term does so expressly or is inconsistent with that provision.

(3) Nothing in this section shall apply to a term of a contract referred to in sub-section (4) of section 47.

Limitation
in certain
circumstanc
es of
liability of
manufactur
er to a
seller

47.-(1) Notwithstanding section 44, in the case of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of a manufacturer to a seller is limited to a liability to pay to the seller an amount equal to:

- (a) the cost of replacing the goods;
 - (b) the cost of obtaining equivalent goods; or
 - (c) the cost of having the goods repaired;
- whichever is the lowest amount.

(2) Sub-section (1) shall not apply in relation to particular goods if the seller established that it is not fair or reasonable for the liability of the manufacturer in respect of those goods to be limited as mentioned in sub-section (1).

(3) In determining for the purposes of sub-section (2) whether or not it is fair or reasonable for the liability of a manufacturer to a seller in respect of goods to be limited as mentioned in sub-section (1), a court shall have regard to all the circumstances of the case and, in particular, to -

- (a) the availability of suitable alternative sources of supply of the goods;
- (b) the availability of equivalent goods; and
- (c) whether the goods were manufactured, processed or adapted to the special order of the seller.

(4) Any term of a contract between the

manufacturer and the seller imposing on the manufacturer a greater liability than the liability mentioned in sub-section (1), shall be subject to this section.

(5) In this section, the expressions “manufacturer” and “seller” have the same respective meanings as provided for under section 44.

PART VIII

PRODUCT SAFETY AND PRODUCT INFORMATION

Warning
notice to
public

48.-(1) Notwithstanding the provisions of this Act, the Commission may publish a notice in the Gazette containing

-

(a) a statement that goods of a kind specified in the notice are under public investigation to determine whether the goods will or may cause injury to any person; or

(b) a warning of possible risks involved in the use of goods of a kind specified in the notice.

(2) Where an investigation referred to in sub-section (1) has been completed the Commission shall, as soon as practicable after the investigation has been completed, by notice published in the Gazette, announce the results of the investigation, and may announce in the notice whether and if so, what action is proposed to be taken in relation to the goods under this Part.

Product
safety
standards
and unsafe
goods

49.-(1) No person shall supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind -

(a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;

(b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or

(c) in respect of which there is in force a notice under this section imposing a permanent ban on those goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product safety standard consisting of such requirements as to -

(a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;

(b) testing of the goods during, or after the completion of, manufacture or processing; and

(c) the form and content of markings, warnings or instructions to accompany the goods, as are reasonably necessary to prevent or reduce risk of injury to any person.

(3) No person shall export goods or supply

goods in the country which are prohibited by sub-section (1) unless the Minister has, by notice in writing given to such person, approval to export such goods.

(4) Where the Minister approves the export of goods under sub-section (3), the Minister shall cause a statement setting out particulars of the approval to be laid before the Nation Assembly at the next sitting after the approval.

(5) Where it appears to the Minister after consultation with the Commission that goods of a particular kind will or may cause injury to any person, the Minister may, by notice published in the Gazette, declare the goods to be unsafe, and shall forthwith impose a temporary ban on such goods.

(6) A notice and the temporary ban under sub-section (5) shall remain in force until the end of three months after the publication of the notice in the Gazette unless it is revoked before the end of that period.

(7) Where:

(a) period of three months has elapsed after the date of publication of the notice in the Gazette declaring goods to be unsafe and a temporary ban has been imposed; and

(b) the supplier has failed to make good the defect, the Minister may, by notice published in the Gazette impose a permanent ban.

(8) Where:

(a) the supplying of goods by any person constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the goods had complied with that standard, the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

(9) Where:

(a) the supplying of goods by any person constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods or imposing a temporary or permanent ban on the goods; and

a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of the goods, or by reason of not having particular information as to a characteristic of the goods,

that person, shall be deemed for the purposes of this Act to

have suffered the loss or damage by supplying of such goods.

Product Information Act No.3 of 1975

50.-(1) Subject to the provisions of the Standards Act, 1975 no person shall supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless he has complied with that Standard in relation to those goods.

(2) The regulations may, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to:

(a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and

(b) the form and manner in which that information is to be disclosed on or with the goods, as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

(3) Where:

(a) the supplying of goods by any person constitutes a contravention of this section by reason that he has not complied with a prescribed consumer product information standard in relation to the goods;

(b) a person suffers loss or damage by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if he had complied with that standard in relation to the goods,

that person shall be deemed, for the purposes of this Act, to have suffered the loss or damage by supplying such goods.

Power of Minister to declare product safety information standards

51.-(1) The Minister may, by a notice published in the Gazette, declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by the Bureau of Standards or by a prescribed association or body, or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard for the purposes of section 49 or a consumer product information standard for the purposes of section 50.

(2) Where a notice is so published, the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, as the case may be, shall be deemed to be a prescribed consumer product safety standard for the purposes of section 49 or a prescribed

consumer product information standard for the purposes of section 50, as the case may be.

(3) Sub-section (1) shall not authorise the publication of a notice in relation to goods of a particular kind if the standard or the part of the standard referred to in the notice, or the standard or the part of the standard so referred to with additions and variations specified in the notice is inconsistent with a standard prescribed in relation to goods of that kind by regulations made for the purposes of section 49 or 50.

Copies of certain notices to be given to supplier or be published in certain newspapers

52.-(1) Where the Commission publishes notice in the Gazette under paragraph (1) of section 48 the Commission shall, within fourteen days, either:

- (a) cause a copy of the notice to be given to each person who, to the knowledge of the Commission, supplies goods of the kind to which the notice relates; or
- (b) cause a copy of the notice to be published in a newspaper circulating in each part of the country where goods of the kind to which the notice relates are, to the knowledge of the Commission supplied.

(2) Any failure to comply with sub-section (1) in relation to a notice shall not invalidate the notice.

PART IX PRODUCT

RECALL

Compulsory product recall

53.-(1) Where-

- (a) any person supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer, and:
 - (i) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person;
 - (ii) the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard; or
 - (iii) the goods are goods of a kind in relation to which there is in force a notice under sub-section (5) or (7) of section 49, and
- (b) it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury to any person, the Minister may, by notice published in the Gazette, require the supplier:
 - (c) to take action within the period specified in the notice to recall the goods;
 - (d) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following:
 - (i) the nature of a defect in, or a dangerous characteristic of, the goods identified or the notice;

- (ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous;
- (iii) the procedures for disposing of the goods specified in the notice; or
- (e) to inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) except where the notice identifies a dangerous characteristic of the goods - repair the goods;
 - (ii) replace the goods;
 - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods,
 within the period specified in the notice.

(2) Notwithstanding the provisions of subparagraph (iii) of subsection(1)(e), where the Minister, in a notice under sub-section (1), requires the supplier to take action under paragraph (e) of subsection (1), the Minister may specify in the notice that, where:

- (a) the supplier chooses to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier, the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(3) The Minister may, by notice published in the Gazette, give directions as to the manner in which the supplier is to carry out a recall of good required under sub-section (1).

(4) Where the supplier, under sub-section (1) undertakes to repair goods, the supplier shall cause the goods to be repaired so that:

- (a) any defect in the goods identified in the notice under sub-section (1) is remedied; and
- (b) if there is a prescribed consumer product safety standard in respect of the goods - the goods comply with that standard.

(5) Where the supplier, under sub-section (1), undertakes to replace goods, the supplier shall replace the goods with like goods which:

- (a) if a defect in, or a dangerous characteristic of, the first mentioned goods was identified in the notice under sub-section (1), do not contain that defect or have that characteristic; and
- (b) if there is a prescribed consumer product safety standard in respect of goods of that kind, comply with that

standard.

(6) Where the supplier, under sub-section (1) undertakes to repair goods or replace goods, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (d) of subsection (1), a person who has supplied any of the recalled goods to another person outside the country shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person:

- (a) stating that the goods are subject to recall;
- (b) if the goods contain a defect or have a dangerous characteristic - setting out the nature of that defect or characteristic; and
- (c) if the goods do not comply with a prescribed consumer product safety standard in respect of the goods - setting out the nature of the non compliance.

(8) Where a person is required under sub-section (7) to give a notice in writing to another person, the first-mentioned person shall, within ten days after giving that notice, provide the Minister with a copy of that notice.

(9) Any person who contravenes sub-section (8) commits an offence and is liable on conviction:

- (a) in the case of a person not being a body corporate, to a fine not less than fifty thousand and not exceeding one million shillings or to imprisonment for a term not exceeding twelve months; or
- (b) in the case of a person being a body corporate, to a fine not less than one hundred thousand shilling and not exceeding five million shillings.

Compliance
with
product
recall order

54. Where a notice under sub-section 53(1) is in force in relation to any person such person:

- (a) shall comply with the requirements and directions in the notice; and
- (b) shall not:
 - (i) where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of the kind to which the notice relates and which contain that defect and have that characteristic; or
 - (ii) in any other case, supply goods of the kind to which the notice relates.

Loss or
damage

55. Where:

- (a) a person contravenes the provisions of section 54

caused by
contravention of
product
recall order

by:

(i) supplying goods of a kind in relation to which a notice under sub-section (1) of section 53 is in force; or

(ii) failing to comply with the requirements of such a notice; and

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,
that person shall be deemed for the purposes of this Act to have suffered loss or damage by the supplying of the goods; or by the failure of supplier to comply with the notice, as the case may be.

Notification of
voluntary
recall

56.-(1) Notwithstanding the provisions of this Act, where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, he shall, within two days after taking that action, give a notice in writing to the Commission:

(a) stating that the goods are subject to recall; and

(b) setting out the nature of the defect in, or dangerous characteristics of, the goods.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction:

(a) in the case of a person not being a body corporate to a fine not less than fifty thousand shillings and not exceeding one million shillings or to imprisonment for a term not exceeding twelve months; or

(b) in the case of a person being a body corporate to a fine not less than one hundred thousand shillings and not exceeding five million shillings.

PART X OFFENCES, PENALTIES AND REMEDIES

Person
involved in
an offence

57.-(1) A person shall not:

(a) aid, abet, counsel or procure;

(b) conspire with others to commit;

(c) be directly or indirectly knowingly concerned in; an offence against this Act by another person (in this section referred to as the “primary offence”).

(2) For the purposes of this Part, a person who commits an offence against sub-section (1) is “involved” in the primary offence.

Compliance
orders and

58.-(1) Where the Commission is satisfied that a person has committed or is likely to commit an offence

compliance agreements against this Act (other than Parts VI or VII), it may make a compliance order under this section against the person and any person involved in the offence.

(2) A person against whom a compliance order is made commits an offence if the person fails to comply with the order.

(3) A compliance order may require a person to refrain from conduct in contravention of this Act or to take actions to comply with this Act, and shall specify the time for compliance with the order and the duration of the order.

(4) The Commission may make an interim compliance order pending a proper consideration of a matter if the Commission is of the opinion that there is an imminent danger of substantial damage to a person if a threatened or likely offence is committed or there are other good reasons for making such an order.

(5) Without limiting the generality of sub-section (3), where the Commission is satisfied that a person (in this sub-section referred to as the “acquirer”) has acquired shares or other assets in breach of sub-section (1) of section 11, the Commission may make an order at any time within three years after the acquisition -

(a) requiring the acquirer to dispose of some or all of the shares or assets within such time as the Commission specifies in the order; or

(b) declaring the acquisition to be void, requiring the acquirer to transfer some or all of the shares or assets back to the person from whom the acquirer acquired the shares or assets (in this sub-section referred to as the “vendor”) and requiring the vendor to refund to the acquirer some or all of the amounts received by the vendor in respect of the acquisition, as the Commission specifies in the order.

(6) Without limiting the generality of the provisions of sub-section (3), where the Commission is satisfied that a person has committed an offence against this Act (other than under Parts VI and VII), the Commission may order that person to publish, in such manner and within such time as the Commission sees fit, such information as Director General it considers appropriate relating to the offence.

(7) A compliance order shall be made in writing specifying the grounds for making the order.

(8) The Commission may enter into an agreement in writing, referred to in this section as a “compliance agreement”, whereby a person undertakes to the Commission to refrain from conduct in contravention of this Act from a date, and for a period of time, specified in the compliance agreement or for the disposal of shares or assets and other matters referred to in sub-section (5), on such terms and conditions as the Commission deems appropriate.

(9) A compliance order shall be enforceable as an order of the High Court.

(10) A copy of a compliance order or compliance agreement shall be placed on the Public Register and, in the case of a compliance order, a copy shall be served on the person against whom it is made.

(11) Notwithstanding any law to the contrary, a copy of a compliance order or compliance agreement duly certified by the Commission shall be conclusive evidence in any court of the making of the order and the grounds for making it or the making of the compliance agreement.

(12) The Commission does not have jurisdiction to make compliance orders or enter into compliance agreements in relation to breaches of conditions or warranties implied under Part VI or manufacturers obligations under Part VII.

Compensatory orders

59.-(1) Any person who suffers loss or damage as a result of an offence against this Act (other than under Parts VI or VII) may apply to the Commission for compensatory orders under this section against the person who committed the offence and any person involved in the offence, whether or not they have been convicted of the offence.

(2) An application under sub-section (1) may be made at any time within three years after the loss or damage was suffered or the applicant became aware of the offence, whichever is the later.

(3) The Commission may make orders under this section against the person who committed the offence and any person involved in the offence (in this section referred to as the “respondents”) as the Commission considers appropriate to compensate the applicant for the loss or damage suffered by the applicant or to prevent or reduce such loss or damage, including the orders in sub-section (4).

(4) The orders referred to in sub-section (3) are:

- (a) an order requiring the respondents to pay money;
- (b) an order requiring the respondents to supply goods or services for specified periods or on specified terms and conditions;
- (c) an order declaring void, terminating or varying a contract;
- (d) an order requiring the respondents to pay the costs of the applicant or of a person appearing at the hearing or producing documents.

(5) Any person against whom a compensatory order is made commits an offence if that person fails to comply with the order.

(6) Any person who suffers loss or damage as a result of breach of a condition or warranty implied under

Part VI or a manufacturer's obligation under Part VII may seek a relief in a Court of competent jurisdiction but shall not seek, and the Commission shall not grant, a compensatory order under this section.

(7) Orders of the Commission under this section shall be enforceable as orders of the High Court.

Offences

60.-(1) Where a person commits an offence against this Act (other than under Part VI, Part VII or section 58, 59 or 88) or is involved in such an offence, the Commission may impose on that person a fine of not less than five percent of his annual turnover and not exceeding ten percent of his annual turnover.

(2) If the Commission is satisfied that a monetary value can reasonably be placed on the damage including loss of income suffered by a person as a result of an offence against this Act, the convicted person shall, in addition to any other penalty which may be imposed, be liable to a fine of two times such monetary value, which the Commission shall order to be paid to the person suffering the damage.

(3) Where a person charged with an offence under this Act is a body corporate, every person who, at the time of the commission of the offence, was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with such body corporate and where the body corporate is convicted of the offence, every such director, manager or officer of the body corporate shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(4) For the purposes of this section, any partner of a firm shall be jointly and severally liable for the acts or omissions of any other partner of the same firm done or omitted in the course of the firm's business.

(5) A person who contravenes section 16 is not liable to fines under this section but may be subject to compliance orders under section 58 and compensatory orders under section 59.

(6) Any person who contravenes section 15 is not liable to fines under this section but may be subject to compliance orders under section 58 and compensatory orders under section 59.

(7) Any person who breaches a condition or warranty implied under Part VI or a manufacturer's obligation under Part VII is not liable to fines under this section.

(8) The Commission may act upon an offence at any time within six years after the commission of the offence.

PART XI
APPEALS TO THE FAIR COMPETITION TRIBUNAL

Appeals
against
decisions of
the
Commission
n

61.-(1) Any person that has a pecuniary and material grievance arising from a decision of the Commission:

(a) to grant or refuse to grant an exemption under section 12 or section 13;
(b) to make or not to make a compliance order under section 58; or
to make or not to make a compensatory order under section 59,
may appeal to the Tribunal for review of the decision within 28 days after notification or publication of the decision.

(2) An appeal under sub-section (1) shall be by way of a rehearing.

(3) Any person that has a pecuniary and material grievance arising from a decision of the Commission other than a decision referred to in sub-section (1) may appeal to the Tribunal for review of the decision within 28 days after the notification or publication of the decision.

(4) The grounds for an appeal under sub-section (3) shall be that:

(a) the decision made was not based on evidence produced;
(b) there was an error in law;
(c) the procedures and other statutory requirements applicable to the Commission were not complied with and non-compliance materially affected the determination;
(d) the Commission did not have power to make the determination.

(5) On an appeal under this section the Tribunal shall make a determination affirming, setting aside or varying the decision of the Commission or it may direct the Commission to reconsider the matter or specified parts of the matter to which the appeal relates.

(6) In reconsidering a matter referred back to it under sub-section (5), the Commission shall have regard to the Tribunal's reasons for giving the direction.

(7) For the purposes of an appeal under this section, the Tribunal:

(a) may perform all the functions and exercise all the powers of the Commission; and
(b) may make such orders as to the payment of any person's costs of the review as it deems appropriate.

(8) The decisions of the Tribunal on appeals under this section shall be final.

PART XII
FAIR COMPETITION COMMISSION

Establishment of the Commission

62.-(1) There is hereby established a Commission to be known as the Fair Competition Commission.

(2) The Commission shall be independent and shall perform its functions and exercise its powers independently and impartially without fear or favour.

(3) The Commission shall be a body corporate with perpetual succession and subject to this Act, shall -

- (a) be capable of suing and being sued in its corporate name;
- (b) be capable of acquiring, holding and disposing of real and personal property;
- (c) have power to exercise and perform the powers and functions conferred on it by or under this Act;
- (d) have power to do and suffer all such other acts and things a body corporate may by law do and suffer.

(4) Subject to the provisions of this Act, the Commission shall have power to do all things necessary to enable it to perform its functions and duties.

(5) The common seal of the Commission shall be judicially noticed and shall be duly affixed if witnessed under the hand of the Chairman or Director General of the Commission.

(6) The Commission shall be constituted by five members as follows:

- (a) a Chairman, who shall be a non-executive appointed by the President;
- (b) three non-executive members appointed by the Minister;
- (c) the Director General.

(7) There shall be a Director General of the Commission, who shall be appointed by the Minister, from amongst a list of names submitted by the Nomination Committee, to serve on such terms and conditions as may be set out in the letter of his appointment or as may from time to time be determined by the Commission with the approval of the Minister.

(8) A person appointed as a Director General under this section shall have the functions and qualifications set out in the Second Schedule to this Act.

(9) No civil liability will attach to any member, or employee of the Commission in his personal capacity as a

result of any act or thing done in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Commission.

Appointme
nt of
members

63.-(1) Whenever a member or members are to be appointed to the Commission a Nomination Committee shall be established in accordance with the provisions of the First Schedule.

(2) Subject to this section, the composition, functions and procedures of the Nomination Committee shall be as provided under the provisions of the First Schedule.

(3) The President shall appoint the Chairman of the Commission from candidates nominated by the Nomination Committee.

(4) The Minister shall appoint other members of the Commission from candidates nominated by the Nomination Committee.

(5) Before nominating a person as a candidate for appointment to the Commission, the Nomination Committee shall satisfy itself that the person is qualified for the appointment because of his knowledge of, or experience in, industry, commerce, economics, law, public administration or other related fields.

(6) In order to maintain impartiality of the Commission and for the purpose of avoiding conflict of interest, a person shall not be qualified for appointment as a member to the Commission if owing to the nature of the office he holds is likely to exert influence on the Commission.

(7) The first Chairman and members of the Commission shall be appointed for the following fixed terms:

Chairman - four years;

Director-General - four years;

one member - three years;

two members - five years.

(8) Members shall be eligible for reappointment for one further consecutive term but shall not be eligible for re-appointment thereafter.

(9) The members of the Commission shall be paid such fees and allowances as shall be set out in their letters of appointment as determined by the President or the Minister, as the case may be, on the advice of the Commission and after consultation with relevant Ministers.

(10) The members of the Commission may not be removed from office except in accordance with the

provisions of section 64.

(11) Members may resign by giving written notice of resignation to the Minister.

Removal of members

64.-(1) The President may, acting upon an advise given by the Minister remove a member, including the Chairman, from office at any time if:

- (a) the member is declared bankrupt, takes the benefit of any law for the relief of insolvent debtors or assigns the member's remuneration for the benefit of creditors;
- (b) the member is convicted of a criminal offence;
- (c) if the member is required by section 66 to resign;
- (d) the President decides that member is incapable of carrying out the member's duties because of ill health or physical or mental impairment;
- (e) the member fails to attend at least two thirds of all meetings of the Commission in any period of twelve consecutive months; or
- (f) the member has committed a material breach of a code of conduct to which the Commission is subject or a material breach of the provisions of this Act.

(2) Before removing a member from office the President shall inform a member in writing stating the grounds for removal.

Functions of the Commission

65.-(1) The Commission shall administer this Act and develop and promote policies for enhancing competition and consumer welfare.

(2) Without limiting sub-section (1), the Commission shall

- (a) control, manage and efficiently perform the functions of the Commission under the Act;
- (b) promote and enforce compliance with the Act;
- (c) promote public knowledge, awareness and understanding of the obligations, rights and remedies under the Act and the duties, functions and activities of the Commission;
- (d) make available to consumers information and guidelines relating to the obligations of persons under the Act and the rights and remedies available to consumers under the Act;
- (e) carry out inquiries studies and research into matters relating to competition and the protection of the interests of consumers;
- (f) study government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicise the results of such studies;

- (g) investigate impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;
- (h) investigate policies, procedures and programmes of regulatory authorities so as to assess their effects on competition and consumer welfare and publicise the results of such studies;
- (i) participate in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to competition and consumer welfare;
- (j) make representations to government, government commissions, regulatory authorities and other bodies on matters related to competition and consumer welfare;
- (k) consult with consumer bodies, regulatory authorities, business organizations and other interested persons;
- (l) consult with the competition authorities of other countries;
- (m) represent Tanzania at international fora concerned with matters relating to competition or the interests of consumers.

(3) The Chairman of the Commission shall in consultation with the other members of the Commission determine from time to time the priority to be given to any of the functions and activities set out in sub-section (2) for effective and efficient administration of this Act.

(4) The Commission shall be entitled to participate in the proceedings of courts, tribunals, regulatory authorities, government inquiries, commissions, committees and working groups for the purpose of observing the proceedings and making representations on matters relevant to the Commission's functions.

Conflicts of interest

66.-(1) A member or employee of the Commission shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Commission.

(2) If at any time a member of the Commission has a conflict of interest in relation to:

- (a) any matter before the Commission for consideration or determination; or
- (b) any matter the Commission could reasonably expect might come before it for consideration or determination;

the member shall immediately disclose the conflict of interest to the other members of the Commission and refrain from taking part, or any further part, in the consideration or determination of the matter.

(3) Where the Commission becomes aware that a member has a conflict of interest in relation to any matter before the Commission, the Commission shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the Chairman has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict to the Minister by written notice.

(5) Upon the Commission becoming aware of any conflict of interest it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Commission and the member with the conflict of interest shall not vote on this determination.

(6) Where the Commission determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided in sub-section (5), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Commission within 30 days.

(7) The Commission shall report to the Minister any determination by the Commission that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Commission.

(8) The Annual Report of the Commission shall disclose details of all conflicts of interest and determinations arising during the period covered by the Report.

Code of Conduct

67.-(1) Within twelve months of the commencement of this Act, the Commission shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and employees of the Commission in the performance of their duties.

(2) Subject to sub-section (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Competition Commission shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comment.

(3) The Commission shall include in its Annual Report a report on compliance with the code during the period covered by the Annual Report.

(4) Code of conduct adopted or prescribed under this section shall be binding on the Commission and its employees.

Power to hold inquiries

68.-(1) The Commission may conduct an inquiry where it considers it necessary or desirable for the purpose of carrying out its functions.

(2) The Commission shall conduct an inquiry before exercising a power to grant, revoke or vary a block exemption under section 12.

(3) The Minister may, by a direction in writing to the Commission, require the Commission to conduct an inquiry into a matter specified in the direction and may specify in the direction a time within which the Commission shall submit its report on the inquiry and, if so, the Commission shall submit its report to the Minister within that time.

(4) At the request of a regulatory body the Commission may conduct an inquiry into the matter specified by the regulatory body and provide a report within a period agreed with the regulatory body.

(5) The Commission shall give notice of an inquiry by:

(a) publishing a notice in the Gazette and in a daily newspaper circulating generally in Tanzania specifying the purpose of the inquiry, the time within which submissions may be made to the Commission and the form in which submissions should be made, the matters the Commission would like submissions to deal with and in the case of an inquiry conducted at the direction of the Minister, the Minister's terms of references;

(b) sending written notice of the inquiry, including the information in paragraph (a) to -

(i) undertakings whose interests the Commission considers are likely to be affected by the outcome of the inquiry;

(ii) the National Consumer Advocacy Council, established under Part XIV;

(iii) industry and consumer organizations which the Commission considers may have an interest in the matter;

(iv) the Minister.

Initiating a complaint

69.-(1) The Commission may initiate a complaint against an alleged prohibited practice.

(2) Any person may -

(a) submit information concerning an alleged prohibited practice to the Commission, in any manner or form; or

(b) submit a complaint against an alleged prohibited practice to the Commission in the prescribed form.

Interim relief

70.-(1) At any time, whether or not a hearing into an alleged prohibited practice, has commenced the complainant may apply to the Commission for an interim order in respect of the alleged practice.

(2) The Commission -

- (a) shall give the respondent a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
- (b) may grant an interim order if it is reasonable and just to do so, having regard to -
 - (i) the evidence relating to the alleged prohibited practice;
 - (ii) the need to prevent serious or irreparable damage to the applicant; and
 - (iii) the balance of convenience.

Power to
obtain
information

71.-(1) Where the Commission has reason to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, a member of the Commission may, by summons signed by the Chairman or Director General of the Commission served on that person, require that person:

- (a) to furnish the information in writing signed by him, in the case of a (b) body corporate signed by a competent authorized officer or a legal officer of the body corporate;
- (c) to produce the document to the Commission;
- (d) to appear before the Commission to give evidence orally.

(2) A summons under this section shall specify the required time and manner of compliance.

(3) The Commission may require that any evidence referred to under this section be given on oath or affirmation and, for this purpose, the Chairman, the Director General or any member of the Commission may administer the oath or affirmation.

(4) A person shall not be excused from complying with a summons under this section on the grounds that compliance may tend to incriminate the person or make the person liable to a penalty, save that information, documents and evidence provided in answer to a summons will not be admissible in any proceedings against the person other than proceedings under this Act.

(5) Where the Commission has reason to believe that a person is in possession or control of any documents that may assist it in the performance of any of its functions, the Chairman, the Director General or any member of the Commission, may apply to the Tribunal who, acting through the Chairman, shall issue a warrant authorizing any police officer, accompanied by staff of the Commission duly authorized by the Chairman of the Commission to enter premises to conduct a search and make copies or take extracts of documents therein.

(6) Any person who -
 knowingly gives false or misleading information or
 evidence in purported compliance with a summons
 without lawful excuse refuses or fails to comply with a
 summons;
 under this section commits an offence.

Employees
 and
 Consultants

72.-(1) The Commission shall employ such staff as
 it considers appropriate to enable it to perform its functions
 and exercise its powers.

(2) The Commission may engage consultants and
 experts, as it considers appropriate, to assist it to perform its
 functions and exercise its powers.

(3) The Commission shall establish a competitive
 selection procedure for the appointment of all employees,
 consultants and experts.

(4) The terms and conditions on which the
 Commission employs staff and engages consultants and
 experts shall be as determined by the Commission but shall
 include the following -

(a) an employee, consultant or expert shall, without
 delay, notify the Commission in writing of any conflict of
 interest as soon as it arises and failure to comply with this
 requirement, whether willfully or inadvertently, will be a
 ground for immediate dismissal;

(b) where the Commission becomes aware of a conflict
 of interest, whether as a result of a notification under
 paragraph (a) or by any other means, the Commission may
 direct the person not to participate in the consideration of
 any matter in relation to which the person has the conflict of
 interest and, in that case, the person shall comply with the
 direction.

(5) Before employing or engaging any person, the
 Commission shall obtain from the person a written
 declaration of any existing conflict of interest.

(6) Persons employed by the Commission as full-
 time employees shall not undertake any other paid
 employment or remunerated activities.

(7) The Commission may enter into agreements with
 government departments and other government authorities
 and agencies to share the services of particular employees,
 as the Chairman considers appropriate.

(8) The Commission shall include in its Annual
 Report a report of its competitive selection procedure and
 its employment practices.

Meetings of
 the
 Commissio

73.-(1) The Commission shall hold meetings not
 less than six times in any period of twelve months and the
 interval between successive meetings shall not on any

n occasion exceed two months.

(2) The Director General shall convene meetings of the Commission as directed by the Chairman or if requested in writing by at least half of the members.

(3) Subject to the provisions of sub-sections (1) and (2), the Chairman may convene meetings of the Commission, after consultation with the members, at such times and places as he sees fit.

(4) The Chairman shall preside at meetings of the Commission and the members may appoint from amongst themselves a Deputy Chairman to preside at meetings in his absence.

(5) A quorum will be three members including the Chairman or a Deputy Chairman.

(6) All questions shall be decided by a majority of votes of the members present and voting and, in the event of an equality of votes, the presiding member shall have a deliberative and a casting vote.

(7) The Chairman may decide that particular meetings of the Commission should be held by telephone, closed circuit television or other method of communication as the Chairman thinks fit.

(8) A minute of a resolution signed by all members of the Commission shall constitute a valid resolution of the Commission as if it were duly passed at a validly constituted meeting of the Commission.

Delegation

74.-(1) The Commission may delegate to a member of the Commission, either generally or otherwise as provided by the instrument of delegation, any of its powers other than -

- (a) duties to make decisions under Part II of the Act;
- (b) this power of delegation itself; and
- (c) the powers to revoke or vary delegation.

(2) A delegated power shall be exercised in accordance with the instrument of delegation.

(3) A delegation may be revoked or varied at will and shall not prevent the exercise of a power by the Commission.

Establishment of divisions of the Commission
n

75.-(1) The Commission shall establish one or more divisions which shall be responsible for investigation and compliance in respect to matters falling under Part II.

(2) The Commission shall appoint an employee or employees of the Commission as Directors of the divisions.

(3) The Commission may establish one or more

other divisions to perform other functions, subject to the directions of the Commission as the Commission may from time to time determine.

Confidentiality

76.-(1) In this section “material” includes any information, document or evidence.

(2) Any person who gives or discloses any material to the Commission, whether under compulsion of law or otherwise, may claim confidentiality in respect of the whole or any part of the material.

(3) A claim for confidentiality may be made at any time before the material is disclosed to persons outside the Commission without any breach of the provisions of this section.

(4) In the case of oral evidence, the claim may be made orally at the time of giving the evidence and in all other cases it shall be in writing, signed by the person making the claim specifying the material and stating the reason for the claim.

(5) If the Commission is satisfied that material is of a confidential nature and:

(a) its disclosure could adversely affect the competitive position of any person; or

(b) is commercially sensitive for some other reason, the Commission shall grant confidentiality for the material.

(6) The Commission shall give notice in writing to a person making a claim for confidentiality of the Commission’s decision to grant or not grant confidentiality and, if it has not granted confidentiality, the Commission shall treat the material as confidential for a period of fourteen days after giving such notification.

(7) If a claim for confidentiality:

(a) is made in relation to material supplied to the Commission voluntarily; and

(b) the Commission decides not to grant confidentiality in whole or in part for the material;

that person who supplied the material may, within the fourteen days period provided under sub-section (6), withdraw the material from the Commission together with other material supplied with it.

(8) Notwithstanding that the Commission has granted a claim for confidentiality under sub-section (5), the Commission may disclose the material:

(a) at any time without notice to any other person if -

(i) the disclosure is made to another person who is also performing a function under this Act;

(ii) the disclosure is made with the consent of the person who gave the material;

(iii) the disclosure is authorised or required under any other Act or law; or

- (iv) the disclosure is authorised or required by a court or tribunal constituted by law; or
 - (b) if the Commission is of the opinion that:
 - (i) disclosure of the material would not cause detriment to the person supplying it or the person to whom it relates; or
 - (ii) although the disclosure of the material would cause detriment to the person supplying it or the person to whom it relates, the public benefit in disclosing it outweighs the detriment;
- and the Commission has given fourteen days prior written notice to those persons of its intention to disclose the material pursuant to this provision.

(9) Any person who is aggrieved by a decision of the Commission under this section not to grant a claim for confidentiality for material or to disclose confidential material may, at any time while the Commission is obliged by this section to keep the material confidential, appeal to the Tribunal against the decision and the Commission shall continue to treat the material confidential pending determination of the appeal.

(10) Any person who discloses confidential information otherwise than as authorised by this section, commits an offence.

Public
Register

77.-(1) There shall be a Public Register kept by the Commission at its principal office, which shall be available for public inspection at all times during business hours.

(2) There shall be kept at any sub-offices of the Commission copies of the Public Register which shall be accessible for inspection by members of the public.

(3) The Commission shall promptly place on the Public Register copies of-

- (a) decisions made in respect to offences committed under sections 8, 9, 10 and 11, decisions to grant or refuse exemptions under sections 12 and 13 and decisions to make or refuse to make orders under Part X and section 70;
- (b) its reasons for granting or refusing exemptions or orders referred to in paragraph (a);
- (c) significant reports and studies;
- (d) all other documents required to be placed on the Public Register under any other provision of this Act; and
- (e) such other decisions and information as the Commission may determine from time to time.

(4) The Commission shall cause to be published in the Gazette and placed on the Public Register as soon as may be practicable -

- (a) any proposed or adopted code of conduct or amendment to a code of conduct;
- (b) any Regulations, Rules or Orders;

(c) any other decision or information the Commission may decide to publish in the Gazette.

(5) The Commission shall exclude from the Public Register any document or part of a document which is confidential within the provisions of section 74.

(6) The Commission shall ensure that, where possible, the Public Register shall be accessible to the public by internet.

Funds of
the
Commission

78.-(1) Funds of the Commission will comprise of

- (a) fees not exceeding 2.5% of business licences ;
- (b) any grants, donations, bequests or other contributions made to the Commission;
- (c) funds allocated to the Commission from the funds of EWURA, SUMATRA, the Tanzania Communication Regulatory Authority, the Tanzania Civil Aviation Authority and such other regulatory authorities for work done by the Commission or as provided in the other relevant legislation or as may be agreed between the Commission and those authorities respectively; and
- (d) funds allocated to the Commission by Parliament;
- (e) fees collected by the commission;
- (f) all other payment due to the Commission in respect of any matter incidental to its functions;

(2) The Commission may make rules prescribing filing fees and other fees to be paid by persons in connection with the procedures of the Commission.

(3) The Commission shall disclose details of the sources of its funds in the Annual Report.

Accounts
and
financial
audit

79.-(1) The Commission shall keep books of accounts and maintain proper records of its operations in accordance with accounting standards.

(2) The accounts of the Commission may at any time and shall, at the end of each financial year, be audited by a person registered as an auditor under the Auditors and Accountants (Registration) Act, 1972 appointed by the Commission on such terms and conditions as the Commission may determine.

Act No.33
of 1972

Performanc
e audit

80.-(1) The Controller and Auditor General shall at the request of the Minister conduct performance audit of the Commission's functions particularly in relation to the Commission's key performance indicators, on such terms and conditions as the Minister may determine.

(2) Before the beginning of each financial year the

Commission shall adopt key performance indicators for that year and shall include them in its annual report.

Annual
report

81.-(1) Before 30th September each year, the Commission shall prepare an Annual Report in respect of the year up to the immediately preceding 30th June and submit it to the Minister before 30th November in that year.

(2) The Annual Report shall provide information regarding the activities and plans of the Commission during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include:

- (a) a copy of the audited accounts of the Commission;
- (b) a copy of any report of the Controller and Auditor General on any performance audit carried out by the Controller and Auditor General during the year to which the Annual Report relates;
- (c) details of the performance of the Commission against its key performance indicators including the number and nature of complaints and applications the Commission has decided or are under consideration, the number and nature of investigations completed and continuing, significant studies and reports completed, undertaken or planned, and the number and nature of inquiries completed, undertaken or planned;
- (d) such information and other material as the Commission may be required by this Act or the regulations to include in the Annual Report;
- (e) such additional information or other material as the Minister may request in writing.

(3) The Minister shall cause a copy of the Annual Report to be laid before the National Assembly within two months after receiving it from the Chairman or at the following meeting of the National Assembly.

Budget

82. Before the end of each financial year the Commission shall cause to be prepared a budget for the following financial year showing estimates of its receipts and expenditures for that financial year and shall submit the budget to the Minister for information and approval.

PART XIII FAIR COMPETITION TRIBUNAL

Establishment of the Fair Competition Tribunal and a

83.-(1) There shall be established an independent tribunal which shall be known as the Fair Competition Tribunal to exercise the functions conferred upon it by this Act.

(2) The Tribunal shall consist of -

nomination
committee

(a) a Chairman who shall be a person holding the office of a the High Court appointed by the President after consultation with the Chief Justice, and shall serve on part time basis; and

(b) six other members appointed to serve on part time basis by the President after consultation with the Attorney General from candidates nominated by a Nomination Committee established under sub-section (4) of this section.

(3) No person shall be appointed as a member of the Tribunal other than the Chairman, unless he qualifies for appointment by virtue of his knowledge of, or experience in industry, commerce, economics, law or public administration.

(4) Whenever a member or members of the Tribunal, other than the Chairman, are to be appointed to the Tribunal, a Nomination Committee shall be established as follows -

(a) the committee shall be separate from any Nomination Committee established under section 63; and

(b) the composition, functions and procedure of the Nomination Committee shall be as provided under the First Schedule subject to the substitution of the Attorney-General for the Minister and of the Permanent Secretary of the Ministry responsible for Justice for the Permanent Secretary of the Ministry responsible for the Commission.

(5) A member of the Tribunal shall hold office for a period not exceeding three years as specified in the instrument of his appointment and shall be eligible for re-appointment unless, prior to the expiration of that period -

(a) he resigns his office by written notification under his hand addressed to the President; or

(b) the President, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(6) The quorum for a meeting of the Tribunal shall be the Chairman and two other members.

Judgment
and Orders
of Tribunal

84.-(1) A judgment or order of the Tribunal on any matter before it shall, subject to sub-section (2), be final.

(2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.

Functions
of Tribunal

85.-(1) The Tribunal shall have jurisdiction -

(a) to hear and determine appeals under Part XI of the

Acts Nos 11 and 9 of 2001	<p>Act;</p> <p>(b) to issue warrants in accordance with section 71;</p> <p>(c) to carry out the functions conferred on it under the EWURA Act, 2001, the SUMATRA Act, 2001, the Tanzania Communication Regulatory Authority Act, 2003, the Tanzania Civil Aviation Authority Act, 2003 and any other written law.</p> <p>(d) to exercise such other functions and powers as are conferred upon it by the Act;</p> <p>(2) The Tribunal may decline to hear an appeal if it considers that the person does not have a pecuniary and material grievance arising from the decision of the Commission. In reaching its decision the Tribunal shall have regard to any regulations on the matters made by the Minister under section 98.</p> <p>(3) The Tribunal shall in the exercise of its functions under this Act be guided by the rules of natural justice and shall publish its decisions and the reasons for its decisions in the Public Register.</p> <p>(4) Notwithstanding the provisions of subsection (4) of section 90 the Tribunal shall maintain a Public Register into which all the proceedings and decisions made by it shall be entered.</p> <p>(5) The Tribunal shall in the discharge of its functions have all the powers of the High Court in respect of -</p> <p>(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;</p> <p>(b) compelling the production of documents; and</p> <p>(c) the issue of a Commission or request to examine witnesses abroad.</p> <p>(6) The Tribunal shall be duly constituted if at any time the Chairman and two other members are present.</p> <p>(7) Any decision shall be deemed to be a decision of the Tribunal if it is supported by a majority of the members.</p> <p>(8) A witness before the Tribunal shall have the immunities and privileges as if he were a witness before the High Court.</p>
Registrar and other staff of the Tribunal	<p>86. The Minister shall, after consultation with the Chief Justice, appoint an officer to be known as the Registrar of the Tribunal and shall provide to the Tribunal the services of such other officers as the Tribunal may reasonably require for carrying out its functions under this Act.</p>
Financial arrangemen ts of the	<p>87.-(1) Funds of the Tribunal shall comprise -</p> <p>(a) fees paid to the Tribunal;</p> <p>(b) funds allocated to the Tribunal by Parliament;</p>

Tribunal

(c) grants, donations, bequests or other contributions made to the Tribunal; and

(d) funds allocated to the Tribunal from the funds of EWURA, SUMATRA, the Tanzania Communication Regulatory Authority, the Tanzania Civil Aviation Authority and other Regulatory Authorities as provided for in the relevant legislation.

(2) Before the end of each financial year the Tribunal shall cause to be prepared a budget for the following financial year showing estimates of its receipts and expenditures for that financial year and shall submit the budget to the Minister for information and approval.

(3) The members of the Tribunal, the Registrar and staff of the Tribunal shall be paid from the funds of the Tribunal such remunerations and allowances as the Minister shall determine.

Obstruction of Tribunal

88.-(1) Any person who -

(a) when summoned, fails or refuses to attend without reasonable excuse;

(b) having attended as a witness refuses or fails to take an oath or make an affirmation as required by the Tribunal;

(c) makes any statement before the Tribunal which he knows to be false or which he has no reason to believe to be true;

(d) omits or suppresses any information required by the Tribunal in the discharge of its functions or relevant to the discharge of those functions; or

(e) in any manner misleads, obstructs, insults or disturbs the Tribunal, commits an offence.

(2) The Tribunal shall be empowered to impose a fine of not less than one hundred thousand shilling and not exceeding five million shillings on a person that commits an offence under sub-section (1) of this section.

Rules of Tribunal

89.- Subject to the provisions of this Act, the Tribunal may make rules-

(a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;

(b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;

(c) prescribing the manner in which the Tribunal shall be convened and places where and the time at which the sittings shall be held;

(d) generally for the better carrying out of the

provisions of this Act relating to the Tribunal and appeals thereto.

Procedure
on appeals
to the
Tribunal

90.-(1) The parties to an appeal may appear before the Tribunal either in person or by an advocate.

(2) The costs of the appeal shall be at the discretion of the Tribunal.

(3) The Tribunal may, if it considers it is in the interest of the parties or of any of them and is not contrary to the interest of other persons concerned or the public interest, order that a hearing or any part of it shall be held in camera.

(4) The Tribunal may make an order prohibiting the publication of any report or description of proceedings or of any part of proceedings before it (whether heard in public or in camera) but no such order shall be made prohibiting the publication of the names and descriptions of the parties to an appeal or a decision of the Tribunal.

Stay of the
Commission's orders
pending
determination of
appeal

91. Where an appeal is brought under Part XI against an order of the Commission, the order shall, unless the Tribunal otherwise orders, be stayed pending the determination of the appeal.

PART XIV NATIONAL CONSUMER ADVOCACY COUNCIL

Establishment of the
Council

92.-(1) There is hereby established a Council to be known as the National Consumer Advocacy Council.

(2) The Council shall consist of not less than five members and not more than ten members appointed by the Minister.

(3) The Minister shall appoint the Chairman and the Members shall elect the Deputy Chairman from amongst themselves.

(4) Before making the appointments of members pursuant to sub-section (2), the Minister shall, by notice published in the Gazette, and in any newspaper or newspapers circulating widely in the country, invite nominations for appointments and having received them publish the names and call for comments, objections or representations from the public.

(5) In appointing persons to the Council, the Minister shall have regard to the desirability of the Council

as a group having knowledge and understanding of the interests of consumers, including the interest of -

- (a) low income, rural and disadvantaged persons;
- (b) industrial and business users;
- (c) government and community organization.

(6) Subject to the provisions of this Part the Council in consultation with the Minister shall make its own rules for regulating its procedures and other matters relating to its functions.

Functions
and powers
of the
Council

93.-(1) In carrying out its functions conferred under this Act, the Council shall -

- (a) represent the interests of consumers by making submissions to, providing views and information to and consulting with the Commission, regulatory authorities and government ministries;
- (b) receive and disseminate information and views on matters of interest to consumers;
- (c) establish regional and sector consumer committees and consult with them;
- (d) consult with industry, government and other consumer groups on matters of interest to consumers.

(2) The Commission shall in the first three years of the existence of the Council provide for the secretarial functions of the Council, and thereafter the Council shall maintain its own secretariat.

Proceedings
of the
Council

94.-(1) The Council shall hold meetings at least four times in any period of twelve months.

(2) The Chairman of the Council shall convene meetings of the Council as directed by the Council or if requested by members in writing so to do.

(3) At least seven days written notice of a meeting shall be given to all members, except in the case of extraordinary meetings for which the requirement may be waived.

(4) Subject to sub-sections (1), (2) and (3), the Chairman in consultation with the members may convene meetings at such time and places as he may think fit.

(5) The Chairman in his absence the Deputy Chairman, shall preside at meetings of the Council. .

(6) A quorum at a meeting of the Council shall be five members.

Funds of
the Council
and Annual
Report

95.-(1) The funds of the Council shall comprise -

- (a) such sums as may be appropriated by Parliament for the purposes of the Council;

Act No.33
of 1972

(b) grants, donations, bequests or other contributions.

(2) The Council shall keep books of accounts and maintain proper records of its operations in accordance with commercial accounting standards.

(3) The Council may at any time, and shall at the end of each financial year have the accounts of the Council audited by a person registered under the Auditors and Accountants (Registration) Act, 1972 appointed by the Council on such terms and conditions as the Council may determine.

(4) The Council shall prepare an Annual Report in relation to each year ending 30th June and submit it to the Minister before 30th November in that year.

(5) The Annual Report shall provide detailed information regarding the activities of the Council during the previous year and any additional information requested by the Minister.

(6) Within twenty eight days of its receipt or on the first available sitting day thereafter, the Minister shall table in the National Assembly the Annual Report of the Council.

(7) Subject to sub-section (5), the Annual Report of the Council shall include the financial statements of the Council for the immediately preceding financial year and the auditor's report based on the aforementioned financial statements.

(8) The Council shall prepare a budget and submit to the Minister for approval before the end of each financial year for the following financial year showing estimates of its receipts and expenditures for the following financial year.

(9) At the Minister's request, the Council shall commission its auditors to assess and report on the extent to which the budget represents a fair and reasonable projection of the income and expenditure of the Council for the relevant year and shall submit that report to the Minister.

PART XV INCONSISTENCY WITH OTHER LAWS

Inconsistency with other laws

96.-(1) Subject only to this section, this Act applies to all persons in all sectors of the economy and shall not be read down, excluded or modified -

(a) by any other Act except to the extent that the Act is passed after the commencement of this Act and expressly excludes or modifies this Act; or

(b) by any subsidiary legislation whether or not such subsidiary legislation purports to exclude or modify this Act.

(2) A person shall not contravene this Act by

reason only of engaging in a conduct, unless a provision of an enactment specified in sub-section (3):

(a) requires the person to engage in the conduct or conduct of that kind; or

(b) authorises or approves the person engaging or refraining from engaging in conduct of that kind.

Acts No.11
and No.9
of 2001

(3) The enactments referred to in sub-section (2) are: EWURA Act, 2001 SUMATRA Act, 2001 the Tanzania Communication Regulatory Authority Act, 2003 the Tanzania Civil Aviation Authority Act, 2003 and sector legislation referred to in the sector legislation, enactments for the protection of the environment; and, any subsidiary legislation or instrument under any of the aforementioned Acts.

(4) Where the Commission is of the opinion that any conduct required, authorised or approved by a regulatory authority under an enactment referred to in sub-section (3) would be in breach of this Act if sub-section (1) did not apply to the conduct the Commission shall report the matter to the Minister.

(5) Where the Minister receives a report from the Commission under sub-section (4), he may direct the relevant regulatory authority to take the necessary steps to ensure that the conduct described by the Commission is not required, authorised or approved by the regulatory authority.

(6) A person shall not contravene this Act by reason only of engaging in conduct required in order to comply with an enactment other than an enactment referred to in sub-section (3) of this section.

PART XVI MISCELLANEOUS

Functions
of the
Minister

97. The functions and powers of the Minister are:

(a) to appoint members of the Commission other than the Chairman as provided for under section 63;

(b) to receive reports of any conflicts of interest by the Chairman or other members of the Commission as provided for under section 66;

(c) to direct the Commission to conduct an inquiry under section 68;

(d) to request performance audits of the Commission as provided for under section 80;

(e) to receive the Annual Reports of the Commission and cause a copy to be laid before the National Assembly under section 81;

(f) to receive the budgets of the Commission and request assessments of the budgets under section 82;

- (g) to appoint members to the Council, to receive Annual Reports and budgets of the Council and to request assessments of the budgets under section 95; and
- (h) to make regulations under section 98.
- Regulations 98. The Minister may, in consultation with the Commission or Tribunal, make regulations not inconsistent with this Act as he considers necessary or desirable to give effect to the provisions of this Act.
- Rules 99. The Commission may make rules or orders not inconsistent with this Act with respect to:
- (a) matters referred to in the Act as matters on which the Commission may make rules or orders; and
- (b) such other matters as the Commission considers necessary or desirable to give effect to this Act.
- Savings and provisions 100.-(1) Notwithstanding the repeal of the Fair Competition Act, 1994 any rules, regulations, certificates or anything done under the repealed Act or made immediately before the commencement of this Act shall continue to have force until amended or revoked or otherwise dealt with under this Act.
- (2) The property, rights and liabilities to which the Commissioner of Trade Practices was entitled or subject immediately before and after the commencement of this Act shall vest in the Commission.
- Rights of employees 101.-(1) The terms and conditions of employment of any employee or staff from the former Fair Competition Commission who joins the Commission through a competitive recruitment process established in terms of section 63 and 72 shall not be less favourable than those enjoyed by that employee immediately prior to the date on which he joined the service of the Commission.
- (2) The service of any employee or staff of the former Fair Competition Commission who joins the service of the Commission shall be deemed to be continuous with the Fair Competition Commission or with any respective Ministry, public institution.
- (3) An employee or staff of the Fair Competition Commission whose service does not continue with the Commission and where such employee or staff is a member of any statutory, voluntary pension or other supernumerary benefits scheme prior to such termination, such employee or staff shall be paid terminal benefits in accordance with the laws and regulations governing such scheme immediately before such termination.
- (4) Where an employee or staff of the former Fair Competition Commission is not absorbed by the Commission he may be transferred to any other Ministry or

public institution, and his service shall be deemed to be continuous and if he was a member of any statutory, voluntary pension or any other superannuate scheme, such employee shall continue to be governed by the same laws and regulations governing such scheme and the employer shall contribute to such scheme accordingly.

(5) Where an employee or staff whose service with the Fair Competition Commission is deemed to be continuous is a member of any statutory, voluntary pension or any other superannuate scheme, such employee shall continue to be governed by the same laws and regulations governing such scheme and the Commission shall contribute to such scheme accordingly.

(6) Nothing in this section shall operate so as to create an entitlement for any employee or staff of the Fair Competition Commission to become employees or staff of the Commission.

Repeal of Act No.4 of 1994 102. The Fair Competition Act, 1994 is hereby repealed.

PART XVII CONSEQUENTIAL AMENDMENTS

AMENDMENT OF THE SURFACE AND MARINE TRANSPORT REGULATORY AUTHORITY ACT, 2001

Construction Act No.9 of 2001 103. The Surface and Marine Transport Regulatory Authority Act, 2001, herein referred to as the “principal Act” is amended.

Amendment of section 3 Section 3 of the principal Act is amended by –
(a) adding the following definitions in their appropriate alphabetical positions -
“Code of Conduct” means a code of conduct adopted by the Authority in accordance with section 10(2);
“consultation” means notify or seek views of the other party or person;
(b) by deleting the definition of the word “Division”, and substituting for it on its appropriate alphabetical order the following-
“Committee” means a Committee established by the Authority under section 20;”

Amendment of section 4 105. Section 4 of the principal Act is amended in subsection (3), by adding immediately after the word “Authority” which appears at the end of that subsection the

words “and any other person duly authorized in that behalf”.

Amendment of section 6
106. Section 6 of the principal Act is amended -

(a) in subsection (1)(b)(v), by adding the words “for carrying out the purposes and provisions of this Act and the sector legislation” immediately after the words “rules” appearing at the end of that subsection;

(b) by adding immediately after subsection (4) the following new subsection -

“(5). Any direction given by the Minister in accordance with subsection (4) of this section shall be in writing and shall be published in the Government Gazette.”

Amendment of section 7
107. Section 7 of the Principal Act is amended -

in subsection (2), by adding immediately after the word “Minister’s” appearing at the end of that subsection the words “and the appointments shall be made from the respective lists of short listed candidates submitted by the Nomination Committee”;

by deleting subsection (3) and substituting for it the following -

“(3)) In order to maintain impartiality of the Authority and for the purpose of avoiding conflict of interest, a person shall not be qualified for appointment as a member to the Authority if owing to the nature of the office he holds is likely to exert influence on the Authority.

Amendment of section 9
108. Section 9 of the principal Act is amended by adding immediately after subsection (3) the following new subsection -

“(4) The Nomination Committee shall submit to -

the Minister, three names of persons to be forwarded to the President by the Minister to be considered for appointment as Chairman;

(b) the Minister, ten names of persons to be considered for appointment as Board members;

(c) the Minister, three names of persons to be considered for appointment as Director General.”

Amendment of section 11
109. Section 11 of the principal Act is amended in subsection (3), by deleting the words “Chairman” and “he” appearing in the first and second lines and substituting for them the words “Board” and “it” respectively.

Amendment of section 13
110. Section 13 subsection (1) of the principal Act is amended by deleting the words “the Board after consultation with” appearing on the second line.

Amendment of section 14 111. Section 14 of the principal Act is amended by deleting subsection (7) and substituting for it the following -

“(7) The Authority shall comply with the competitive selection procedure established under subsection (6) whenever it appoints employees and consultants.”

Amendment of section 17 112. Section 17 of the principal Act is amended -

(a) by deleting the words “a District Court for grant of a warrant permitting the Authority to enter into any premises at reasonable times to search or inspect the premises for documents in the possession or under the control of the person and make copies of, or take extracts from those documents” appearing in subsection (6), and substituting for them the words “the Fair Competition Tribunal which acting through its Chairman, shall issue a warrant authorizing any police officer, accompanied by staff of the Authority duly authorized by the Director General to enter premises to conduct search and make copies or take extracts of documents therein”.

(b) by deleting subsection (8) and substituting for it the following new subsection -

“(8) The Chairman, or any authorized person may, on application, issue a warrant authorizing any police officer to enter by force in the premises to conduct the search and make copies or take extracts of documents therein.”

Amendment of section 20 113. Section 20 of the principal Act is amended by deleting the word “Division” wherever it appears in subsections (1),(2),(3),(4), and (5) and substituting for it the word “Committee”.

Amendment of section 26 114. Section 26 of the principal Act is amended-

by deleting subsection (2);
by renumbering subsections, (3), (4), (5), (6), (7), (8), (9) and (10) as subsections (2), (3), (4), (5), (6), (7), (8) and (9);
by adding the words “the Authority to” immediately after the word “to” which appears in the opening words of subsection (8) as renumbered.

Amendment of section 27 115. Section 27 of the principal Act is amended in subsection (1), by deleting the figure “17” and substituting for it the figure “26”.

- Amendment of section 28 116. Section 28 of the principal Act is amended by-
- deleting paragraph (d) of subsection (2);
by renaming paragraph (e) as (d);
- Amendment of section 29 117. Section 29 of the principal Act is amended-
- in subsection (2), by deleting the words “not less than six nor more than ten” appearing in the first line of that subsection, and substituting for them the word “seven”;
by adding immediately after subsection (5) the following new subsection -
“(6) After the members are appointed under subsection (2) they shall meet to elect their Chairman”.
- Amendment of section 30 118. Section 30 of the principal Act is amended –
- (a) in subsection (4), by deleting the words “such times and places as he may think fit” and substituting for them the words “at least four times a year”.
(b) in subsection (6) by deleting the word “five” and substituting for it the word “four”.
- Amendment of section 33 119. Section 33 of the principal Act is amended by adding immediately after paragraph (e) of subsection (1) the following new paragraphs -
- “(f) imposing the fines and or refunds;
(g) requiring specific performance;
(h) setting up an escrow fund;
(i) appointing Trustees;
(j) such other relief as may be deemed reasonable and necessary”.
- Amendment of section 34 120. Section 34 of the principal Act is amended in subsection (4)-
- by adding the word “or” immediately after the word “part” appearing at the end of paragraph (a);
by deleting paragraph (c).
- Amendment of section 36 121. Section 36 of the principal Act is amended-
- in subsection (1), by inserting a word “not” between the words “shall” and “contravene”;
in subsection (2), by deleting the word “Practice” appearing immediately after the word “Competition” which appears in the first line of that subsection.

- Amendment of section 39 122. Section 39 of the principal Act is amended by deleting the word “specific” appearing between the words “sector” and “Act”.
- Amendment of section 42 123. Section 42 of the principal Act is amended in subsection (1), by deleting the words “at the end of the financial year” appearing at the end of that subsection.
- Repeal of section 43 124. The principal Act is amended by repealing section 43.
- Amendment of section 45 125. Section 45 of the principal Act is amended-
in subsection (1), by deleting the words “on such terms and conditions as the Minister may determine” appearing at the end of that subsection;
in subsection (2), by deleting the word “shall” appearing between the words “General” and “conduct” and substituting for it the words “may, in a proper case;”
by deleting subsection (3).
- Amendment of section 46 126. Section 46 of the principal Act is amended in subsection (2) by-
deleting the figure “45” appearing in paragraph (a), and substituting for it the figure “44”;
deleting the figure “45” appearing in paragraph (b), and substituting for it the figure “44.”

AMENDMENT OF THE ENERGY AND WATER UTILITIES
REGULATORY AUTHORITY ACT, 2001

- Construction Act No. 11 of 2001 127. The Energy and Water Utilities Regulatory Authority Act, 2001, herein referred to as “principal Act” is amended.
- Amendment of section 3 128. Section 3 of the principal Act is amended-
by adding the following definitions in their appropriate alphabetical positions-
““Code of Conduct” means a code of conduct adopted by the Authority in accordance with section 11(2);
“consultation” means notify or seek views of the other party or person;
“Committee” means a Committee established by the Authority under section 21;”

(b) by deleting the definition of the words “regulated

sector” and substituting for it the following -
 ““regulated sector” means -

- (a) electricity;
- (b) petroleum;
- (c) natural gas;
- (d) water and sewerage;”
- (e) by deleting the definition of the word “standards” and substituting for it the following -
 ““standards” includes technical and safety standards in the regulated sectors”;
- (f) by deleting the words “supply” and “distribution” appearing in the definition of the word “standards”;

Amendment of section 5 129. Section 5 of the principal Act is amended in subsection (3) by deleting the words “the Chairman” and the “comma”, and by adding immediately after the word “Authority” which appears at the end of that subsection the words “and any other person duly authorised in that behalf”.

Amendment of section 7 130. Section 7 of the principal Act is amended-
 by adding the words “for carrying out the purposes and provisions of this Act and the sector legislation” immediately after the word “rules” appearing at the end of subsection (1)(b) (v);
 by adding immediately after subsection (4) the following new subsection -
 “(5) Any direction given by the Minister in accordance with subsection (4) of this section shall be in writing and shall be published in the Government Gazette.”

Amendment of section 8 131. Section 8 of the principal Act is amended by-
 adding immediately after the word “Minister” appearing at the end of subsection (2) the words “and the appointments shall be made from the respective lists of shortlisted candidates submitted by the Nomination Committee”;

- (b) by deleting subsection (3) and substituting for it the following -
 “(3) In order to maintain impartiality of the Authority and for the purpose of avoiding conflict of interest, a person shall not be qualified for appointment as a member of the Authority if owing to the nature of the office he holds is likely to exert influence on the Authority.”

(c) by deleting the word “remuneration” appearing under subsection (4) and substituting for it the word “fees”.

132. Section 9 of the principal Act is amended in

Amendment of section 9 subsection (4), by deleting the word “cause” appearing in the third line of that subsection and substituting for it the word “course”.

Amendment of section 11 133. Section 11 of the principal Act is amended-
by adding immediately after subsection (2) the following new subsection -
“(3) The Nomination Committee shall submit to-
to the Minister, three names of persons to be forwarded to the President by the Minister to be considered for appointment as Chairman;
the Minister, ten names of persons to be considered for appointment as Board members;
the Minister, three names for appointment as Director General.”
by renumbering subsections (3) and (4) as subsections (4) and (5).

Amendment of section 12 134. Section 12 of the principal Act is amended in subsection (3), by deleting the word “Chairman” appearing in the first line of that subsection and substituting for it the word “Board.”

Amendment of section 14 135. Section 14 of the principal Act is amended in subsection (1), by deleting the words “ the Board after consultation with” appearing in the second line of that subsection.

Amendment of section 15 136. Section 15 of the principal Act is amended in subsection (7), by deleting the words “unless, because of the urgency of the appointment or other special circumstance, the procedure is not reasonably practical in any particular case” appearing immediately after the word “experts”.

Amendment of section 17 137. Section 17 of the principal Act is amended in subsection (3), by deleting the word “Board” which appears at the end of that subsection, and substituting for it the word “Authority”.

Amendment of section 18 138. Section 18 of the principal Act is amended-
in subsection (6), by deleting the words “a District Court for grant of a warrant permitting the Authority to enter into any premises at reasonable times to search or inspect the premises for documents in the possession or under the control of the person and make copies of or take extracts from those documents” appearing in that subsection and

substituting for them the words “the Fair Competition Tribunal which acting through its Chairman, shall issue a warrant authorising any police officer, accompanied by staff of the Authority duly authorised by the Director General to enter premises to conduct search and make copies or take extracts of documents therein;”

by deleting subsection (8) and substituting for it the following new subsection -

“(8) The Chairman, or any authorised person may, on application, issue a warrant authorising any police officer to enter by force in the premises to conduct the search and make copies or take extracts of documents therein.”

Amendment
of section
21

139. Section 21 of the principal Act is amended by-

deleting subsection (1);

renumbering subsection (3) as subsection (1);

by deleting the word “Division” and substituting for it the word “Committee” wherever it appears in subsection (2) as renumbered.

Amendment
of section
24

140. Section 24 of the principal Act is amended by deleting subsection (3) and substituting for it the following-

“(3) The Authority shall, determine the categories of decisions and information which is to be placed on the Public Register from time to time”.

Amendment
of section
27

141. Section 27 of the principal Act is amended-

by deleting subsection (2);

by renumbering subsections, (3), (4), (5), (6), (7), (8), (9) and (10) as subsections (2), (3), (4), (5), (6), (7), (8) and (9);

by adding the words “the Authority to” immediately after the word “to” which appears in the opening words of subsection (8) as renumbered.

Amendment
of section
29

142. Section 29 of the principal Act is amended in subsection (2) by-

deleting paragraph (d)

by renaming paragraph (e) as (d).

Amendment
of section
30

143. Section 30 of the principal Act is amended in subsection (2) by deleting the words “not less than six members or more than ten” appearing in the first and

second lines of that subsection, and substituting for them the word “seven”.

- Amendment of section 32 144. Section 32 of the principal Act is amended in subsection (6) by deleting the word “five” appearing in that subsection and substituting for it the word “four”.
- Amendment of section 34 145. Section 34 of the principal Act is amended in subsection (7), by deleting the words “in each Division” appearing in the second line of that subsection.
- Amendment of section 35 146. Section 35 of the principal Act is amended -
designating section 35 as section 35(1);
in subsection (1) as designated, by -
(i) deleting paragraph (a) and substituting for it the following -
“(a) imposing fine;”
(ii) adding immediately after paragraph (e) the following new paragraphs -
“(f) requiring specific performance;
(g) setting up an escrow accounts;
(h) appointing Trustees;
for refunds;
such other relief as may be deemed reasonable and necessary”.
(iii)
under this section the phrase ”escrow account “ means a bank account generally held in the name of the depositor and an escrow agent that is returnable to the depositor or paid to a third person on fulfilment of specified conditions.
- Amendment of section 36 147. Section 36 of the principal Act is amended by deleting paragraph (c) of subsection (4).
- Amendment of section 40 148. Section 40 is amended in subsection (1) by deleting the opening words of that subsection and substituting for it the following -
“(1) In consultation with the Minister, the Authority may make rules in respect to”
- Amendment of section 41 149. Section 41 of the principal Act is amended by deleting the word “specific” appearing between the words “sector” and “Act”.
- Amendment of section 43 150. Section 43 of the principal Act is amended in subsection (1), by deleting the word “other” appearing in paragraph (c) and substituting for it the word “the.”
- Amendment 151. Section 44 of the principal Act is amended in

t of section 44 subsection (1), by deleting the words “at the end of the financial year” appearing at the end of that subsection.

Amendment of section 45 152. The principal Act is amended by repealing section 44.

Amendment of section 47 153. Section 47 of the principal Act is amended-
in subsection (1), by deleting the word “on such terms and conditions as the Minister may determine” appearing at the end of that subsection;
in subsection (2), by deleting the word “shall” appearing between the words “General” and “conduct” and substituting for it the words “may, in a proper case.”

Amendment of section 48 154. Section 48 of the principal Act is amended in subsection (2) by-
deleting the figure “46” appearing in paragraph (a) and substituting for it the figure “43”;
deleting the figure “47” appearing in paragraph (b), and substituting for it the figure “43.”

FIRST SCHEDULE
(Made under sections 63 and 83)
THE NOMINATION COMMITTEE

Composition of Committee 1.-(1) The Nomination Committee shall consist of three members, namely:

(a) the Permanent Secretary of the Ministry responsible for the Commission in the case of appointments to the Commission, or the Permanent Secretary of the Ministry responsible for Justice in the case of appointments to the Tribunal, as the case may be, who shall be the Chairman of the Committee; and

(b) two other persons appointed by the Minister, in the case of appointments to the Commission, or by the Attorney-General in the case of appointments to the Tribunal, as the case may be, one nominated by a body recognized as being representative of private sector and one nominated by a body recognized as being representative of consumers.

(2) In proposing names of persons for appointment to the Nomination Committee, the body

representing the private sector and the body representing consumers shall strive to select persons with relevant knowledge, sound integrity and probity who do not have conflicts of interest.

Functions 2. The function of the Nomination Committee shall be to nominate persons for appointment as:

- (a) Member of the Commission;
- (b) Director- General of the Commission; or
- (c) Member of the Tribunal;

Nomination of members of the Tribunal and Commission 3. -(1) The Nomination Committee shall submit to the Attorney General twelve names of persons to be forwarded to the President by the Attorney General to be considered for appointment as members of the Tribunal.

(2) The Nomination Committee shall submit to -

- (a) the Minister, three names of persons to be forwarded to the President by the Minister to be considered for appointment as Chairman;
- (b) the Minister, six names of persons to be considered for appointment as members of the Commission;
- (c) the Minister, three names of persons to be considered for appointment as the Director General of the Commission.

Meetings of Committee 4.-(1) The Nomination Committee shall meet as often as there arises the need for exercise of the function of the Committee.

(2) Meetings of the Committee shall be convened by the Chairman and at such places and times as the Chairman may specify in the notice of the meeting.

(3) The Chairman may on his own motion, and shall, if requested in writing in that behalf by at least one of the other members, convene a meeting of the Committee.

(4) The Committee may invite any person who is not a member to participate in the deliberations of the Committee, but any person so invited shall have no vote at the meeting.

(5) A quorum at a meeting of the Committee shall be the Chairman and the two other members.

(6) Minutes in proper form of each meeting of the Committee shall be kept and shall be confirmed by the Committee at its next meeting.

Nominations 5. Nominations by the Committee shall be in writing signed by the Chairman and one other member.

Proceedings not invalidated by irregularity

6. No act or proceeding of the Committee shall be invalid by reason of any defect or irregularity in the appointment of any member or by reason that any person who purported bona fide to act as a member at the time of the act or proceeding was in fact disqualified or not entitled to act as a member.

Absence from three consecutive meetings

7. Where any member absents himself from three consecutive meetings of the Committee without sufficient cause, the Committee shall advise the Minister or the Attorney-General, as the case may be, of the fact and the Minister or the Attorney-General may terminate the appointment of the member and appoint another member in his place.

Committee may regulate its own proceedings

8. Subject to this Act, the Committee shall have power to regulate its procedure in relation to its meetings and the transaction of its business.

SECOND SCHEDULE
(Made under section 62)
QUALIFICATIONS AND FUNCTIONS
OF THE DIRECTOR - GENERAL

Qualifications

1.-(1) A person appointed as the Director General shall -

- (a) be graduate of a recognised university;
- (b) possess at least ten years experience in one or more of the fields of management, law, economics or finance;
- (c) satisfy the Board that he is unlikely to have a conflict of interest under section 11;
- (d) be willing to serve as the Director General;
- (d) be in the opinion of the Board otherwise well suited to perform the functions and duties of Director-General competently and honestly.

Director General to be Chief Executive Officer

2. The Director-General shall also be the Chief Executive Officer of the Commission and shall not engage in any other paid employment.

Responsibilities

3. The Director – General shall be responsible for the day to day operations of the Commission subject to the directions of the Board.

Passed in the National Assembly on the 2nd April, 2003

KIPENKA M. MUSSA,
Clerk of the National Assembly