The Restrictive Trade Practices, Monopolies and Price Control Act

CHAPTER 504
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THE RESTRICTIVE TRADE PRACTICES MONOPOLIES AND PRICE CONTROL ACT

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CHAPTER 504
THE RESTRICTIVE TRADE PRACTICES, MONOPOLIES AND PRICE CONTROL ACT

Commencement: 1st Februar, 1989

An Act of Parliament to encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentrations of economic power and prices and for connected purposes

PART I - PRELIMINARY

1. This Act may be cited as the Restrictive Trade Practices. Monopolies and Price Control Act

2. In this Act, unless the context otherwise require - "business records" include:-
   a) accounts, balance sheet, vouchers, records, minutes of meetings, contracts, files, instructions to employees, and other instruments; and
   b) any information recorded or stored by means of any computer, or other device whatsoever, and any material subsequently derived from information so recorded or stored;

"commission agent" means any person who receives or orders goods on account of others or, who solicits for goods on behalf of other persons, and includes, a person carrying on business as a broker;

"Commissioner" means the Monopolies, and Prices Commissioner, appointed under, section 3.
“competitor” means a person who produces, distributes, or supplies substantially similar, goods or services, at the same stage of production or distribution of goods or supply of services, in relation to another person;

"consent agreement" means an agreement concluded pursuant to subsection (3) of section 15;

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

"customer" means a person who purchases goods or services from another person;

"distribution”, includes any act by which goods or services are sold or supplied by one person to another person;

“distributor” means a person who engages regularly in distribution or who participates in some act or set of acts of distribution which is the subject of an action under this Act;

"downstream processor”, means a manufacturer who adds value to goods supplied or manufactured by another person

“fair market price” means a price at which the market for goods or services clears with sufficient competition without the occurrence of shortages or build-up of excess inventories;

"goods”, include;--

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

"intermediate goods”, means goods used as inputs in manufacturing;

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

"Minister" means the Minister for the time being responsible for finance;

"monopoly undertaking”, means a dominant undertaking, or an undertaking which, together with not more than two other independent undertakings-
(a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed in Kenya or any substantial part thereof; or

(b) provides or otherwise controls less than one-half of the services that are rendered in Kenya or any substantial part thereof:

"person" includes a local authority or public body

“price”, in relation to the sale of goods or to the performance of services, includes every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the sale of the goods or to the performance of the services, although ostensibly relating to any other matter or thing;

"reasonable unit cost" means the average total cost of producing goods or services at the producer's normal scale of output, with all productive factors being remunerated at fair market rates;

"Restrictive Trade Practices Tribunal" means the tribunal established pursuant to Part V;'

"restrictive trade practices" means trade practices described in sections 6 to 12;

"retail trade" means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing; and includes any act or set of acts of sale to consumers which is the subject of an action under this Act;

“retailer” means a person regularly engaged in retail trade, or who participates in some act or set of acts of retail trade which is the subject of an action under this Act;

“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 the sale of goods, where the goods are sold in conjunction with the rendering of a service;

"supplier", in relation to a service, includes a person who performs the service and a person who arranges the performance of the service, and in relation to goods or services, means a person who sells or supplies goods or services to another person :

“supply", in relation to goods, includes supply or resupply by way of sale, exchange, lease, hire or hire purchase:
"trade association" means a body of persons (whether incorporated or not) which is formed for the purposes of furthering the trade interests of its members or of persons represented by its members;

"trade practice" means any practice related to the carrying on of any trade; and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply, or price, in the course of trade, of any property, whether real or personal, or of any services;

"wholesale trade" means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing; and includes any act or set of acts of sale for either of those purposes which is the subject of an action under this Act;

"wholesaler" means a person regularly engaged in wholesale trade, or who participates in some act or set of acts of wholesale trade, which is the subject of an action under this Act.

3. (1) There shall be appointed a Monopolies and Prices Commissioner and such other officers as may be necessary for the due administration of this Act.

(2) The Monopolies and Prices Commissioner shall, subject to the control of the Minister, be responsible for the control and management of the Monopolies and Prices Department of the Treasury.

(3) The Commissioner may authorize any officer to exercise any of the powers conferred by this Act upon the Commissioner subject to such limitations as the Commissioner may think fit.

PART II - PROVISIONS RELATING TO RESTRICTIVE TRADE PRACTICES

Restrictive Trade Practices

4. (1) For the purposes of this Act, "restrictive trade practice" refers to an act performed by one or more persons engaged in production or distribution of goods or services which-

(a) in respect of other persons offering the skills, motivation and minimum seed capital required in order to compete at fair market prices in any field of production or distribution, reduces or eliminates their opportunities so to participate; or

(b) in respect of other persons able and willing to pay fair market prices for goods or services, either for production for resale or final consumption reduces or eliminates their opportunities to acquire those goods or services.
(2) For the purposes of subsection (1) reduction or elimination of opportunities is to be measured with reference to the situation that would retain in the absence of the practices in question.

(3) Subject to exemptions set out in section 5, the practices enumerated in sections 6 to 12 are declared to be restrictive trade practices for the purposes of this Act.

5. The following trade practices are exempted from the provisions of this Act—

(a) trade practices which are directly and necessarily associated with the exercise of exclusive or preferential trading privileges conferred on any person by an Act of Parliament or by an agency of the Government acting in accordance with authority conferred on it by an Act of Parliament;

(b) trade practices which are directly and necessarily associated with the licensing of participants in certain trades and professions by agencies of the Government acting in accordance with authority conferred on them by an Act of Parliament.

Enumeration of restrictive trade practices

6. (1) For the purposes of this Act, the following categories of trade agreements are declared to be restrictive trade practices—

(a) an agreement or arrangement between persons engaged in the business of selling goods or services to engage in conduct—

(i) hindering or preventing the sale or supply or purchase of goods or services between persons engaged in the selling or buying of goods or services; or

(ii) limiting or restricting the terms and conditions of sale or supply or purchase between persons engaged in the selling or buying of goods or services;

(b) an agreement or arrangement between manufacturers, wholesalers or retailers to sell goods at prices or on terms agreed upon between themselves;

(c) an agreement or arrangement between manufacturers, wholesalers, retailers, or contractors to buy, or offer to buy, goods at prices or on terms agreed upon between themselves;

(d) an agreement or arrangement between manufacturers, wholesalers, retailers or contractors or any combination of persons other than a partnership, engaged in the selling of goods or the performance of
services, to sell goods, or perform services, at prices or on terms agreed upon between the parties to any such agreement or arrangement;

(e) an agreement or arrangement between manufacturers or between wholesalers to sell goods on the condition that prices charged by or conditions of sale applicable to retailers shall be the prices or conditions of sale stipulated by those manufacturers or wholesalers

(f) a discriminatory agreement or arrangement between sellers or between sellers and buyers to grant rebates to buyers of goods calculated with reference to the quantity of, or value of the total purchases by those buyers from those sellers;

(g) an agreement or arrangement between sellers not to sell goods in any particular form or of any particular kind to buyers or to any class of buyers; or an agreement or arrangement between resellers not to buy goods in any particular form or of any particular kind from sellers or any class of sellers;

(h) an agreement or arrangement between manufacturers or wholesalers or retailers not to employ or to restrict or favour the employment of any method, machinery, process, labour, land or other resources;

(i) an agreement or arrangement between persons whether as producers, wholesalers, retailers or buyers, to limit or restrict the output or supply of any goods, or withhold or destroy supplies of goods, or allocate territories or markets for the disposal of goods; or

(j) an agreement or arrangement to enforce the carrying out of an agreement or arrangement referred to in subsection

(2) No agreement or arrangement belonging to a category enumerated in subsection (1) shall be enforceable in legal proceedings after the commencement of this Act nor shall any person bring a suit against any other person by reason of failure to observe or adhere to the terms of that agreement or arrangement or by reason of damages arising from that failure.

(3) An agreement or arrangement enumerated in sub section (1) shall be regarded as a restrictive trade practice for the purposes of this Act whether or not the agreement or arrangement is intended to be enforceable by legal proceedings.

(4) Where an agreement is made by a trade association the agreement shall be deemed to be made by the association and by all persons who are members of the association or represented thereon as if each of those persons were a party to the agreement.
(5) Nothing contained in subsection (1) shall apply in respect of any agreement or arrangement between consumers relating to goods which are bought by them for consumption and not for resale.

7. (1) The following practices conducted by or on behalf, of a trade association are declared to be restrictive trade practices-

(a) the unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; and in determining whether an exclusion from such an association is unjustifiable the Minister may examine in addition to any other matters which he considers relevant not only the application of any rules of that association but also the reasonableness of those rules;

(b) the making directly or indirectly of a recommendation by a trade association to its members or to any class of its members-

(i) which relate to the prices charged or to be charged by such members or any such class of members or to the margins included in the prices or to the pricing formula used in the calculation of those prices; or

(ii) which relates to the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such members or any such class of members and which directly affects prices, profit margins included in the prices, or the pricing formula used in the calculation of prices

(2) A recommendation by a trade association as described in subsection (1) (b) shall be deemed to be a restrictive trade action notwithstanding that any statement in the recommendation may or may not be complied with as the members or class of members to the recommendation is made think fit

(3) A recommendation made by any person for the purpose of or having the effect of whether directly or indirectly, enabling any trade association to defeat or evade the provisions of this Act shall be deemed to have been made by that trade association

(4) Where a specific recommendation whether express or implied is made by or on behalf of a trade association to its members or to any class of its members, concerning the action to be taken or not to be taken by them in relation to any matter affecting the trading Conditions of those members the provisions of this Act shall apply as if membership of the association Constituted an agreement under which the members agreed with the association and with each other to comply with the recommendations, notwithstanding anything to the contrary in the constitution or rules of the association

(5) Notwithstanding anything in section 6 (4) or sub- section (4) of this section, a member of a trade association who expressly notifies the
association in writing that he disassociates himself entirely from an
agreement made by that association or, as the case may be, that he will not
take action or will refrain from action of a kind referred to in an express or
implied recommendation made by that association shall not, in the absence
of proof to the contrary, be deemed to be a party to that agreement or, as the
case may be, a member of the association who has agreed to comply with
the recommendation.

8. (1) For purposes of this section, and sections 9 and 10, “discrimination”
means the act of a person in selling or supplying, or offering to sell or
supply, goods or services to another person, whether for use in production,
for resale or final consumption, under conditions less favourable to that
person than those on which he sells or supplies or offers to sell or supply
substantially similar goods or services to third persons.

(2) Conditions of sale or supply may be deemed to be less favourable under
the following circumstances-

(a) goods or services are delivered or made available after a
significantly longer period of time following receipt of an
order, provided that such treatment shall not be deemed to
constitute discrimination if more rapid delivery is openly
offered to each purchaser on condition of payment of a
uniform premium; or

(b) goods or services are sold or supplied at higher prices.
provided that the provisions of quantity discounts which are
normal for the trade in question shall not be deemed to
constitute discrimination; or

(c) goods or services are sold or supplied on less favourable
credit terms, provided that differential credit terms reflecting
the established creditworthiness or lack thereof of different
purchasers shall not be deemed to constitute discrimination; or

(d) in a situation of shortage, such as one prompted by import
restrictions, a person sells or supplies goods or services to
non-favoured purchasers in quantities less than their normal
proportionate share in his sale or supplies.

(3) A person commits a restrictive trade practice within the meaning of this
Act, who, whether as principal or agent and whether by himself or his agent-

(a) being a manufacturer refuses to sell or supply or to continue to sell
or supply or who discriminates in selling or supplying goods to
another manufacturer, wholesaler, or a supplier of services;

(b) being a wholesaler refuses to sell or supply, or discriminates in
selling or supplying, goods to a manufacturer, a retailer, or a supplier
of services;
(c) being a retailer refuses to sell or supply or discriminates in selling or supplying goods to a manufacturer, a supplier of services or final consumer; or

(d) being a supplier of services refuses to sell or supply or discriminates in selling or supplying services to a manufacturer, a wholesaler, a retailer or another supplier of services.

9. Without prejudice to the generality of section 8, a person commits a restrictive trade practice within the meaning of this Act who, whether as principal or agent, and whether by himself or his agent, commits any of the following practices-

(a) the person, being an organization which manufactures intermediate goods used in part as inputs by down-stream processors, or being in control of such an enterprise, having also a beneficial interest in one or more such down-stream processors, and being a regular or part-time seller or supplier of such intermediate goods to one or more down-stream processors in which he has no beneficial interest, refuses to sell or supply, or discriminates in selling or supplying such intermediate goods to one or more down-stream processors;

(b) the person refuses to sell or supply or discriminates in selling or supplying goods or services to another person except on the condition that the other person also purchases other goods and services from him or from a third person nominated by him or the person attempts to impose such a condition: but nothing in this paragraph shall render unlawful a condition against the separate sale of any goods customarily forming part of a unified set or forming pan of a single or composite article;

(c) the person being a retailer of goods or supplier of services indicates in the course of bargaining with another person, being a purchaser or prospective purchaser of goods or services-

(i) that he will sell goods or supply services to that person only if the other person sells or arranges the sale of second-hand goods to the seller or to a person nominated by the seller: or

(ii) that the terms and conditions on which he will sell those goods or supply those services will be less favourable than those upon which he would make them available if the purchaser were to sell or to arrange the sale of second-hand goods to the seller or to a person nominated by the seller: Provided that it shall not be a restrictive trade practice for a seller to stipulate the term! and conditions for second-hand goods in part exchange for reconditioned goods of the same kind if the second-hand goods are required for reconditioning and resale;
(d) the person refuses to sell or supply or discriminating in selling or supplying goods or services to any other, person on the ground-

(i) that the other person intends or is likely to resell or supply the goods or services, or has in the past sold or supplied similar goods or services, at a price that is or was lower than a specified amount or lower than some other price pro posed, recommended, determined, charged, collected, or paid by any person or trade association; or

(ii) that the other person refuses to impose, or to agree to impose, on any third person to whom he resells or supplies the goods or services, the condition that the resale or supply may not take place at a t a price lower than a specified amount or lower than some other price pro- posed, recommended, determined, charged, collected or paid by any person or trade association.

10. (1) A person who, whether as principal or agent, and whether by himself or his agent, commits predatory trade practices with the intention, whether exclusively or in common with other objects, of accomplishing any of the following purposes-

(a) to drive a competitor out of business, or to deter a person from establishing a competitive business in Kenya or in any specific area or location within Kenya; or

(b) to induce a competitor to sell assets to, or merge with, another party, whether that party is the offender himself or a third person; or

(c) to induce a competitor to shut down, whether temporarily or permanently an existing manufacturing facility or wholesale or retail outlet or outlet for the sale of services, or to deter a person from establishing any such facility or outlet in anyone or more locations in Kenya; or

(d) to induce a competitor to desist from producing or trading in any goods or services, or to deter a person from producing or trading in any goods or services, shall be guilty of an offence.

(2) For the purposes of this section a "predatory trade practice" shall be deemed to have been committed with the intention, exclusively or partially, of accomplishing any of he purposes described in subsection (1) if any outcome described in that subsection occurs subsequent to the occurrence of the practice, or if it may reasonably be inferred that successful execution of the practice would ordinarily be followed by that outcome.

(3) For the purposes of this section "predatory trade practice" includes the following-
(a) a person sells or supplies, or threatens to sell or supply, goods or services at certain prices which prices are found by the Minister to be below their average variable cost, or intended to drive a competitor out of business or to deter a person from establishing a competing business in Kenya;

(b) a person offers money or other consideration of value to a purchaser of goods or services on the condition that the purchaser refrains or agrees to refrain from purchasing the goods or services from some other person or persons unless such consideration is given by way of a normal trade discount;

(c) a person threatens an existing or potential competitor with bodily harm, damage to property, or other disadvantageous consequences if the competitor under-takes or continues or refuses to agree not to under-take or continue specified lawful trade practice;

(d) a person threatens another person with bodily harm, damage to property or other disadvantageous consequences if the other person purchases goods or obtains services from a third person or refuses to agree to refrain from making purchases from the third person;

(e) a person offers inducements to existing or potential suppliers of goods or services to an existing or potential competitor to withhold such supplies or to furnish them on terms and conditions that discriminate against the competitor, or he threatens the suppliers with bodily harm, damage to property or other disadvantageous consequences if they fail to carry out or agree to withhold the supplies or to furnish them on terms and conditions that discriminate against the competitor.

11. (1) It shall be an offence-

(a) for two or more persons, being either manufacturers, wholesalers, retailers, or contractors, or suppliers of services, to tender for the supply or purchase of any goods or services at prices, or on terms, agreed, or arranged between them; or

(b) for two or more persons to agree or arrange for all or any of them to abstain from tendering for the supply or purchase of any goods or services, tender for the supply or purchase of which have been invited.

(2) It shall not be a defence in proceedings for an offence under this section-
(a) that the invitation to tender or the tender was not made or submitted in writing; or

(b) that the invitation to tender or the tender was not described as such or was given some other description; or

(c) that the invitation to tender was extended to some or all of the parties to the agreement or arrangement at different times.

(d) that the tender of any party to the agreement or arrangement was submitted before that party had consulted with all or some of the other parties to the agreement or arrangement on the prices or the terms that those other parties were to submit or on the question as to whether all or some of those parties should abstain from tendering.

(3) Nothing in this section shall apply to a tender made by two or more persons jointly at the express request or with the prior express consent of the person inviting the tender (whether made in the name of one person or in the names of two or more persons), where the tender is made with the intention that if it is successful the supply or purchase of the goods or services purchased, as the case may be, will or may be shared by two or more persons.

(4) Any person who is guilty of an offence under this section shall be liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

12. (1) It shall be an offence for any two or more persons, being either manufacturers, wholesalers, retailers, or contractors, to enter into any agreement or arrangement as to the price or prices which any of them win bid at any auction sale of goods, or any agreement or arrangement whereby any party to that agreement agrees to abstain from bidding at any auction sale of goods.

(2) Any person who is guilty of an offence under this section shall be liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Enquiries and investigations into restrictive trade practices

13. Any person who considers himself to be aggrieved as a result of a restrictive trade practice may submit a complaint to the Minister through the Commissioner in the prescribed form.

14. (1) The Commissioner shall investigate a complaint made under section 13 which appears to him to have merit and he may also initiate investigations into alleged restrictive trade practices of which he takes cognisance by other means, including but not limited to references by agencies of the Government.
(2) The Commissioner or any person authorized in writing by him, may require access to copies of such records of trade practices, business transactions, and enterprise ownership and control as he may reasonably need to investigate complaints made under section 13 and without limiting the generality of the foregoing, he or his authorized agent may-

(a) address to any person currently or previously engaged in trading in goods or services to which the allegations refer, or to any person currently or previously connected with a relevant trade association, questions concerning the existence or otherwise of agreements, minutes of meetings or memoranda, correspondence instructions to employees, or other records relating to the alleged trade practices and demand a response to the questions within a reasonable time;

(b) require any person currently or previously engaged in trading in goods or services to which the allegations refer to grant him access to records- indicating the specifications of goods or services traded, person from whom they have been sold or supplied, quantities and dates of purchases, sales and deliveries prices charged, paid, and collected, terms and conditions of payment, credit provided, periods of delivery, manner of shipment and other relevant information;

(c) require any person possessing records such as those described in this subsection to give them copies of those records or alternatively to submit the record to him for copying by the Commissioner.

(3) Where the Commissioner deems it necessary for the purpose of verifying the specification of any goods whose trade is the subject of allegations under this section, or of verifying the movement of such goods in the course of trade, he or a person authorized in writing by him may enter any premises in the occupation or under the control of a trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporters or other person believed to be engaged in trading in those goods, and may inspect the premises and any goods situated thereon.

(4) Upon entering premises in pursuance of the powers conferred by subsection (3), the Commissioner or any other person authorized by him in writing shall, before proceeding to conduct an inspection of the premises or goods situated thereon, inform the person present who is or who reasonably appears to be for the time being in charge of the premises of his intention to exercise his powers under this Act.

15. (1) The Commissioner may take any of the following steps with respect to a person alleged to be engaged or have been engaged in restrictive trade practices-

(a) inform the person in writing that allegations have been made and that specific evidence has been presented to substantiate the allegations, and invite the person to comment on the allegations and the evidence and to indicate what remedies (if any) the person would
propose in order to bring his trade practices into conformity with this Act; or

(b) inform the person that in his opinion the weight of the evidence supports allegations that have been made concerning the occurrence of a restrictive trade practice, and request the person to take specific steps to discontinue such practices and, in addition, compensate for the past effects of such practices by taking positive steps to assist one or more existing or potential suppliers, competitors or customers to participate actively in producing or trading in the goods or services to which the allegations relate.

(2) In either of the cases referred to in paragraph (a) or (b) of subsection (1) the Commissioner shall request the person alleged to have committed restrictive trade practices to respond to his communication by a certain date, and additionally he may request the person to take the corrective steps described in paragraph (b) of subsection (1) by a certain date and to furnish him with evidence that the steps have been taken by that date.

(3) If the person alleged to have committed a restrictive trade practice does not respond to the Commissioner's communication by the indicated date, or the Commissioner deems the person's response not to remove the grounds for the allegation, or the person fails to implement measures to which he has agreed in his response, the Commissioner shall invite the person to negotiate a consent agreement satisfactory to the Commissioner, stipulating that the person will desist from specified practices and will take specified measures to compensate for the past effect of such practices.

(4) The Commissioner shall cause a consent agreement entered into under subsection (3) to be published in the Gazette as early as practicable and he shall send copies of the agreement to any person who complains to him of the trade practices in question, and also to any other persons whom he deems to be affected by the agreement.

16. (1) If a person considered by the Commissioner to be committing or to have committed a restrictive trade practice under this Act fails to take steps satisfactory to the Commissioner under section 15 or, having signed a consent agreement under subsection (3) of section 15, fails to abide by the terms of the agreement or commits restrictive trade practices not covered by the agreement, the Commissioner shall inform the person that he proposes to recommend that the Minister make an order regulating the practices in question, and that a hearing on the desirability and contents of such an order will be held on a specified date.

(2) Any person whose trade practices are the subject of a proposed order and any person who has complained in writing to the Commissioner in respect of those trade practices, shall be given reasonable advance notice of the holding of a hearing on that order and shall be invited either to attend in person or to send a duly appointed representative.
(3) A person invited to a hearing under subsection (2) shall be entitled to representation by an advocate of his choice.

(4) The Commissioner may authorize any person in writing to conduct all or any portion of any hearing on his behalf.

17. Upon concluding his investigation under section 16, including the holding of a hearing as specified in that section, the Commissioner shall present his report together with recommendations for action to the Minister.

Orders on restrictive trade practices and appeals there from

18. (1) At any time after the holding of a hearing under section 16 the Minister may, by notice in the Gazette, make an order requiring a person committing or deemed to have committed a restrictive trade practice to desist from the trade practices prohibited by this Act and may also require him to take certain positive steps to assist existing or potential suppliers, competitors, or customers, in order to compensate for the past effects of those practices.

(2) An order made under this section shall specify the effective dates by which the actions specified therein must be undertaken which dates shall be no sooner than twenty-eight days following the date of publication of the order in the Gazette.

19. (1) In any case where one or more restrictive trade practices are alleged to be committed or to have been committed by two or more persons acting in concert, whether expressly or implicitly, the Commissioner may classify any such persons as objects of a single investigation, and two or more such persons may be invited to negotiate and sign a single consent agreement.

(2) The Minister may address a single order to two or more persons, and in general wherever the context allows the word “person” in sections 15, 16 and 17 may be interpreted to mean two or more persons alleged to be committing or to have committed one or more restrictive trade practices in concert.

20. (1) A person aggrieved by the order of the Minister under section 18 may appeal to the Restrictive Trade Practices Tribunal against the order within twenty-eight days of the making of the order.

(2) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Restrictive Trade Practices Tribunal may appeal to the High Court against that decision within thirty days after the date on which a notice of that decision has been served on him and the decision of the High Court shall be final.
21. (1) Every person who, whether as principal or agent and whether by himself or his agent-

(a) having not lodged an appeal in accordance with section 20 against an order of the Minister made under section 18, contravenes or fails to comply with the order; or

(b) after the Restrictive Trade Practices Tribunal on the High Court has pronounced its decision on an appeal made under section 20, contravenes or fails to comply with any portion of an order of the Minister under section 18 which is confirmed by the Tribunal or the High Court or as modified by the Tribunal or the High Court, shall be guilty of an offence.

(2) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand or to both.

(3) If the Restrictive Trade Practices Tribunal 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 restrictive trade practices committed by a person guilty of an offence under section 11 or 12 or subsection (1) of this section the convicted person shall, in addition to any other party which may otherwise be imposed, be liable to a fine or two times such monetary value which the Restrictive Trade Practices Tribunal shall order to be paid to the person suffering the damage.

(4) A person aggrieved by the decision of the Restrictive Trade Practices Tribunal made under subsection (3) may appeal to the High Court whose decision shall be final.

PART III - CONTROL OF MONOPOLIES AND CONCENTRATIONS OF ECONOMIC POWER

Preliminary

22. (1) In this Part, unless the context otherwise requires-

"beneficial interest" or "interest" means ownership of shares or a proportion of the assets of an enterprise engaged in production, distribution, or the supply of services;

"control" means the power to make major decision in respect of the conduct of the affairs of an enterprise after no more than nominal consultations with other persons, whether directors or other officers of the enterprise;
"merger or takeover" means a transaction or other action which involves the implementation of a merger or takeover proposal;

"merger or takeover proposal" means-

(a) a proposal relating to the acquisition or disposition of any share in a company which, together with shares, if any, to which the transferee already has a beneficial interest, carry the right to exercise or control the exercise;

(i) in the case of a private company, of more than fifty percent of the voting power at any general meeting of the transferor company”; or

(ii) in the case of a company other, than a private company, of fifty per cent or more of the voting power at any general meeting of the transferor company;

(b) a proposal for the acquisition or disposition of-

(i) the whole of the equity capital of the business of any persons or body of person (other than a company); or

(ii) a portion in the equity capital of the business of any person or body of persons (other than a company), being a portion which, together with the portion (if any) in the equity capital of the business to which the transferee is already beneficially entitled or in which the transferee is already beneficially interested, gives the transferee the whole, or more than fifty per cent, of the equity capital of the business; or

(c) a proposal relating to the acquisition or disposition of-

(i) the whole of the assets of a section of a business (whether or not the business or the section of the business is carried on by a company); or

(ii) a portion of the assets of a section of a business (whether or not the business or that section of the business is carried on by a company), being a portion of those assets which, together with any equity capital already held in that section by the transferee, represents the whole of, or more than fifty per cent of the value of, the assets used in carrying on that section of the business; or

(d) a proposal (not being a proposal coming within paragraph (b) or paragraph (c) relating to the acquisition or disposition of the tangible and intangible assets employed in the business or section of a business if the total value of the assets to which the proposal relates, together with any equity capital already held in the business or the section of the business, is more than fifty per cent of the combined value of the tangible and intangible assets employed in connection with the business or section of a business
(whether the business or section of a business is carried on by a company or not); or

(e) a proposal which if effected would result in the establishment of a new business to acquire by any of the means set out in paragraphs (a) to (d), a controlling interest in two or more independently owned businesses or in one or more sections of at least two such businesses, being sections capable in themselves of being operated as businesses; or

(f) proposal (not being a proposal coming within the foregoing paragraphs of this definition) under which a company or business or section of a business (whether incorporated or not) ceases to be carried on at all and does so under or in consequence of any arrangement or transaction entered into for the purpose of, or having the effect of, preventing or restricting competition between that company, business, or section of a business and the other party to the arrangement or transaction or any body corporate that is interconnected with that party;

“market”, in relation to any goods or services, means the total value of transactions measured in prices at the stage of production or distribution under examination based on the recent year for which they are available;

“nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of the first-mentioned person, or who holds shares directly or indirectly on behalf of the person;

“participant”, in relation to a merger or takeover proposal or to a merger or takeover, means-

(a) where the proposal is of the kind described in paragraph (a) of the definition of that term, the transferee and the transferor company;

(b) where the proposal is of the kind described in paragraph (b) of the definition of that term, the transferee and the business whose capital or portion of whose capital is the subject of the offer or offers involved in the proposal;

(c) where the proposal is of the kind described in paragraph (c) of the definition of that term, the transferee and the business (whether a company or not) whose assets or portion of the assets are the subject of the offer or offers involved in the proposal;

(d) where the proposal is of the kind described in paragraph (d) of the definition of that term, the business whose assets are the subject of the proposal and the purchaser;
(e) where the proposal is of the kind described in paragraph (e) of the definition of that term, each business or section of a business involved in the proposal;

(f) where the proposal is of the kind described in paragraph (f) of the definition of that term, the parties to the arrangement or transaction and the company, business, or section of a business which is to cease to be carried on;

"private company" has the same meaning as in the Companies Act;

"section of a business" means a section of a business which is capable in itself of being operated independently;

"share", in relation to a company, includes stock, any beneficial interest in any share, and any perpetual debenture or perpetual debenture stock;

"transferee" means a person who, whether or not in connection with any other person, and whether by himself or his agent, is intended to receive a merger or takeover proposal, or proposes to acquire shares in a company, or the whole or a portion of a section of a business, or the whole or part of the tangible or intangible assets of a business or a section of a business;

"transferor" means the owner of a business the capital or assets of which are sought to be acquired or disposed of in whole or in part under a merger or takeover proposal;

"transferor company" means a company whose shares, or any of them, are sought to be acquired or disposed of under a merger or takeover proposal;

(2) For the purposes of this section, an officer appointed as the receiver or manager of the property of a body corporate or as the liquidator of a body corporate is not solely by reason of his appointment a transferee.

(3) The reference in paragraph (a) of the definition of the term "merger or takeover proposal" in subsection (1), and the references in subsection (4), to shares to which the transferee is beneficially entitled shall each be read as including a reference to-

(a) shares held by any person or body corporate as a trustee for or nominee or agent of the transferee; and

(b) shares in or over which the transferee has any right, title, interest, or control over the vote; and

(c) shares which the transferee is or will be entitled to acquire under any option or on the fulfilment of any condition under any other shares or financial interest in the transferor company; and

(d) if the transferee is a company, shares to which any interconnected bodies corporate are already beneficially entitled,
(4) Where-

(a) in the case of a proposal of the kind described in paragraph (a) of the definition of the term "merger or takeover" proposal in subsection (1) the transferee is already beneficially entitled to, or already has a beneficial interest in, any shares in the company to which the proposal relates, being share which carry the right to exercise or control the exercise of more than fifty per cent of the voting power at any general meeting of the transferor company; or

(b) in the case of proposal of the kind described in paragraph (b) (ii) of the definition of the term "merger or takeover" proposal in subsection (1) the transferee is already beneficially entitled to more than fifty per cent of the equity capital of the business to which the proposal relates; or

(c) in the case of a proposal of the kind described in paragraph (ii) of the definition of the term "merger or takeover" proposal in subsection (1), the transferee already holds, in the assets used in the carrying on of the section of the business to which the proposal relates, equity capital that represents more than fifty per cent of the value of those assets;

(d) or in the case of a proposal of the kind described in Paragraph (d) of the definition of the term merger or takeover" proposal in subsection (1) the transferee already owns tangible, or intangible assets employed in connection with the business or section of the business to which the proposal relates, being assets which have a value that is more than fifty per cent of the combined value of the tangible and intangible assets employed in connection with the business or section of the business,

that proposal shall not be a merger or takeover proposal within the meaning of that definition.

(5) For the purposes of paragraph (c) (ii) and paragraph (d) of the definition of the term "merger or takeover proposal" in subsection (1) the value of the assets of the section of the business involved in the merger or takeover proposal shall be determined by reference to the value at which the assets less any current liabilities attributable to the section of the business are shown in the books of the relevant business, less any relevant provisions for depreciation.
23. (1) The Minister shall keep the structure of production and distribution of goods and services in Kenya under review to determine where concentrations of economic power exist whose detrimental impact on the economy out-weighs the efficiency advantages, if any, of integration in production and distribution; and in identifying unwarranted concentration of economic power he shall pay particular attention to the following factors:

(a) a person controls a chain of distributing units the value of whose sales exceeds one-third of the relevant market for the category of goods sold by the chain, comprising the national market in the case of a national chain or a regional or urban market in the case of a regional or urban chain, respectively; or

(b) a person, by virtue of controlling two or more physically distinct units which manufacture substantially similar products, supplies more than one-third of the value, at ex-factory prices, of the domestic market for the category of the goods into Kenya but excluding exports of the goods from Kenya; or

(c) a person has a beneficial interest, exceeding twenty per cent of outstanding shares, in a manufacturing enterprise, and simultaneously has a beneficial interest, however small, of outstanding shares, in one or more wholesale or retail enterprises which distribute products of the manufacturing enterprise; or

(d) a person has a beneficial interest, exceeding twenty per cent of outstanding shares, in a wholesale distributing enterprise, and simultaneously has a beneficial interest, however small, in one or more retail enterprises which distribute goods supplied by that wholesale enterprise.

(2) The Minister may direct the Commissioner to investigate any economic sector which he has reason to believe may feature one or more factors relating to unwarranted concentrations of economic power; and for that purpose the Commissioner shall be entitled to require any participant in that sector to grant him or any person authorized in writing by him access to records relating to patterns of ownership and percentages of sales accounted for by leading enterprises in the sector.

(3) The Commissioner may require any person possessing the records referred to in subsection (2) to give him copies of the records or alternatively to submit the records to him for copying.

(4) For the purpose of this section, an unwarranted concentration of economic power shall be deemed to be prejudicial to the public interest if, having regard to the economic conditions prevailing in the country and to all other factors which are relevant in the particular circumstances, the effect thereof is or would be-
(a) to increase unreasonably the cost relating to the production, supply, or distribution of goods or the provision of any service; or

(b) to increase unreasonably-

(i) the price at which goods are sold; or
(ii) the profits derived from the production, supply or distribution of goods or from the performance of any service; or

(c) to reduce or limit competition in the production, supply or distribution of any goods (including their sale or purchase) or the provision of any service; or

(d) to result in a deterioration in the quality of any goods or in the performance of any service.

24. (1) After receiving the report of the Commissioner on an investigation under subsection (2) of section 23 the Minister may make an order directing any person whom he deems to hold an unwarranted concentrations of economic power in any sector to dispose of such portion of his interests in production or distribution or the supply of services as the Minister deems necessary to remove the unwarranted concentration.

(2) A disposal of interest pursuant to an order made under subsection (1) may be accompanied by sale of all or part of a person's beneficial interests in an enterprise, or by sale of one or more units in a group or chain of manufacturers or distributors or supplies of services controlled by the person.

(3) No order shall be issued under this section that would have the effect of subdividing a manufacturing facility whose degree of physical integration is such that the introduction of independent management units controlling different components reduce its efficiency and substantially raise Production costs per unit of output

(4) An order made under this section shall allow sufficient time for orderly disposal of interests so as not to cause undue loss of value to the person to whom the order is addressed.

25. (1) A person aggrieved by an order of the Minister made under section 24 shall appeal to the Restrictive Trade Practices Tribunal in the prescribed form

(2) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Restrictive Trade Practices Tribunal may appeal to the High Court against that decision within thirty days after the date on which a notice of that decision has been served on him and the decision of the High Court shall be final.
Offences and penalties

26. (1) Every person who, whether as principal or agent and whether by himself or his agent-
   (a) having lodged no appeal within the time allotted for appeals under section 25 against an order of the Minister made under section 24 contravenes or fails to comply with such order;

   (b) after the Restrictive Trade Practices Tribunal has pronounced its decision on the appeal contravenes or fails to comply with any portion of an order of the Minister made under section 24 which is confirmed by the Tribunal or as modified by the Tribunal,

shall be guilty of an offence.

(2) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Restrictive Trade Practices Tribunal may appeal to the High Court against that decision within thirty days after the date on which a notice of that decision has been served on him and the decision of the High Court will be final.

Control of mergers and takeovers

27. (1) Every person who, whether as principal or agent, and whether by himself or his agent, in the absence of an authorizing order by the Minister, participates in consummating-

   (a) a merger between two or more independent enterprise engaged in manufacturing or distributing substantially similar commodities or engaged in supplying substantially similar services; or

   (b) a takeover of one or more such enterprises by another such enterprise, or by a person who controls another such enterprise,

shall be guilty of an offence.

(2) No merger or takeover as described in subsection (1) carried out in the absence of an authorizing order by the Minister, shall have any legal effect, and no obligation imposed on the participating parties by any agreement in respect of the merger or takeover shall be enforceable in legal proceedings.

(3) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred thousand shillings or to both.

28. Any person may apply to the Minister, through the Commissioner, for an order authorizing a merger or takeover as described in section 27.
29. (1) The Commissioner shall investigate any application under section 28 and for that purpose the Commissioner shall be entitled to require any participant in any economic sector within which a merger or takeover under section 27 is proposed to take place to grant to the Commissioner or to any person authorized in writing by him access to records relating to patterns of ownership and percentages of sales accounted for by participants in the proposed merger or take-over or by other leading enterprises in the relevant sector.

(2) The Commissioner may require any person possessing such records to give him copies of those records or alternatively to submit such records to him for copying by the office of the Commissioner.

30. In evaluating an application under section 28 for the purpose of formulating a recommendation to the Minister, the Commissioner shall have due regard to the following criteria-

(a) a merger or takeover will be advantageous to Kenya to the extent that the participants produce goods and services entering into international trade and the merger or takeover will yield a substantially more efficient unit with lower production costs and greater marketing thrust, thus enabling it to compete more effectively with imports, expand Kenya's exports and therefore increase employment;

(b) a merger or takeover will be disadvantageous to the extent that it reduces competition in the domestic market and increases the ability of producers of the goods or services in question to manipulate domestic prices in accordance with the principles of oligopolistic interdependence;

(c) a merger or takeover will be disadvantageous to the extent that it encourages capital-intensive production technology in lieu of labour-intensive technology.

31. (1) After considering the recommendation of the Commissioner made under section 30 the Minister may make an order concerning the application for authorization of a merger or takeover.

(2) An order made under subsection (1) may approve or reject the application, or it may approve the application on condition that certain steps be taken to reduce the negative effects of the merger or takeover on competition.

(3) The Minister shall cause an order made under sub-section (1) to be published in the Gazette as soon as reasonably practicable after it is made.
32. (1) A person aggrieved by an order of the Minister made under section 31 shall appeal to the Restrictive Trade practices Tribunal in the prescribed form.

(2) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Restrictive Trade Practices Tribunal may appeal to the High Court against that decision within thirty days after the date on which a notice of that decision has been served on him and the decision of the High Court shall be final.

PART IV-PROVISIONS RELATING TO THE CONTROL AND DISPLAY OF PRICES

Preliminary

33. In this Part, unless the context otherwise requires-

"cost" means the cost determined in the manner prescribed by an order under section 37;

"invoice" includes a record of a cash sale;

"maximum price" means the maximum lawful price at which goods may be sold in wholesale or retail quantities or otherwise, as the case may be, in accordance with this Act and includes any consideration for an option to purchase;

"maximum service charge" means the maximum lawful charge at which any service may be rendered in accordance with this Act;

"overcharge" means a sale of any goods at a price in excess of the maximum price or rendering a service at a charge in excess of the maximum service charge;

"percentage fixed goods" means goods or any quantity of goods in respect of which the maximum percentage of profit on cost is fixed under section 36;

"price-controlled goods" means percentage fixed goods and price-regulated goods:

"price-controlled service" means a service the maximum charge for which has been fixed by an order made under section 35;

"price-regulated goods" means goods the maximum price for which has been fixed by an order made under section 35;
"selling price" means the actual net price charged to the purchaser of the goods concerned, after all discounts and other allowances have been deducted;

"trader" includes-

(a) any person, other than a commission agent or clearing or forwarding agent, who is required to take out a licence under the Trade Licensing Act;

(b) any person who carries on the business of supplying goods, whether or not the person is required to take out a licence under the Trade Licensing Act; and

(c) any person carrying on business in the course of which he supplies goods for the purpose of or in performance of a contract by him for work, labour and materials

“transporters” means any person who carries on the business of transporting goods on behalf of another person.

34. The Minister may, by notice in the Gazette, establish a costs and price committee to advise him on all matters affecting, arising out of or relating to the prices of goods or services or to the control of the prices of goods or services and appoint members thereof.

Fixing of Prices

35. (1) The Minister may from time to time by order-

(a) fix maximum prices for the sale, either wholesale or retail, which may include charges for packing and delivery, of any goods-

(i) by any person to another person; or

(ii) by their manufacturer to or through the agency of a trader in those goods; or

(iii) by a trader in those goods to another trader of such good; or

(iv) by a trader in those goods to a person who is not a trader in such goods; or

(v) by a person who is not a trader in any particular goods to a trader in those goods;
(b) fix the maximum service charge that may be made for any service in relation to any goods;

(c) prohibit any person carrying on any business or gainful occupation specified in the order from increasing the price of any goods sold by him in the course of such business or occupation above the price which was ordinarily charged by him for like or similar goods, or the charge which was ordinarily made by him for any like or similar service, on a date or during a period specified in the order; and in any proceedings brought for failing to comply with an order made under this paragraph the burden of proving the price ordinarily charged or the charge ordinarily made on the date or during the period specified shall be upon the defendant;

(d) prescribe the type of packing, weight, size, quality, marking and the processing and ingredients of any goods manufactured in Kenya;

(e) prescribe the amount of the deposit which any person selling any price-controlled, goods subject to the condition that any container of those goods is to be returned may require in respect of any such container, and prescribe the amount (which may exceed the amount of the deposit) which such person shall, on the return of the container, refund to the person by whom the container is returned and the conditions subject to which the refund shall become payable;

(f) exclude anything from the operation of all or any of the provisions of this Act.

(2) For the purposes of this section, the Minister may fix the maximum price or any maximum charge in respect of the sale of any goods or the rendering of any service by declaring in any manner whatsoever how the maximum price or charge shall be ascertained, and, without prejudice to the generality of the foregoing, may fix any such maximum price or charge either by declaring the maximum price or charge irrespective of the price or charge of such goods or services to the seller, or person rendering the same, or by declaring that any maximum price of goods shall be a price not exceeding the cost to the seller plus a stated sum or a stated percentage of such cost or a stated maximum profit.

(3) Under this section, the Minister may-

(a) fix a maximum price or a maximum service charge for any area of Kenya which differs from the maximum price or maximum service charge fixed in respect of like or similar goods or services for another area or other areas;

(b) fix a maximum price for goods which includes any charge made for any service, whether a price controlled service or not, rendered in relation to the sale of those goods;
(c) fix a maximum service charge for any service which includes any price or charge for the sale of goods, whether price-controlled goods or not, sold in connection with that service.

(4) For the purposes of this section, the Minister’s power shall be limited to the goods and services produced by monopoly undertakings.

5) For the purposes of subsection "monopoly undertaking", means a dominant undertaking or an undertaking which, together with not more than two other independent undertakings-

(a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed in Kenya or any substantial part thereof; or

(b) provides or otherwise controls not less than one-half of the services that are rendered in Kenya or any substantial part thereof.

Provided that for the purposes of this subsection, the goods produced by an undertaking which do not amount to more than five per cent of the market shall not be taken into account.

36. (1) The Minister may from time to time by order prescribe any goods of which the maximum price shall, except where the price is fixed under section 35, be the cost of such goods to the importer, manufacturer or producer, plus the percentage of profit set forth in the order, and plus, in addition as a separate item, such transport charges as are permitted by subsection (2).

(2) Every importer, commission agent, manufacturer or producer of percentage fixed goods shall, on first sale, endorse on the invoice the maximum retail price which may be charged for such goods sold at the place at which the importer or commission agent has taken delivery of the goods, or at which the goods have been manufactured or produced, and every trader when reselling those goods (except when selling retail to a consumer) shall endorse on his invoice the maximum retail price endorsed on the importer's or previous seller's invoice, adding thereto, as a separate item, the expense (if any) ordinarily incurred in transporting the goods from the importer's or previous seller's place of business to his own place of business.

(3) A trader who acquires for resale any percentage fixed goods by the transfer of such goods from one department or branch of his business to another, or from an associated business or from any business in which he has a financial interest other than that of a shareholder, or in which he has
an interest in the management or control thereof, whether such department, branch, associated business or other business is in Kenya, or in any other country shall, when selling those goods, endorse on his invoice the maximum retail price of the goods, which shall be the price which would be permissible had he himself imported the goods direct from the country of origin; and every trader when reselling those goods (except when selling retail to a consumer) shall endorse on his invoice the maximum retail price endorsed on the first or previous seller's invoice, adding thereto, as a separate item, the cost (if any) ordinarily incurred of transporting the goods from the first or previous seller's place of business to his own place of business.

(4) Any person who sells or transfers percentage fixed goods otherwise than in accordance with the provisions of this section, or who omits to do anything which he is required to do under this section, or who, purporting to give any information or to make any endorsement required by this section, gives any false information or makes any false endorsement, shall be guilty of an offence.

37. The Minister may from time to time by order declare the method by which the cost of any goods or of any service shall be determined, and may in such order declare different methods of determining the cost in respect of different classes of goods, transaction or sellers.

38. All orders made under section 35, 36 or 37 shall be laid before the National Assembly as soon as may be after they are made, and if a resolution is passed within the next twenty days on which the National Assembly sits next after any such order is laid before it that the order be annulled, it shall thenceforth be void, but without prejudice to the validity of anything done thereunder, or to the making of any new order.

Auctions

39. (1) No price-controlled goods shall be sold by auction except under and in accordance with the conditions of a permit issued by the Commissioner and the Commissioner may grant such a permit to any auctioneer either generally in respect of any class of such goods or specifically in respect of any particular sale, and may in such permit impose such conditions relating to the maximum prices at which the goods may be sold as he may consider necessary in order to avoid the contravention of this Act.

(2) Any person who sells any price-controlled goods by auction without a permit granted under this section or otherwise than in accordance with the conditions imposed in such permit shall be guilty of an offence.
40. Every order made under this Act shall come into operation on the day on which the same is made, unless another date is therein specified, and every such order shall be published in the Gazette as soon as circumstances permit after the making thereof.

41. Copies of any order made under this Act or lists of maximum prices or maximum service charges fixed under this Act shall be displayed in such places in Kenya as the Commissioner may consider necessary to bring such matter to the notice of the public.

42. (1) The Commissioner may, by notice published in the Gazette, require any trader or other person, or any class of traders or other persons supplying price-controlled goods or rendering price-controlled services to display a list in English, or in any other language or languages specified in the notice, in a prominent manner and in a conspicuous position, so that it may easily be read by and is clearly legible to customers in those parts of his or their business premises where business is done, of the current maximum prices for such price-controlled goods as are mentioned in the order which he or they may supply, or the maximum service charge for any price-controlled service as are specified in the notice which he or they may render.

(2) A notice under this section may apply to Kenya as a whole or to any area or areas thereof, and may provide for the form in which any such list of maximum prices or maximum service charges which it requires to be displayed shall be arranged.

43. (1) Every trader, manufacturer, producer or commission agent-

(a) shall, at the time of sale, supply to every purchaser from him of goods in wholesale quantities an original invoice containing the following particulars-

(i) the name and address of the seller;

(ii) the name of the purchaser;

(iii) the date of the sale;

(iv) a description sufficiently exact to identify the goods;

(v) the net quantity of the goods sold;

(vi) the price or charges charged therefore, showing any authorized transport charge separately; and

(vii) in the case of imported goods, other than price, regulated goods, the customs entry, number and date; and
(b) shall retain in his records a duplicate copy of the invoice.

(2) Every trader, manufacturer, producer or commission agent-

(a) shall, at the time of sale, supply to every purchaser from him of goods in retail quantities an original invoice containing the following particulars (unless the purchaser at the time of sale dispenses with this requirement)-

(i) the name and address of the seller;
(ii) the date of the sale;
(iii) a description sufficiently exact to identify the goods;
(iv) the net quantity of the goods sold; and
(v) the price or charges charged therefore; and

(b) shall retain in his records a duplicate copy of the invoice.

(3) Every transporter shall-

(a) as soon as practicable after completion of the transport of any price-controlled goods, supply to the person for whom the goods have been transported an original invoice containing the following particulars-

(i) the name and address of the transporter;
(ii) the date on which the transportation took place;
(iii) a description sufficiently exact to identify the goods transported;
(iv) a description sufficiently exact to identify the conveyance in which the goods were transported;
(v) the place from which and the place to which the goods were transported;
(vi) the quantity of the goods transported; and
(vii) the rate or rates charged therefore; and

(c) retain in his records a duplicate copy of the invoice.

(4) For the purposes of this section, the seller shall specify in writing the price or charge which he assigns to each class of price-controlled goods included in the transaction.

(5) Every person who renders any person any price-controlled service for which a charge has been made or is to be made shall, as soon as possible
after such service has been rendered, supply to such person an invoice describing the service and showing the charge which has been or is to be made for such service, including the selling price of any materials used in connection therewith, and shall keep a copy of every invoice in his records.

(6) Any person who fails to comply with the provisions of this section or with any condition imposed under sub-section (5) shall be guilty of an offence.

44. (1) Every trader, manufacturer, producer, commission agent, clearing and forwarding agent or other person supplying any price-controlled goods or rendering any price-controlled service shall keep such books of account or other records in respect of his dealings in price-controlled goods or price, controlled services, and shall make such entries therein, as may be prescribed, and shall preserve such books of account or records after the date of the last entry therein for a period of two years, or such other period as the Commissioner may allow:

Provided that, if any retail trader, commission agent, clearing and forwarding agent or other person supplying any price-controlled goods or rendering any price-controlled service shows to the satisfaction of the Commissioner that the application of this section would impose undue hardship the Commissioner may exempt such retail trader, commission agent, clearing and forwarding agent or other person from complying with the provisions of this section subject to such conditions and for such time as he may consider necessary.

(2) Any person who fails to comply with the provisions of this section or with any conditions imposed thereunder shall be guilty of an offence.

Miscellaneous Provisions

45. (1) For the purposes of assisting him-

(a) to determine whether any goods or any service shall be made the subject of an order under this Act fixing the prices therefore; or

(b) to decide the manner in which the powers conferred on him by this Act shall be exercised in respect of any goods or any service, the Minister may, from time to time, by notice published in the Gazette, or by notice in writing served on such person, require any trader, manufacturer, producer, transporter or any other person supplying any goods or rendering any service-

(i) to furnish to the Commissioner, either verbally, or in writing, and in such form as the Minister may specify in such notice, any information in relation, to his trade or business, either by way of periodical return or otherwise;
(ii) to produce for inspection by the Commissioner any books, accounts or other documents relating to his trade or business, and to submit to the Commissioner samples of any goods in which he deals.

(2) No person shall be required under subsection (1) to furnish any balance-sheet or profit and loss account, but this subsection shall not prevent the requiring of information by reason only that it is or might be contained as an item in such a balance sheet or profit and loss account.

(3) Any notice authorized to be served under subsection (1) on any person believed to be carrying on any trade or business therein mentioned shall be deemed to be duly served if it is addressed to him by the description of "the occupier" of the premises upon which the trade or business in question is believed to be carried on, and delivered to some person, not appearing to be merely a subordinate employee, on the premises.

(4) No information relating to any particular trade or business obtained under this section shall be published or otherwise disclosed without the previous consent in writing of the person by whom the information was furnished;

Provided that nothing in this section shall restrict the disclosure of information-

(i) to any Minister responsible for, or any officer of, any Ministry or department of the Government;

(ii) to any person or any authority having any functions in relation to the development or regulation of trade or business in Kenya; or

(iii) to any person for the purpose of legal proceedings;

or the use of such information in any manner which the Minister thinks necessary or expedient in connection with the purposes of this Act.

46. (1) The Commissioner or any person authorized in writing by the Commissioner, or any police officer of or above the rank of inspector, is empowered to do anyone or more or all of the following things-

(a) to enter any premises in the occupation or under the control of any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or any other person supplying any goods or rendering any price-controlled service;

(b) to inspect any such premises as are specified in paragraph (a);

(c) to examine any books, accounts or other documents relating to the trade or business of any person specified in paragraph (a), and to
require a copy of any such books, account or other document or of the record of any transaction which he has reasonable cause to believe relates to price-controlled goods or price-controlled services to be provided and to be certified by such person; and where any such books, accounts or other documents or records are in a language other than the English language, and he is satisfied that any such person can provide or obtain a translation, and further to require that any such books, accounts or other documents to be deposited at his office for examination;

(d) to require, from time to time, by notice in writing served upon any person specified in paragraph (a), such person to furnish verbally or in writing, and in such form as may be required, such information in relation to his trade or business as may be specified in such notice.

(2) Upon entering any premises in pursuance of the powers conferred by paragraph (a) of subsection (1), the Commissioner or any other person so authorized to enter the premises, or any police officer of or above the rank of inspector, shall, before proceeding to exercise any of the powers conferred by subsection (1), inform the person present on such premises who is or who reasonably appears to be for the time being in charge of such premises of his intention to exercise his powers under subsection (1).

(3) When any books, accounts or other documents are deposited in pursuance of paragraph (c) of subsection (1), the person who has required the deposit of such books, accounts or other documents shall-

(a) furnish the owner thereof with a receipt therefor;

(b) be responsible to the owner thereof for the safe custody of the same; and

(c) return the same to the owner thereof as soon as his purpose therewith has been served.

(4) Nothing in subsection (3) shall be construed as requiring any person to return or be responsible for the safe custody of any books, accounts or other documents which have been handed to the police or which have been produced as exhibits in proceedings before any court.

(5) The Commissioner is empowered-

(a) to require, by notice published in the Gazette, in respect of any goods, that, when exposed or offered for sale, they shall bear such mark or label as may be specified in such notice for the purpose of indicating their quality, grade, weight or other measure, price or place of origin;
(b) to prohibit or regulate in like manner, the sale, purchase, disposal or movement by any person of any price-controlled goods in such manner as he may direct;

(c) to require, by notice in writing served upon such person, any person who is in possession of any price-controlled goods to sell the goods to that person and in such manner and at such price or charge as he may specify in the notice;

(d) to require, in like manner, any trader, manufacturer, producer or omission agent to submit to him samples of any price-controlled goods in which he deals:

(e) to direct, in like manner, the place in which any price-controlled goods may be stored;

(f) to demand, in like manner, from any person in apparent possession of any price-controlled goods, who alleges that such goods or any of them have already been sold by him, the immediate production of the invoice, contract or other documentary evidence of the sale.

(6) The Commissioner may-

(a) by notice published in the Gazette or by a notice in writing served upon, or left at the place of business of, any trader, manufacturer, producer, commission agent, clearing and forwarding agent or transporter or any person who rendered any service-

(i) require, in relation to any price-controlled goods or any price-controlled service, any such person as and from a date to be specified in such order to endorse on any sales invoice any information, directions or such other particulars as may be specified in such notice;

(ii) require, in relation to any price-controlled goods or any price-controlled service, that such information, directions or other particulars shall be declared in writing to an intending purchaser or other person before any sale or rendering of service;

(b), Determine-

(i) what constitutes a wholesale or retail quantity;

(ii) what constitutes a wholesale or a retail transaction;

(c) with the approval of the Minister, prohibit or regulate the movement of any goods.

(7) The Commissioner shall acknowledge all correspondence pertaining to price changes within ninety days of the receipt of that correspondence.
(8) Whenever a person has overcharged in respect of any price-controlled goods which he has sold or in respect of any price-controlled service which he has rendered, the Commissioner may, irrespective of any action that may have been taken or, that may be taken against the person under this Act, direct him to refund a sum equal to twice the overcharge; and that sum shall within a time specified by the Commissioner, be paid to him, and he shall refund to the purchaser the amount constituting the overcharge and such other sum as he may in his absolute discretion consider reasonable, and shall pay the balance, if any, into the Consolidated Fund.

(9) Where it appears that, in determining the selling price of price-controlled goods, the seller thereof has complied with this Act but that the price charged by any previous seller of those goods was in excess of the maximum price, the Commissioner may direct the previous seller to refund a sum equal to twice the amount by which the price paid by such purchaser exceeded the maximum price which he would have been required to pay for the goods, if the provisions of this Act had been observed by each of the persons who dealt in the goods up to the time of their acquisition by such purchaser; and that sum shall be paid to the Commissioner who shall refund to the ultimate purchaser the amount by which the price paid by the purchaser exceeded the maximum price which he would have been required to pay for the goods if the provisions of this Act had been observed by each of the persons who dealt in those goods up to the time of their acquisition by the purchaser, and such other sum (not exceeding the balance of the sum refunded by the seller) as he may consider reasonable, and shall pay the balance, if any, into the Consolidated Fund.

(10) For the purposes of this section, "trader" includes an auctioneer.

47. The Commissioner may, with the approval of the Minister, delegate in writing all or any of his powers, duties or functions under this Act, either generally, or in any area in Kenya, or for such periods or purposes as he may specify, to any Deputy Commissioner. Assistant Commissioner, Price Inspector or Assistant Price Inspector, or to any other person approved by the Minister, and may at any time revoke or vary such delegation.

48. (1) The Commissioner may, at any time and from time to time, and without assigning any reason therefor, cancel, revoke, amend or vary any permit, exemption or permission which he may have granted under this Act.
(2) An appeal shall lie to the Minister against any decision of the Commissioner under this section; every appeal shall be in writing and shall be lodged with the Minister within seven days of the communication to the person concerned of the Commissioner's decision; and the decision of the Minister shall be final.
49. (1) The Commissioner or any public officer authorized by him may in writing certify-
(a) the maximum price that has been fixed for any wholesale or retail sale of any price-regulated goods;
(b) what constitutes a wholesale or retail sale, or what is a wholesale or retail quantity;
(c) the precise amount of the overcharge invoiced in any transaction, subject to proof that such transaction has constituted an offence involving overcharge;
(d) that any exemption or permission which may be given under this Act by the Commissioner has or has not been given;
(e) the maximum percentage of profit allowed upon the sale of any percentage fixed goods;
(f) in any proceedings concerning the price at which price-controlled goods were sold, if such price is not expressed in currency of Kenya, the equivalent selling price in currency of Kenya;
(g) the maximum service charge that has been fixed for any price-controlled service.

(2) In any proceedings instituted in any court under this Act, any fact so certified or purporting to be so certified by the Commissioner or any public officer authorized by him shall be admitted without further proof as prima facie evidence of the fact so certified:

Provided that, in any proceedings in any court arising out of the provisions of this Act, the certificate of the Commissioner or any public officer authorized by him as to what constitutes a wholesale or a retail sale, or as to what constitutes a wholesale or retail quantity, in respect of the subject matter of such proceedings shall be final and conclusive.

50. If a magistrate is satisfied by information on oath that there is reasonable grounds for suspecting that an offence has been committed under this Act, and that evidence of the commission of the offence is to be found on any premises specified in the information, he may grant a search warrant authorizing any police officer to enter the premises at any time within one month from the date of the warrant, and to search the premises and seize any goods found on the premises which the person so authorized has reasonable ground for believing to be evidence of the commission of the offence.

51. (1) The Commissioner or any officer authorized by him or any police officer of or above the rank of inspector, if he has reasonable cause to believe, that any offence under this Act is being committed on any premises.
or if he has reasonable cause to believe that any goods, in respect of which there is reasonable ground for suspecting that any such offence has been committed, are in or upon any premises, and that the delay which would occur in obtaining a search warrant as provided under section 50 would defeat the purposes of this Act, may enter and search the premises without a search warrant for the purpose of ascertaining if an offence is being committed or whether or not the goods are in or upon such premises, and may inspect such goods and any documents relating to them, and may seize any goods or documents on such premises which the person so searching or inspecting has reasonable cause to believe to be evidence of the commission of such an offence.

(2) The Commissioner or any officer authorized by him may, in connection with the investigation of any alleged offence arising out of a test purchase involving payment with, marked money, search any person for the marked money, or enter and search premises, or search any box or receptacle and the contents thereof, at the place at which such test purchase has been made, and may seize any marked money so found.

52. (1) If the Commissioner or any officer authorized by him or any police officer, has reason to believe that any vehicle contains any goods which are being transported in contravention of any of the provisions of this Act, he may order such vehicle to stop, and may examine the contents thereof, and if that person fails to stop he shall be guilty of an offence.

(2) Where any vehicle has been stopped under subsection (1), the person stopping the vehicle may take it with its contents to the nearest police station, and the officer in charge of the police station may thereupon seize any goods found therein, being goods which the officer has reasonable cause to believe are goods in respect of which an offence under this Act is or has been committed.

53. Where any goods have been seized under section 50, 51 or 52 the person who has seized the goods shall forthwith report to a magistrate the fact of the seizure, and if a magistrate is satisfied that the goods are of a perishable nature, or that, by reason of the fact that the market for goods is seasonal, or for other good reasons, to delay the disposal of the same would otherwise unduly prejudice the owner thereof, he may authorize the Commissioner to sell or otherwise dispose of the goods.

54. (1) Where any vehicle, goods or money has been seized under section 50, 51 or 52 the vehicle, goods or money may be retained for a period not exceeding one month or, if within that period proceedings are commenced for any offence under this Act, until the final determination of those proceedings.

(2) Where proceedings are taken for any offence under this Act, the court by or before which the alleged offender is tried may make such order as to the forfeiture of the vehicle or goods in respect of which such offence was
committed, or as to the disposal, of any vehicle, goods or money seized in connection therewith, as the court shall see fit.

(3) In this section, "goods" shall be construed as including the proceeds of the sale of any goods, where such goods have been sold in accordance with section 53.

55. (1) Any person who sells any price-controlled goods or renders any price-controlled service at a price or charge which exceeds the maximum price or the maximum service charge, as the case may be, shall be guilty of an offence.

(2) Subject to section 62, any person who purchases or offers to purchase any price-controlled goods at a price or charge which exceeds the maximum price for the goods, or who pays or offers to pay for any price-controlled service a charge which exceeds the maximum service charge fixed therefore, shall be guilty of an offence.

56. (1) Any person carrying on a business in the course of which any goods are supplied, and who has in his possession a stock of the goods, and who-

(a) falsely denies that he has the goods in his possession or ownership;

or;

(b) refuses or fails, except with the permission of the Commissioner, to supply the goods in reasonable quantities upon tender of immediate payment of the maximum price thereof (in the case of price-controlled goods) or the price indicated by any mark or label borne by the goods (in the case of any other goods); or

(c) refuses or fails to expose or offer for sale such goods continuously when required by the Commissioner, shall be guilty of an offence:

Provided that it shall be a good defence for a person charged with an offence under paragraph (b) to prove that the supply of the goods would involve a breach of an obligation lawfully binding on him.

(2) The servant or agent of any person carrying on a business in the course of which any price-controlled goods are supplied shall be deemed to have in his possession a stock of such goods if any such goods are being kept or stored in the premises where he is employed and if he sells such goods on behalf of his employer in the ordinary course of his employment.

57. Any trader, manufacturer, producer or commission agent to whom an offer to buy price-controlled goods has been made, and who, except with the permission of the Commissioner imposes any condition of sale other than a condition requiring immediate payment on delivery thereof or prescribing the terms within which payment must be made or delivery taken, or a condition requiring a deposit in respect of any container of such goods, shall be guilty of an offence.
58. Any person who-

(a) obstructs or hinders any person authorized by this Act to enter and inspect or search any premises or to stop and search any vehicle or to examine any books, accounts or other documents or to seize any vehicle, goods or money; or

(b) refuses or delays or fails to produce any books, accounts or other documents or certified copies or translations thereof relating to his trade or business which he may be required under this Act to produce; or

(c) refuses or delays or fails to furnish any information or, in purported compliance with any requirement of this Act, knowingly or without reasonable grounds for believing the same to be true furnishes information which is false or misleading in any material particular, whether upon demand being made by a person authorized by this Act to demand the same or otherwise; or

(d) publishes or otherwise discloses any information in contravention of any provision of this Act; or

(e) refuses or delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, given, issued, served or published under this Act,

shall be guilty of an offence.

59. (1) Any person who is guilty of an offence under this Part shall be liable to imprisonment for a term not exceeding five years, with or without corporal punishment, or to a fine or to both.

(2) Where the offence in respect of which a person is convicted is an offence under section 55 (1), that person shall, in addition to any other penalty which may be imposed, be liable to a fine of not less than five times the value of the overcharge, and in such a case the court may order that there shall be paid therefrom to the purchaser such sum as may in the opinion of the court serve to compensate him for any loss of time or any expenses which he may have incurred.

(3) Where any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or person rendering any services has been found guilty of any offence under this Act, the court may, in addition to any other penalty to which the convicted person may be liable, make such order, having effect during such period, as the court thinks fit, for preventing the offender from carrying on or being concerned directly or indirectly in the carrying on of, the business in the course of which the transaction
constituting the offence was effected, or any branch of that business, or in any business or branch of a business of a similar character.

(4) Where a person charged with any 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 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.

(5) Any partner in any firm shall be answerable for the acts or omissions of any other partner in the same firm in so far as they concern the firm; and if any partner commits any act or makes any omission which is an offence under this Act, every partner in the firm shall be jointly and severally liable to the penalties provided by this Act.

(6) Any employer who employs in his shop, store or other place of business any agent, clerk, servant or other person shall be answerable for the acts or omissions of such agent, clerk, servant or other person in so far as they concern the business of such employer; and if such agent, clerk, servant or other person commits any act or makes any omission which is an offence under this Act, or which would be an offence if made or committed by such employer, such employer and his agent, clerk, servant or other person shall be jointly and severally liable to the penalties provided under this Act.

(7) Notwithstanding the provisions of the Magistrates’ Courts Act or of the Criminal Procedure Code relating to the jurisdiction of subordinate courts, any subordinate court of the first class may impose any penalty or any combination of penalties prescribed under this Part.

60. (1) In any proceedings in any court instituted for an offence under this Part, the production by the Commissioner, and Deputy Commissioner, any Assistant Commissioner, Chief Price Inspector, any Senior Price Inspector, any Assistant Price Inspector or any person authorized by any such persons in writing, or by any police officer, or by a public prosecutor within the meaning of section 85 of the Criminal Procedure Code, of an original invoice, a duplicate invoice or a triplicate invoice purporting to have been found in the possession of the seller or a copy of such invoice certified by the Commissioner or by the seller shall, save where the prosecution alleges the falsity of the contents of such invoice, be prima facie evidence of a sale by the seller and of all the facts contained in such invoice, duplicate invoice or triplicate invoice or certified copy; and for the purposes of this subsection, “sale” includes the rendering of services.

(2) Where, in any proceedings instituted in any court for an offence under this Part, any goods are described in the charge, information or indictment, the description shall be prima facie evidence of the fact that the goods are,
or were, at the time of the alleged offence, as so described, and the burden of proving the contrary shall lie upon the defendant.

(3) In any proceedings instituted for an offence under section 36, the burden of proving that any information or any endorsement is not false shall lie upon the defendant.

61. In any proceedings against any person for an offence under section 55, it shall be no defence-

(a) that the defendant has purchased such goods at a price which exceeds the maximum price thereof under this Part; or

(b) that any invoice or other document showing the price at which the goods were sold was endorsed to the effect that no responsibility could be accepted in respect of any error or omission in the invoice or document, or was endorsed with the letters "E. and O.E." or any other symbols or letters of a like nature indicating that the statements in such invoice or documents were subject to correction.

62. (1) No proceedings shall be instituted under this Part against any person, being a person duly authorized by the Commissioner, who has knowingly purchased any price-controlled goods at a price in excess of the maximum price, or who has paid a charge for any price-controlled service in excess of the maximum service charge, with the intention of procuring evidence for the purpose of prosecuting the seller or person rendering the price-controlled service for an offence under this Part.

(2) No proceedings shall be instituted against any person who knowingly purchases any price-controlled goods at a price in excess of the maximum price, or who knowingly pays a charge for any price-controlled service in excess of the maximum service charge, for an offence under this Part in respect of such purchase, if that person notifies the Commissioner of such transaction within seven days from the date of the transaction, or within such longer period as the Commissioner may, in his discretion, allow.

63. (1) The Minister may make regulations for the better carrying out of the intent and purposes of this Part.

**PART V-ESTABLISHMENT OF THE RESTRICTIVE TRADE PRACTICES TRIBUNAL**

64. (1) There shall be established a Restrictive Trade Practices Tribunal (hereinafter referred to as "the Tribunal") to exercise the functions conferred upon it by this Act.

(2) The Tribunal shall consist of a chairman who shall be an advocate of not less than seven years standing and not less than two and not more than four other members appointed by the Minister.
(3) A member of the Tribunal shall hold office for the period, not exceeding five years, specified in the instrument of his appointment unless, prior to the expiration of that period-

(a) he resigns his office by written notification under his hand addressed to the Minister; or

(b) the Minister, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that file member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(4) The quorum for a meeting of the Tribunal shall be the chairman and two other members.

(5) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

(6) The Minister 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 all 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 there- to.

65. In an appeal under this Act-

(a) the appellant shall appear before the Tribunal either in person or by an advocate on the day and at the time fixed for the hearing of the appeal but if it is proved to the satisfaction of the Tribunal that, owing to absence of the appellant from Kenya, sickness, or other reasonable cause, he is prevented from attending at the hearing of the appeal on the day and at the time fixed for that purpose, the Tribunal may postpone the hearing of the appeal for such reasonable time as it thinks necessary; and

(b) the costs of the appeal shall be at the discretion of the Tribunal.

66. The following persons may exercise the right of appeal to the Tribunal conferred under this Act-

(a) any person who, by an order made under section 18-
(i) is directed to discontinue or not to repeat any trade practice; or

(ii) is permitted to continue or repeat a trade practice subject to conditions prescribed by the order; or

(iii) is directed to take certain steps to assist existing or potential suppliers or customers adversely affected by any prohibited trade practices; or

(b) where any order referred to in paragraph (a) is directed to a class of persons, any person belonging to or representing that class; or

(c) any person who by an order made under section 31-

(i) is enjoined from proceeding with a proposed merger or takeover; or

(ii) is authorized to proceed with a proposed merger or takeover subject to conditions prescribed by the order -

67. (1) The Tribunal may in any case, if it considers it 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 the hearing or any part of it shall be held in camera.

(2) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private); but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or of any decision of the Tribunal.

(3) In its determination of any appeal, the Tribunal may confirm, modify, or reverse the order appealed against. or any part of that order.

68. (1) Notwithstanding anything contained in section 67, the Tribunal may in any case, instead of determining any appeal under that section, direct the Minister to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(2) In giving any direction under this section, the Tribunal shall-

   (a) advise the Minister of its reasons for so doing; and

   (b) give to the Minister such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(3) In reconsidering the matter so referred back, the Minister shall have regard to the Tribunal’s reasons for giving a direction under subsection (1) and to the Tribunal's directions under subsection (2).
69 (1) Where an appeal is brought under section 20 against any order of the Minister under section 18 the order to which the appeal relates shall, unless the Tribunal otherwise orders, be held in abeyance pending the determination of the appeal

(2) Where an appeal is brought under section 32 against any order of the Minister under section 31 the merger or takeover to which the appeal relates may not be consummated pending the determination of the appeal.

PART VI-MISCELLANEOUS PROVISIONS

70. (1) Every person who, whether as principal or agent, and whether by himself or his agent, being in possession of business records required by the Commissioner or his authorized agent pursuant to section 14 or 29-

(a) denies the existence of such records; or

(b) refuses access to such records by the Commissioner or his authorized agent; or

(c) refuses to supply copies of those records designated by the Commissioner or his authorized agent, or alternatively refuses to deposit such records with the Commissioner or his authorized agents; or

(d) supplies false or misleading information to the Commissioner or his authorized agent, shall be guilty of an offence.

(2) When any business records are deposited in pursuance of paragraph (c) of subsection (1) the person who has required the deposit of such records shall-

(a) furnish the owner thereof with a receipt therefore

(b) be responsible to the owner thereof for the safe custody of the same; and

(c) return the same to the owner thereof as soon as his purpose therewith has been served:

Provided that paragraph (c) shall not be construed as derogating from the provisions of any other law for the time being in force which authorizes the retention by a police officer of such records.

(3) Nothing in subsection (2) shall be construed as requiring any person to return or be responsible for the safe custody of any books, accounts or other documents which have been handed to the police or which have been produced as exhibits in proceedings before any court.
(4) A person who, whether as principal or, agent, and whether by himself or his agent, publishes or discloses records obtained pursuant to section 14 or 29 without the previous consent in writing of the person by whom the records were furnished shall be guilty of an offence.

(5) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding one year or to a fine or to both.

71. (1) Where a person charged with any 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 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.

(2) Any partner in any firm shall be answerable for the acts or omissions of any other partner in the same firm in so far as they concern such firm; and, if any partner commits any act or makes any omission which is an offence under this Act, every partner in the firm shall be jointly and severally liable to the penalties provided by this Act.

72. (1) No legal proceedings shall be instituted in any court against the Minister or Commissioner or any person authorized by the Minister or Commissioner for anything done or intended to be done in good faith under this Act.

(2) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Minister or Commissioner or any person authorized by the Minister or Commissioner under this Act.

73. Except insofar as it exempted from the application of the provisions of this Act by section 5 or any other written law, every body corporate in which the Government holds one or more shares, whether as sole, majority, or minority share holders, and which is carrying on any trade is a person to whom this Act applies and who may be investigated by the Commissioner, who is subject to an order of the Minister, and against whom a prosecution may be brought in respect of an offence against any provision of this Act.

74. The Commissioner shall consult with the Kenya Bureau of Standards in all matters involving definition and specification of commodities and grading of commodities by quality for the purposes of this Act.

75. The Minister may make regulations generally for the better carrying out of the provisions of this Act.