

No. 6 of 2002.

***Independent Consumer and Competition Commission Act 2002.***

Certified on: 26/4/2002.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 6 of 2002.

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**ARRANGEMENT OF SECTIONS.**

**PART 1 – PRELIMINARY.**

1. Compliance with Constitutional Requirements.
2. Interpretation.
  - “Appeals Panel”
  - “Appointments Committee”
  - “Associate Commissioner”
  - “Chairman”
  - “Commission”
  - “Commissioner”
  - “Court”
  - “decision”
  - “International Arbitrator”
  - “officer of the Commission”
  - “Panel of Experts”
  - “price”
  - “regulated entity”
  - “regulated goods”
  - “regulated industry”
  - “regulated services”
  - “regulatory contract”
  - “related corporation”
  - “State owned entity”
3. Acts binds the State.

**PART 2 – INDEPENDENT CONSUMER AND COMPETITION COMMISSION.**

***Division 1 – Establishment, Functions and Powers.***

4. Establishment of Independent Consumer and Competition Commission.
5. Objectives of Commission.

6. Functions of Commission.

7. Powers of Commissions.

***Division 2 – Membership of the Commission.***

8. Composition of the Commission.

9. Appointment of Members.

10. Leave.

11. Qualifications for Appointment.

12. Disqualification from Office.

13. Special Conditions of Employment.

14. Resignation from Office.

15. Vacancy.

16. Removal.

17. Minister to perform functions of Commission pending appointment of members.

18. Validity of Conduct of Commission.

***Division 3 – Procedures of the Commission.***

19. Meetings of Commission.

20. Disclosure of interests by members.

21. Committees.

22. Delegation.

***Division 4 – Independence of the Commission.***

23. Commission not subject to direction.

***Division 5 – Finance.***

24. Application of money received by Commission.

25. Application of *Public Finances (Management) Act 1995*.

26. Tenders and Contracts.

***Division 6 – Agreement with other Bodies.***

27. Agreements with other Bodies.

***Division 7 – Staff of the Commission.***

28. Permanent Employee.

29. Temporary and Casual Employees.

30. Other Staff Arrangements.

31. Consultants.

**PART 3 – REGULATED ENTITIES, REGULATED GOODS,  
REGULATED SERVICES AND REGULATORY CONTRACTS.**

***Division 1 – Regulated Entities, Regulated Goods and  
Regulated Services.***

32. Declaration of Regulated Entities, etc.

33. Declaration by Commission.

***Division 2 – Regulatory Contracts.***

34. Regulatory Contracts issued by the Minister.

35. Regulatory Contracts issued by the Commission.

36. Process for issue of Regulatory Contracts by Commission.

37. Compliance with Regulatory Contracts.

38. Enforcement of Regulatory Contracts.

39. Compliance with Order.

**PART 4 – CODES AND RULES.**

40. Codes and Rules.

**PART 5 – PANEL OF EXPERTS, APPEALS PANEL AND APPEALS.**

41. Panel of Experts.  
42. Appeals Panel.  
43. Appeals from Certain decisions of the commission.

**PART 6 – COMPETITIVE MARKET CONDUCT.**

*Division 1 – Interpretation and Application.*

44. Interpretation.  
    “acquire”  
    “arrive at”  
    “assets”  
    “authorization”  
    “business”  
    “clearance”  
    “covenant”  
    “credit instrument”  
    “document”  
    “give effect to”  
    “goods”  
    “price”  
    “provision”  
    “services”  
    “share”  
    “supply”  
    “trade”
45. Certain Terms defined in relation to competition.  
46. Commission to consider efficiency.  
47. Application of part to conduct outside Papua New Guinea.  
48. Application of part to the State.  
49. Law relating to restraint of trade and breaches of confidence not affected.

***Division 2 – Market Conduct Rules.***

*Subdivision 1 – Practices Substantially Lessening Competition.*

50. Contracts, Arrangements or Understandings Substantially Lessening Competition Prohibited.  
51. Covenants Substantially Lessening Competition Prohibited.  
52. Contracts, Arrangements or Understandings Containing Exclusionary Provisions Prohibited.

*Subdivision 2 – Price Fixing.*

53. Certain Provision of Contracts, etc., with respect to prices deemed to substantially lessen competition.  
54. Joint Venture Pricing Exempt from Application of Section 53.  
55. Certain Recommendations as to prices for goods and services exempt from application of Section 53.

56. Joint buying and promotion arrangements exempt from application of Section 53.
57. Certain Provisions of Covenants with respect to prices deemed to substantially lessen competition.
- Subdivision 3 – Taking Advantage of Market Power.*
58. Taking Advantage of Market Power.
- Subdivision 4 – Resale Price Maintenance.*
59. Resale Price Maintenance by Suppliers Prohibited.
60. Resale Price Maintenance by others prohibited.
61. Recommended Prices.
62. Withholding the supply of Goods or Services.
63. Preventing the Supply of Goods or Services.
64. Special Evidentiary Provisions in respect of certain resale price maintenance practices.
- Subdivision 5 – Exceptions.*
65. Statutory Exceptions.
66. Other Exceptions.
67. Exceptions in relation to intellectual property rights.
68. Saving in Respect of Business Acquisitions.
- Division 3 – Business Acquisitions.***
69. Certain Acquisitions Prohibited.
- Division 4 – Authorizations and Clearances.***
70. Commission may grant Authorization for Restrictive Trade Practices.
71. Effect of Authorization.
72. Additional Provisions Relating to Authorizations.
73. Contracts or Covenants Subject to Authorization not prohibited under certain conditions.
74. When Commission may grant Authorization.
75. Contraventions not prevented by granting of authorization under Section 73 or Section 74.
76. Procedure for Application for Authorization of Restrictive Trade Practices.
77. Determination of application for Authorization of Restrictive Trade Practices.
78. Commission to prepare draft determination in relation to restrictive trade practices.
79. Procedure at Conference.
80. Commission may vary or revoke authorization.
81. Commission may give clearance for business acquisitions.
82. Commission may grant authorizations for business acquisitions.
83. Provisions applying to applications for clearances and authorizations for business acquisitions.
84. Effect of Clearance or Authorization.
85. Commission may accept undertakings.
86. Conferences in relation to business acquisitions.
- Division 5 – Enforcement, Remedies and Appeals.***
- Subdivision 1 – Restrictive Trade Practices.*
87. Pecuniary Penalties.



119. Notification of Voluntary Recall.
120. Copies of certain notices to be given to Suppliers or Published in certain newspapers.
121. Certain action not to affect insurance, contracts.

#### **PART 8 – INQUIRIES AND REPORTS.**

122. Inquiry by Commission.
123. Minister or Parliament may refer matter for inquiry.
124. Notice of Inquiry.
125. Conduct of Inquiry.
126. Reports.

#### **PART 9 – GENERAL POWERS OF COMMISSION, ETC.**

##### ***Division 1 – Information Gathering.***

127. Summoning Witnesses, etc.
128. Obtaining Information Generally.
129. Entry and Search.
130. Regulated Entities to retain records.
131. Access to Information.

##### ***Division 2 – Enforcement and Penalties.***

132. Commission to prosecute offences.
133. Prosecution of offences.
134. General Penalty, etc.
135. Offences by Corporations.
136. Recognizances.
137. Evidence by Certificates.
138. Evidence or Orders, etc.
139. Evidence of certain instruments.
140. Evidence given under Compulsion.

#### **PART 10 – REPEAL, AMENDMENT, SAVING, TRANSITIONAL AND MISCELLANEOUS PROVISIONS.**

##### ***Division 1 – Repeals, Amendments, Savings and Transitional.***

141. Repeal of *Consumer Affairs Council Act 1993*.
142. Amendment of *Prices Regulation Act 1949*.
143. Amendments of other Acts.
144. Commission is Successor in Law.

##### ***Division 2 – Miscellaneous.***

145. Immunity.
146. Head Office.
147. Symbol of the Commission.
148. Preservation of Secrecy.
149. Attorney.
150. Services of Process.
151. Regulations.

#### **SCHEDULE 1 – .**

#### **SCHEDULE 2 – .**



**INDEPENDENT STATE OF PAPUA NEW GUINEA.**



AN ACT

entitled

***Independent Consumer and Competition Commission Act 2002,***

Being an Act to provide for the establishment of an Independent Consumer and Competition Commission the functions of which include the promotion of competition and fair trading, the regulation of prices for certain goods and services, and the protection of consumers' interest, and for related purposes,

MADE by the National Parliament to come into operation –

- (a) in respect Part 6 – on the date 12 months after the date on which the Act comes into operation in accordance with Paragraph (b); and
- (b) in respect of the remainder – in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the *Constitution*, namely –

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organisations and other associations conferred by Section 47 of the *Constitution*; and

- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
- (f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*) –

- (h) taking account of the National Goals and Directive Principles (including in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organisation) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safe guard the national wealth, resources and environment in the interest not only of the present generation but of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of under privileged or less advanced groups or areas; and
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

## 2. INTERPRETATION.

In this Act, unless the contrary intention appears –

“**Appeals Panel**” means the Appeals Panel constituted under Section 42;

“**Appointments Committee**” means the Independent Consumer and Competition Commission Appointments Committee referred to in Section 9(1);

“**Associate Commissioner**” means a person appointed as an Associate Commissioner under Section 9;

“**Chairman**” in relation to a meeting of the Commission, means the Commissioner or (in the Commissioner’s absence) such other member as is appointed by the Commissioner to preside at meetings of the Commission in the absence of the Commissioner;

- “Commission”** means the Independent Consumer and Competition Commission established by Section 4, and includes a member of the Commission performing any function of the Commission;
- “Commissioner”** means a person appointed as the Commissioner under Section 9;
- “Court”** means the National Court;
- “decision”** includes a declaration, determination, order or other decision;
- “International Arbitrator”** means a member of the Panel of Experts who satisfies the requirements set out in Section 41(3);
- “officer of the Commission”** means any person engaged by the Commission pursuant to Division II.7;
- “Panel of Experts”** means the panel of experts appointed under Section 41;
- “price”** includes a price range;
- “regulated entity”** means an entity that is declared to be a regulated entity under Section 32 or Section 33;
- “regulated goods”** means goods that are declared to be regulated goods under Section 32 or Section 33;
- “regulated industry”** means an industry that is declared to be a regulated industry for the purposes of this Act by another Act;
- “regulated services”** means services that are declared to be regulated services under means services that are declared to be regulated services under Section 32 or Section 33;
- “regulatory contract”** means a contract issued under Section 34(1) or Section 35(1);
- “related corporation”** has the meaning in Section 2(3) of the *Companies Act 1997*;
- “State owned entity”** means –
- (a) a statutory body established by an Act; or
  - (b) an entity in relation to which the State, a Department or an office of a Department, the trustee of a trust a beneficiary of which is the State, or another State owned enterprise –
    - (i) controls the composition of the board of directors of the entity; or
    - (ii) controls more than 50% of the voting power in the entity; or
    - (iii) holds more than 50% of the issued share capital of the entity (excluding any part of its that carries no right to participate beyond a specific amount in a distribution of either profits or capital).

s. 3.

*Independent Consumer and Competition Commission 2002*

**3. ACTS BINDS THE STATE.**

Except otherwise provided, this Act binds the State.

**PART 2. – INDEPENDENT CONSUMER AND COMPETITION COMMISSION.**

***Division 1.***

***Establishment, Functions and Powers.***

**4. ESTABLISHMENT OF INDEPENDENT CONSUMER AND COMPETITION COMMISSION.**

(1) There is established a body corporate called the Independent Consumer and Competition Commission.

(2) The Commission –

- (a) has perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be used in its corporate name; and
- (d) has the functions assigned to it by or under this or any other Act; and
- (e) has the powers conferred on it by or under this or any other Act.

(3) All courts and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and, until the contrary is proved, shall presume that it was duly affixed.

(4) The common seal of the Commission shall be kept in such custody as the Commission directs and shall not be used except as authorized by the Commission.

**5. OBJECTIVES OF COMMISSION.**

(1) In performing its functions and exercising its powers, the primary objectives of the Commission are –

- (a) to enhance the welfare of the people of Papua New Guinea through the promotion of competition, fair trading and the protection of consumers' interests; and
- (b) to promote economic efficiency in industry structure, investment and conduct; and
- (c) to protect the long term interests of the people of Papua New Guinea with regard to the price, quality and reliability of significant goods and services.

(2) In seeking to achieve its primary objectives, the Commission shall have regard to the following facilitating objectives: –

- (a) to promote and protect the *bona fide* interests of consumers with regard to the price, quality and reliability of goods and services;
- (b) to ensure that users and consumers (including low-income or vulnerable consumers) benefit from competition and efficiency;

- (c) to facilitate effective competition and promote competitive market conduct;
- (d) to prevent the misuse of market power;
- (e) to promote and encourage the efficient operation of industries and efficient investment in industries;
- (f) to ensure that regulatory decision making has regard to any applicable health, safety, environmental and social legislation;
- (g) to promote and encourage fair trading practices and a fair market.

## **6. FUNCTIONS OF COMMISSION.**

The functions of the Commission are –

- (a) to perform such functions relating to price regulation, licensing, industry regulation and other matters as are conferred on the Commission by or under this Act or any other Act, including, without limitation, in relation to issuing, administering and enforcing regulatory contracts under Part 3; and
- (b) to promote and protect the *bona fide* interests of consumers in relation to the acquisition and supply of goods and services; and
- (c) to make available information in relation to matters affecting the interests of consumers, including information with respect to the rights and obligations of persons under Papua New Guinea laws that are designed to protect the interest of consumers; and
- (d) to investigate complaints concerning matters affecting or likely to affect the *bona fide* interests of consumers in relation to the acquisition of goods and services and to enforce compliance with laws relating to such matters; and
- (e) to investigate complaints concerning market conduct and to enforce compliance with laws relating to market conduct in Papua New Guinea; and
- (f) to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operation of regulated entities; and
- (g) to advise and make recommendations to the Minister in relation to any matter referred to the Commission by the Minister; and
- (h) to advise and make recommendations to the Minister with respect to any matter connected with this Act or with respect to any matter connected to any other Act which confers functions on the Commission; and
- (i) such other functions as may be conferred on the Commission by any other Act.

**7. POWERS OF COMMISSIONS.**

(1) The Commission has power to do all things necessary or convenient to be done for or in connection with or otherwise incidental to the performance of its functions and to enable it to achieve its objectives.

(2) Without limiting Subsection (1), the Commission has such other powers as are conferred on the Commission by any other Act.

(3) Without limiting Subsection (1), the Commission may publish statements, reports and guidelines relating to the performance of its functions.

(4) The Commission shall not exercise any power in a manner that is inconsistent with the requirements of a regulatory contract that is in effect and the exercise of a power in a manner that is inconsistent with a regulatory contract that is in effect is of no effect to the extent of the inconsistency.

*Division 2.*

*Membership of the Commission.*

**8. COMPOSITION OF THE COMMISSION.**

(1) The Commission consists of one Commissioner and two Associate Commissioners.

(2) The Commissioner shall be appointed as a full-time member of the Commission.

(3) An Associate Commissioner may be appointed as a full-time or part-time member of the Commission.

**9. APPOINTMENT OF MEMBERS.**

(1) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Independent Consumer and Competition Commission Appointments Committee consisting of –

- (a) the Prime Minister, who is the Chairman; and
- (b) the Leader of the Opposition; and
- (c) the Minister or, if the Minister is the Prime Minister, the Attorney General; and
- (d) the Governor of the Central Bank.

(2) Before the Appointments Committee advises the Head of State to appoint a person as a member of the Commission, a majority of the members of the Appointments Committee shall be satisfied that the person –

- (a) is qualified for appointment to the Commission in accordance with Section 11; and
- (b) is not disqualified from appointment to the Commission under Section 12.

(3) A member of the Commission –

- (a) subject to Subsection (4), shall be appointed for a period of five years; and
- (b) shall hold office on such terms and conditions as are determined by the Parliament in accordance with a recommendation of the Salaries and Remuneration Commission; and
- (c) is eligible for re-appointment.

(4) Notwithstanding Subsection (3)(a), in relation to the three first members of the Commission, one shall be appointed for an initial term of three years, one for an initial term of four years and one for an initial term of five years.

(5) The terms and conditions of office of a member of the Commission shall not, without the consent of that member, be varied while that member is in office so as to become less favourable to that member.

#### **10. LEAVE.**

If a member of the Commission applies to the Minister for leave of absence, the Minister may grant such leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

#### **11. QUALIFICATIONS FOR APPOINTMENT.**

(1) A person is not eligible for appointment as a member of the Commission unless he is a person of integrity, independence of mind and good reputation.

(2) A person is not eligible for appointment as a member of the Commission unless he has knowledge of or experience in industry, commerce, economics, law, public administration or consumer protection.

(3) At least one of the persons appointed as an Association Commissioner –

- (a) shall have international experience in the operation and administration of an economic regulatory regime; and
- (b) shall not be a resident of Papua New Guinea.

#### **12. DISQUALIFICATION FROM OFFICE.**

A person is not qualified to be, or to remain, a member of the Commission if he is –

- (a) a member, or candidate for election as a member, of the National Parliament, a member of a Provincial Government or a member of a Local-level Government or a Local-level Government Special Purposes Authority; or
- (b) an office-holder, or candidate for election as an office-holder, in a registered political party; or



- (c) an undischarged bankrupt or insolvent; or
- (d) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (e) under sentence of death or imprisonment or has previously been sentenced to death or a term of imprisonment; or
- (f) found guilty of misconduct in office under the *Organic Law on the Duties and Responsibilities of Leadership*.

**13. SPECIAL CONDITIONS OF EMPLOYMENT.**

(1) A member of the Commission shall not –

- (a) actively engage in politics; or
- (b) absent himself from duty for more than fourteen consecutive days or more than 28 days in any period of 12 months except because of illness or on leave granted by the Minister.

(2) The Commissioner or an Associate Commissioner appointed as a full-time member of the Commission shall not, without the consent in writing of the Minister, directly or indirectly engage in any paid employment outside the duties of their respective offices as a member of the Commission.

**14. RESIGNATION FROM OFFICE.**

(1) A member of the Commission may resign his office by giving to the Head of state three months' notice in writing of his intention to do so.

(2) The period of three months specified in Subsection (1) is deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the Head of State, acting with, and in accordance with, the advice of a majority of the members of the Appointments Committee, by notice in writing to the member, fixes an earlier date for the commencement of that period.

(3) A member of the Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

**15. VACANCY.**

(1) The office of Commissioner or Associate Commissioner becomes vacant if the person holding that office –

- (a) dies; or
- (b) resigns in accordance with Section 14; or
- (c) attains the age of 70 years; or
- (d) is not re-appointed at the end of a term of office; or
- (e) is removed from office in accordance with Section 16; or

s. 16.

*Independent Consumer and Competition Commission 2002*

(f) is not qualified to remain a member of the Commission by virtue of Section 12; or

(g) is declared by the Court to have contravened Section 13.

(2) A vacancy in the office of Commissioner or Associate Commissioner shall be filled as soon as possible end, in any event, within 90 days of the vacancy arising.

(3) If –

(a) a vacancy in the office of Commissioner or Associate Commissioner arises as a result of the expiry of the term of office of a member of the Commission; and

(b) the vacancy is not filled within 90 days of the vacancy arising; and

(c) the member of the Commission whose term of office expired –

(i) has advised the Head of State in writing that he is willing to be re-appointed; and

(ii) is eligible for re-appointment,

then, with effect from the day next following the 90 days after the vacancy arose, the member of the Commission shall be deemed to have been re-appointed to the office of Commissioner or Associate Commissioner, as the case may be, for a further term of five years.

**16. REMOVAL.**

(1) The Court, on the application of the Minister, may remove or suspend a member of the Commission from office for –

(a) misconduct; or

(b) incapacity to perform satisfactorily his functions; or

(c) material contravention of or failure to comply with the requirement of this or any other Act conferring functions on the Commission.

(2) The Minister may only bring an application under Subsection (1) acting with, and in accordance with, the advice of the National Executive Council.

(3) A member of the Commission may only be removed or suspended from office as provided in Section 15 or under this section.

**17. MINISTER TO PERFORM FUNCTIONS OF COMMISSION PENDING APPOINTMENT OF MEMBERS.**

The Minister may perform such functions and exercise such powers as are conferred on and exercisable by the Commission under this Act or any other Act but only until the appointment of the first Commissioner and the first two Associate Commissioners pursuant to this Act.

**18. VALIDITY OF CONDUCT OF COMMISSION.**

An act or decision of the Commission is not invalid by reason only of –

- (a) a defect or irregularity in, or in connection with, the appointment or removal of a member of the Commission; or
- (b) a vacancy in, or absence from, an office of a member of the Commission.

***Division 3.***

***Procedures of the Commission.***

**19. MEETINGS OF COMMISSION.**

(1) The Commission shall meet as often as the business of the Commission requires, but in any event at least once in every two months.

(2) A meeting of the Commission may be convened by any member of the Commission.

(3) Notice of a meeting of the Commission shall be provided to each member of the Commission by the member who wishes to convene the meeting.

(4) Meeting of the Commission shall be held at such places and at such times as the Commissioner determines.

(5) At a meeting of the Commission –

- (a) a quorum is constituted by two members of the Commission one of whom shall be the Associate Commissioner who satisfied the requirements set out in Section 11(3) unless there is no such member or that member is on leave or is disqualified from taking part in a deliberation of the Commission in accordance with Section 20(4); and
- (b) all members present are entitled to vote; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) in the event of any equality of votes on any matter, the Chairman has a casting vote as well as a deliberative vote.

(6) The Commission shall cause minutes of its meetings to be recorded and kept.

(7) Subject to this Act, the procedures of the Commission are as determined by the Commissioner which shall be determined prior to the first meeting of the Commission and may be amended by the Commissioner as required from time to time.

(8) If the Commissioner so determines, a member or members may participate in, and form part of a quorum at, a meeting of the Commission by means of any of the following methods of communication: –

- (a) telephone;

- (b) closed circuit television;
- (c) any other method of communication determined by the Commissioner.

(9) A determination made by the Commissioner under Subsection (8) may be made in respect of a particular meeting or meetings of the Commission or in respect of all meetings of the Commission.

(10) A resolution in writing signed by all of the members of the Commission who are entitled to vote on the resolution (including those members who are necessary to constitute a quorum) is a valid resolution of the Commission and is effective when signed by the last of those members or at such later time or in such later circumstances as the resolution provides.

(11) A resolution referred to in Subsection (10) may consist of several documents in the same form, each signed by one or more of the relevant members of the Commission.

## **20. DISCLOSURE OF INTERESTS BY MEMBERS.**

(1) A member of the Commission shall, as soon as possible after the relevant facts have come to his knowledge, inform the Commission in writing of –

- (a) any direct or indirect pecuniary interest that he has or acquires in any business, or in any body corporate carrying on business, in Papua New Guinea or elsewhere; and
- (b) any direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Commission.

(3) A disclosure under Subsection (1)(b) shall –

- (a) be notified by the Commission to the Minister as soon as possible; and
- (b) be included in the Commission's annual performance and management report required under Section 63(2) of the *Public Finances (Management) Act 1995*; and
- (c) be notified by the Commission to the persons concerned in the matter.

(4) A member of the Commission to whom Subsection (1)(b) applies –

- (a) shall not take part in any deliberation or decision of the Commission in relation to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

(5) If the operation of Subsection (4) has the effect that the Commission is unable to proceed with the deliberation or decision of a matter, the Chairman (who shall not be that member) may direct that the member of the Commission who has the relevant interest may take part, after the disclosure of that interest, in a deliberation or decision of the Commission in relation to the matter and may be

counted for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

(6) This section does not apply to the extent the interest of a member of the Commission is only as a result of the supply of goods and services that are available to members of the public on the same terms and conditions.

(7) A failure to comply with this section does not affect the validity of an act or decision of the Commission.

## **21. COMMITTEES.**

(1) The Commission may, from time to time, establish committees to advise it on such matters related to its objectives or the performance of its functions as it considers necessary.

(2) In establishing a committee under Subsection (1), the Commission may –

- (a) appoint such persons, including members of the Commission, as it considers necessary; and
- (b) specify the functions and procedures of the committee.

(3) If the Commission establishes a committee under this section, the Commission shall notify the Minister, and cause notice to be published in the National Gazette, of the establishment of the committee, the members of the committee, the functions of the committee and the remuneration (if any) payable to the members of the committee.

## **22. DELEGATION.**

(1) The Commission may, by unanimous decision of all members of the Commission and subject to any regulations made for the purposes of this section, delegate to any member, officer or committee of the Commission or to any other person any of its functions and powers other than this power of delegation.

(2) A delegation under Subsection (1) –

- (a) shall be in writing; and
- (b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
- (c) may be specified to be restricted to a particular matter or class of matters; and
- (d) is revocable at will by resolution of the Commission in writing; and
- (e) does not affect or prevent the performance of a function or the exercise of a power by the Commission.

***Division 4.******Independence of the Commission.*****23. COMMISSION NOT SUBJECT TO DIRECTION.**

Subject to Section 25 and Part 8, the Commission is not subject to direction or control by the Minister or any other person in the performance of its functions.

***Division 5.******Finance.*****24. APPLICATION OF MONEY RECEIVED BY COMMISSION.**

Fees received by the Commission under this or any other Act shall be retained by the Commission for the purpose of funding its costs.

**25. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.**

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Commission.

(2) The Commission's annual performance and management report required under Section 63(2) of the *Public Finances (Management) Act 1995* shall include, in addition to the matters required under that Act –

- (a) a report on the Commission's operations during the year in question; and
- (b) such other matters as are required under this or any other Act or as are prescribed.

**26. TENDERS AND CONTRACTS.**

For the purposes of Section 59(1) of the *Public Finances (Management) Act 1995*, tenders shall be publicly invited and contracts taken by the Commission for all works, supplies and services the estimated cost of which exceeds K100,000.00.

***Division 6.******Agreement with other Bodies.*****27. AGREEMENTS WITH OTHER BODIES.**

(1) The Commission may enter into agreements with other regulatory bodies or authorities, whether in Papua New Guinea or overseas, for the purpose of assisting the Commission to carry out its functions and to meet its objectives under this Act or any other Act.

(2) An agreement referred to in this section –

- (a) may deal with –
  - (i) matters pertaining to joint investigative efforts; and

- (ii) reciprocal enforcement regimes; and
  - (iii) joint prosecution; and
  - (iv) gathering and sharing of information; and
  - (v) institutional strengthening and development of knowledge; and
  - (vi) such further or other matters as are convenient for the performance by the Commission of its functions; and
- (b) in the case of an agreement with an overseas regulatory body or authority, shall be made conditional on being approved by the Head of State, acting on advice.

***Division 7.***

***Staff of the Commission.***

**28. PERMANENT EMPLOYEE.**

(1) The Commission may engage such persons as it considers necessary as employees of the Commission.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of engagement of an employee engaged under Subsection (1) are as determined by the Commission.

(3) Where the employee of the Commission who is engaged under Subsection (1) was, immediately before his engagement, an officer of the Public Service, his service as an employee of the Commission shall be counted as service in the Public Service for the purpose of determining that the member's rights (if any) in respect of –

- (a) leave of absence on the grounds of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the employee).

**29. TEMPORARY AND CASUAL EMPLOYEES.**

(1) The Commission may engage such persons as it considers necessary as temporary and casual employees of the Commission.

(2) Employees engaged under Subsection (1) shall be employed on such terms and conditions as the Commission determines.

**30. OTHER STAFF ARRANGEMENTS.**

The Commission may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory or other public body.

s. 31.

*Independent Consumer and Competition Commission 2002*

**31. CONSULTANTS.**

(1) Subject to Section 26 and to Part VIII of the *Public Finances (Management) Act 1995*, the Commission may engage persons with suitable qualifications and experience as consultants.

(2) An engagement under Subsection (1) shall be on such terms and conditions as the Commission determines.



**PART 3. – REGULATED ENTITIES, REGULATED GOODS, REGULATED SERVICES AND REGULATORY CONTRACTS.**

***Division 1.***

***Regulated Entities, Regulated Goods and Regulated Services.***

**32. DECLARATION OF REGULATED ENTITIES, ETC.**

(1) The Minister responsible for treasury matters may, by notice published in the National Gazette, declare an entity that supplies, or is capable of supplying, goods or services in a regulated industry, to be a regulated entity –

- (a) where that entity is a State owned entity – at any time when that entity is a State owned entity; or
- (b) where that entity was a State owned entity as at the date this section comes into operation but that entity ceases to be a State owned entity – at any time within the period of three months after that entity ceases to be a State owned entity; or
- (c) where that entity carries on business using assets transferred to it from an entity that was a State owned entity as at the date this section comes into operation – at any time within the period of three months after that transfer of those assets,

with effect from the later of the date of publication of the notice in the National Gazette and the commencement date specified in the notice.

(2) Where the Minister makes a declaration under Subsection (1), he may, by the same notice or by a subsequent notice published in the National Gazette, declare any goods or services supplied or capable of being supplied by the regulated entity to be regulated goods or regulated services, as the case may be, with effect from the later of the date of publication in the National Gazette and the commencement date specified in the notice.

(3) A declaration made under Subsection (2) may identify the relevant goods or services by reference to the persons to whom they are supplied, the location in which they are supplied, the purpose for which they are supplied, the period over which they are supplied or such other factors as the Minister considers appropriate.

(4) The Minister may not vary or revoke a declaration made under Subsection (1) or Subsection (2).

(5) The Minister shall not exercise any power conferred under this section in a manner that is inconsistent with the requirements of a regulatory contract that is in effect, and any exercise of a power in a manner that is inconsistent with a regulatory contract that is in effect is of no effect to the extent of the inconsistency.

**33. DECLARATION BY COMMISSION.**

(1) The Commission may, by notice in the National Gazette, declare –

- (a) any entity that supplies or is capable of supplying goods or services in a regulated industry to be a regulated entity; or
- (b) any goods or services supplied or capable of being supplied by a regulated entity to be regulated goods or regulated services, as the case may be,

with effect from the later of the date of publication of the notice in the National Gazette and the commencement date specified in the notice.

(2) The Commission shall not make a declaration –

- (a) under Subsection (1)(a) unless it is satisfied that –
  - (i) the entity concerned has substantial degree of power in a market; and
  - (ii) the declaration is appropriate having regard to the Commission’s objectives set out in Section 5; or
- (b) under Subsection (1)(b) unless it is satisfied that –
  - (i) the goods or services concerned are supplied or are capable of being supplied by the regulated entity in a market in which the regulated entity concerned has a substantial degree of power in a market; and
  - (ii) the declaration is appropriate having regard to the Commission’s objectives set out in Section 5.

(3) A declaration made under Subsection (1)(b) may identify the relevant goods or services by reference to the persons to whom they are supplied, the location in which they are supplied, the purpose for which they are supplied, the period over which they are supplied or such other factors as the Commission considers appropriate.

(4) The Commission may, by notice published in the National Gazette, with the consent of the regulated entity concerned, revoke, but not vary, part or all of a declaration made under Section 32(1) or (2) under Subsection (1), with effect from the later of the date of publication of the National Gazette and the commencement date specified in the notice, and –

- (a) a revocation of a declaration made under Section 32(1) or Subsection (1)(a) shall terminate any regulatory contract applying to the regulated entity concerned at the time the revocation comes into effect; and
- (b) a revocation of part or all of a declaration made under Section 32(2) or Subsection (1)(b) shall vary any regulatory contract applying to the regulated entity concerned by deleting any reference to goods and services that cease to be regulated goods or services at the time the revocation comes into effect.

(5) The Commission shall not revoke –

- (a) a declaration made under Section 32(1) or Subsection (1)(a) unless it is satisfied that –
  - (i) the entity concerned does not have a substantial degree of power in a market; or
  - (ii) the declaration is not appropriate having regard to the Commission’s objectives set out in Section 5; or
- (b) a declaration made under Section 32(2) or Subsection (1)(b) unless it is satisfied that –
  - (i) the goods or services in relation to which declaration is to be revoked are not supplied or capable of being supplied by the regulated entity in a market in which the entity concerned has a substantial degree of power in a market; or
  - (ii) the declaration is not appropriate having regard to the Commission’s objectives set out in Section 5.

(6) The Commission shall not make a declaration under Subsection (1) or revoke a declaration under Subsection (4) unless –

- (a) it has given notice of its intention to make or revoke the declaration no later than four weeks prior to doing so to –
  - (i) the Minister;
  - (ii) the relevant entity; and
  - (iii) any other person that the Commission considers appropriate; and
- (b) it has given each of those persons a reasonable opportunity to make submissions in relation to that matter and has considered any submissions made.

(7) At least two weeks prior to its decision taking effect, the Commission shall give each of the persons referred to in Subsection (6) written notice of its decision together with written reasons.

(8) In this section, “market” means a market in the whole or any part of Papua New Guinea for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them, including imports.

***Division 2.***

***Regulatory Contracts.***

**34. REGULATORY CONTRACTS ISSUED BY THE MINISTER.**

(1) The Minister responsible for treasury matters may issue a regulatory contract in accordance with this section applying to an entity that he declares to be a regulated entity under Section 32(1) in relation to the supply of regulated goods and regulated services and related matters as specified in the regulatory contract, such power to be exercised by the Minister only once in relation to each regulated entity that he declares to be a regulated entity under Section 32(1).

(2) A regulatory contract shall –

- (a) have a term not exceeding ten years; and
- (b) regulate prices for the supply of regulated goods and regulated services by the regulated entity over the term of the regulatory contract; and
- (c) specify service standards the relevant regulated entity shall meet, together with payments which the relevant regulated entity shall make to customers and other persons (whether by way of rebate or otherwise), or price reductions which may be imposed, if the relevant regulated entity fails to meet those service standards; and
- (d) specify a process for the issue of a new regulatory contract to replace that regulatory contract on the expiry of its term (including the date by which the relevant regulated entity shall provide a draft of the new regulatory contract to the Commission and the date by which the Commission shall issue the new regulatory contract); and
- (e) specify pricing policies and principles that are to be adopted in any regulatory contract that is issued in replacement of that regulatory contract on the expiry of its term; and
- (f) deal with such other matters as this Act or an Act that declares an industry to be a regulated industry, or a regulation made under such an Act, requires be dealt with in a regulatory contract.

(3) A regulatory contract issued under Subsection (1) may regulate prices in any manner the Minister considers appropriate, including –

- (a) fixing a price or the rate of increase or decrease in a price; and
- (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price; and
- (c) fixing an average price for regulated goods or regulated services or an average rate of increase or decrease in an average price; and
- (d) specifying pricing policies or principles; and
- (e) specifying an amount determined by reference to a general price index, the cost of production, rate of return on assets employed or any other specified factor; and
- (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of regulated goods or regulated services; and
- (g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to regulated goods or regulated services.

(4) In addition to the matters referred to in Subsection (2), a regulatory contract issued under Subsection (1) may also –

- (a) specify conditions relating to prices; and

- (b) provide that a calculation is to be performed, or a matter is to be determined, by the Commission in a manner specified by the regulatory contract; and
- (c) require the relevant regulated entity to provide information to the Commission, customers or other persons; and
- (d) specify restrictions or limitations on how the Commission or any other statutory authority may exercise powers conferred on it by this or any other Act in relation to the regulated entity concerned or other suppliers of regulated goods or services supplied or capable of being supplied by the regulated entity concerned; and
- (e) deal with such other matters as this Act or an Act that declares an industry to be a regulated industry, or a regulation made under such an Act, specifies or contemplates may be dealt with in a regulatory contract.

(5) The Minister shall not exercise any power conferred under this section in a manner that is inconsistent with the requirements of a regulatory contract that is in effect and any exercise of a power in a manner that is inconsistent with a regulatory contract that is in effect is of no effect to the extent of the inconsistency.

### **35. REGULATORY CONTRACTS ISSUED BY THE COMMISSION.**

(1) Subject to Subsection (2) and Section 36, the Commission may issue a regulatory contract in accordance with this section applying to a regulated entity in relation to the supply of regulated goods and regulated services and related matters as specified in the regulatory contract.

(2) The Commission shall not issue a regulatory contract under Subsection (1) that applies to a regulated entity where the term of that regulatory contract coincides in whole or in part with the term of a regulatory contract issued under Section 34(1) that applies to that regulated entity.

(3) A regulatory contract shall –

- (a) have a term not exceeding 10 years; and
- (b) regulate prices for the supply of regulated goods and regulated services by the regulated entity over the term of the regulatory contract; and
- (c) specify service standards the relevant regulated entity shall meet, together with payments which the relevant regulated entity shall make to customers and other persons (whether by way of rebate or otherwise), or price reductions which may be imposed, if the relevant regulated entity fails to meet those service standards; and
- (d) specify a process for the issue of a new regulatory contract to replace that regulatory contract on the expiry of its term (including the date by which the relevant regulated entity shall provide a draft of the new regulatory contract to the Commission and the date by which the Commission shall issue the new regulatory contract); and

- (e) specify pricing policies and principles that are to be adopted in any regulatory contract that is issued in replacement of that regulatory contract on the expiry of its term; and
- (f) deal with such other matters as this Act or an Act that declares an industry to be a regulated industry, or a regulation made under such an Act, requires to be dealt with in a regulatory contract.

(4) A regulatory contract issued under Subsection (1) may regulate prices in any manner the Commission considers appropriate, including –

- (a) fixing a price or the rate of increase or decrease in a price; and
- (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price; and
- (c) fixing an average price for regulated goods or regulated services or an average rate of increase or decrease in an average price; and
- (d) specifying pricing policies or principles; and
- (e) specifying an amount determined by reference to a general price index, the cost of production, rate of return on assets employed or any other specified factor; and
- (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of regulated goods or regulated services; and
- (g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to regulated goods or regulated services.

(5) In addition to the matters referred to in Subsection (3), a regulatory contract issued under Subsection (1) may also –

- (a) specify conditions relating to prices; and
- (b) provide that a calculation is to be performed, or a matter is to be determined, by the Commission in a matter specified by the regulatory contract; and
- (c) require the relevant regulated entity to provide information to the Commission, customers or other persons; and
- (d) specify restrictions or limitations on how the Commission or any other statutory authority may exercise powers conferred on it by this or any other Act in relation to the regulated entity concerned or other suppliers of regulated goods or services supplied or capable of being supplied by the regulated entity concerned; and
- (e) deal with such other matters as this Act or an Act that declares an industry to be a regulated industry, or a regulation made under such an Act, specifies or contemplates may be dealt with in a regulatory contract.

(6) In issuing a regulatory contract under Subsection (1), the Commission shall, in addition to having regard to its objectives specified in Section 5, have regard to –

- (a) the legitimate business interests of the regulated entity to which the regulatory contract applies (the “relevant regulated entity”); and
- (b) the legitimate interests of suppliers to, and customers of, the relevant regulated entity; and
- (c) the particular circumstances of the industries in which the relevant regulated entity operates for the purpose of making, producing and supplying the regulated goods and regulated services to which the regulatory contract relates; and
- (d) the nature and uses of the regulated goods and regulated services to which the regulatory contract relates; and
- (e) the costs of making, producing and supplying the regulated goods and regulated services to which the regulatory contract relates; and
- (f) the costs of complying with applicable laws and regulatory requirements; and
- (g) the return on assets required to sustain past and future investment in the industries in which the relevant regulated entity operates for the purpose of making, producing and supplying the regulated goods and regulated services to which the regulatory contract relates; and
- (h) any relevant international benchmarks for prices, costs and return on assets in comparable industries, taking into account the particular circumstances of Papua New Guinea; and
- (i) the financial implications of the regulatory contract for the relevant regulated entity and for the industries in which the relevant regulated entity operates for the purpose of making, producing and supplying the regulated goods and regulated services to which the regulatory contract relates; and
- (j) any factors specified by another Act or by regulation under this Act or any other Act; and
- (k) any other factors that the Commission considers relevant.

**36. PROCESS FOR ISSUE OF REGULATORY CONTRACTS BY COMMISSION.**

(1) Where the Commission proposes that a regulatory contract should apply to a regulated entity, the Commission shall, not more than two years and not less than nine months before issuing a regulatory contract under Section 35(1) that applies to that regulated entity, invite the regulated entity to submit to the Commission by a date that is at least two months after the date the invitation was issued –

s. 36.

*Independent Consumer and Competition Commission 2002*

- (a) a draft regulatory contract that applies to that regulated entity and that complies with the requirements of Section 35(3); and
- (b) such written submissions as to the form and content of that draft regulatory contract as the regulated entity considers appropriate.

(2) After considering any material submitted by a regulated entity on or prior to the date specified in the invitation issued under Subsection (1), the Commission shall –

- (a) send to the Minister, the regulated entity and any other person the Commission considers appropriate; and
- (b) make available for inspection and purchase by members of the public,

a copy of –

- (c) the draft regulatory contract and written submissions (if any) submitted to the Commission by the regulated entity under Subsection (1) by the date specified in the invitation issued under Subsection (1); and
- (d) an issues paper prepared by the Commission which sets out the Commission's preliminary views in relation to, and identifies any issues which the Commission considers relevant in connection with, the form and content of any regulatory contract that may be issued under Section 35(1) for the purposes of applying to the regulated entity and that also invites submissions on the matters raised in the issues paper by a date that is at least two months after the issues paper was issued.

(3) At least one month prior to the date it issues any regulatory contract under Section 35(1) and after having considered any submissions received by the Commission on or prior to the date specified in the issues paper, the Commission shall send to the Minister, the regulated entity and any other person who has made submissions as described in this section –

- (a) a copy of the regulatory contract that it proposes to issue under Section 35(1) for the purposes of applying to the regulated entity; and
- (b) a summary of the information on which the regulatory contract is based; and
- (c) a statement of the reasons for making the regulatory contract in that form.

(4) The procedure and time limits set out in this section may be varied, in relation to their application to the issue of a regulatory contract, by the terms of any regulatory contract by which the relevant regulated entity is bound.

(5) Unless the declaration of the relevant entity as a regulated entity has been revoked, the Commission shall ensure that prior to the term of a regulatory contract applying to a regulated entity expiring, the Commission issues under Section 35(1) a replacement regulatory contract that will take effect upon the expiry of the term of the previous regulatory contract.



(6) If the Commission fails to issue a replacement regulatory contract in accordance with Subsection (5), the draft regulatory contract (if any) submitted by the regulated entity under Subsection (1) shall be deemed to be a regulatory contract issued by the Commission under Section 35(1) and shall apply until such time as the Commission issues a regulatory contract under Section 35(1).

### **37. COMPLIANCE WITH REGULATORY CONTRACTS.**

(1) Notice of a regulatory contract being issued under Section 34 or Section 35 shall be published in the National Gazette.

(2) A regulatory contract takes effect on the date on which notice is published in the National Gazette or a later date of commencement specified in the regulatory contract.

(3) After publication of the notice in the National Gazette, the Commission shall ensure that copies of the regulatory contract are available for inspection and purchase by members of the public.

(4) A regulated entity shall comply with the terms of any regulatory contract that applies to it.

(5) The Commission shall perform any function that a regulatory contract contemplates will be performed by the Commission for the purposes of the regulatory contract in accordance with the regulatory contract.

(6) A regulatory contract that applies to that regulated entity shall not be varied or revoked except with the agreement of both the Commission and the regulated entity.

(7) A regulatory contract made under this Part –

(a) takes effect as an agreement between the Commission and the regulated entity to which the regulatory contract relates and shall be executed by the Commission and the regulated entity as the parties to the agreement as soon as practicable after it is made; and

(b) is not a subordinate legislative enactment for the purpose of Section 116 of the *Constitution* and need not be tabled in Parliament; and

(8) If, notwithstanding Subsection (7), a regulatory contract is disallowed in whole or in part pursuant to Section 116 of the *Constitution*, then –

(a) notwithstanding Section 91 of the *Interpretation Act 1975*, the Minister responsible for treasury matters or the Commission, as the case may be, shall remake, as soon as practicable, the regulatory contract in accordance with Part 3 in substantially the same form as the disallowed regulatory contract; and

(b) any person who has rights and liabilities under the regulatory contract that is disallowed in whole or in part is entitled to rely on the rights, and is obliged to continue to assume the liabilities, under the disallowed

regulatory contract, until such time as a further regulatory contract is made under Paragraph (a).

(9) This Act is an Act of Parliament contemplated by Section 116(2) of the *Constitution*.

### **38. ENFORCEMENT OF REGULATORY CONTRACTS.**

(1) If the Commission forms the opinion that, on the balance of probabilities, a regulated entity is contravening or is likely to contravene a regulatory contract and that the contravention is of a material nature, the Commission may, by written order, require the regulated entity to comply with the regulatory contract within a reasonable period as specified in the notice.

(2) An order under Subsection (1) may be a provisional order or a final order.

(3) Unless withdrawn earlier by the Commission, a provisional order has effect for a period of seven days commencing on the day that it is served.

(4) The Commission may serve another provisional order on the expiry of a proceeding provisional order.

(5) If the Commission has made a provisional order, the Commission shall not make a final order if –

(a) the relevant regulated entity has given an undertaking as to compliance with the regulatory contract and the Commission has accepted the undertaking; or

(b) the Commission becomes satisfied that the provisional order should not have been made having regard to the factors to which the Commission is required to have regard under this Act or any other Act.

(6) The Commission shall not make a final order unless the Commission has –

(a) given the relevant regulated entity at least 28 days' notice of its intention to do so; and

(b) given the relevant regulated entity a reasonable opportunity to make a submission in respect of the order; and

(c) considered any submission or other objection to the order received by the Commission.

(7) The Commission shall, as soon as possible after serving a provisional order or a final order on a regulated entity, publish a copy of the order in the National Gazette.

### **39. COMPLIANCE WITH ORDER.**

(1) A regulated entity shall comply with –

(a) a provisional order or a final order served on it under Section 38; or

- (b) an undertaking given by it and accepted by the Commission under Section 38.

Penalty: A fine not exceeding K10,000,000.00.

(2) If a person profits from a contravention of Subsection (1), the Commission may recover an amount equal to the profit from the person –

- (a) on application to a court convicting the person of an offence under that subsection; or
- (b) by action in a court of competent jurisdiction.

(3) Any amount recovered under this section shall be paid into the Consolidated Revenue Fund.

**PART 4. – CODES AND RULES.**

**40. CODES AND RULES.**

(1) The Commission may make codes or rules relating to the conduct or operations of a participant in a regulated industry.

(2) The Commission may vary or revoke a code or rule made under Subsection (1).

(3) The Commission shall, before making, varying or revoking a code or rule, consult with the Minister, any regulated entity to which the code or rule applies or is intended to apply and such other persons or representative bodies as the Commission considers appropriate.

(4) A code or rule may apply or incorporate, wholly or partially and with or without modification, a document referred to in the code or rule, as in force from time to time or as in force at a particular time.

(5) The Commission shall –

(a) give a copy of any new code or rule, a copy of any variation to any code or rule and notice of the revocation of any code or rule –

(i) to the Minister; and

(ii) to each regulated entity to which the code or rule applies or is intended to apply; and

(b) ensure that copies of the code or rule (as in force from time to time) are available for inspection and purchase by members of the public.

(6) Notice of the making of a code or rule, or the variation or revocation of a code or rule, shall be published in the National Gazette.

(7) A code or rule, or variation or revocation of a code or rule, takes effect on the date on which it is notified in the National Gazette or a later date specified by the Commission in the code or rule.

(8) The Commission shall keep the contents and operation of codes and rules under review with a view to ensuring their continued relevance and effectiveness.

(9) Nothing in this section permits a code or rule to be made, varied or revoked where that would be inconsistent with the terms of a regulatory contract.

**PART 5. – PANEL OF EXPERTS, APPEALS PANEL AND APPEALS.**

**41. PANEL OF EXPERTS.**

(1) The Head of State, acting with, and in accordance with, the advice of a majority of the members of the Appointments Committee, shall –

- (a) appoint a panel of experts who may sit as members of the Appeals Panel; and
- (b) appoint a member of the panel as the chairman of the panel.

(2) A person is not eligible for appointment to the Panel of Experts unless he –

- (a) is a person of integrity, independence of mind and of good reputation; and
- (b) has knowledge of or experience in industry, commerce, economics, law, public administration or consumer protection.

(3) At least one of the persons appointed to the Panel of Experts –

- (a) shall have international experience in the operation and administration of an economic regulatory regime; and
- (b) shall not be a resident of Papua New Guinea; and
- (c) shall be known as the ‘International Arbitrator’.

(4) A member of the Commission may not be appointed to the Panel of Experts.

(5) A member of the Panel of Experts shall be appointed for a term of office of five years and on the conditions determined by a majority of the members of the Appointments Committee and specified in the instrument of appointment.

(6) A member of the Panel of Experts may resign by giving to the Head of State three months’ notice in writing of his intention to resign.

(7) The period of three months specified in Subsection (6) is deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the Head of State, acting with, and in accordance with, the advice of a majority of the members of the Appointments Committee, by notice in writing to the member, fixes an earlier date for the commencement of that period.

(8) A member of the Appeals Panel may withdraw his resignation at any time before the period of three months referred to in Subsection (6) commences.

(9) A member of the Panel of Experts ceases to hold that office if he –

- (a) dies; or
- (b) resigns in accordance with Subsection (6); or
- (c) attains the age of 70 years; or
- (d) is not re-appointed at the end of a term of office; or
- (e) is removed from office under Subsection (10).

(10) The Court, on the application of the Minister, may remove or suspend a member of the Appeals Panel from office for –

- (a) misconduct; or
- (b) incapacity to perform satisfactorily the member's functions; or
- (c) material contravention of or failure to comply with the requirements of this or any other Act conferring functions on the Appeals Panel.

(11) The Minister may only bring an application under Subsection (10) acting with, and in accordance with, the advice of the National Executive Council.

(12) A member of the Appeals Panel may only be removed or suspended from office as provided in this section.

#### **42. APPEALS PANEL.**

(1) Subject to this section and the provisions of any other Act, the chairman of the Panel of Experts shall determine the constitution of the Appeals Panel for the purposes of reviewing any decision where an application for review of that decision is made to the Appeals Panel under this or any other Act.

(2) A member of the Panel of Experts who has a direct or indirect pecuniary interest in a matter before the Appeals Panel is disqualified from participating in the hearing of that matter.

(3) Subsection (2) does not apply if the interest is only as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.

(4) The Appeals Panel shall comprise one member of the Panel of Experts.

(5) Where the decision the subject of an application for review is a decision of the Commission referred to in Section 43(1), the Appeals Panel shall consist of an International Arbitrator (unless, in the case of a decision of the Commission referred to in Section 43(1)(c) to (e) inclusive, a regulatory contract applying to the regulated entity concerned at the time of the decision provides that the Appeals Panel need not consist of an International Arbitrator).

(6) Subject to Subsection (7) the Appeals Panel has no power to award costs against a party to a review.

(7) Subject to Section 43(11), the costs of the Appeals Panel shall be borne as determined by the Appeals Panel.

#### **43. APPEALS FROM CERTAIN DECISIONS OF THE COMMISSION.**

(1) An application may be made to the Appeals Panel –

- (a) by a regulated entity or the Minister for review of a decision of the Commission under Section 33 to declare that entity to be a regulated entity or to revoke a declaration of an entity as a regulated entity; or

- (b) by a regulated entity or the Minister for review of a decision of the Commission under Section 33 to declare any goods or services supplied or capable of being supplied by that entity to be regulated goods or regulated services (as the case may be) or to revoke a declaration of goods or services as regulated goods or services; or
- (c) by a regulated entity or the Minister for review of a decision of the Commission under Section 35 as to the terms and conditions of any regulatory contract applying to that entity that is issued by the Commission under that section; or
- (d) by a regulated entity or the Minister for review of a decision or deemed decision of the Commission under any regulatory contract applying to that entity that is issued under Section 34 or Section 35; or
- (e) by a regulated entity for review of a decision made by the Commission under Section 38.

(2) An application for review of a decision of the Commission referred to in Subsection (1) shall –

- (a) be in writing; and
- (b) set out the decision or part of the decision to which the application relates; and
- (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
- (d) be accompanied by any information that the applicant considers should be taken into account by the Appeals Panel on the review; and
- (e) be lodged with the Appeals Panel within ten days after written notice of the decision is given to the applicant or in the case of a deemed decision within ten days after the decision is deemed to have been made (or such longer period as the Appeals Panel may allow).

(3) If an application is made for review of a decision of the Commission referred to in Subsection (1) –

- (a) the Appeals Panel shall give a copy of the application to the Minister or the relevant regulated entity (as the case requires) and the Commission; and
- (b) invite whichever of them is not the applicant to join as a party to the review and make submissions on the matter the subject of the review in a manner and within the period specified by the Appeals Panel.

(4) The Appeals Panel may stay the operation of the decision of the Commission to which the application relates.

(5) If a decision is stayed, the Appeals Panel shall cause notice of the stay of the decision –

(a) to be given to the Minister, the regulated entity to which the decision applies and the Commission; and

(b) to be published in the National Gazette.

(6) A review shall be decided within six weeks of the application being lodged with the Appeals Panel, and, if the Appeals Panel fails to decide a review within this time, the applicant may apply to the National Court for an order that the Appeals Panel decide the review.

(7) On a review, the Appeals Panel –

(a) is only to consider the information that was available to the Commission when it made the decision that is the subject of the application for review; and

(b) is not bound by the rules of evidence; and

(c) may adopt such procedures it sees fit.

(8) After considering the application, the Appeals Panel may either –

(a) confirm the decision of the Commission; or

(b) return the matter to the Commission with such directions as the Appeals Panel considers appropriate and the Commission shall remake its decision in accordance with the Appeals Panel's directions including any directions in relation to the retrospective effect of the remade decision.

(9) In making its decision, the Appeals Panel is to have regard to the need for consistency with previous decisions of the Appeals Panel.

(10) The Appeals Panel shall give the parties to the review written notice of the Appeals Panel's decision, and the reasons for the decision, on the review.

(11) The costs of the Appeals Panel in a review of a decision of the Commission referred to in Subsection (1) shall be borne by the Commission to the extent the application for review is successful and by the applicant to the extent that application for review is unsuccessful, as determined by the Appeals Panel.



**PART 6. – COMPETITIVE MARKET CONDUCT.**

***Division 1.***

***Interpretation and Application.***

**44. INTERPRETATION.**

(1) In this Part, unless the contrary intention appears –

**“acquire”** –

- (a) in relation to goods, includes obtain by way of gift, purchase or exchange and take on lease, hire or hire purchase; and
- (b) in relation to services, includes accept; and
- (c) in relation to interests in land, includes obtain by way of gift, purchase, exchange, lease or licence;

**“arrive at”** in relation to an understanding, includes reach and enter into;

**“assets”** includes intangible assets;

**“authorization”** means an authorization granted by the Commission under Division 4;

**“business”** means any undertaking –

- (a) that is carried on for gain or reward; or
- (b) in the course of which –
  - (i) goods or services are acquired; or
  - (ii) any interest in land is acquired or disposed of,

otherwise than free of charge;

**“clearance”** means a clearance given by the Commission under Division 4;

**“covenant”** means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether or not for the benefit of other land) and “proposed covenant” has a corresponding meaning;

**“credit instrument”** means any agreement, whether in writing or not, acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times;

**“document”** means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes –

- (a) any writing on any material; and
- (b) any information recorded or stored by means of any tape-recorder, computer or other device, and any material subsequently derived from information so recorded or stored; and

- (c) any label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means; and
- (d) any book, map, plan, graph or drawing; and
- (e) any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

**“give effect to”**, in relation to a provision of a contract, arrangement or understanding, includes –

- (a) do an act or thing in pursuance of or in accordance with that provision; and
- (b) enforce or purport to enforce that provision;

**“goods”** includes –

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

**“price”** includes valuable consideration in any form, whether direct or indirect, and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing;

**“provision”** in relation to an understanding or arrangement, means any matter forming part of or relating to the understanding or arrangement;

**“services”** includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are or are to be provided, granted or conferred in trade and, without limiting the generality of the foregoing, also includes the rights, benefits, privileges or facilities that are or are to be provided, granted or conferred under any of the following classes of contract:–

- (a) a contract for, or in relation to –
  - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) the provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking or recreation; or

- (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance, including life assurance and life reinsurance;
- (c) a contract between a bank and a customer of the bank;
- (d) a contract for or in relation to the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits,

but does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service;

**“share”** means a share in the capital of a body corporate, whether or not it carries the right to vote at general meetings, and includes –

- (a) a beneficial interest in any such share; and
- (b) a power to exercise, or control the exercise of, a right to vote attaching to any such share that carries the right to vote at meetings of the body corporate; and
- (c) a power to acquire or dispose of, or control the acquisition or disposition of, any such share;

**“supply”** –

- (a) in relation to goods, includes supply (or resupply) by way of gift, sale, exchange, lease, hire or hire purchase; and
  - (b) in relation to services, includes provide, grant or confer,
- and “supply” as a noun, “supplied” and “supplier” have corresponding meanings;

**“trade”** means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.

(2) In this Part –

- (a) a reference to engaging in conduct is to be read as a reference to doing or refusing to do any act, including –
  - (i) the entering into, or the giving effect to a provision of, a contract or arrangement; and
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; and
  - (iii) the requiring of the giving of, or the giving of, a covenant; and

- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in Subsection (2)(a), is to be read as a reference to the doing of, or the refusing to do, any act, including –
  - (i) the entering into, or the giving effect to a provision of, a contract or arrangement; and
  - (ii) the arriving at, or the giving effect to a provision of, an understanding; and
  - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (c) a reference to refusing to do an act includes a reference to –
  - (i) refraining (otherwise than inadvertently) from doing that act; and
  - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

(3) Where any provision of this Part is expressed to render a provision of a contract or a covenant unenforceable if the provision of the contract or the covenant has or is likely to have a particular effect, that provision of this Part applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect, notwithstanding that –

- (a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or
- (b) the provision of the contract or the covenant will not or may not have that effect at a later time.

(4) In this Part –

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods; and
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both; and
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both; and
- (e) a reference to the resupply of goods acquired from a person includes a reference to –

- (i) a supply of the goods to another person in an altered form or condition; and
  - (ii) a supply to another person of other goods in which the goods have been incorporated.
- (5) For the purposes of this Part –
- (a) a provision of a contract, arrangement or understanding, or a covenant, is deemed to have had, or to have, a particular purpose if –
    - (i) the provision was or is included in the contract, arrangement or understanding, or the covenant was or is required to be given, for that purpose or purposes that included or include that purpose; and
    - (ii) that purpose was or is a substantial purpose; and
  - (b) a person is deemed to have engaged, or to engage, in conduct for a particular purpose or a particular reason if –
    - (i) that person engaged or engages in that conduct for that purpose or reason or for purposes or reasons that included or include that purpose or reason; and
    - (ii) that purpose or reason was or is a substantial purpose or reason.
- (6) In this Part –
- (a) a reference to a contract is to be construed as including a reference to a lease of, or a licence in respect of, any land or a building or part of a building, and is to be so construed notwithstanding any express reference in this Part to any such lease or licence; and
  - (b) a reference to making or entering into a contract, in relating to such a lease or licence, is to be read as a reference to granting or taking the lease or licence; and
  - (c) a reference to a party to a contract, in relation to such a lease or licence, is to be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or licence.
- (7) For the purposes of this Part, any two bodies corporate are to be treated as related if they are related corporations.
- (8) For the purpose of this Part –
- (a) any contract or arrangement entered into, or understanding arrived at, by an association or body of persons is deemed to have been entered into or arrived at by all the persons who are members of the association or body; and
  - (b) any recommendation made by an association or body of persons to its members or to any class of its members is deemed, notwithstanding anything to the contrary in the constitution or rules of the association or body of persons, to be an arrangement made between those members or

the members of that class and between the association or body of persons and those members or the members of that class.

(9) Nothing in Subsection (8) applies to –

- (a) any member of an association or body of persons who expressly notifies the association or body in writing that he disassociates himself from the contract, arrangement or understanding or any provision of it and who does so disassociate himself; or
- (b) any member of an association or body of persons who establishes that he had no knowledge and could not reasonably have been expected to have had knowledge of the contract, arrangement or understanding.

#### **45. CERTAIN TERMS DEFINED IN RELATION TO COMPETITION.**

(1) In this Part, “competition” means workable or effective competition, including competition from imports and substitutes.

(2) A reference in this Part to the term “market” is a reference to a market in the whole of Papua New Guinea for goods or services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them, including imports.

(3) In this Part, unless the context otherwise requires, a reference to the lessening of competition includes a reference to the hindering or preventing of competition.

(4) For the purposes of this Part, the effect on competition in a market is to be determined by reference to all material factors that affect competition in that market including competition from goods or services supplied or likely to be supplied by persons not resident or not carrying on business in Papua New Guinea.

(5) In Sections 50 and 51, a reference to a market in relation to the purpose or effect in respect of competition of a provision of a contract, arrangement or understanding, or of a covenant, or of conduct, is to be read as including a reference to –

- (a) a market in which a person who is a party to the contract, arrangement or understanding or any related corporation, or in which the person or any associated person (within the meaning of Section 51(7)) who requires the giving of or gives the covenant, supplies or acquires or is likely to supply or acquire, or would, but for that provision, covenant or conduct, supply or acquire or be likely to supply or acquire goods or services; and
- (b) any other market in which those goods or services may be supplied or acquired.

(6) For the purposes of Section 50, a provision of a contract, arrangement or understanding is deemed to have or to be likely to have the effect of substantially lessening competition in a market if that provision and –

- (a) the other provisions of that contract, arrangement or understanding; or
- (b) the provisions of any other contract, arrangement or understanding to which that person or any related corporation is a party,

taken together, have or are likely to have the effect of substantially lessening competition in that market.

(7) For the purposes of Section 51, a covenant is deemed to have or to be likely to have the effect of substantially lessening competition in a market if –

- (a) that covenant; and
- (b) any other covenant to the benefit of which that person or an associated person (within the meaning of Section 51(7)) is entitled or would be entitled if the covenant were enforceable,

taken together, have or are likely to have the effect of substantially lessening competition in that market.

(8) For the purposes of Sections 50 and 51, the engaging in conduct is deemed to have or to be likely to have the effect of substantially lessening competition in a market if –

- (a) the engaging in that conduct; and
- (b) the engaging by that person in conduct of the same or a similar kind,

taken together, have or are likely to have the effect of substantially lessening competition in that market.

#### **46. COMMISSION TO CONSIDER EFFICIENCY.**

Where the Commission is required under this Part to determine whether or not, or the extent to which, conduct will result, or will be likely to result, in a benefit to the public, the Commission shall have regard to any efficiencies that the Commission considers will result, or will be likely to result, from that conduct.

#### **47. APPLICATION OF PART TO CONDUCT OUTSIDE PAPUA NEW GUINEA.**

(1) This Part extends to the engaging in conduct outside Papua New Guinea by any person resident or carrying on business in Papua New Guinea to the extent that such conduct affects a market in Papua New Guinea.

(2) Without limiting Subsection (1), Section 69 extends to the acquisition outside Papua New Guinea by a person (whether or not the person is resident or carries on business in Papua New Guinea) of the assets of a business or shares to the extent that the acquisition affects a market in Papua New Guinea.

#### **48. APPLICATION OF PART TO THE STATE.**

(1) Subject to this section, this Part binds the State only in so far as the State engages in trade.

(2) The State is not liable to pay a pecuniary penalty under Section 87.

(3) The State is not liable to be prosecuted for an offence against this Part.

(4) Where it is alleged that the State has contravened any provision of this Part and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the Court for a declaration that the State has contravened that provision and, if the Court is satisfied beyond a reasonable doubt that the State has contravened that provision, it may make a declaration accordingly.

(5) The protection in Subsections (2) and (3) does not apply to an authority of the State.

**49. LAW RELATING TO RESTRAINT OF TRADE AND BREACHES OF CONFIDENCE NOT AFFECTED.**

(1) Nothing in this Part limits or affects any rule of law relating to restraint of trade not inconsistent with any of the provisions of this Part.

(2) Nothing in this Part limits or affects any rule of law relating to breaches of confidence.

(3) No rule of law referred to in Subsection (1) or Subsection (2) affects the interpretation of any of the provisions of this Part.

***Division 2.***

***Market Conduct Rules.***

***Subdivision 1. – Practices Substantially Lessening Competition.***

**50. CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS SUBSTANTIALLY LESSENING COMPETITION PROHIBITED.**

(1) A person shall not enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

(2) A person shall not give effect to a provision of a contract, arrangement or understanding that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

(3) Subsection (2) applies in respect of a contract or arrangement entered into, or an understanding arrived at, whether before or after the commencement of this section.

(4) No provision of a contract, whether made before or after the commencement of this section, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market, is enforceable.



**51. COVENANTS SUBSTANTIALLY LESSENING COMPETITION PROHIBITED.**

(1) A person, either on his own or on behalf of an associated person, shall not –

- (a) require the giving of a covenant; or
- (b) give a covenant,

that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

(2) A person, either on his own or on behalf of an associated person, shall not carry out or enforce the terms of a covenant that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

(3) Subsection (2) applies to a covenant whether given before or after the commencement of this section.

(4) No covenant, whether given before or after the commencement of this section, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market, is enforceable.

(5) A person shall not –

- (a) threaten to engage in particular conduct if a person who, but for Subsection (4), would be bound by a covenant, does not comply with the terms of the covenant; or
- (b) engage in particular conduct because a person who, but for Subsection (4), would be bound by a covenant, has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant.

(6) Where a person –

- (a) issues an invitation to another person to enter into a contract containing a covenant; or
- (b) makes an offer to another person to enter into a contract containing a covenant; or
- (c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms,

that person, by issuing that invitation, making that offer, or making that fact known, is deemed to require the giving of the covenant.

(7) For the purposes of this section, two persons shall be taken to be associated with each other in relation to a covenant or proposed covenant if, but only if –

- (a) one person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person in relation to the covenant or proposed covenant; or
- (b) the persons are related corporations.

**52. CONTRACTS, ARRANGEMENTS OR UNDERSTANDINGS CONTAINING EXCLUSIONARY PROVISIONS PROHIBITED.**

(1) Subject to Subsection (2), for the purposes of this Part, a provision of a contract, arrangement or understanding is an exclusionary provision if –

- (a) it is a provision of a contract or arrangement entered into, or understanding arrived at, between persons of whom any two or more are in competition with each other; and
- (b) it has the purpose of preventing, restricting or limiting –
  - (i) the supply of goods or services to; or
  - (ii) the acquisition of goods or services from,

any particular person or class of persons, either generally or in particular circumstances or on particular conditions, by all or any of the parties to the contract, arrangement or understanding, or if a party is a body corporate, by a corporation that is related to that party; and

- (c) the particular person or the class of persons to which the provision relates is in competition with one or more of the parties to the contract, arrangement or understanding in relation to the supply or acquisition of those goods or services.

(2) A provision of a contract, arrangement or understanding that would, but for this subsection, be an exclusionary provision under Subsection (1) is not an exclusionary provision if it is proved that the provision does not have the purpose, or does not have or is not likely to have the effect, of substantially lessening competition in a market.

(3) For the purpose of Subsection (1)(a) and (c), a person is in competition with another person if that person or any related corporation is, or is likely to be, or, but for the relevant provision, would be or would be likely to be, in competition with the other person, or with a related corporation of that person, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.

(4) A person shall not enter into a contract or arrangement, or arrive at an understanding, that contains an exclusionary provision.

(5) A person shall not give effect to an exclusionary provision of a contract, arrangement or understanding.

(6) Subsection (5) applies to an exclusionary provision of a contract or arrangement made, or understanding arrived at, whether before or after the commencement of this section.

(7) No exclusionary provision of a contract, whether made before or after the commencement of this section, is enforceable.

***Subdivision 2. – Price Fixing.***

**53. CERTAIN PROVISION OF CONTRACTS, ETC., WITH RESPECT TO PRICES DEEMED TO SUBSTANTIALLY LESSEN COMPETITION.**

(1) Without limiting the generality of Section 50, a provision of a contract, arrangement or understanding is deemed for the purposes of that section to have the purpose, or to have or to be likely to have effect, of substantially lessening competition in a market if the provision has the purpose, or has or is likely to have the effect, of fixing, controlling, or maintaining, or providing for the fixing, controlling, or maintaining of, the price for goods or services, or any discount, allowance, rebate or credit in relation to goods or services, that are –

- (a) supplied or acquired by the parties to the contract, arrangement or understanding, or by any of them, or by any corporations that are related to any of them, in competition with each other; or
- (b) resupplied by persons to whom the goods are supplied by the parties to the contract, arrangement or understanding, or by any of them, or by any corporations that are related to any them, in competition with each other.

(2) The reference in Subsection (1)(a) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

**54. JOINT VENTURE PRICING EXEMPT FROM APPLICATION OF SECTION 53.**

(1) For the purposes of this section –

- (a) “joint venture” means an activity in trade –
  - (i) carried on by two or more persons, whether or not in partnership; or
  - (ii) carried on by a body corporate for the purpose of enabling two or more persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate or a related corporation; and
- (b) a reference to a contract or arrangement entered into, or an understanding arrived at, for the purposes of a joint venture is, in relation to a joint venture by way of an activity carried on by a body corporate in terms of Subsection (1)(a)(ii), to be read as including a reference to the constitution, memorandum and articles of association, rules, or other document that constitute or constitutes, or is or are to constitute, that body corporate.

(2) Nothing in Section 53 applies to a provision of a contract or arrangement entered into, or an understanding arrived at, for the purposes of a joint venture, to the extent that the provision relates to –

- (a) the joint supply by two or more of the parties to the joint venture, or the supply by all the parties to the joint venture in proportion to their respective interests in the joint venture, of goods jointly produced by all the parties to the joint venture in pursuance of the joint venture; or
- (b) the joint supply by two or more of the parties to the joint venture of services in pursuance of the joint venture, or the supply by all the parties to the joint venture in proportion to their respective interests in the joint venture, of services in pursuance of, and made available as a result of, the joint venture; or
- (c) in the case of a joint venture carried on by a body corporate in terms of Subsection (1)(a)(ii) –
  - (i) the supply by that body corporate of goods produced by it in pursuance of the joint venture; or
  - (ii) the supply by that body corporate of services in pursuance of the joint venture, not being services supplied on behalf of the body corporate by a person who is the owner of shares in the capital of the body corporate or in the capital of a corporation that is related to such a person.

**55. CERTAIN RECOMMENDATIONS AS TO PRICES FOR GOODS AND SERVICES EXEMPT FROM APPLICATION OF SECTION 53.**

Nothing in Section 53 applies to a provision of a contract, arrangement or understanding to the extent that the provision recommends or provides for the recommending of the price for, or a discount, allowance, rebate or credit in relation to, goods or services where the parties to the contract, arrangement or understanding include not less than 50 persons (corporations that are related to each other being counted as a single person) who supply or acquire, in trade, goods or services to which the provision applies.

**56. JOINT BUYING AND PROMOTION ARRANGEMENTS EXEMPT FROM APPLICATION OF SECTION 53.**

Nothing in Section 53 applies to a provision of a contract, arrangement or understanding that –

- (a) relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by parties to the contract, arrangement or understanding; or
- (b) provides for joint advertising of the price for the resupply of goods or services so acquired.

**57. CERTAIN PROVISIONS OF COVENANTS WITH RESPECT TO PRICES DEEMED TO SUBSTANTIALLY LESSEN COMPETITION.**

(1) Without limiting the generality of Section 51, a covenant is deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market if the covenant has the purpose, or has or is likely to have the effect, of fixing, controlling, or, or providing for the fixing, controlling or maintain of, the price for goods or services, or any discount, allowance, rebate or credit in relation to goods or services, that are –

- (a) supplied or acquired by the persons giving the covenant or the persons entitled to the benefit of the covenant, or by any of them, or by any corporations that are related to any of them, in competition with each other; or
- (b) resupplied by persons to whom the goods are supplied by the persons giving the covenant or the persons entitled to the benefit of the covenant, or by any of them, or by any corporations that are related to any of them, in competition with each other.

(2) The reference in Subsection (1)(a) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for the covenant, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

***Subdivision 3. – Taking Advantage of Market Power.***

**58. TAKING ADVANTAGE OF MARKET POWER.**

(1) Nothing in this section applies to any practice or conduct to which this Part applies that has been authorized under Division 3 of this Part.

(2) A person that has a substantial degree of power in a market shall not take advantage of that power for the purpose of –

- (a) restricting the entry of a person into that or any other market; or
- (b) preventing or deterring a person from engaging in competitive conduct in that or any other market; or
- (c) eliminating a person from that or any other market.

(3) For the purposes of this section, a person does not take advantage of a substantial degree of power in a market by reason only that the person seeks to enforce a statutory intellectual property right, within the meaning of Section 67(2), in Papua New Guinea.

(4) For the purposes of this section, a reference to a person includes two or more persons that are related corporations.

(5) The existence of any of the purposes specified in Subsection (2) may be inferred from the conduct of any relevant person or from any other relevant circumstances.

***Subdivision 4. – Resale Price Maintenance.***

**59. RESALE PRICE MAINTENANCE BY SUPPLIERS PROHIBITED.**

(1) A person shall not engage in the practice of resale price maintenance.

(2) For the purposes of this section, a person engages in the practice of resale price maintenance if that person (in this section referred to as the “supplier”) does any of the following acts: –

- (a) the supplier makes it known to another person that the supplier will not supply goods or services to the other person unless the other person agrees not to sell or resupply those goods or services at a price less than a price specified by the supplier;
- (b) the supplier induces, or attempts to induce, another person not to sell or resupply, at a price less than a price specified by the supplier, goods or services supplied to the other person by the supplier or by a third person who, directly or indirectly, has obtained the goods or services from the supplier;
- (c) the supplier enters, or offers to enter into an agreement, for the supply of goods or services to another person where one of the terms is or would be that the other person will not sell or resupply the goods or services at a price less than a price specified, or that would be specified, by the supplier;
- (d) the supplier withholds the supply of goods or services to another person for the reason that the other person –
  - (i) has not agreed to the condition referred to in Paragraph (a); or
  - (ii) has sold or resupplied, or is likely to sell or resupply, goods or services supplied to him by the supplier, or good or services supplied to him by a third person who, directly or indirectly, has obtained the goods or services from the supplier, at a price less than a price specified by the supplier as the price below which the goods or services are not to be sold or resupplied;
- (e) the supplier withholds the supply of goods or services to another person for the reason that a third person who, directly or indirectly, has obtained, or wishes to obtain, goods or services from the other person –
  - (i) has not agreed not to sell or resupply those goods or services at a price less than a price specified by the supplier; or
  - (ii) has sold or resupplied or is likely to sell or resupply goods or services supplied or to be supplied to that third person by the other person at a price less than a price specified by the supplier

as the price below which the goods or services are not to be sold or resupplied.

(3) For the purposes of Subsection (2) –

- (a) where the supplier makes it known, in respect of any goods or services, that the price below which those goods or services are not to be sold or resupplied is a price specified by another person in respect of those goods or services, or in respect of goods or services of a like description, that price is deemed to have been specified, in respect of the first-mentioned goods or services, by the supplier; and
- (b) where a set form, method or formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that set form, method or formula, that price is deemed to have been specified by the supplier; and
- (c) where the supplier makes it known, in respect of any goods or services, that the price below which those goods or services are not to be sold or resupplied is a price ascertained by calculation from or by reference to a set form, method or formula specified by another person in respect of those goods or services, or in respect of goods or service of a like description, that price is deemed to have been specified, in respect of the first-mentioned goods or services, by the supplier; and
- (d) where the supplier makes a statement to another person of a price that is likely to be understood by that person as the price below which goods or services are not to be sold or resupplied, that price is deemed to have been specified by the supplier as the price below which the goods or services are not to be sold; and
- (e) anything done by a person acting on behalf of, or by arrangement with, the supplier is deemed to have been done by the supplier.

(4) For the purposes of this section, sale and resupply includes advertise for sale or resupply, display for sale or resupply and offer for sale or resupply, and sell, selling and sold and resupplying and resupplied have corresponding meanings.

**60. RESALE PRICE MAINTENANCE BY OTHERS PROHIBITED.**

(1) A person (in this section referred to as the “third party”) shall not –

- (a) make it known to another person that the third party proposes to engage in conduct, whether alone or in concert with any other person, that will hinder or prevent the supply of any goods or services to, or the acquisition of any goods or services from, that person unless that person agrees not to sell or resupply those goods or services at a price less than the price specified by the third party; or
- (b) engage in conduct, whether alone or in concert with any other person, that will hinder or prevent the supply of goods or services to, or the acquisition of goods or services from, another person for the purpose of

inducing that person not to sell or resupply those goods or services at a price less than a price specified by the third party.

(2) For the purposes of Subsection (1) –

- (a) where the third party makes it known, in respect of any goods or services, that the price below which those goods or services are not to be sold or resupplied is a price specified by another person in respect of those goods or services, or in respect of goods or services of a like description, that price is deemed to have been specified in respect of the first-mentioned goods or services by the third party; and
- (b) where a set form, method or formula is specified by or on behalf of the third party and a price may be ascertained by calculation from, or by reference to, that set form, method or formula, that price is deemed to have been specified by the third party; and
- (c) where the third party makes it known, in respect of any goods or services, that the price below which those goods or services are not to be sold or resupplied is a price ascertained by calculation from or by reference to a set form, method or formula specified by another person in respect of those goods or services, or in respect of goods or services of a like description, that price is deemed to have been specified, in respect of the first-mentioned goods or services, by the third party; and
- (d) where the third party makes a statement to another person of a price that is likely to be understood by that person as the price below which goods or services are not to be sold or resupplied, that price is deemed to have been specified by the third party as the price below which the goods or services are not to be sold; and
- (e) anything done by a person acting on behalf of, or by arrangement with, the third party is deemed to have been done by the third party.

(3) For the purposes of this section, sale and resupply includes advertise for sale or resupply, display for sale or resupply and offer for sale or resupply, and sell, selling and sold and resupplying and resupplied have corresponding meanings.

## **61. RECOMMENDED PRICES.**

For the purposes of Section 59(2)(b) a supplier of any goods or services is not to be taken as inducing, or attempting to induce, another person not to sell or resupply those goods or services at a price less than a price specified by the supplier merely because –

- (a) a statement of a price is applied or used in relation to the goods or services or is applied to a covering, label, reel or thing if the statement is preceded by the words “recommended price”; or
- (b) the supplier has given notification in writing to the other person (not being a notification in the form of a statement applied to the goods or services or to any covering, label, reel or thing as mentioned in



Paragraph (a)) of the price that the supplier recommends as appropriate for the sale or resupply of those goods or services, if the notification, and each writing that refers, whether expressly or by implication, to the notification, includes a statement to the effect that the price is a recommended price only and there is no obligation to comply with the recommendation.

**62. WITHHOLDING THE SUPPLY OF GOODS OR SERVICES.**

For the purposes of Section 59(2)(d) and (e), the supplier is deemed to withhold the supply of goods or services to another person if –

- (a) the supplier refuses or fails to supply those goods or services to, or as requested by, the other person; or
- (b) the supplier refuses to supply those goods or services except on terms that are disadvantageous to the other person; or
- (c) in supplying those goods or services to the other person, the supplier treats that person less favourably, whether in respect of time, method, place of delivery or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods or services; or
- (d) the supplier causes or procures a person to act in relation to the supply of goods or services in the manner specified in Paragraphs (a), (b) or (c).

**63. PREVENTING THE SUPPLY OF GOODS OR SERVICES.**

For the purposes of Section 60 –

- (a) the supply of goods or services is deemed to be prevented if –
  - (i) the supply of those goods or services is refused except on terms that are disadvantageous to the person acquiring the goods or services; or
  - (ii) the supply of those goods or services is on terms which are less favourable, whether in respect of time, method, place of delivery or otherwise, than the person who supplies the goods or services treats other persons to whom the same or similar goods or services are supplied; and
- (b) the acquisition of goods or services is deemed to be prevented if –
  - (i) the acquisition of those goods or services is refused except on terms that are disadvantageous to the person supplying the goods or services; or
  - (ii) the acquisition of those goods or services is on terms which are less favourable, whether in respect of time, method, place of delivery or otherwise, than the person who acquires the goods or services treats other persons from whom the same or similar goods or services are acquired.

**64. SPECIAL EVIDENTIARY PROVISIONS IN RESPECT OF CERTAIN RESALE PRICE MAINTENANCE PRACTICES.**

(1) Where, in proceedings under this Act against a supplier for a contravention of Section 59(2)(b) or (e), it is proved that –

- (a) the supplier has acted in a manner referred to in Section 62; and
- (b) during a period ending immediately before the supplier so acted, the supplier had been supplying goods or services of the kind withheld either to –
  - (i) the person in respect of whom the contravention is alleged; or
  - (ii) a person carrying on a similar business to that person; and
- (c) during a period of six months immediately before the supplier so acted, the supplier became aware of a matter or circumstance capable of constituting a reason referred to in Section 59(2)(d) or (e),

it must be presumed, in the absence of evidence to the contrary, that the supplier so acted on account of that matter or circumstance.

(2) Nothing in Subsection (1) applies in respect of terms imposed by a supplier that are disadvantageous or treatment that is less favourable than the supplier accords other persons if the terms or treatment consists only of a requirement by the supplier as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

***Subdivision 5. – Exceptions.*****65. STATUTORY EXCEPTIONS.**

(1) Nothing in this Division applies in respect of any act, matter or thing that is, or is of a kind, specifically authorized by any Act or regulation made under this or any Act.

(2) For the purposes of Subsection (1), an Act or regulation does not provide specific authority for an act, matter or thing if it provides in general terms for that act, matter or thing, notwithstanding that the act, matter or thing requires or may be subject to approval or authorization by a Minister, statutory body or a person holding any particular office.

**66. OTHER EXCEPTIONS.**

(1) Nothing in this Division applies to –

- (a) the entering into of a contract or arrangement, or arriving at an understanding, between partners none of whom is a body corporate in so far as it contains a provision in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or

- understanding while that party is, or after that party ceases to be, a partner; or
- (b) the entering into of a contract of service or a contract for the provision of services in so far as it contains a provision by which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which that person may engage during, or after the termination of, the contract; or
  - (c) the entering into of a contract for, or the giving or requiring the giving of a covenant in connection with, the sale of a business or shares in the capital of a body corporate carrying on a business in so far as it contains a provision that is solely for the protection of the purchaser in respect of the goodwill of the business; or
  - (d) the entering into of a contract or arrangement, or arriving at an understanding, in so far as it contains a provision obligating a person to comply with or apply standards of dimension, design, quality, or performance prepared or approved by any association or body as prescribed for the purpose of this paragraph; or
  - (e) the entering into of a contract or arrangement, or arriving at an understanding, in so far as it contains a provision that relates to the remuneration, conditions of employment, hours of work or working conditions of employees; or
  - (f) the entering into of a contract or arrangement, or arriving at an understanding, in so far as it contains a provision that relates exclusively to the export of goods from Papua New Guinea or exclusively to the supply of services wholly outside Papua New Guinea, if full and accurate particulars of the provision (not including particulars of prices for goods or service but including particulars of any method of fixing, controlling or maintaining such prices) were furnished to the Commission before the expiration of 15 days after the date on which the contract or arrangement was made or the understanding was arrived at, or 60 days after the commencement of this Section 66, whichever is the later; or
  - (g) any act done, otherwise than in trade, in concert by users of goods or services against the suppliers of those goods or services; or
  - (h) any act done to give effect to a provision of a contract, arrangement or understanding, or to a covenant, referred to in Paragraph (a) to Paragraph (f) inclusive.
- (2) Except for Section 58, nothing in this Division applies to –
- (a) the entering into of a contract or arrangement, or arriving at an understanding, or the giving or requiring the giving of a covenant, if the only parties, or (in the case of a covenant or proposed covenant) the only persons who are or would be respectively bound by, or entitled to the

benefit of, the covenant or proposed covenant, are, or would be, related corporations; or

(b) any act done to give effect to a provision of a contract, arrangement or understanding, or to a covenant, referred to in Paragraph (a).

(3) Nothing in this Division applies to –

(a) the entering into of a contract or arrangement, or arriving at an understanding, in so far as it contains a provision exclusively for the carriage of goods by sea from a place in Papua New Guinea to a place outside Papua New Guinea or from a place outside Papua New Guinea to a place in Papua New Guinea; or

(b) any act done to give effect to a provision of a contract, arrangement or understanding is not a provision exclusively for the carriage of goods by sea if it relates to the carriage of goods to or from a ship or the loading or unloading of a ship.

(4) For the purposes of Subsection (3), a provision of a contract, arrangement or understanding is not a provision exclusively for the carriage of goods by sea if it relates to the carriage of goods to or from a ship or the loading or unloading of a ship.

## **67. EXCEPTIONS IN RELATION TO INTELLECTUAL PROPERTY RIGHTS.**

(1) Nothing in this Division, except Section 58, 59 or 60, applies to –

(a) the entering into of a contract or arrangement, or arriving at an understanding, in so far as it contains a provision authorizing any act that would otherwise be prohibited by reason of the existence of a statutory intellectual property right; or

(b) any act done to give effect to a provision of a contract, arrangement or understanding referred to in Paragraph (a).

(2) For the purposes of Subsection (1), a statutory intellectual property right means a right, privilege or entitlement that is conferred, or acknowledged as valid, by or under –

(a) the *Patents and Industrial Designs Act 2000*; or

(b) the *Trade Marks Act 1978*; or

(c) the *Copyright and Neighbouring Rights Act 2000*.

(3) For the purposes of Subsection (2) –

(a) a person who has applied for a patent in accordance with Section 19 of the *Patents and Industrial Designs Act 2000* and filed the complete specification in relation to the application is deemed, until the application is determined, to have been granted the patent to which the application relates; and

- (b) a person who has made an application for the registration of a design in accordance with Section 43 of the *Patents and Industrial Designs Act 2000* is deemed, until the application is determined, to be the registered proprietor of the design; and
- (c) a person who has made an application in accordance with Section 32 of the *Trade Marks Act 1978* for registration of a trade mark is deemed, until the application is determined, to be the registered proprietor of the trade mark.

**68. SAVING IN RESPECT OF BUSINESS ACQUISITIONS.**

Nothing in this Division applies to –

- (a) the entering into of a contract or arrangement, or the arriving at of an understanding, in so far as the contract, arrangement or understanding contains a provision that provides for the acquisition or disposition of assets of a business or shares; or
- (b) any act done to give effect to a provision of a contract, arrangement or understanding that provides for the acquisition or disposition of assets of a business or shares.

***Division 3.***

***Business Acquisitions.***

**69. CERTAIN ACQUISITIONS PROHIBITED.**

(1) A person shall not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.

(2) For the purposes of this section, a reference to a person includes two or more persons that are related corporations or are associated.

(3) For the purposes of this section, a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

(4) A person is not able to exert a substantial degree of influence over the activities of another person for the purposes of Subsection (3) by reason only of the fact that –

- (a) those persons are in competition in the same market; or
- (b) one of them supplies goods or services to the other.

(5) Without limiting the matters that may be taken into account for the purpose of Subsection (1) in determining whether the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market, the following matters shall be taken into account: –

- (a) the actual and potential level of import competition in the market;

- (b) the nature and effect of barriers to entry to the market;
- (c) the number of buyers and sellers in the market;
- (d) the degree of countervailing power in the market;
- (e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;
- (f) the extent to which substitutes are available, or are likely to become available, in the market;
- (g) the dynamic characteristics of the market, including growth, innovation and product differentiation;
- (h) the likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor;
- (i) the nature and extent of vertical integration in the market.

#### *Division 4.*

#### *Authorizations and Clearances.*

### **70. COMMISSION MAY GRANT AUTHORIZATION FOR RESTRICTIVE TRADE PRACTICES.**

(1) A person who wishes to enter into a contract or arrangement or arrive at an understanding, to which he considers Section 50 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to enter into the contract or arrangement or arrive at the understanding.

(2) A person who wishes to give effect to a provision of a contract, arrangement or understanding to which he considers Section 50 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to give effect to the provision of the contract, arrangement or understanding.

(3) A person who wishes to carry out or enforce a covenant to which he considers Section 51 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to carry out or enforce the covenant.

(4) A person who wishes to require the giving of, or to give, a covenant to which he considers Section 51 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to require the giving of, or to give, the covenant.

(5) A person who wishes to enter into a contract or arrangement, or arrive at an understanding, to which he considers Section 52 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to enter into the contract or arrangement or arrive at the understanding.

(6) A person who wishes to give effect to an exclusionary provision of a contract, agreement or understanding to which he considers Section 52 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to give effect to the exclusionary provision of the contract, arrangement or understanding.

(7) A person who wishes to engage in the practice of resale price maintenance to which he considers Section 59 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to engage in the practice.

(8) A person who wishes to do an act or to engage in conduct to which he considers Section 60 would apply, or might apply, may apply to the Commission for an authorization to do so, and the Commission may grant an authorization for that person to do the act or engage in the conduct.

#### **71. EFFECT OF AUTHORIZATION.**

(1) While an authorization under Section 70(1) or (5) remains in force, as the case may be, nothing in Section 50 or Section 52, as the case may be, shall prevent the applicant from –

- (a) entering into or, in accordance with the authorization, giving effect to or enforcing, any provision of the contract to which the authorization relates; or
- (b) entering into or, in accordance with the authorization, giving effect to, the arrangement to which the authorization relates; or
- (c) arriving at or, in accordance with the authorization, giving effect to, the understanding to which the authorization relates.

(2) While an authorization under Section 70(2) or (6) remains in force, as the case may be, nothing in Section 50 or Section 52, as the case may be, shall prevent the applicant from –

- (a) in accordance with the authorization, giving effect to or enforcing the contract to which the authorization relates; or
- (b) in accordance with the authorization, giving effect to the arrangement or understanding to which the authorization relates.

(3) While an authorization under Section 70(3) remains in force, nothing in Section 51 shall prevent the applicant from –

- (a) requiring the giving of, or giving, the covenant to which the authorization relates; or
- (b) carrying out or enforcing the terms of the covenant to which the authorization relates in accordance with the authorization.

(4) While an authorization under Section 70(4) remains in force, nothing in Section 51 shall prevent the applicant from carrying out or enforcing the terms of the covenant to which the authorization relates in accordance with the authorization.

(5) While an authorization under Section 70(7) remains in force, nothing in Section 59 shall prevent the applicant from engaging in the practice to which the authorization relates in accordance with the authorization.

(6) While an authorization under Section 70(8) remains in force, nothing in Section 60 shall prevent the applicant from doing the act or engaging in the conduct to which the authorization relates in accordance with the authorization.

## **72. ADDITIONAL PROVISIONS RELATING TO AUTHORIZATIONS.**

(1) An authorization granted by the Commission to a person under Section 70 to –

- (a) enter into a contract or arrangement or arrive at an understanding; or
- (b) give effect to a provision of a contract, arrangement or understanding; or
- (c) require the giving of, or give, a covenant; or
- (d) carry out or enforce the terms of a covenant; or
- (e) engage in the practice of resale price maintenance; or
- (f) do any act or engage in any conduct referred to in Section 60,

shall have effect as if it were also an authorization in the same terms to every other person named or referred to in the application for the authorization as a party to the contract, arrangement or understanding, or the practice, act or conduct or as a person who is or would be bound by, or entitled to the benefit of, the covenant, as the case may be.

(2) An authorization granted to a person under Section 70 may be expressed to apply to or in relation to another person who –

- (a) in the case of an authorization to enter into a contract or arrangement or arrive at an understanding, becomes a party to the proposed contract or arrangement at a time after it is entered into or becomes a party to the proposed understanding at a time after it is arrived at; and
- (b) in the case of an authorization to give effect to a provision of a contract, arrangement or understanding, becomes a party to the contract, arrangement or understanding at a time after the authorization is granted; and
- (c) in the case of an authorization to require the giving of, or to give, a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the covenant is given; and
- (d) in the case of an authorization to carry out or enforce the terms of a covenant, becomes bound by, or entitled to the benefit of, the covenant at a time after the authorization is granted.



**73. CONTRACTS OR COVENANTS SUBJECT TO AUTHORIZATION NOT PROHIBITED UNDER CERTAIN CONDITIONS.**

- (1) Notwithstanding anything in this Part, but subject to Section 75 –
- (a) a contract to which Section 50 or 52 applies may be entered into if the requirements of Subsection (2) are complied with; and
  - (b) a covenant to which Section 51 applies may be required to be given, or may be given, if the requirements of Subsection (2) are complied with.
- (2) For the purposes of Subsection (1), the requirements that must be met are

- 
- (a) in the case of a contract to which Section 50 or Section 52 applies –
    - (i) that the contract is subject to a condition that the provision, or exclusionary provision, as the case may be, does not come into force unless and until authorization is granted to give effect to the provision or exclusionary provision; and
    - (ii) that application has been made for that authorization within 15 days after the contract is entered into; and
  - (b) in the case of a covenant to which Section 51 applies –
    - (i) that the covenant is subject to the condition that it does not have effect unless and until authorization is granted to give effect to it; and
    - (ii) that application has been made for that authorization within 15 days after the covenant is made.

**74. WHEN COMMISSION MAY GRANT AUTHORIZATION.**

- (1) The Commission may grant an authorization to a person –
- (a) to enter into a contract or arrangement, or to arrive at an understanding, even though the contract or arrangement has been entered into, or the understanding has been arrived at, before the Commission makes a determination in respect of the application for that authorization; or
  - (b) to give effect to a provision of a contract or arrangement entered into, or an understanding arrived at, even though the applicant has already given, or is already giving, effect to the provision before the Commission makes a determination in respect of the application for that authorization; or
  - (c) to require the giving of, or to give a covenant even though the covenant has been given before the Commission makes a determination in respect of the application for that authorization; or
  - (d) to do an act or engage in conduct referred to in Section 59 or Section 60 even though the applicant has already done the act or is already

engaging in the conduct before the Commission makes a determination in respect of the application for that authorization.

(2) Subject to Subsection (3), all of the parties to the contract, arrangement or understanding shall, unless and until authorization is granted, discontinue –

- (a) giving effect to the provision of the contract, arrangement or understanding; or
- (b) engaging in conduct referred to in Section 59 or Section 60.

(3) The parties to a contract, arrangement or understanding may do any of the things set out in Subsection (2) if any of the parties establishes to the satisfaction of the Commission that discontinuing any of those things would, or would be likely to, result in exceptional hardship to any of the parties.

#### **75. CONTRAVENTIONS NOT PREVENTED BY GRANTING OF AUTHORIZATION UNDER SECTION 73 OR SECTION 74.**

Nothing in Section 73 or Section 74 prevents conduct that occurred before an authorization was granted in respect of it and that would otherwise have constituted a contravention of this Part from continuing to constitute a contravention.

#### **76. PROCEDURE FOR APPLICATION FOR AUTHORIZATION OF RESTRICTIVE TRADE PRACTICES.**

(1) If a form has been prescribed for this purpose, an application for an authorization under Section 70 shall –

- (a) be made in the prescribed form; and
- (b) contain such particulars as may be specified in the form; and
- (c) be accompanied by the prescribed application fee, if any.

(2) On the receipt of an application (that complies with Subsection (1) if applicable), the Commission shall immediately –

- (a) record the application in the register to be kept by the Commission for the purpose; and
- (b) give written notice of the date of registration to the person by or on whose behalf the application was made; and
- (c) give notice of the application to any other person who, in the Commission's opinion, is likely to have an interest in the application; and
- (d) give public notice of the application in such manner as the Commission thinks fit.

(3) A person who has an interest in any application in respect of which a notice is given under Subsection (2)(d) may give written notice to the Commission of his interest and the reason for that interest.

(4) On the receipt of an application that does not comply with Subsection (1), the Commission may, at its discretion –

- (a) accept the application and take the steps referred to in Subsection (2) in respect of that application; or
- (b) return the application to the person by or on whose behalf it was made; or
- (c) decline to register the application until it complies with Subsection (1).

(5) Where the Commission declines to register an application under Subsection (4)(c), it shall immediately notify the person by or on whose behalf the application was made.

(6) The person making the application under Subsection (1), and any person on whose behalf it was made, and any person to whom the application relates, shall from time to time produce, or, as the case may be, furnish to the Commission, within such time as the Commission may specify, such further documents or information in relation to the application as may be required by the Commission for the purpose of enabling it to exercise its functions under this Part.

(7) Notwithstanding anything in Subsection (2) or Subsection (4), where the Commission is of the opinion that the matters to which an application relates, are for reasons other than arising from the application of any provision of this Part, unlikely to be proceeded with, the Commission may, in its discretion, return the application to the person by or on whose behalf the application was made.

(8) A person who has made an application to the Commission for an authorization may at any time, by notice in writing to the Commission, withdraw the application.

#### **77. DETERMINATION OF APPLICATION FOR AUTHORIZATION OF RESTRICTIVE TRADE PRACTICES.**

(1) The Commission shall, in respect of an application for an authorization under Section 70, make a determination in writing –

- (a) granting such authorization as it considers appropriate; or
- (b) declining the application.

(2) Any authorization granted pursuant to Section 70 may be granted subject to such conditions not inconsistent with this Part and for such period as the Commission thinks fit.

(3) The Commission shall take into account any submissions in relation to the application made to it by the applicant or by any other person.

(4) The Commission shall state in writing its reasons for a determination made by it.

(5) Before making a determination in respect of an application for an authorization, the Commission shall comply with the requirements of Section 78.

(6) The Commission shall not make a determination granting an authorization pursuant to an application under Section 70(1), (2), (3) or (4) unless it is satisfied that –

- (a) the entering into of the contract or arrangement or the arriving at the understanding; or
- (b) the giving effect to the provision of the contract, arrangement or understanding; or
- (c) the giving or the requiring of the giving of the covenant; or
- (d) the carrying out or enforcing of the terms of the covenant,

as the case may be, to which the application relates, will in the circumstances result, or be likely to result, in a benefit to the public which would outweigh the lessening in competition that would result, or would be likely to result or is deemed to result, from it.

(7) The Commission shall not make a determination granting an authorization pursuant to an application under Section 70(5) or (6) unless it is satisfied that –

- (a) the entering into of the contract or arrangement or the arriving at the understanding; or
- (b) the giving effect to the exclusionary provision of the contract, arrangement or understanding,

as the case may be, to which the application relates, will in all the circumstances result, or be likely to result, in such a benefit to the public that –

- (c) the contract, arrangement or understanding should be permitted to be entered into or arrived at; or
- (d) the exclusionary provision should be permitted to be given effect to

(8) The Commission shall not make a determination granting an authorization pursuant to an application under Section 70(7) or (8) unless it is satisfied that –

- (a) the engaging in the practice of resale price maintenance to which the application relates; or
- (b) the act or conduct to which the application relates,

as the case may be, will in all the circumstances result, or be likely to result, in such a benefit to the public that –

- (c) the engaging in the practice should be permitted; or
- (d) the act or conduct should be permitted.

## **78. COMMISSION TO PREPARE DRAFT DETERMINATION IN RELATION TO RESTRICTIVE TRADE PRACTICES.**

(1) Before determining an application for an authorization under Section 70, the Commission shall prepare a draft determination in relation to the application.

(2) The Commission shall send a copy of the draft determination and a summary of the reasons for it to –

- (a) the applicant; and
- (b) any person to whom a notice has been given pursuant to Section 76(2)(c); and
- (c) any person who has given a notice pursuant to Section 76(3) and who, in the opinion of the Commission has such an interest in the application as to justify the Commission sending a copy of the draft determination to him; and
- (d) any other person who in the opinion of the Commission may assist the Commission in its determination of the application.

(3) The applicant and each other person to whom a copy of the draft determination is sent shall notify the Commission within 10 days after a date fixed by the Commission (not being a date earlier than the day on which the notice is sent) whether the applicant or other person wishes the Commission to hold a conference in relation to the draft determination.

(4) If each of the persons to whom a draft determination was sent under Subsection (2) –

- (a) notifies the Commission within the period of 10 days referred to in Subsection (3) that the person does not wish the Commission to hold a conference in relation to the draft determination; or
- (b) does not notify the Commission within that period that the person wishes the Commission to hold such a conference,

the Commission may make the determination at any time after the expiration of that period.

(5) If any of the persons to whom a draft determination was sent under Subsection (2) notifies the Commission, in writing, within the period of 10 days referred to in Subsection (3) that he wishes the Commission to hold a conference in relation to the draft determination, the Commission shall –

- (a) appoint a date (not being a date later than 20 days after the expiration of that period) time and place for the holding of the conference; and
- (b) give notice of the date, time and place so appointed to each of the persons to whom a draft determination was sent under Subsection (2).

(6) The Commission may, of its own motion, determine to hold a conference in relation to the draft determination and shall appoint a date (not being a date later than 20 days after the expiration of the period referred to in Subsection (3)), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom the draft determination was sent under Subsection (2).

(7) Where the Commission is of the opinion that two or more applications for authorizations that are made by the same person, or by corporations that are related

to each other, involve the same or substantially similar issues, the Commission may treat the applications as if they constitute a single application, and may prepare a single draft determination in relation to the applications and hold a single conference in relation to that draft determination.

**79. PROCEDURE AT CONFERENCE.**

(1) At a conference called under Section 78 –

- (a) the Commission shall be represented by a member or members nominated by the Commissioner; and
- (b) each person to whom a draft determination was sent under Section 78(2) and any other person whose presence at the conference is considered by the Commission to be desirable, is entitled to attend and participate personally or, in the case of a body corporate, be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate; and
- (c) a person participating in the conference in accordance with Paragraph (b) is entitled to have another person or other persons present to assist him; and
- (d) no other person is entitled to be present.

(2) The Commission may require any officer of the Commission to attend a conference called under Section 78 where, in the opinion of the Commission, that officer may assist the Commission in the determination of the application.

(3) At a conference called under Section 78, the Commission shall provide for as little formality and technicality as the requirements of this Part and a proper consideration of the application permit.

(4) The Commission shall cause such record of the conference to be made as is sufficient to set out the matters raised by the persons participating in the conference.

(5) Any member of the Commission attending the conference may terminate the conference when that member is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference.

(6) The Commission shall have regard to all matters raised at the conference, and may, at any time after the termination of the conference, make a determination in respect of the application.

**80. COMMISSION MAY VARY OR REVOKE AUTHORIZATION.**

(1) Subject to Subsection (2), if at any time after the Commission has granted an authorization under Section 70, the Commission is satisfied that –

- (a) the authorization was granted on information that was false or misleading in a material particular; or
- (b) there has been a material change of circumstances since the authorization was granted; or

- (c) a condition upon which the authorization was granted has not been complied with,

the Commission may revoke or amend the authorization or revoke the authorization and grant a further authorization in substitution for it.

(2) The Commission shall not revoke or amend an authorization or an authorization and substitute a further authorization pursuant to Subsection (1) unless the person to whom the authorization was granted and any other person who in the opinion of the Commission is likely to have an interest in the matter is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions.

### **81. COMMISSION MAY GIVE CLEARANCE FOR BUSINESS ACQUISITIONS.**

(1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking clearance for the acquisition.

(2) Section 76(1), Subsection (2)(a) and (b), Subsections (4) and (5) apply in respect of every notice given under Subsection (1) as if the notice were an application under Section 70.

(3) Subject to Subsection (5), within 20 days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall either –

- (a) if it is satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or
- (b) if it is not satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance for the acquisition.

(4) If the period specified in Subsection (3), and any extension thereof in accordance with Subsection (5), expires without the Commission having given a clearance for the acquisition and without having given a notice under Subsection (3)(b), the Commission is deemed to have given a clearance for the acquisition.

(5) If the Commission requires a person who gives notice under this section to produce or furnish to the Commission documents and information in relation to the acquisition for the purpose of enabling it to exercise its functions under this section, the period specified in Subsection (3) is extended by the duration of the period commencing on the date the person is notified of that requirement and expiring on the date on which the relevant documents and information are produced and furnished to the Commission.

(6) A clearance given under Subsection (3) and a clearance deemed to be given under Subsection (4) expires 12 months after the date on which it was given.

## **82. COMMISSION MAY GRANT AUTHORIZATIONS FOR BUSINESS ACQUISITIONS.**

(1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking an authorization for the acquisition.

(2) Section 76(1), Subsection (2)(a) and (b), Subsections (4) and (5) apply in respect of every notice given under Subsection (1) as if the notice were an application under Section 70.

(3) Subject to Subsection (6), within 72 days after the date of registration of the notice, or such longer period as the Commission and the person who gave the notice agree, the Commission shall –

- (a) if it is satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or
- (b) if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant an authorization for the acquisition; or
- (c) if it is not satisfied as to the matters referred to in Paragraphs (a) and (b), by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance or grant an authorization for the acquisition.

(4) If the period specified in Subsection (3), and any extension thereof in accordance with Subsection (6), expires without the Commission having given a clearance or having granted an authorization or having declined to do so, the Commission is deemed to have granted an authorization for the acquisition.

(5) The Commission shall state in writing its reasons for a determination made by it under Subsection (3).

(6) If the Commission requires a person who gives notice under this section to produce or furnish to the Commission documents and information in relation to the acquisition for the purpose of enabling it to exercise its functions under this section, the period specified in Subsection (3) is extended by the duration of the period commencing on the date the person is notified of that requirement and expiring on the date on which the relevant documents and information are produced and furnished to the Commission.

(7) A clearance given or an authorization granted under Subsection (3) and an authorization deemed to be granted under Subsection (4) expires 12 months after the date on which it was given or granted.



**83. PROVISIONS APPLYING TO APPLICATIONS FOR CLEARANCES AND AUTHORIZATIONS FOR BUSINESS ACQUISITIONS.**

(1) A person who gives a notice under Section 81 or Section 82 shall from time to time produce or furnish to the Commission, within such time as the Commission may specify, such documents and information in relation to the acquisition as may be required by the Commission for the purpose of enabling it to exercise its functions under this section, Section 81 or Section 82.

(2) Notwithstanding Section 81 or Section 82, where the Commission is of the opinion that a proposed acquisition is, for reasons other than arising from the application of any provision of this Part, unlikely to be proceeded with, the Commission may, in its discretion, decline to give a clearance or grant an authorization for that acquisition.

(3) The Commission shall state in writing its reasons for declining to give a clearance or grant an authorization under Subsection (2).

(4) A person who has given a notice in respect of an acquisition under Section 81 or Section 82 may at any time, by notice in writing to the Commission, advise the Commission that he does not wish the Commission to give a clearance or grant an authorization and the Commission shall accordingly not give a clearance or grant an authorization in respect of that acquisition.

(5) The Commission may consult with any person who, in its opinion, is able to assist it in making a determination under Section 81 or Section 82, as the case may be.

**84. EFFECT OF CLEARANCE OR AUTHORIZATION.**

Nothing in Section 50 or Section 69 applies to the acquisition of assets of a business or shares if the assets or shares are acquired in accordance with a clearance or an authorization under this Division and while the clearance or authorization is in force.

**85. COMMISSION MAY ACCEPT UNDERTAKINGS.**

(1) In giving a clearance or granting an authorization under Section 81 or Section 82, the Commission may accept a written undertaking given by or on behalf of the person who gave a notice under Section 81(1) or Section 82(1), as the case may be, to dispose of assets or shares specified in the undertaking.

(2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorization under Section 81 or Section 82, other than an undertaking given under Subsection (1).

(3) An undertaking given to the Commission under Subsection (1) is deemed to form part of the clearance given or the authorization granted in relation to the acquisition to which the undertaking relates.

**86. CONFERENCES IN RELATION TO BUSINESS ACQUISITIONS.**

(1) Before making a determination under Section 81(3) or Section 82(3) in relation to an acquisition, the Commission may determine to hold a conference and shall appoint a date, time and place for the holding of the conference and give notice of the date, time and place so appointed and of the matters to be considered at the conference to the persons entitled to be present at the conference.

(2) The provisions of Section 79 apply to a conference held under this section as if –

- (a) every reference in Section 79 to a conference called under Section 78 were a reference to a conference held under this Section; and
- (b) the reference in Section 79(1)(b) to a person to whom a draft determination was sent under Section 78(2) were a reference to the person by or on whose behalf a notice was given under Section 81(1) or Section 82(1), as the case may be; and
- (c) the reference in Subsection (6) of that section to a determination in respect of an application were a reference to a determination under Section 81(3) or Section 82(3), as the case may be.

***Division 5.******Enforcement, Remedies and Appeals.******Subdivision 1. – Restrictive Trade Practices.*****87. PECUNIARY PENALTIES.**

(1) If the Court is satisfied on the application of the Commission that a person –

- (a) has contravened any of the provisions of Section 50 to Section 67 inclusive; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured any other person to contravene such a provision; or
- (d) has induced, or attempted to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) has conspired with any other person to contravene such a provision,

the Court may order the person to pay such pecuniary penalty as the Court determines to be appropriate.

(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including the nature and extent of any commercial gain arising from engaging in the conduct referred to in Subsection (1).

(3) The amount of any pecuniary penalty shall not, in respect of each act or omission, exceed –

- (a) in the case of an individual, K500,000.00; or
- (b) in the case of a body corporate, K10,000,000.00.

(4) The standard of proof in proceedings under this section is the standard of proof applying in civil proceedings.

(5) Proceedings under this section may only be commenced within three years after the occurrence of the matter giving rise to the contravention.

(6) Where conduct by any person constitutes a contravention of two or more provisions of Section 50 to Section 67 (inclusive), proceedings may be instituted under this Part against that person in relation to the contravention of any one or more of the provisions, but a person shall not be liable to more than one pecuniary penalty under this section in respect of the same conduct.

#### **88. BODY CORPORATE TO INDEMNIFY CERTAIN PERSONS IN RESPECT OF PECUNIARY PENALTIES.**

(1) A body corporate shall not indemnify a director, employee or agent of the body corporate or a related corporation in respect of –

- (a) liability for payment of a pecuniary penalty under Section 87 that arises out of a provision of a contract, arrangement or understanding that is deemed, under Section 53, to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market; or
- (b) costs incurred by that director, employee or agent in defending or settling any proceeding relating to that liability.

(2) An indemnity given in contravention of Subsection (1) is void.

(3) In this Section –

“**agent**” includes a former agent; and

“**director**” includes a former director; and

“**employee**” includes a former employee; and

“**indemnify**” includes relieve or excuse from liability, whether before or after the liability arises, and “**indemnity**” has a corresponding meaning.

#### **89. PECUNIARY PENALTIES FOR CONTRAVENTION OF SECTION 88.**

(1) If the Court is satisfied on the application of the Commission that a body corporate has acted in contravention of Section 88, the Court may order the body corporate to pay any pecuniary penalty that the Court determines to be appropriate.

(2) The amount of any pecuniary penalty shall not, in respect of each act or omission, exceed twice the value of any indemnity given in contravention of Section 88.

(3) The standard of proof in proceedings under this section is the standard of proof applying in civil proceedings.

(4) Proceedings under this section may only be commenced within three years after the occurrence of the matter giving rise to the contravention.

**90. COURT MAY ORDER CERTAIN PERSONS TO BE EXCLUDED FROM MANAGEMENT OF BODY CORPORATE.**

The Court may make an order that a person shall not, without the leave of the Court, be a director or promoter of, or in any way, either directly or indirectly, be concerned or take part in the management of, a body corporate for a period not exceeding five years as may be specified in the order, if the Court is satisfied on the application of the Commission that –

- (a) the person has entered into a contract or arrangement, or arrived at an understanding, containing a provision that is deemed by Section 53 to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market; or
- (b) the person has given effect to a provision of a contract, arrangement or understanding that is deemed by Section 53 to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition in a market; or
- (c) the person has entered into a contract or arrangement, or arrived at an understanding, that contains an exclusionary provision; or
- (d) the person has given effect to an exclusionary provision of a contract, arrangement or understanding.

**91. APPLICATION FOR ORDER UNDER SECTION 90.**

(1) The Commission shall give not less than ten days notice of its intention to apply for an order under Section 90 to the person against whom the order is sought.

(2) On the hearing of the Commission's application or an application by a person against whom an order under Section 90 has been made –

- (a) the Commission shall appear and call the attention of the Court to any matter that seems to it to be relevant, and may give evidence or call witnesses; and
- (b) the person against whom the order is sought or has been made may appear and give evidence or call witnesses.

(3) An officer of the Court shall, as soon as practicable after the making of an order under Section 90 –

- (a) give notice of the order to the person against whom the order has been made; and
- (b) give notice in the National Gazette of the name of the person against whom the order is made.

**92. OFFENCE TO ACT IN CONTRAVENTION OF ORDER MADE UNDER SECTION 90.**

(1) A person who acts in contravention of an order made under Section 90 is guilty of an offence.

(2) A person, who commits an offence under Subsection (1), is liable on conviction to imprisonment for a term not exceeding five years or a fine not exceeding K500,000.00.

**93. INJUNCTIONS.**

The Court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following: –

- (a) a contravention of any of the provisions of Section 50 to Section 67 inclusive;
- (b) any attempt to contravene such a provision;
- (c) aiding, abetting, counselling or procuring any other person to contravene such a provision;
- (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision;
- (f) conspiring with any other person to contravene such a provision.

**94. ACTIONS FOR DAMAGES.**

(1) A person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following:–

- (a) a contravention of any of the provisions of Section 50 to Section 67;
- (b) aiding, abetting, counselling or procuring a contravention of such a provision;
- (c) inducing, by threats, promises or otherwise, a contravention of such a provision;
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of such a provision;
- (e) conspiring with any other person in a contravention of such a provision.

(2) An action under Subsection (1) may only be commenced within three years after the occurrence of the matter giving rise to the contravention.

***Subdivision 2. – Business Acquisitions.*****95. PECUNIARY PENALTIES.**

(1) If the Court is satisfied on the application of the Commission that a person –

- (a) has contravened Section 69; or
- (b) has attempted to contravene Section 69; or
- (c) has aided, abetted, counselled, or procured any other person to contravene Section 69; or
- (d) has induced, or attempted to induce, any other person, whether by threats, promises or otherwise, to contravene Section 69; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of Section 69; or
- (f) has conspired with any other person to contravene Section 69,

the Court may order the person to pay to such pecuniary penalty as the Court determines to be appropriate.

(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including –

- (a) the nature and extent of the act or omission; and
- (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission; and
- (c) the circumstances in which the act or omission took place; and
- (d) whether or not the person has previously been found by the Court in proceedings under this Division to have engaged in any similar conduct.

(3) The amount of any pecuniary penalty shall not, in respect of each act or omission, exceed –

- (a) in the case of an individual, K500,000.00; or
- (b) in the case of a body corporate, K10,000,000.00.

(4) The standard of proof in proceedings under this section is the standard of proof applying in civil proceedings.

(5) Proceedings under this section may only be commenced within three years after the occurrence of the matter giving rise to the contravention.

(6) A person is not liable to a pecuniary penalty under both Section 87 and this section in respect of the same conduct.

**96. INJUNCTIONS.**

Where it appears to the Court, on the application of the Commission, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes

or would constitute a contravention of Section 69, the Court may, by order, do all or any of the following things :-

- (a) grant an injunction restraining any person from engaging in conduct that constitutes or would constitute –
  - (i) a contravention of Section 69; or
  - (ii) an attempt to contravene Section 69; or
  - (iii) aiding, abetting, counselling or procuring any other person to contravene Section 69; or
  - (iv) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene Section 69; or
  - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of Section 69; or
  - (vi) conspiring with any other person to contravene Section 69;
- (b) impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business;
- (c) provide for the carrying on of any business or the safeguarding of any business or assets of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on such terms and with such powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.

#### **97. ACTIONS FOR DAMAGES.**

(1) A person is liable in damages for any loss or damage caused by him engaging in conduct that constitutes any of the following:-

- (a) a contravention of Section 69; and
- (b) aiding, abetting, counselling or procuring a contravention of Section 69; and
- (c) inducing, by threats, promises or otherwise, a contravention of Section 69; and
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of Section 69; and
- (e) conspiring with any other person in a contravention of Section 69.

(2) An action under Subsection (1) may only be commenced within three years after the occurrence of the matter giving rise to the contravention.

**98. COURT MAY ORDER DIVESTITURE OF ASSETS OR SHARES.**

(1) In any case where the Court, on the application of the Commission, is satisfied that any person –

- (a) has contravened Section 69; or
- (b) has been found in any other proceedings under this Division to have contravened Section 69,

it may, by order –

- (c) give directions for the disposal by that person of such assets or shares as are specified in the order; or
- (d) give directions for the disposal by that person of such assets or shares in accordance with an undertaking given by the person under Section 85.

(2) An application under Subsection (1) may only be made within two years after the occurrence of the matter giving rise to the contravention.

***Subdivision 3. – Injunctions Generally.*****99. GENERAL PROVISIONS RELATING TO GRANTING OF INJUNCTIONS.**

(1) The Court may at any time rescind or vary an injunction granted under this Division.

(2) Where an application is made to the Court under this Division for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may –

- (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) if in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(3) Where an application is made to the Court under this Division for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may –

- (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind – grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) if in the opinion of the Court it is desirable to do so – grant an interim injunction restraining the person from engaging in conduct of that kind,



whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(4) In determining whether to grant an interim injunction under this section, the Court shall have regard to all relevant matters, including the interests of consumers.

#### **100. WHEN UNDERTAKING AS TO DAMAGES NOT REQUIRED BY COMMISSION.**

(1) If the Commission applies to the Court for the grant of an interim injunction under this Division, the Court shall not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.

(2) In determining the Commission's application for the grant of an interim injunction, the Court shall not take into account that the Commission is not required to give an undertaking as to damages.

#### ***Subdivision 4. – Other Matters.***

#### **101. OTHER MATTERS.**

(1) Where, in any proceedings under this Division, the Court finds that a person who is a party to the proceedings has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in contravention of any of the provisions of Section 50 to Section 67 inclusive, the Court may, whether or not it grants an injunction or makes any other order under this Division, make such order or orders as it thinks appropriate against the person who engaged in the conduct or any other person who in relation to the contravention did any act referred to in Section 87(1)(b) to Section 87(1)(f) inclusive.

(2) Where a contract is entered into in contravention of this Part, or a contract contains a provision which if given effect to would contravene this Part, the Court may, in any proceedings under this Division, or on application made for the purpose by a party to the contract or any person claiming through or under any party to the contract, make an order –

- (a) varying the contract, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Part; or
- (b) cancelling the contract; or
- (c) requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract.

(3) Where a covenant is given in contravention of this Part, or the enforcement of the terms of a covenant would contravene this Part, the Court may, in any proceedings under this Division, or on application made for the purpose by a person who, but for Section 51(4), would be bound by or entitled to the benefit of the covenant or any person claiming through or under any such person, make an order –

- (a) varying the covenant, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Part; or
- (b) requiring any person who, but for Section 51(4), would be bound by or entitled to the benefit of the covenant, to make restitution or pay compensation to any other person who, but for Section 51(4), would be bound by or entitled to the benefit of the covenant.

(4) Nothing in Subsection (2) or Subsection (3) prevents any proceedings being instituted or commenced under this Division.

(5) Notwithstanding any enactment or rule of law, where a contract is entered into in contravention of this Part by reason that the contract contains a particular provision, or the contract contains a provision which, if given effect to, would contravene this Part, the enforceability of any other provision of the contract is not affected by the existence of that provision.

## **102. CONDUCT BY EMPLOYEES OR AGENTS.**

(1) Where, in proceedings under this Division in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Part applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, acting within the scope of his actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate –

- (a) by a director, employee or agent of the body corporate, acting within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee or agent,

is deemed, for the purposes of this Part, to have been engaged in also by the body corporate.

(3) Where, in a proceedings under this Division in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Part applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate –

- (a) by an employee or agent of the person acting within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-

mentioned person, given within the scope of the actual or apparent authority of the servant or agent,

is deemed, for the purposes of this Part, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

**PART 7. – CONSUMER PROTECTION.*****Division 1.******Interpretation.*****103. INTERPRETATION.**

In this Part, unless the contrary intention appears –

“**consumer**” means any person who acquires or uses goods or services for personal, domestic or household use or consumption;

“**service**” means –

- (a) any service supplied or carried on by any person or body of persons, incorporated or unincorporated, engaged in an industrial, commercial, business, profit-making or remunerative undertaking or enterprise (including a professional practice); or
- (b) any right or privilege for which remuneration is payable in the form of royalty, stumpage, tribute or other levy based on volume or value of goods produced; or
- (c) any right under an agreement –
  - (i) for the hiring of goods; or
  - (ii) for the hire, use or occupation of any wharf or dock; or
  - (iii) for the provision of lodging; or
- (d) any right under an agreement (not being a lease) or licence for the hiring of a hall; or
- (e) any benefit under a contract of work and labour, or of work and labour and the supply of materials.

***Division 2.******Declaration of Policy and Rights.*****104. DECLARATION OF STATE CONSUMER POLICY.**

It is the policy of the State to protect the rights and interests of consumers and to monitor standards for the ethical conduct of those engaged in the production and distribution of goods and services.

**105. CONSUMER’S RIGHTS.**

(1) The State recognizes that consumers, in their capacity as consumers, have the following rights: –

- (a) right to safety;
- (b) right to choice;

- (c) right to consumer education;
- (d) right to information;
- (e) right to representation;
- (f) right to redress.

(2) The recognition of the rights under Subsection (1) does not confer or imply any liability on the State in respect of these rights or the enforcement of these rights.

***Division 3.***

***Consumer Affairs Functions.***

**106. CONSUMER AFFAIRS FUNCTIONS OF THE COMMISSION.**

In addition to the functions specified in Section 6 of this Act, the Commission has the following functions: –

- (a) to formulate and submit to the Minister policies in the interests of consumers;
- (b) to consider and examine and, where necessary, advise the Minister on the consolidation or updating of legislation providing protection to the consumer in the following areas: –
  - (i) public health;
  - (ii) trade and commerce;
  - (iii) motor vehicles and motor vehicle insurance;
  - (iv) price surveillance and control;
  - (v) services;
  - (vi) such other areas as may be relevant;
- (c) to liaise with Departments and other agencies of Government on matters relating to consumer protection legislation; and
- (d) to receive and consider complaints from consumers on matters relating to the supply of goods and services;
- (e) to investigate any complaint received under Paragraph (d) or, where appropriate, refer the complaint to the appropriate authority and ensure that action is taken by the Commission or by the authority to whom the complaint was referred;
- (f) to make available to consumers general information affecting the interests of consumers;
- (g) to liaise with business, commercial and professional bodies and associations in order to establish codes of practice to regulate the activities of their members in their dealings with consumers;

- (h) to advise consumers of their rights and responsibilities under laws relating to consumer protection;
- (i) to promote and participate in consumer education activities; and
- (j) to research into issues affecting consumers and propose appropriate measures to address such issues;
- (k) to encourage the development of organizations and associations established for the purpose of furthering the interests of consumers, and to liaise and consult with them on the development of consumer policy and on issues of consumer interest;
- (l) to establish appropriate systems whereby consumer claims can be considered and redressed;
- (m) to liaise with consumer organizations, consumer affairs authorities and consumer protection groups overseas and to exchange information on consumer issues with those bodies;
- (n) to arrange for the representation of consumers in court proceedings relating to consumer matters;
- (o) to do all other things relating to consumer affairs.

***Division 4.***

***Product Safety and Product Information.***

**107. WARNING NOTICE TO PUBLIC.**

- (1) The Commission may, by notice in the National Gazette, issue –
  - (a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods will or may cause injury to any person; or
  - (b) a warning of possible risks involved in the use of goods of a kind specified in the notice.
- (2) Where –
  - (a) an investigation referred to in Subsection (1) has been completed; and
  - (b) neither a notice under Section 114 inviting a supplier to notify the Commission whether the supplier wishes the Commission to hold a conference nor a notice under Section 116 has been published in relation to the goods since the commencement of the investigation,

the Commission shall, as soon as practicable after the investigation has been completed, by notice in the National Gazette, announce the results of the investigation, and may announce in the notice whether, and if so, what action is proposed to be taken in relation to the goods under this Division.

**108. PRODUCT SAFETY STANDARDS AND UNSAFE GOODS.**

(1) A person shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind –

- (a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard; or
- (b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or
- (c) in respect of which there is in force a notice under this section imposing a permanent ban on the goods.

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

- (a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) testing of the goods during, or after the completion of, manufacture or processing; and
- (c) the form and content of markings, warnings or instructions to accompany the goods,

as are reasonably necessary to prevent or reduce risk of injury to any person.

(3) A person shall not export goods the supply in Papua New Guinea of which is prohibited by Subsection (1) unless the Minister has, by notice in writing given to the person, approved the export of those goods.

(4) Where the Minister approves the export of goods under Subsection (3), the Minister shall cause the statement to be tabled in Parliament within seven sitting days after the approval is given.

(5) Subject to Section 114, where it appears to the Commission that goods of a particular kind will or may cause injury to any person, the Commission may, by notice in the National Gazette, declare the goods to be unsafe goods.

(6) A notice under Subsection (5) remains in force until the end of 18 months after the date of publication of the notice in the National Gazette, unless it is revoked by notice in the National Gazette before the end of that period.

(7) Subject to Section 114, where –

- (a) a period of 18 months has elapsed after the date of publication of a notice in the National Gazette declaring goods to be unsafe goods; and
- (b) there is not a prescribed consumer product safety standard in respect of the goods,

the Commission may, by notice in the Gazette, impose a permanent ban on the goods.

**109. PRODUCT INFORMATION STANDARDS.**

(1) A person shall not supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the person has complied with that standard in relation to those goods.

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

- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- (b) the form and manner in which that information is to be disclosed on or with the goods,

as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

(3) Subsection (1) does not apply to goods that are intended to be used outside Papua New Guinea.

(4) If there is applied to goods –

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorized by the regulations to be used for the purposes of this subsection that the goods are intended to be used outside Papua New Guinea,

it shall be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.

(5) For the purposes of Subsection (4), a statement shall be deemed to be applied to goods if –

- (a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or
- (b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.

(6) A reference in Subsection (5) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that subsection to a label includes a reference to a band or ticket.

**110. POWER OF MINISTER TO DECLARE PRODUCT SAFETY OR INFORMATION STANDARDS.**

(1) The Minister may, after consulting with the Commission, by notice in the National Gazette, declare that, in respect of goods of a kind specified in the notice, a particular standard, or a particular part of a standard, prepared or approved by the National Institute of Standards and Industrial Technology or by a prescribed association or body, or such a standard or part of a standard with additions or



variations specified in the notice, is a consumer product safety standard for the purposes of Section 108 or a consumer product information standard for the purposes of Section 109.

(2) Where a notice is published in accordance with Subsection (1), the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, as the case may be, will be deemed to be a prescribed consumer product safety standard for the purposes of Section 8 or a prescribed consumer product information standard for the purposes of Section 109, as the case may be.

(3) Subsection (1) does not authorize the publication of a notice in relation to goods of a particular kind if the standard or the part of the standard referred to in the notice, or the standard or the part of the standard so referred to with additions and variations specified in the notice, is inconsistent with a standard prescribed in relation to goods of that kind by regulations made for the purposes of Section 108 or Section 109.

#### **111. COMPULSORY PRODUCT RECALL.**

(1) Subject to Section 114, where –

- (a) a person (in this section referred to as “the supplier”) supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer; and
- (b) one of the following subparagraphs applies : –
  - (i) it appears to the Commission that the goods are of a kind which will or may cause injury to any person;
  - (ii) the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard;
  - (iii) the goods are goods of a kind in relation to which there is in force a notice under Section 108(5) or Section 108(7); and
- (c) it appears to the Commission that the supplier has not taken satisfactory action to prevent the goods causing injury to any person,

the Commission may, by notice in the National Gazette, require the supplier to do one or more of the following:–

- (d) take action within the period specified in the notice to recall the goods;
- (e) disclose to the public, or to a class of persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following :–
  - (i) the nature of a defect in, or a dangerous characteristic of, the goods identified in the notice;

- (ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous;
- (iii) procedures of disposing of the goods specified in the notice;
- (f) subject to Subsection (2), inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate :–
  - (i) except where the notice identifies a dangerous characteristic of the goods – repair the goods;
  - (ii) replace the goods;
  - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods within the period specified in the notice.

(2) Notwithstanding Subsection (1)(f)(iii), where the Commission, in a notice under Subsection (1), requires the supplier to take action under Subsection (1)(f), the Commission may specify in the notice that, where –

- (a) the supplier chooses to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier,

the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(3) The Commission may, by notice in the National Gazette, give directions as to the manner in which the supplier is to carry out a recall of goods required under Subsection (1).

(4) Where the supplier, under Subsection (1), undertakes to repair goods, the supplier shall cause the goods to be repaired so that –

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

(5) Where the supplier, under Subsection (1), undertakes to replace goods, the supplier shall replace the goods with like goods which –

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

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

(7) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Commission under Subsection (1)(d), a person who has supplied or supplies any of the recalled goods to another person outside Papua New Guinea shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person –

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

(8) Where a person is required under Subsection (7) to give a notice in writing to another person, the first-mentioned person shall, within 10 days after giving that notice, provide the Commission with a copy of that notice.

(9) A person who contravenes Subsection (8) is guilty of an offence.

(10) For the purposes of this section, things that are goods at the time they are supplied are taken to be goods at all times after the supply, even if they become fixtures.

(11) Subsection (9) is an offence of strict liability.

#### **112. COMPLIANCE WITH PRODUCE RECALL ORDER.**

Where a notice under Section 111(1) is in force in relation to a person, the person shall comply with the requirements and directions in the notice.

#### **113. NO SUPPLY IF PRODUCT RECALL ORDER ISSUED.**

Where a notice under Section 111(1) is in force in relation to a person, the person shall not –

- (a) where the notice identifies a defect in, or a dangerous characteristic of, the goods – supply goods of the kind to which the notice relates which contain that defect or have that characteristic; or
- (b) in any other case – supply goods of the kind to which the notice relates.

#### **114. OPPORTUNITY FOR CONFERENCE TO BE AFFORDED BEFORE CERTAIN POWERS EXERCISED.**

(1) Subject to Section 116, where the Commission proposes to publish a notice under Section 108(5), Section 108(7) or Section 111(1) in relation to goods of a particular kind, the Commission shall prepare –

- (a) a draft of the notice proposed to be published; and
- (b) a summary of the reasons for the proposed publication of the notice,

and shall, by notice in the National Gazette, invite any person (in this section referred to as “a supplier”) who supplied or proposed to supply goods of that kind to notify the Commission, within the period (in this section referred to as “the relevant period”) of 10 days of publication of the last-mentioned notice in the National Gazette, whether the supplier wishes the Commission to hold a conference in relation to the proposed publication of the first-mentioned notice.

(2) A notice published under Subsection (1) shall set out a copy of the draft notice under Section 108(5), Section 108(7) or Section 111(1) and a copy of the summary of the reasons for the proposed publication of the notice.

(3) If a supplier notifies the Commission in writing within the relevant period or within such longer period as the Commission allows that the supplier wishes the Commission to hold a conference in relation to the proposed publication of a notice under Section 108(5), Section 108(7) or Section 111(1), the Commission shall appoint a day (being not later than 14 days after the end of that period), time and place for the holding of the conference, and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

(4) At a conference under this section –

- (a) the Commission shall be represented by a member or members or employee or employees nominated by the Commissioner; and
- (b) each supplier who notified the Commission in accordance with Subsection (3) is entitled to be present or to be represented; and
- (c) any other person whose presence at the conference is considered by the Commission to be appropriate is entitled to be present or to be represented; and
- (d) the Minister or a person or persons nominated in writing by the Minister is or are entitled to be present; and
- (e) the procedure to be followed shall be as determined by the Commission.

(5) The Commission shall cause a record of proceedings at a conference under this section to be kept.

(6) The Commission shall, as far as is practicable, ensure that each person who, in accordance with Subsection (4), is entitled to be present or who is representing such a person at a conference is given a reasonable opportunity at the conference to present his case and, in particular, to inspect any documents which the Commission proposes to consider for the purpose of making a decision after the conclusion of the conference, other than any document that contains particulars of a secret formula or process, and to make submissions in relation to those documents.

**115. DECISION AFTER CONCLUSION OF CONFERENCE.**

As soon as is practicable after the conclusion of a conference in relation to the proposed publication of a notice under Section 108(5), Section 108(7) or Section 111(1), the Commission shall –

- (a) decide, by resolution in writing –
  - (i) to publish the first-mentioned notice in the same terms as the draft notice referred to in Section 114(1); or
  - (ii) to publish the first-mentioned notice with such modifications as are specified by the Commission; or
  - (iii) not to publish the first-mentioned notice; and
- (b) cause a copy of the resolution in writing to be given to each supplier who was present or represented at the conference.

**116. EXCEPTION IN CASE OF DANGER TO PUBLIC.**

(1) Where it appears to the Commission that goods of a particular kind create an imminent risk of death, serious illness or serious injury, the Commission may, by notice in the National Gazette, certify that a notice in relation to the goods under Section 108(5), Section 108(7) or Section 111(1), should be published without delay.

(2) Where the Commission publishes a notice in the National Gazette under Subsection (1) –

- (a) in a case where the notice is published before the Commission takes any action under Section 114(1) in relation to goods of a particular kind – Section 114 does not apply in relation to the action that the Commission may take under Section 108(5) or Section 111(1) in relation to goods of that kind; or
- (b) in any other case – any action taken by the Commission under Section 114(1) in relation to goods of a particular kind ceases to have effect and, if a conference had, under Section 114, been arranged or such a conference had commenced or been completed without the Commission making a decision under Section 115, the Commission may publish the notice under Section 108(5) or Section 111(1) without regard to the action taken under Section 114(1).

**117. CONFERENCE AFTER GOODS BANNED.**

(1) Where –

- (a) a notice has been published under Section 108(5) in relation to goods of a particular kind; and
- (b) the Commission publishes a notice under Section 116 in relation to goods of that kind,

the Commission shall, by notice in the National Gazette, invite any person (in this section referred to as “a supplier”) who supplied or proposes to supply goods of that kind to notify the Commission within the period (in this section referred to as “the relevant period”) of 10 days of publication of that notice in the National Gazette, to notify the Commission whether the supplier wishes the Commission to hold a conference in relation to the notice referred to in Paragraph (a).

(2) If a supplier notifies the Commission in writing within the relevant period, or within such longer period as the Commission allows, that the supplier wishes the Commission to hold a conference in relation to the notice under Section 108(5) the Commission shall appoint a day (being not later than 10 days after the end of that period), time and place for the holding of the conference and give notice of the day, time and place so appointed to the Minister and to each supplier who so notified the Commission.

(3) Section 114(4), Section 114(5) and Section 114(6) apply in relation to a conference held under this section.

#### **118. DECISION AFTER CONCLUSION OF CONFERENCE.**

As soon as is practicable after the conclusion of a conference in relation to a notice that has been published under Section 108(5), the Commission shall –

- (a) decide that the notice under Section 108(5) shall–
  - (i) remain in force; or
  - (ii) be varied; or
  - (iii) be revoked; and
- (b) cause a copy of the notice in writing given to each supplier who was present or represented at the conference.

#### **119. NOTIFICATION OF VOLUNTARY RECALL.**

(1) Where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, the person shall, within two days after taking that action, give a notice in writing to the Commission –

- (a) stating that the goods are subject to recall; and
- (b) setting out the nature of the defect in, or dangerous characteristic of, the goods.

(2) A person who contravenes Subsection (1) is guilty of an offence.

(3) For the purposes of this section, goods includes things that were goods at the time they were supplied but became fixtures after the supply.

(4) Subsection (2) is an offence of strict liability.

**120. COPIES OF CERTAIN NOTICES TO BE GIVEN TO SUPPLIERS OR PUBLISHED IN CERTAIN NEWSPAPERS.**

(1) Where the Commission publishes a notice in the National Gazette under Section 107(1), Section 114(1), Section 116(1) or Subsection (1), the Commission shall, within two days after the publication of that notice in the National Gazette or, if it is not practicable to do so within that period, as soon as practicable after the end of that period either –

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

(2) Any failure to comply with Subsection (1) in relation to a notice does not invalidate the notice.

**121. CERTAIN ACTION NOT TO AFFECT INSURANCE, CONTRACTS.**

The liability of an insurer under a contract of insurance with a person, being a contract relating to the recall of goods supplied or proposed to be supplied by the person or to the liability of the person with respect to possible defects in goods supplied or proposed to be supplied by the person, shall not be affected by reason only that the person gives to the Minister, to the Commission or to an officer of the Commission information relating to any goods supplied or proposed to be supplied by the corporation.

**PART 8. – INQUIRIES AND REPORTS.****122. INQUIRY BY COMMISSION.**

The Commission may conduct an inquiry if the Commission considers an inquiry is necessary or desirable for the purpose of carrying out the Commission's functions.

**123. MINISTER OR PARLIAMENT MAY REFER MATTER FOR INQUIRY.**

(1) The Commission shall conduct an inquiry into any matter that the Minister or Parliament, by written notice, refers to the Commission.

(2) The notice under Subsection (1) shall specify the terms of reference for the inquiry.

(3) The Minister or Parliament may –

- (a) require that a report on the inquiry be delivered to the Minister within a specified period; and
- (b) require the Commission to make a draft report publicly available or available to specified persons or bodies during the inquiry; and
- (c) require the Commission to consider specified matters; and
- (d) give the Commission specific directions in respect of the conduct of the inquiry.

(4) The Minister or Parliament may, by written notice, vary the terms of reference or a requirement or direction given by it under Subsection (3).

**124. NOTICE OF INQUIRY.**

(1) The Commission shall publish notice of an inquiry in a newspaper circulating generally in the country.

- (a) the purpose of the inquiry; and
- (b) the period during which the inquiry is to be held; and
- (c) the period within which, and the form in which members of the public may make submissions, including details of public hearings; and
- (d) the matters that the Commission would like submissions to deal with.

(3) If the inquiry relates to a matter referred to the Commission by the Minister or Parliament, the notice shall include the terms of reference and any requirements or directions of the Minister or Parliament relating to the inquiry.

(4) The Commission shall publish a further notice if the Minister or Parliament varies the terms of reference or any requirement or direction relating to the inquiry.



**125. CONDUCT OF INQUIRY.**

(1) Subject to any requirement or direction of the Minister or Parliament under this Part, an inquiry –

- (a) may be conducted in such manner as the Commission considers appropriate; and
- (b) may (but need not) involve public hearings.

(2) The Commission is not, in the conduct of an inquiry, bound by the rules of evidence.

**126. REPORTS.**

(1) The Commission shall deliver a copy of the Commission's final report on an inquiry to the Minister.

(2) The Commission may, during the course of an inquiry, deliver a special report to the Minister on any matter that the Commission considers should be the subject of such a report.

(3) The Commission shall identify in a report any information contained in the report that the Commission considers is confidential information.

(4) The Minister shall cause a copy of a report (excluding any information identified under Subsection (3) as confidential information) to be tabled in Parliament within 12 sitting days after receipt of the report.

(5) The Minister shall, after a report has been tabled in Parliament or, if Parliament is not sitting, within 28 days after receiving a report, ensure that copies of the report (excluding any information identified under Subsection (3) as confidential information), are available for public inspection.

(6) After the Minister has made a report publicly available, the Commission shall ensure that copies (excluding any information identified under Subsection (3) as confidential information) are available for purchase by members of the public.

(7) If information is excluded from a report as being confidential information, a note to that effect shall be included in the report at the place in the report from which the information is excluded.

**PART 9. – GENERAL POWERS OF COMMISSION, ETC.**

***Division 1.***

***Information Gathering.***

**127. SUMMONING WITNESSES, ETC.**

(1) The Commission or an officer authorized in writing by the Commission for the purpose may –

- (a) summon witnesses; and
- (b) take evidence on oath; and
- (c) require the production of documents, books and papers,

where the Commission reasonably believes it is necessary or desirable to do so for or in connection with the performance of the Commission's functions.

(2) Witnesses summoned under Subsection (1) may be paid such fees and allowances as are fixed by the Minister or as are prescribed.

(3) A person who, having been summoned as a witness under Subsection (1), fails, without lawful excuse, to appear in obedience to the summons is guilty of an offence.

(4) A witness before the Commission or an officer authorized in writing by the Commission, whether summoned to appear or not, who, without lawful excuse, refuses –

- (a) to be sworn or to make an affirmation; or
- (b) to produce documents, books and papers; or
- (c) to answer questions that he or she is lawfully required to answer,

is guilty of an offence.

**128. OBTAINING INFORMATION GENERALLY.**

(1) The Commission or an officer authorized in writing for the purposes by the Commission may require a person –

- (a) to furnish such information as the Commission or authorized officer, as the case may be, requires; or
- (b) to answer any question put to him,

where the Commission reasonably believes the information or answer will assist in connection with the performance of the Commission's functions.

(2) The Commission or an officer authorized in writing for the purpose by the Commission may require the information to be given, or the question to be answered, on oath, and orally or in writing, and for that purpose may administer an oath.

(3) The Commission or an officer authorized in writing for the purpose by the Commission may, by written notice, require the information to be given, or the question to be answered, in writing and at the place specified in the notice.

(4) A person who, when required under this section to furnish information or answer a question –

(a) refuses or fails to furnish the information or to answer the question; or

(b) gives information or makes an answer that is false in any particular,

is guilty of an offence.

(5) A person is not obliged to answer orally any question unless he or she has first been informed by the Commission or an officer authorized in writing for the purpose by the Commission asking the question that he or she is required to answer by virtue of this section.

### **129. ENTRY AND SEARCH.**

(1) An officer of the Commission authorized in writing for the purpose by the Commission may, under warrant issued under Subsection (2) –

(a) enter and search any premises; and

(b) inspect any documents, books and papers; and

(c) inspect and take samples of any stocks of any goods,

where the Commission reasonably believes it is necessary or desirable to do so for or in connection with the performance of the Commission's functions.

(2) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be on or in any premises particular documents, books, papers or goods that may be necessary or desirable for the Commission to obtain for or in connection with the performance of its functions and the information sets out those grounds, the Magistrate may issue a search warrant authorizing the officer of the Commission named in the warrant, with such assistance, and by such force, as are necessary and reasonable, to enter the premises and exercise the powers referred to in Subsection (1) in respect of the thing.

(3) A Magistrate may not issue a warrant under Subsection (2) unless –

(a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) There shall be stated in a warrant issued under Subsection (2) –

(a) the purpose for which the warrant is issued, and the nature of the matter in relation to which the entry, search and seizure are authorized; and

- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a description of the kind of things to be inspected or impounded; and
- (d) a day, not being later than one week after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) The Commission or an officer authorized in writing for the purpose by the Commission may –

- (a) impound or retain any documents, books or papers produced to, or inspected by, the Commission or the authorized officer, as the case may be, under Subsection (1); and
- (b) make copies or abstracts of them, or of entries in them,

but the person entitled to them is entitled within a reasonable time, to a copy certified as correct by the Commission.

(6) A copy certificated in accordance with Subsection (2) shall be received in all courts as evidence having equal validity to the original.

(7) A person who prevents or attempts to prevent the Commission or an officer authorized in writing for the purpose by the Commission from –

- (a) entering any premises; or
- (b) inspecting any documents, books and papers; or
- (c) inspecting or taking samples of any stocks or any goods; or
- (d) making copies or abstracts of, or of entries in, any documents, books and papers,

is guilty of an offence.

### **130. REGULATED ENTITIES TO RETAIN RECORDS.**

(1) The Commission may, by order published in the National Gazette or served on the regulated entity or entities to whom it applies, require a regulated entity which sells or has for sale any regulated goods, or which supplies any regulated services –

- (a) to prepare and keep such accounting or other records as are specified in the order; and
- (b) to retain any or all of the accounting or other records specified in the order for the period specified in the order.

(2) The Commission may, in any order made under Subsection (1), require all or any of the accounting or other records to be prepared in accordance with guidelines made by the Commission.

(3) Any guidelines made under Subsection (2) shall be made available by the Commission, on reasonable terms, to any regulated entity to which they apply.

(4) The Commission may, if it has made an order under Subsection (1), by notice served on a regulated entity to which the order applies, require that regulated entity to make all or any of the accounting or other records required to be retained by that entity available, without charge, to the Commission or an authorized officer.

(5) A regulated entity may comply with a notice under Subsection (4) by providing either –

- (a) the original accounting or other records; or
- (b) true copies of those accounting or other records,

to the Commission within 14 days of receipt of that notice.

(6) A regulated entity which –

- (a) refuses or fails to comply with a notice under Subsection (4) in accordance with Subsection (5); or
- (b) willfully furnishes false or misleading records in response to a notice under Subsection (4),

is guilty of an offence.

### **131. ACCESS TO INFORMATION.**

(1) Subject to Subsection (2), the Commission shall make available for public inspection information submitted to it in the course of the performance of its functions except information that is designated “confidential” by the person who submits it.

(2) A member of or person employed by the Commission, shall not knowingly or recklessly disclose or knowingly or recklessly allow to be disclosed information designated “confidential” to any person in any manner that is calculated or likely to make it available for the use of any person who may benefit from such information or use such information to the detriment of the person to whose business or affairs the information relates, and the provisions of this subsection shall apply whether or not the person who discloses such information has ceased to be a member or employee of the Commission.

(3) Where information designated “confidential” is submitted to the Commission, the Commission may disclose or require its disclosure if it determines, after considering any representation from interested persons, that the disclosure is in the public interest.

### ***Division 2.***

### ***Enforcement and Penalties.***

### **132. COMMISSION TO PROSECUTE OFFENCES.**

With respect to offences created by this Act, the Commission may, in consultation with and with the approval of the Public Prosecutor –

- (a) control and exercise the prosecution function of the State; and

- (b) provide counsel –
  - (i) to prosecute persons charged with any offence; and
  - (ii) to appear on behalf of the State in any appeal before the National or Supreme Court.

**133. PROSECUTION OF OFFENCES.**

(1) An offence against this Act may be prosecuted summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(2) For the purpose of the trial of a person for an offence against this Act, the offence will be deemed to have been committed –

- (a) at the place in which it was actually committed; or
- (b) at any place in which the person may be.

**134. GENERAL PENALTY, ETC.**

(1) Unless otherwise specified in this Act, the penalty for an offence against this Act is –

- (a) if the offence is prosecuted summarily – a fine not exceeding K50,000.00 or imprisonment for a term not exceeding six months; or
- (b) if the offence is prosecuted on indictment – a fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years.

(2) In addition to any other punishment that it may impose, a court may, if it thinks fit, order the forfeiture of any money or goods in respect of which an offence against this Act has been committed.

**135. OFFENCES BY CORPORATIONS.**

Where a person is convicted of an offence against this Act is a corporation, every person who at the time of the commission of the offence, was a director or officer of the corporation shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

**136. RECOGNIZANCES.**

(1) Where a person is convicted of an offence against this Act, in addition to or in lieu of any punishment provided for the offence, the court before which he is convicted may require him to enter into recognizance, with or without sureties, to comply with this Act, or with the order, notice, direction or requirement in relation to which the offence was committed.

(2) If a person fails to comply with an order of the court requiring him to enter into a recognizance, the court may order him to be imprisoned for a term not exceeding six months.

### 137. EVIDENCE BY CERTIFICATES.

In a prosecution for an offence against this Act, a certificate under the hand of any person that a document annexed to the certificate is a true copy of a letter or notice sent by him to the defendant is *prima facie* evidence –

- (a) of the matters certified; and
- (b) that the original letter or notice of which the document purports to be a copy was received by the defendant on or about the time at which it would be delivered in the ordinary course of post if it had been sent on the date borne by the document; and
- (c) that the signature on the certificate is the signature of the person by whom it purports to have been signed.

### 138. EVIDENCE OR ORDERS, ETC.

For the purposes of this Act –

- (a) the production of the National Gazette purporting to contain an instrument is *prima facie* evidence that the instrument was duly made, given or issued in the terms set out in the National Gazette and that the instrument is in force; and
- (b) the production of a document purporting –
  - (i) to be an extract from the National Gazette; and
  - (ii) to be printed or published by the Government Printer; and
  - (iii) to contain an instrument,  
is *prima facie* evidence that the instrument –
  - (iv) was duly made, given or issued to the effect of or in the terms set out in the extract; and
  - (v) was published in the National Gazette; and
  - (vi) is in force.

### 139. EVIDENCE OF CERTAIN INSTRUMENTS.

(1) A document purporting to be an instrument made or issued by the Minister, the Commission or any other person under this Act, or of an order made under this Act, and to be signed by or on behalf of the Minister, the Commission or the person, shall –

- (a) be received in evidence; and

- (b) until the contrary is proved, be deemed to be an instrument made or issued by the Minister, the Commission or the person.

(2) In any legal proceedings, *prima facie* evidence of an instrument referred to in Subsection (1) may be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister, the Commission or the other person having power to make or issue the instrument.

**140. EVIDENCE GIVEN UNDER COMPULSION.**

Where by this Act a person is obliged to answer questions orally, he shall not refuse to answer any question on the ground that the answer might tend to incriminate him or make him liable to a penalty, but the answer given by him is not admissible in evidence in any proceedings against him other than proceedings in respect of –

- (a) the falsity of the answer; or
- (b) the refusal or failure to answer any question.



**PART 10. – REPEAL, AMENDMENT, SAVING, TRANSITIONAL AND MISCELLANEOUS PROVISIONS.**

***Division 1.***

***Repeals, Amendments, Savings and Transitional.***

**141. REPEAL OF CONSUMER AFFAIRS COUNCIL ACT 1993.**

The *Consumer Affairs Council Act 1993* is repealed with effect from the commencement of Part II of this Act.

**142. AMENDMENT OF PRICES REGULATION ACT 1949.**

(1) The *Prices Regulation Act 1949* is amended as set out in Schedule 1 of this Act with effect from the commencement of Part II of this Act.

(2) The amendment of the *Prices Regulation Act 1949* shall not disturb the continuity of, status, operation or effect of any declaration, order, notice, approval, summons, right or other matter or thing made, issued or granted, existing or continuing before the commencement of the amendment.

**143. AMENDMENTS OF OTHER ACTS.**

Each Act that is specified in Schedule 1 to this Act is amended as set out in Schedule 1 to this Act with effect from the commencement of Part 2 of this Act.

**144. COMMISSION IS SUCCESSOR IN LAW.**

(1) In this Section 144 –

- (a) Price Controller means the Price Controller appointed under the *Prices Regulation Act 1949*; and
- (b) Consumer Affairs Council means the Consumer Affairs Council established under the *Consumer Affairs Council Act 1993*.

(2) On the commencement of Part 2 of this Act –

- (a) all property, rights and assets of the Price Controller and the Consumer Affairs Council vest in the Commission; and
- (b) all liabilities of the Price Controller and the Consumer Affairs Council become liabilities of the Commission; and
- (c) the Commission becomes the successor in law of the Price Controller and the Consumer Affairs Council.

(3) A person who was an employee of the Price Controller or the Consumer Affairs Council immediately before the commencement of Part 2 of this Act is taken –

- (a) to have been engaged by the Commission as an employee of the Commission with effect from the commencement of Part 2 of this Act; and

- (b) to have been so engaged on the same terms and conditions as those that applied to the person, immediately before the commencement of Part 2 of this Act as an employee of the Price Controller or the Consumer Affairs Council; and
- (c) to have accrued an entitlement to benefits, in connection with that engagement by the Commission, that is equivalent to the entitlement that the person had accrued, as an employee of the Price Controller or the Consumer Affairs Council, immediately before the commencement of Part 2 of this Act, as an employee of the Price Controller or the Consumer Affairs Council.

(4) The service of a transferred employee as an employee of the Commission is taken for all purposes to have been continuous with the service of the employee, immediately before the commencement of Part 2 of this Act.

(5) A transferred employee is not entitled to receive any payment or other benefit merely because he or she ceased to be an employee of the Price Controller or the Consumer Affairs Council by virtue of this Act or the repeal of the *Consumer Affairs Council Act 1993*.

(6) A Price Controller or a Deputy Price Controller under the *Prices Regulation Act 1949* or a director, secretary or auditor of the Consumer Affairs Council does not, because of the operation of this Act, become a director, secretary, auditor or employee of the Commission.

(7) Where, immediately before the commencement of Part 2 of this Act, proceedings in respect of which the Price Controller or the Consumer Affairs Council was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Commission is substituted for the Price Controller or the Consumer Affairs Council, as the case may be, as a party to the proceedings and has the same rights and obligations in the proceedings as the Price Controller or the Consumer Affairs Council, as the case may be.

(8) On and after the commencement of Part 2 of this Act, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to –

- (a) the Price Controller or the Consumer Affairs Council is to be construed as a reference to the Commission, unless the contrary intention appears; or
- (b) the *Consumer Affairs Council Act 1993* is to be construed as a reference to this Act, unless the contrary intention appears.

(9) No stamp duty or other tax is payable under any Act in respect of anything done under this section.

***Division 2.***

***Miscellaneous.***

**145. IMMUNITY.**

A member, officer or agent of the Commission is not personally liable for any thing done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this or any other Act.

**146. HEAD OFFICE.**

(1) The Head Office of the Commission shall be at such place in the country as the Commission from time to time decides.

(2) Until the Commission decides the place at which the Head Office shall be situated, the Head Office shall be within the National Capital District.

**147. SYMBOL OF THE COMMISSION.**

(1) The Commission shall have the exclusive right to the use of any symbol or representation it may select or devise and thereafter display or exhibit in connection with its activities or affairs.

(2) A person who uses a symbol or representation identical with that of the Commission, or which so resembles the symbol or representation of the Commission so as to deceive or cause confusion, or to be likely to deceive or to cause confusion, is guilty of an offence.

**148. PRESERVATION OF SECRECY.**

(1) Except for the purpose of the performance of his duties or the exercise of his function or when lawfully required to do so by any court or under the provisions of any written law, a member, officer, employee, staff or agent of the Commission and or a member of a Committee shall not disclose any information relating to the affairs of the Commission or of any person which has been obtained by him in the performance of his duties or the exercise of his functions.

(2) A person who contravenes Subsection (1) is guilty of an offence.

**149. ATTORNEY.**

The Commission may, by instrument, appoint a person (whether within or outside the country) to be its attorney and, subject to the instrument, a person so appointed may do any act or exercise or perform any power or function which he or she is authorized by the instrument to do, exercise or perform.

**150. SERVICES OF PROCESS.**

Any notice, summons, writ or other process required to be served to the Commission may be served by being left at the head office of the Commission or, in the case of notice, by post.

**151. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act or any relevant regulatory contract, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for prescribing penalties or fines not exceeding K5,000.00 for offences against the regulations.

## SCHEDULE 1 – .

<b>1. REPEAL AND REPLACEMENT OF LONG TITLE.</b>
The Long Title of the <i>Prices Regulation Act</i> (Chapter 320) is repealed and replaced with the following: –
“Being an Act to make provision for the monitoring and regulation of prices for the sale of certain goods and for the supply of certain services, and for related purposes,”.
<b>2. AMENDMENT OF SECTION 1.</b>
Section 1 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) by inserting after the definition of “authorized officer” the following new definition: –
“Commission” means the Independent Consumer and Competition Commission established by the <i>Independent Consumer and Competition Commission Act 2002</i> ,” and
(b) by repealing the definition of “the controller”; and
(c) by inserting after the definition of “declared goods ” the following new definitions: –
“declared monitored goods” means any goods declared under Section 32A to be declared monitored goods for the purposes of this Act;
“declared monitored services” means any services declared under Section 32A to be declared monitored services for the purposes of this Act;” and
(d) by repealing the definition of “Deputy Controller”; and
(e) in paragraph (c) of the definition of “service”, by repealing at the end of Subparagraph (iii) the word “and” and replacing it with the following: –
“or”.
<b>3. AMENDMENT OF SECTION 2.</b>
Section 2(2) of the <i>Prices Regulation Act</i> is amended by repealing the word “affixed” and replacing it with following: –
“fixed”.
<b>4. AMENDMENT OF SECTION 3.</b>
Subsection (3)(1) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the word “proposed” and replacing it with the following: –
“purported”.
<b>5. REPEAL OF DIVISION II.I</b>
Division II.1 of the <i>Prices Regulation Act</i> (Chapter 320) is repealed.
<b>6. AMENDMENT OF SECTION 10.</b>
Section 10 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –

(a) in Subsection (1)(a), by inserting after the words “any goods” the following: –
“, other than goods declared to be regulated goods for the purposes of the <i>Independent Consumer and Competition Commission Act 2002</i> .”; and
(b) in Subsection (1)(b), by inserting after the words “any service” the following: –
“, other than a service declared to be a regulated service for the purposes of the <i>Independent Consumer and Competition Commission Act 2002</i> .”.
<b>7. AMENDMENT OF SECTION 12.</b>
Section 12 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (1) –
(i) by repealing the words “authorized officer” and replacing them with the following: –
“officer authorized in writing for the purposes by the Commission”; and
(ii) in Paragraph (a), by repealing the words “him with such information as he requires” and replacing them with the following: –
“such information as the Commission or authorized officer, as the case may be, requires”; and
(b) in Subsection (5), by repealing the words “authorized officer” and replacing them with the following: –
“officer authorized in writing for the purposes by the Commission”.
<b>8. AMENDMENT OF SECTION 13.</b>
Section 13 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (1) –
(i) in Paragraph (c), by repealing the words “, as the case may be”; and
(ii) in Paragraph (d) –
(A) by repealing the words “, as the case may be”; and
(B) by repealing the word “him” and replacing it with the following: –
“the Commission”; and
(b) in Subsection (2) –
(i) by repealing the words “, as the case may be”; and
(ii) by repealing the word “him” and replacing it with the following: –
“the Commission” and
(c) in Subsection (3), by repealing the word “him” and replacing it with the following: –
“the Commission”.
<b>9. AMENDMENT OF SECTION 14.</b>

Section 14 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (1), by repealing the words “furnish to him” and replacing it with the following: –
“furnish to the Commission”; and
(b) in Subsection (2) –
(i) by repealing the words “or carrying on”; and
(ii) by repealing the words “furnish to him” and replacing them with the following: –
“furnish to the Commission”.
<b>10. AMENDMENT OF SECTION 15.</b>
Section 15 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (2)(a), by inserting after the words “prescribed form” the following: –
“(if any)”; and
(b) in Subsection (4), by repealing the word “he” and replacing it with the following: –
“it”; and
(c) in Subsection (6), by repealing the word “him” and replacing it with the following: –
“the Commission”.
<b>11. AMENDMENT OF SECTION 16.</b>
Section 16(2)(a) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the words “him or inspected by him” and replacing them with the following: –
“or inspected by the Commission or the authorized officer, as the case may be”.
<b>12. AMENDMENT OF SECTION 17.</b>
Section 17 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) by inserting after the words “by order” the following: –
“in the National Gazette or served on the person to whom it applies”; and
(b) by inserting after the words “sells any” the following: –
“declared”.
<b>13. AMENDMENT OF SECTION 18.</b>
Section 18 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) by inserting after the word “selling” the following: –
“declared”; and
(b) by inserting after the word “supplying” the following: –
“declared”.

<b>14. AMENDMENT OF SECTION 19.</b>
Section 19(1) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the words “or rate”.
<b>15. AMENDMENT OF HEADING OF PART III.</b>
Part III of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the heading and replacing it with the following: –
<b>“PART III – PRICE CONTROL”.</b>
<b>16. NEW SECTION 20A.</b>
Division III.1 of the <i>Prices Regulation Act</i> (Chapter 320) is amended by inserting immediately before Section 21 the following new sections: –
<b>“20A. INTENTION TO DETERMINE MAXIMUM PRICES.</b>
(1) Where the Commission intends to make an order under Section 21(1), the Commission shall, at least 30 days prior to making the proposed order, publish a notice in a daily newspaper generally circulating in Papua New Guinea –
(a) specifying that the Commission intends to make an order under Section 21(1); and
(b) specifying in reasonable detail the declared goods or declared services to which the order is intended to apply; and
(c) specifying in reasonable detail the proposed terms of the order; and
(d) specifying the manner in which further details in relation to the proposed order may be obtained; and
(e) inviting interested persons to make submissions to the Commission with respect to the proposed order, within the period and in the manner specified in the notice.
“(2) Prior to making and publishing an order under Section 21(1), the Commission shall consider any submissions received from interested persons with respect to the proposed order.
<b>“20B. DUTY TO PUBLISH REASONS.</b>
(1) The Commission shall publish a statement of reasons for any order made and published by the Commission under Section 21(1).
“(2) A statement of reasons published under Subsection (1) shall –
(e) be published on the same date as the order to which it relates; and
(f) specify in reasonable detail the reasons for which the Commission made the order.”.
<b>17. AMENDMENT OF SECTION 21.</b>
Section 21 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (1) –
(i) by inserting after the words “National Gazette” the following: –
“prior to the expiration of the Price Declaration Period”; and
(ii) in Paragraph (b) –



(A) by repealing the words “supplied to” and replacing them with the following: –
“supplied by”; and
(B) by adding at the end of that Paragraph the following: –
“prior to the expiration of the Price Declaration Period.”; and
(b) in Subsection (2) –
(i) in Paragraph (a)(i), by repealing the words “or carried”; and
(ii) in Paragraph (h), by repealing the word “he” and replacing it with the following: –
“the Commission”; and
(c) by inserting after Subsection (2) the following new subsection: –
“(2A) When making an order under Subsection (1), the Commission shall have regard to –
(d) the need to protect consumers and users of the declared goods or services from misuse of market power in terms of prices, pricing policies (including policies relating to the level or structure of prices) and the standard of the declared goods or services; and
(e) the cost of making, producing or supplying the declared goods or services; and
(f) the desirability of encouraging greater efficiency in relation to making, producing or supplying the declared goods or services; and
(g) the need to ensure an appropriate rate of return on any investment in relation to the declared goods or services; and
(h) the borrowing, capital and cash flow requirements of persons making, producing or supplying the declared goods or services; and
(i) considerations of demand management and least-cost planning; and
(j) existing standards of quality, reliability and safety of the declared goods or services, and the desirability of encouraging improvements in those standards; and
(k) the effect of any proposed order on general price inflation over the medium term; and
(l) the economic and social impact of any proposed order; and
(m) any other matters the Commission considers relevant.”; and
(n) in Subsection (3), by repealing the words “or carried on”; and
(o) in Subsection (3)(c) –
(i) by repealing the words “or carrying on”; and
(ii) by repealing the words “or carry on”; and
(p) in Subsection (4), by repealing the words “or carries on”; and
(q) in Subsection (5), by repealing the words “or carry on” (twice occurring); and
(r) in Subsection (6), by repealing the words “or carry on”; and

(s) in Subsection (8) –
(i) by repealing the words “or carried on”; and
(ii) in Paragraph (c), by repealing the words “or carry on”; and
(t) by inserting after Subsection (9) the following new subsections: –
“(10) In this section, “Price Declaration Period” means the period of 90 days immediately following publication in the National Gazette of the notice which declared the goods or
services to be declared services for the purposes of this Act, as extended from time to time by the Commission in accordance with Subsection (11).
“(11) The Commission may, from time to time, by notice in the National Gazette prior to the expiration of the Price Declaration Period, extend the Price Declaration Period for a
further period of 30 days from the date on which the Price Declaration Period would otherwise have expired.”.
<b>18. AMENDMENT OF SECTION 22.</b>
Section 22 of the Prices Regulation Act (Chapter 320) is amended –
(a) in Subsection (1) –
(i) by repealing the words “the maximum rate”; and
(ii) by repealing the words “or carried on”; and
(b) in Subsection (2)(b), by repealing the word “rate” and replacing it with the following: –
“price”; and
(c) in Subsection (3) –
(i) in Paragraph (a), by repealing the words “and carrying on”; and
(ii) in Paragraph (b), by repealing the words “or carried on”; and
(d) in Subsection (4) –
(i) by repealing the words “or carrying on”; and
(ii) in Paragraph (c), by repealing the word “rate” and replacing it with the following: –
“price”; and
(iii) in Paragraph (d), by repealing the word “rate” and replacing it with the following: –
“price”.
<b>19. AMENDMENT OF SECTION 23.</b>
Section 23(3)(b) of the <i>Prices Regulation Act</i> (Chapter 320) is repealed and is replaced with the following: –
“(b) by order in the National Gazette, confirm, amend, vary or revoke the suspended order or part of the suspended order in conformity with its report to the Minister,”.

<b>20. NEW DIVISION III.1A.</b>
Part III of the <i>Prices Regulation Act</i> (Chapter 320) is amended by inserting after Section 25 the following new division: –
<b>“Division 1A. – Review of Price Control.</b>
<b>“25A. DECISION TO REVIEW PRICE CONTROL ORDER.</b>
(1) In this Division, “reviewable order” means an order made under Section 21(1) that has not expired or been terminated.
“(2) At any time after a reviewable order is made, the Minister or a supplier of the declared goods or services concerned may apply to the Commission for the order to be reviewed.
“(3) An application under Subsection (2) shall state, with reasons, the variation that the applicant proposes should be made to the reviewable order, including the proposed new maximum price.
“(4) Prior to the expiration of 12 months from the later of the date on which a reviewable order took effect and the date on which the outcome of the last review of the reviewable order was published under Section 25C(3), the Commission may,
in its discretion, following an application under Subsection (2) –
(a) decide to conduct a review of that order; or
(b) decide not to conduct a review of that order.
“(5) On or after the expiration of 12 months from the later of the date on which a reviewable order took effect and the date on which the outcome of the last review of the reviewable order
was published under Section 25C(3), the Commission shall, following an application under Subsection (2), conduct a review of that order in accordance with Section 25B.
“(6) The Commission may at any time, on its own motion, decide to conduct a review of a reviewable order.
“(7) If the Commission has received more than one application under Subsection (2) in respect of the same reviewable order, the Commission may treat the application as a single application and such application shall be deemed for the purposes of
Section 25C(1) to have been received by the Commission on the date that the Commission received the first application.”.
<b>“25B. REVIEW OF PRICE CONTROL ORDER.</b>
(1) If the Commission has decided, or been required by Section 25A(5), to conduct a review of a reviewable order, the Commission shall publish a notice in a daily newspaper generally circulating in Papua New Guinea –
(c) specifying in reasonable detail the order to which the notice relates; and
(d) specifying that the Commission intends to conduct a review of that order generally or in respect of particular matters, in the later case specifying in reasonable detail those matters; and

(e) inviting interested persons to make submissions to the Commission with respect to the review of the order, within the period and in the manner specified in the notice.
“(2) when conducting a review of a reviewable order, the Commission shall consider any submissions received from interested persons with respect to the review of that order.
<b>“25C. REVIEW PERIOD.</b>
(1) In this section, “review period”, in respect of a reviewable order, means the period of 90 days immediately following the date on which the Commission received an application under
Section 25A(2), as extended from time to time by the Commission in accordance with Subsection (2).
“(2) The Commission may, from time to time, by notice published in the National Gazette prior to the expiration of the review period, extend the review period for a further period of 30 days from the date on which the review period would otherwise have expired.
“(3) If the Commission has decided, or been required by Section 25A(5), to conduct a review of a reviewable order, the Commission shall, prior to the expiration of the review period, by notice in the National Gazette, determine that the order should –
(f) continue to operate in its present form; or
(g) be varied; or
(h) be terminated.
“(4) An order made under this section takes effect on the date specified in the order or, if no date is specified, on the date of publication of the notice in the National Gazette.
“(5) If, on the expiration of the review period, the Commission has failed to make a decision required by Subsection (3), the reviewable order shall be varied in the manner proposed by the applicant and the new maximum price shall be as proposed
by the applicant or, if there is more than one applicant, the maximum price proposed by the first applicant.”.
<b>21. AMENDMENT OF SECTION 27.</b>
Section 27(1) of the <i>Prices Regulation Act</i> (Chapter 320) as amended –
(a) in Paragraph (c), by repealing the words “or rate”; and
(b) by repealing the words “in his opinion” and replacing them with the following: –
“in the Commission’s opinion”.
<b>22. AMENDMENT OF SECTION 28.</b>
Section 28 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Paragraph (b), by repealing the words “or carry on”; and
(b) by repealing the words “or carried on”.
<b>23. AMENDMENT OF SECTION 29.</b>

Section 29(1) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the word “he” and replacing it with the following: –
“the Commission”.
<b>24. AMENDMENT OF SECTION 30.</b>
Section 30 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in the heading, by inserting after the word “of” the following: –
“declared”; and
(b) in Subsection (1) –
(i) by inserting after the words “distribution of” the following: –
“declared”; and
(ii) by inserting after the words “any specified” the following: –
“declared”.
<b>25. AMENDMENT OF SECTION 31.</b>
Section 31 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in the heading, by inserting after the word “in” the following: –
“declared”; and
(b) in Subsection (1), by repealing the words “any goods” (twice occurring) and replacing them in each case with the following: –
“any declared goods”; and
(c) in Subsection (2), –
(i) by repealing the words “had not” and replacing them with the following: –
“did not have”; and
(ii) by repealing the words “price of the goods” and replacing them with the following: –
“price of the declared goods”; and
(d) in Subsection (3), by repealing the words “acquisition of goods” and replacing them with the following: –
“acquisition of declared goods”.
<b>26. AMENDMENT OF SECTION 32.</b>
Section 32 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in the heading, by inserting after the word “of” the following: –
“declared”; and
(b) in Subsection (1), by repealing the words “buys up goods” and replacing them with the following: –
“buys up declared goods”.
<b>27. NEW PART IVA.</b>

The <i>Prices Regulation Act</i> (Chapter 320) is amended by inserting after Part IV the following new part: –
<b>“NEW PART IVA. – DECLARED MONITORED GOODS AND SERVICES.</b>
<b>“32A. DECLARED MONITORED GOODS AND SERVICES.</b>
(1) The Minister may, by notice in the National Gazette, declare –
(a) any goods, other than goods declared by any other Act or by a regulation made under any other Act to be regulated goods for the purposes of the <i>Independent Consumer and Competition Commission Act 2002</i> , to be declared monitored goods; or
(b) any service, other than a service declared by any other Act or by a regulation made under any other Act to be a regulated service for the purposes of the
<i>Independent Consumer and Competition Commission Act 2002</i> , to be a declared monitored service, for the purposes of this Act.
“(2) A declaration under Subsection (1) may be made –
(c) generally; or
(d) in respect of –
(i) any part of the country or any proclaimed area; or
(ii) a person, body or association of persons.
“(3) The Commission shall monitor the prices of declared monitored goods and declared monitored services, and matters connected with those prices, for the purpose of reporting to the Minister as required from time to time by the Minister on –
(e) the prices at which those goods are sold or those services are supplied; and
(f) the desirability or otherwise, having regard to the matters specified in Section 21(2A), of declaring those goods or services to be declared goods or services.”.
<b>28. AMENDMENT OF SECTION 37.</b>
Section 37 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Subsection (1)(b), by repealing the words “or carried on”; and
(b) Subsection (2)(b), by inserting after the word “manufacturer” the following: –
“of;”
<b>29. AMENDMENT OF SECTION 38.</b>
Section 38(1) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the words “delivers of” and replacing them with the following: –
“knowingly delivers or”.
<b>30. NEW SECTIONS 41A AND 41B.</b>

Division V.2 of the <i>Prices Regulation Act</i> (Chapter 320) is amended by inserting after the heading of Division 2 the following new sections.
<b>“41A. INTERPRETATION.</b>
In this Division, unless the contrary intention appears –
“Counsel” means a lawyer who is entitled, as of right, to appear before the Supreme Court or the National Court;
“the State” includes statutory authorities, and instrumentalities of the State.
<b>41B. COMMISSION TO PROSECUTE OFFENCES.</b>
(1) With respect to all offences created by this Act, the Commission –
(a) may control and exercise the prosecution function of the State; and
(b) may provide Counsel –
(i) to prosecute persons charged with any offence; and
(ii) to appear on behalf of the State in any appeal before the National or Supreme Court; and
(c) may advise the National Executive Council, through the Minister, to exercise its power under Section 151(2) ( <b>grant of pardon, etc.</b> ) of the <i>Constitution</i> to advise
the Head of State to grant pardons, free or conditional, to accomplices who give evidence leading to the conviction of principal offenders.
(2) Notwithstanding the provisions of any other Act, the Commission may prosecute offences under this Act without the consent of the Public Prosecutor.”.
<b>31. AMENDMENT OF SECTION 42.</b>
Section 42 of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing Subsection (2).
<b>32. AMENDMENT OF SECTION 49.</b>
Section 49(5) of the <i>Prices Regulation Act</i> (Chapter 320) is amended by repealing the word “Public Prosecutor” and replacing it with the following: –
“Commission”.
<b>33. AMENDMENT OF SECTION 51.</b>
Section 51 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) by inserting after the words “has been a” the following: –
“member of the”; and
(b) by repealing the words “or an advisor appointed under Section 6”; and
(c) in Paragraph (b), by inserting after the word “officer” the following: –
“of the Commission”.

<b>34. AMENDMENT OF SECTION 58.</b>
Section 54 of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) by repealing Subsection (1) and replacing it with the following: –
(1) A document purporting to be an instrument made or issued by the Minister, the Commission or any other person under this Act, or of an order made under this Act, and to be signed by or on behalf of the Minister or person shall –
(b) be received in evidence; and
(c) until the contrary is proved, be deemed to be an instrument made or issued by the Minister, Commission or person.”; and
(d) in Subsection (2) –
(i) by inserting after the word “Minister” the following: –
“the Commission”; and
(ii) by repealing the words “authority or”.
<b>35. AMENDMENT OF SECTION 58.</b>
Section 58(1) of the <i>Prices Regulation Act</i> (Chapter 320) is amended –
(a) in Paragraph (b), by repealing the words “or carries on”; and
(b) in Paragraph (d), by repealing the words “or carried on”.
<b>36. FURTHER AMENDMENTS</b>
The <i>Prices Regulation Act</i> (Chapter 320) is further amended –
(a) by repealing the words “the Controller” wherever they appear in the Act and replacing them with the following: –
“the Commission”; and
(b) by repealing the following words wherever they appear in the Act: –
(i) “a Deputy Controller”; and
(ii) “or a Deputy Controller”; and
(iii) “or the Deputy Controller”.



## SCHEDULE 2 – .

<b>Amendment to other Acts.</b>	
<b>1. INDUSTRIAL DEVELOPMENT (WAGE SUBSIDY) ACT (CHAPTER 110B).</b>	
Section 1 of the <i>Industrial Development (Wage Subsidy) Act</i> (Chapter 110B) is amended –	
(c) by inserting after the definition of “Certificate” the following new definition: –	
“Commission” means the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ”; and	
(d) in the definition of “import quota”, by repealing the words “Price Controller” and replacing them with the following: –	
“Commission”; and	
(e) by repealing the definition of “Price Controller”.	
<b>2. LICENSING OF HEAVY VEHICLES ACT (CHAPTER 367).</b>	
The Licensing of Heavy Vehicles Act (Chapter 367) is amended –	
(f) in Section 1 –	
(i) by repealing the definition of “the Controller”; and	
(ii) by inserting after the definition of “the Chairman” the following new definition: –	
“the Commission” means the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ”; and	
(g) in Section 22(1), by repealing the word “Controller” and replacing it with the following: –	
“Commission”.	
<b>37. NATIONAL AGRICULTURE QUARANTINE AND INSPECTION AUTHORITY ACT 1997.</b>	
Section 8(1)(d) of the <i>National Agriculture Quarantine and Inspection Authority Act 1997</i> is amended by repealing the words “the Executive Head of the Consumer Affairs Council” and replacing them with the following: –	
“the Commissioner of the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ”.	
<b>38. PACKAGING ACT (CHAPTER 285).</b>	
Section 1(1) of the Packaging Act (Chapter 285) is amended in the definition of “authorized officer” by repealing the words “the Price Controller, a Deputy Price Controller” and replacing them with the following: –	

“the Commissioner, an Associate Commissioner”.
<b>Amendment to other Acts.</b>
<b>1. INDUSTRIAL DEVELOPMENT (WAGE SUBSIDY) ACT (CHAPTER 110B).</b>
Section 1 of the <i>Industrial Development (Wage Subsidy) Act</i> (Chapter 110B) is amended –
(c) by inserting after the definition of “Certificate” the following new definition: –
“Commission” means the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ; and
(d) in the definition of “import quota”, by repealing the words “Price Controller” and replacing them with the following: –
“Commission”; and
(e) by repealing the definition of “Price Controller”.
<b>2. LICENSING OF HEAVY VEHICLES ACT (CHAPTER 367).</b>
The Licensing of Heavy Vehicles Act (Chapter 367) is amended –
(f) in Section 1 –
(i) by repealing the definition of “the Controller”; and
(ii) by inserting after the definition of “the Chairman” the following new definition: –
“the Commission” means the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ; and
(g) in Section 22(1), by repealing the word “Controller” and replacing it with the following: –
“Commission”.
<b>37. NATIONAL AGRICULTURE QUARANTINE AND INSPECTION AUTHORITY ACT 1997.</b>
Section 8(1)(d) of the <i>National Agriculture Quarantine and Inspection Authority Act 1997</i> is amended by repealing the words “the Executive Head of the Consumer Affairs Council” and replacing them with the following: –
“the Commissioner of the Independent Consumer and Competition Commission established under the <i>Independent Consumer and Competition Commission Act 2002</i> ”.
<b>38. PACKAGING ACT (CHAPTER 285).</b>
Section 1(1) of the Packaging Act (Chapter 285) is amended in the definition of “authorized officer” by repealing the words “the Price Controller, a Deputy Price Controller” and replacing them with the following: –
“the Commissioner, an Associate Commissioner”.