

## CHAPTER 326C

### FAIR COMPETITION

2002-19

Parts I - VIII and X of this Act came into operation on 3rd January, 2003 by Proclamation (S.I. 2002 No. 146).

Part IX of this Act came into operation on 10th March, 2008 by Proclamation (S.I. 2008 No. 11).

#### **Amended by:**

This Act has not been amended

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

2002

2008



**CHAPTER 326C**

**FAIR COMPETITION  
2002-19**

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**BARBADOS****FAIR COMPETITION  
2002-19***An Act*

- (a) *to promote and maintain and encourage competition;*
- (b) *to prohibit the prevention, restriction or distortion of competition and the abuse of dominant positions in trade in Barbados and within the Caricom Single Market and Economy;*
- (c) *to ensure that all enterprises, irrespective of size, have the opportunity to participate equitably in the market place; and*
- (d) *for connected matters.*

[Commencement: 3rd January, 2003 Parts I - VIII and X]

[Commencement: 10th March, 2008 Part IX]

**PART I  
PRELIMINARY****Short title**

1. This Act may be cited as the *Fair Competition Act*.

**Interpretation**

2.(1) In this Act,

“acquire”, in relation to

- (a) goods, includes to obtain by way of gift, purchase or exchange, lease, hire or hire purchase; and
- (b) a service, includes to accept the rendering or performance of the service;

“advertisement” means any form of communication made to the public or a section thereof for the purpose of promoting the supply of goods or services;

“agreement” includes any agreement, arrangement or understanding, whether oral or in writing or whether or not it is or is intended to be legally enforceable;

“authorised officer” means any person appointed as such under the *Fair Trading Commission Act*, Cap. 326B;

“business” includes the business of

- (a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in goods for gain or reward; and
- (b) acquiring, supplying and otherwise dealing in services for gain or reward;

“Caribbean Community” means the Caribbean Community established by the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the Caricom Single Market and Economy;

“Commission” means the Fair Trading Commission established under section 3 of the *Fair Trading Commission Act*, Cap. 326B;

“Community Competition Commission” means the Competition Commission established under Article 171 of the Revised Treaty of Chaguaramas

Establishing the Caribbean Community including the Caricom Single Market and Economy;

“Court” means the High Court;

“document” includes

- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph;
- (c) anything from which sounds or visual images are capable of being reproduced;
- (d) any record created, stored, generated, received or communicated by electronic or electromagnetic means;

“enterprise” means an individual, partnership or body (corporate or incorporate) engaged in business but does not include any employee or officer of a partnership or body;

“exclusive dealing” means any practice whereby a supplier of goods

- (a) as a condition of supplying the goods to a customer, requires that customer to
  - (i) deal only or primarily in goods supplied by or designated by the supplier or his nominee; or
  - (ii) refrain from dealing in a specified class or kind of goods except as supplied by the supplier or his nominee; or
- (b) induces a customer to meet a condition referred to in paragraph (a) by offering to supply the goods to the customer on more favourable terms or conditions if the customer agrees to meet that condition;

“goods” includes all chattels other than money, securities or *choses in action*;

“market restriction” means any practice whereby a supplier of goods, as a condition of supplying the goods to a customer, requires that customer to

supply any goods only in a defined market, or exacts a penalty of any kind from the customer if he supplies any goods outside a defined market;

“member state” means a state that is a member of the Caribbean Community;

“merger” means

- (a) the cessation of two or more enterprises from being distinct, whether by amalgamation, by one or more enterprises acquiring control over another or otherwise; or
- (b) the engagement in a joint venture between enterprises which results in two or more enterprises ceasing to be distinct entities;

“Minister” means the Minister responsible for Commerce and Consumer Affairs;

“price” includes any charge or fee, by whatever name called, payable in connection with the provision of a good or service;

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

“supply” means,

- (a) in relation to goods
  - (i) to sell, rent, exchange, hire or otherwise dispose of goods or an interest therein or a right thereto,
  - (ii) to offer to sell, rent, exchange, hire or otherwise dispose of such goods, right or interest;
- (b) in relation to services, to provide services or offer to provide such services otherwise than under a contract of employment,

and “supplier” shall be construed accordingly;

“tied selling” means any practice whereby a supplier of goods or services

- (a) as a condition of supplying the goods or services (hereinafter referred to as the “tied goods” or “tied services”, respectively) to a customer, requires the customer to
  - (i) acquire any other goods or services from the supplier or the nominee; or
  - (ii) refrain from using or distributing, in conjunction with the tied goods, any other goods that are not of a brand or manufacture designated by the supplier or the nominee; or
- (b) induces a customer to meet a condition set out in paragraph (a) by offering to supply the tied goods or tied services to the customer on more favourable terms or conditions if the customer agrees to meet that condition;

“trade” means any trade, business, industry, profession or occupation relating to the supply or acquisition of goods or services.

- (2) For the purposes of this Act,
  - (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
  - (b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.
- (3) For the purposes of this Act,
  - (a) a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person;
  - (b) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

- (c) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.
- (4) Every reference in this Act to the term
  - (a) “anti-competitive practice” or “anti-competitive business conduct” is a reference to a practice or conduct amounting to or resulting in an unreasonable restraint of trade or any act of competition in industrial or commercial matters, including the conclusion of any agreement or the establishment of any arrangement that
    - (i) restricts trade;
    - (ii) maintains or is likely to result in the maintenance of a dominant position; or
    - (iii) constitutes a pricing regime respecting a particular product or trade that is controlled by the supplier or purchaser;
  - (b) “market” is a reference to a market for goods and services supplied in Barbados.
- (5) References in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition.
- (6) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including competition from goods or services supplied or likely to be supplied by persons not resident or carrying on business in Barbados.

### **Application of Act**

- 3.(1) This Act shall not apply to
  - (a) combinations or activities of employees for their own reasonable protection as employees;

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- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
  - (c) subject to section 16(4), the entering into of an arrangement insofar as it contains a provision relating to the use, licence or assignment of rights under or existing by virtue of any copyright, patent or trademark;
  - (d) any act done to give effect to a provision of an arrangement referred to in paragraph (c);
  - (e) the entering into or carrying out of such agreement as is authorised by the Commission under Part V or the engagement in such business practice as is so authorised;
  - (f) activities expressly authorised or required under any treaty or agreement to which Barbados is a party;
  - (g) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public;
  - (h) such other business or activity declared by the Minister by order subject to affirmative resolution.
- (2) This Act applies to an enterprise that supplies any utility service set out in the *Second Schedule* to the *Fair Trading Commission Act*, Cap. 326B.

## PART II

### THE FAIR TRADING COMMISSION

#### **Fair Trading Commission**

4. The Fair Trading Commission established by section 3 of the *Fair Trading Commission Act*, Cap. 326B shall be responsible for the administration of this Act.

**Functions of Commission**

- 5.(1) The Fair Trading Commission shall
- (a) be responsible for the promotion and maintenance of fair competition;
  - (b) carry out, on its own initiative or at the request of any person that has an interest in the matter, such investigations or inquiries in relation to the conduct of trade
    - (i) as will enable it to prevent the use of trading practices in contravention of this Act;
    - (ii) as it may consider necessary or desirable in connection with any matters falling within the provisions of this Act;
  - (c) keep under review commercial activities to ensure that practices that may adversely affect the interests of consumers are prevented or terminated;
  - (d) carry out such other investigations or inquiries as the Minister may request;
  - (e) take such action as it considers necessary to
    - (i) prevent the abuse of a dominant position by any enterprise;
    - (ii) eliminate anti-competitive agreements;
    - (iii) prevent or control mergers;
  - (f) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister;
  - (g) carry out such other functions as are required to give effect to this Act.
- (2) Notwithstanding section 3(g), the Commission may, where it deems it to be in the public interest, enquire into the practices of any professional association to ensure that such practices are not contrary to subsections (13) and (14) of this Act.



(3) Where the Commission acts pursuant to subsection (2), it shall submit a report respecting the enquiry to the Minister within 90 days of the completion of the enquiry.

(4) Notwithstanding section 25 of the *Fair Trading Commission Act*, Cap. 326B, where the Commission determines that the conditions for the conduct of an investigation cannot reasonably be met by the complainant, the Commission may conduct an investigation pursuant to a complaint received under section 23 of that Act.

(5) The Commission shall investigate any allegations of anticompetitive business conduct referred to it by the Community Competition Commission or by a competition authority of another member state and shall submit to the Community Competition Commission or that other competition authority, a written report of its findings.

(6) The Commission

(a) shall make available

- (i) to persons engaged in business, general information with respect to their rights and obligations under this Act;
- (ii) to consumers, general information with respect to the rights and obligations of persons under this Act that affect the interests of consumers;

(b) shall co-operate with

- (i) the Community Competition Commission for the purpose of enforcing compliance with the provisions of this Act; and
- (ii) competition authorities of other member states for the purpose of detecting and preventing anti-competitive business conduct and exchanging information relating to such conduct;

(c) may undertake studies and publish reports and information regarding matters affecting the interests of consumers; and

- (d) may assist any national body or the competent authority within any member state or within the Caribbean Community in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

### **General powers of Commission**

6.(1) For the purpose of carrying out its functions under this Act, the Commission shall have power to

- (a) declare certain business practices to be abuses of a dominant position;
- (b) prohibit the withholding of supplies or any conduct relating to the withholding of supplies;
- (c) prohibit the making or carrying out of an agreement or order the termination of an agreement the execution of which is likely to result in the engaging in or effectuation of an anticompetitive practice;
- (d) prohibit the attachment of extraneous conditions to any transactions;
- (e) prohibit
  - (i) discrimination or preferences in prices or other related matters;
  - (ii) the recommending or prescribing of retail prices;
- (f) require the publication of accurate price lists that are available to members of the public;
- (g) prohibit
  - (i) the acquisition of one company by another company;
  - (ii) the acquisition of the assets of one company by another companyexcept in accordance with section 20(2);
- (h) mandate the furnishing of such returns or information as it may require within such period as it may specify by notice.

(2) The Commission shall obtain such information as it considers necessary to assist it in its investigation or inquiry and, in appropriate circumstances, shall examine and obtain verification of documents submitted to it.

(3) For the purposes of carrying out its functions under this Act, the Commission shall have power to

(a) require a person engaged in business or trade or such other person as the Commission considers appropriate, to state such facts concerning goods manufactured, produced or supplied by that person or services so supplied, as the Commission may think necessary to determine whether the conduct of the business in relation to the goods and services constitutes an anti-competitive practice; and

(b) require that any document submitted to the Commission be verified by affidavit.

(4) Where a person

(a) whose conduct is the subject of an investigation undertaken by the Commission;

(b) to whom a mandate has been given for the furnishing of returns or information in accordance with subsection (1)(h); or

(c) who is required to provide information to the Commission

fails to provide information, relevant to the matter to the Commission, the Commission may make a finding on the information available to it.

(5) Any person who

(a) being a witness, leaves a sitting of the Commission without the Commission's permission;

(b) willfully

(i) insults any member or officer of the Commission; or

(ii) obstructs or interrupts the proceedings of the Commission,

is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for a term of 6 months or both.

### **Power of entry to conduct search**

7.(1) The Commission, for the purpose of ascertaining whether any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of this Act, may

- (a) enter and search any premises;
- (b) inspect and remove, for the purpose of making copies, any documents or extracts therefrom in the possession or under the control of any person; and
- (c) upon completing the search authorised by the warrant, leave a receipt listing documents or extracts therefrom that are removed for the purposes of this section.

(2) Sections 27 and 28 of the *Fair Trading Commission Act*, Cap. 326B apply, with such modifications and adaptations as are necessary, to a search or seizure executed under this Act.

(3) The occupier or person in charge of any premises entered pursuant to this section shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of his functions under this section.

(4) A person who assaults, obstructs or impedes an authorised officer in the performance of his duties under this section is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for a term of 6 months or to both.

### **Destruction of records**

8. A person who alters any record or destroys any record likely to be required for any investigation that has commenced under this Act is guilty of an offence and is liable on conviction on indictment to a fine of \$150 000 or to imprisonment for a term of 2 years or to both.

**Discontinuance by Commission of inquiry or investigation**

9.(1) Where the Commission at any stage of an investigation or inquiry under this Act is of the opinion that the matter being investigated or subject to inquiry does not justify further investigation or inquiry, the Commission may discontinue the investigation or inquiry.

(2) Where the Commission discontinues an investigation or inquiry, it shall, within 14 days of the discontinuance notify the parties concerned in the investigation or inquiry of the discontinuance.

*Financial Provisions, Accounts and Reports***Power to charge fees**

10. The Commission may charge such fees as may be prescribed for any services rendered by it under this Act and such fees shall be used by the Commission to defray its expenses.

**Director**

11. The Director of Fair Competition shall be responsible for the discharge of the functions under this Act that are assigned to him by the Chief Executive Officer.

**Report**

12.(1) The Commission shall, within 2 months after the end of each financial year, submit to the Minister a report dealing generally with the activities undertaken under this Act during the preceding financial year.

- (2) The report referred to in subsection (1) shall include separately
- (a) all investigations respecting trade between Barbados and a Caricom Member State;
  - (b) all matters referred for investigation by a Caricom Member State; and

- (c) all matters in respect of which a complaint has been made concerning trade practices in Barbados to the Community Competition Commission.

### PART III

#### ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION, MERGERS AND INTERLOCKING DIRECTORSHIPS

##### **Provisions restricting, preventing or distorting competition**

**13.(1)** All acts or trading practices prescribed or adopted by

- (a) an enterprise;
- (b) an association of enterprises; or
- (c) a group of affiliated companies

that result or are likely to result in the disruption or distortion of competition are prohibited.

(2) Subject to the provisions of this section, all agreements between enterprises, trade practices or decisions of enterprises or organisations that have or are likely to have the effect of preventing, restricting or distorting competition in a market are prohibited and void.

(3) Without prejudice to the generality of subsection (2) agreements preventing competition referred to in that subsection include agreements containing provisions that

- (a) directly or indirectly fix purchase or selling prices or determine any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) provide for the artificial dividing up of markets or sources of supply;

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- (d) affect tenders to be submitted in response to a request for bids;
  - (e) apply dissimilar conditions to equivalent transactions with other parties engaged in the same trade, thereby placing those other parties at a competitive disadvantage; or
  - (f) make the conclusion of contracts subject to acceptance, by parties other than the offeror, of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (4) Subsection (2) shall not apply to any agreement or category of agreements
- (a) the conclusion of which has been authorised under Part V; or
  - (b) that the Commission is satisfied
    - (i) contributes to the improvement of production or distribution of goods and services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
    - (ii) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in sub-paragraph (i); or
    - (iii) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.
- (5) No person shall give effect to any agreements of enterprises or practices or decisions of associations of enterprises that are anticompetitive.

**Agreements containing exclusionary provisions**

**14.(1)** No person shall give effect to an exclusionary provision in an agreement where

- (a) the agreement is entered into or arrived at between persons any two or more of whom are in competition with each other; and
- (b) the effect of the provision is to prevent, restrict or limit the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons either generally or in particular circumstances or conditions, by all or any of the parties to the agreement, or, if a party is a company, by an affiliated company.

(2) For the purposes of subsection (1), a person is in competition with another person if that person or any affiliated company

- (a) is, or is likely to be; or
- (b) in the absence of the relevant provision, would be or would be likely to be,

in competition with the other person or with the affiliated company, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.

**Action by Commission re anticompetitive agreement or trade practice**

**15.(1)** Subject to this section, where the Commission determines that any agreement or trade practice referred to in sections 13 and 14 is anti-competitive, it shall serve notice on the parties whose agreement or trade practice is anti-competitive requiring them to cease a practice or terminate an agreement referred to in section 13 or 14.



(2) A person who fails to terminate the anti-competitive agreement or practice within the period stipulated in the notice is guilty of an offence and where the person is

- (a) an individual is liable to a fine of \$150 000; and
- (b) an enterprise is liable to a fine of \$500 000 or to 10 per cent of the turnover of the enterprise for the financial year preceding the date of the commission of the offence; whichever is the greater.

### **Abuse of dominant position**

**16.(1)** Subject to subsection (4), the abuse by an enterprise of a dominant position which the enterprise holds is prohibited.

(2) For the purposes of this Act, an enterprise holds a dominant position in a market if, by itself or together with an affiliated company, it occupies such a position of economic strength as will enable it to operate in the market without effective competition from its competitors or potential competitors.

(3) An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular, but without prejudice to the generality of the foregoing, if it

- (a) restricts the entry of any enterprise into that or any other market that supplies or is likely to supply a substitute for the good or service supplied in that market;
- (b) prevents or deters any enterprise from engaging in competitive conduct in that or any other market;
- (c) eliminates or removes any enterprise from that or any other market;
- (d) directly or indirectly imposes unfair purchase or selling prices that are excessive, unreasonable, discriminatory or predatory;
- (e) limits production of goods or services to the prejudice of consumers;

- (f) makes the conclusion of agreements subject to acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements;
        - (g) engages in exclusive dealing, market restriction or tied selling; or
        - (h) uses any other measure unfairly in its trading operations that allows it to maintain dominance.
- (4) An enterprise shall not be treated as abusing a dominant position
  - (a) if it is shown that its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress and consumers were allowed a fair share of the resulting benefit;
  - (b) the effect or likely effect of its behaviour in the market is the result of its superior competitive performance; or
  - (c) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trademark except where the Commission is satisfied that the exercise of those rights
    - (i) has the effect of lessening competition substantially in a market; and
    - (ii) impedes the transfer and dissemination of technology.

#### **Action in relation to abuse of dominant position**

**17.(1)** Where the Commission has reason to believe that an enterprise that has a dominant position in a market has abused or is abusing that position, the Commission may conduct an investigation into the matter.

(2) Where the Commission finds that an enterprise has abused or is abusing a dominant position, the Commission shall prepare a report indicating the practices that constitute the abuse and shall

- (a) notify the enterprise of its finding accompanied by a copy of the report; and
- (b) direct the enterprise to cease the abusive practice within a specified period.

### **Finding of abusive practice**

**18.(1)** Where the Commission finds that the abusive practice constitutes tied selling, the Commission, by notice in writing, shall direct the enterprise concerned to discontinue that practice.

(2) Subject to subsection (4), the Commission shall act in accordance with subsection (3) if it finds that exclusive dealing or market restriction is likely to

- (a) impede entry into or expansion of an enterprise in the market;
- (b) impede the introduction of goods into or expansion of sales of goods or the provision of services in the market; or
- (c) have any other exclusionary effect in the market,

with the result that competition is or is likely to be lessened substantially.

(3) The Commission may direct the supplier referred to in subsection (2) to discontinue engaging in market restriction or exclusive dealing and require that supplier to take such other action as, in the Commission's opinion, is necessary to restore or stimulate competition in relation to the supply of goods or services in the market.

(4) The Commission shall not take action under this section where, in its opinion, exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of new goods or a new supplier of goods or services into a market.

(5) This section shall not apply in respect of exclusive dealing or market restriction between or among affiliated companies.

**Provisions relating to notice under section 18**

**19.(1)** Where, within 30 days of the receipt of the direction under section 18(3), the enterprise concerned submits to the Commission the measures it would take and the timetable for giving effect to the measures to cease the abusive practice, and the Commission is satisfied that the measures and timetable are satisfactory, it shall suspend the operation of the direction for a period specified and notify the enterprise in writing thereof.

(2) Where an enterprise referred to in subsection (1) fails or neglects to give effect to the measures mentioned in that subsection, within the period specified by the Commission, the direction issued under section 18(3), to discontinue the activity referred to in that subsection shall have effect at the end of that period.

**Mergers**

**20.(1)** From the commencement of this Act, all mergers by an enterprise that

- (a) by itself controls, or
- (b) together with any other enterprise with which it intends to effect the merger is likely to control

not less than 40 per cent of any market or such other amount of the market as the Minister may by Order prescribe are prohibited unless permitted by the Commission in accordance with this section.

(2) Where an enterprise referred to in subsection (1) is desirous of effecting a merger, it shall apply to the Commission for permission to effect the merger.

(3) An application referred to in subsection (2) shall be accompanied by the prescribed information.

(4) Subsection (2) shall apply to any public bid for the control of an entity.

(5) Within 3 months after the receipt of an application under subsection (2), or as soon as practicable thereafter the Commission shall determine whether to grant or refuse permission and notify the applicant in writing of its determination.

(6) Before granting permission the Commission shall conduct an investigation into the proposed merger in order to satisfy itself that the proposed merger would not affect competition adversely or be detrimental to consumers or the economy.

(7) The Commission, in the conduct of its investigation under subsection (6), shall take into account

- (a) the structure of the markets likely to be affected by the proposed merger;
- (b) the degree of control exercised by the enterprises concerned in the proposed merger in the market and particularly the economic and financial power of the enterprises;
- (c) the availability of alternatives to the services or goods provided by the enterprises concerned in the merger;
- (d) the likely effect of the proposed merger on consumers and the economy; and
- (e) the actual or potential competition from other enterprises and the likelihood of detriment to competition.

(8) Where the merger proposed is likely to result in unfair competition, the Commission may direct the enterprises within an agreed period to divest interests or part of their combined business or operations if the Commission is satisfied that such divestment would make the merger less likely to lessen competition or to affect adversely the interests of consumers or the economy.

(9) An enterprise that contravenes subsection (1) or fails to comply with a direction given pursuant to subsection (8) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to 10 per cent of the turnover

of the enterprise for the financial year preceding the date of the commission of the offence; whichever is the greater.

### **Permitted merger**

- 21.(1)** A merger may be permitted if the parties establish that either
- (a) the merger is likely to bring about gains in real as distinct from pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the merger; or
  - (b) one of the parties to the merger is faced with actual or imminent financial failure, and the merger represents the least anti-competitive among the known alternative uses for the assets of the failing business.
- (2) A person seeking permission for a merger under section 20(2) shall demonstrate
- (a) that if the merger was not completed it is not likely that the relevant efficiency gains would be realised by means that would limit competition to a lesser degree than the merger; or
  - (b) that reasonable steps have been taken within the recent past to identify alternative purchasers for the assets of the failing business and describe in detail the results of the search for alternative purchasers.
- (3) Where, before the completion of a merger, the Commission determines that the merger does not qualify for permission under section 20, the Commission shall
- (a) prohibit completion of the merger; or
  - (b) prohibit completion of the merger unless
    - (i) it is modified by changes specified by the Commission; or
    - (ii) the relevant parties enter into legally enforceable agreements as specified by the Commission.

**Order for determination of merger**

**22.(1)** Where the Commission is of the opinion that enterprises have, without obtaining the permission of the Commission under section 21, structured themselves in such a way as to constitute a merger within the meaning of this Act the Commission may by notice in writing direct the enterprises concerned to determine the merger within such time as is specified in the direction.

(2) Before giving a direction under subsection (1), the Commission shall give the enterprises an opportunity to be heard.

(3) Where an enterprise fails to comply with a direction under subsection (1) the Commission shall apply to the Court for an order against the enterprise in the terms of the direction.

**Interlocking directorships**

**23.** Where a director serves on a board of directors of two or more companies that are significant competitors and the director's conduct has the effect of welding together the policies of those companies in such a way as to reduce significantly competition between them or to eliminate such competition, the Commission shall direct that the director serve on not more than one board of the relevant companies.

## PART IV

## RESALE PRICE MAINTENANCE

**Collective agreements by suppliers and dealers**

**24.(1)** It is unlawful for any

- (a) association comprising members who are suppliers of goods; or
- (b) two or more enterprises or agents of enterprises that are suppliers of goods

to enter into or carry out any agreement whereby the association, enterprises, or agents of enterprises, as the case may be, undertake to

- (i) withhold supplies of goods from dealers (whether parties to the agreement or not) who resell or have resold goods in breach of any condition as to the price at which those goods may be resold;
- (ii) refuse to supply goods to the dealers referred to in subparagraph (i) except on terms and conditions which are less favourable than those applicable in the case of other dealers carrying on business in similar circumstances;
- (iii) supply goods only to persons who undertake to do any of the acts described in sub-paragraph (i) or (ii).

(2) It is unlawful for any associations or enterprises that are dealers in any goods to enter into or carry out any agreement

- (a) whereby they undertake to withhold orders for supplies of goods from suppliers, whether parties to the agreement or not, who
  - (i) supply or have supplied goods without imposing a condition respecting the minimum price at which goods may be resold; or
  - (ii) refrain from taking steps to ensure compliance with such conditions in respect of goods supplied by them; or
- (b) that permits discrimination in their handling of goods supplied by those suppliers.

(3) It is unlawful for any association or enterprise referred to in subsection (1) or (2) to enter into or carry out any agreement authorising

- (a) the recovery of penalties, however described, by or on behalf of the parties to the agreement from dealers who re-sell or have resold goods in breach of any condition described in subsection (1) or (2); or
- (b) the conduct of any proceedings in connection with the recovery of a penalty as described in paragraph (a).



- (4) Any agreement that contravenes the provisions of this section is void.

**Agreement re minimum resale price void**

**25.(1)** Any term or condition of an agreement for the sale of any goods by a supplier to a dealer is void to the extent that it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods.

(2) Subject to subsections (3) and (4), it is unlawful for a supplier of goods or his agent to

- (a) include in an agreement for the sale of goods a term or condition which is void by virtue of this section;
- (b) require, as a condition of supplying goods to a dealer, the inclusion in the agreement of any term or condition or the giving of any undertaking that is void in accordance with subsection (1);
- (c) notify to dealers, or otherwise publish in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods.

(3) Subsection (2)(a) does not affect the enforceability of an agreement except in respect of the term or condition which is void by virtue of this section.

(4) Nothing in subsection (2)(c) shall be construed as precluding a supplier, or an association or agent acting on a supplier's behalf, from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods supplied or to be supplied by the supplier.

**Patented goods**

**26.(1)** Section 25 applies to patented goods and goods made by a patented process as it applies to other goods.

(2) Notice of any term or condition which is void by virtue of section 25, or which would be so void if included in an agreement relating to the sale of any

such goods, is of no effect for the purpose of limiting the right of a dealer to dispose of those goods without infringement of the patent.

(3) Nothing in section 25 and this section affects the validity, as between the parties to an agreement and their successors, of any term or condition of

(a) a licence granted by the proprietor of a patent or a licensee under any such licence; or

(b) any assignment of a patent,

insofar as it regulates the price at which goods produced or processed by the licensee or assignee may be sold by the dealer.

### **Maintenance of minimum resale prices**

27.(1) It is unlawful for a supplier to withhold supplies of any goods from a dealer seeking to obtain them for resale on the ground that the dealer

(a) has sold goods obtained either directly or indirectly from that supplier at a price below the resale price or has by other means supplied such goods either directly or indirectly to a third party who had done so; or

(b) is likely, if the goods are supplied to him, to sell them at a price below that price, or supply them either directly or indirectly to a third party who would be likely to supply the goods at a price below that paid for the goods.

(2) Where under this section it would be unlawful for a supplier to withhold supplies of goods, it is also unlawful for him to cause or procure any other supplier to do so.

(3) In this section “the resale price”, in relation to a sale of a good of any description, means any price

(a) notified to the dealer or otherwise published by or on behalf of a supplier of the goods in question, whether lawfully or not, as the price or minimum price which is to be charged or is recommended as appropriate, for a sale of a good of that description; or

- (b) prescribed or purporting to be prescribed to be charged for a good, by an agreement between the dealer and any supplier of the good.

### **Withholding supplies**

**28.(1)** For the purposes of this Part, a supplier of goods shall be treated as withholding supplies from a dealer if

- (a) the supplier refuses or fails to supply those goods to the order of the dealer;
- (b) the supplier refuses to supply those goods to that dealer except at prices, or on terms or conditions as to credit, discount or other matters, which are significantly less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or
- (c) where the supplier enters into an agreement to supply goods to the dealer, the supplier treats the dealer in a manner significantly less favourable than that in which the supplier normally treats other dealers in the goods supplied in respect of times or methods of delivery or other matters arising in the execution of the agreement.

(2) A supplier shall not be treated as withholding supplies of goods on any ground mentioned in section 27(1) if, in addition to that ground, the supplier has other grounds which, standing alone, would justify the withholding of those supplies.

(3) Subject to subsection (5), where in proceedings brought against a supplier of goods in respect of a contravention of section 27, the matters specified in subsection (4) are proved, it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had acted or was likely to act as described in that section.

(4) For the purposes of subsection (3) the following are required to be proved:

- (a) supplies of goods were withheld from a dealer;

- (b) during a period ending immediately before the supplies were so withheld, the supplier was doing business with the dealer or was supplying goods of the same description to other dealers carrying on business in similar circumstances; and
  - (c) the dealer, to the knowledge of the supplier, had within the preceding 6 months acted as described in section 27(1)(a) or had indicated his intention to act as described in section 27(1)(b) in relation to the goods in question.
- (5) Subsections (3) and (4) do not apply where the proof that supplies were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods supplied or to be supplied.

## PART V AUTHORISATIONS

### **Grant of authorisation**

**29.(1)** Subject to subsections (2) and (3), any person who proposes to enter into or carry out an agreement or to engage in a business practice which, in that person's opinion, is an agreement or practice affected or prohibited by this Act, may apply to the Commission for an authorisation to do so.

(2) The Commission, notwithstanding any other provision of this Act, upon receipt of an application referred to in subsection (1) may, where it is satisfied that the agreement or practice, as the case may be, is likely to promote the public benefit and is reasonable in the circumstances, grant an authorisation subject to such terms and conditions as it thinks fit and for such time as the Commission shall specify.

- (3) The Commission shall before granting an authorisation
- (a) publish a notice in the *Gazette* and in at least one newspaper that is published daily informing the public of the application and advising that persons who have an interest in the matter may submit written objections to the grant of the authorisation, within the time specified in the notice; and
  - (b) consider all objections received and satisfy itself that it is reasonable in the circumstances to grant the authorisation.
- (4) Where the Commission refuses to grant an authorisation, it shall inform the applicant in writing of the refusal and the reasons for it.

#### **Effect of authorisation**

**30.** While an authorisation granted under section 29 remains in force, nothing in this Act shall prevent the person to whom it is granted from giving effect to any agreement or any provision thereof or from engaging in any practice to which the authorisation relates.

#### **Revocation of authorisation**

- 31.(1)** Subject to subsection (2), the Commission may
- (a) revoke an authorisation where it is satisfied that
    - (i) the authorisation was granted on information that was false or misleading;
    - (ii) there has been a breach of any terms or conditions subject to which the authorisation was granted; or
    - (iii) the circumstances that justified the grant of the authorisation no longer exist; or
  - (b) amend the authorisation where it is satisfied that the current conditions in the market necessitate an amendment.

(2) The Commission shall, before revoking or amending an authorisation, serve on the relevant applicant a notice in writing specifying the reason for the proposed revocation or amendment and inform the person of the right to apply to the Commission to be heard on the matter within such time as may be specified in the notice.

### **Register of authorisation**

**32.(1)** The Commission shall keep, in such form as it may determine, a register of authorisations granted under this Part.

(2) The register shall be kept at the office of the Commission and shall be available for inspection by members of the public during the hours of business of the Commission.

## **PART VI**

### **ANTI-COMPETITIVE BUSINESS CONDUCT**

#### **Price fixing**

**33.(1)** A person who is engaged in the business of producing or supplying goods or services shall not, directly or indirectly

- (a) by agreement or promise, intimidation or threat or any like means, attempt to influence an increase or the maintenance or a reduction of the price at which any other person supplies or offers to supply or advertises goods or services;
- (b) refuse to supply goods or services to or otherwise discriminate against any other person engaged in business because of the low pricing policy of that other person or for any other reason.

(2) Subsection (1) does not apply where the person attempting to influence the conduct of another person and the person in respect of whom the attempt to influence is made are affiliated companies or, as the case may be, principal and agent.

(3) For the purposes of this section, the publication by a supplier of goods other than a retailer of an advertisement that mentions a resale price for the goods is an attempt to influence the maintenance or an increase of the selling price of any person into whose hands the goods come for resale unless the price is so expressed as to make it clear to any person who becomes aware of the advertisement that the goods may be sold at a lower price.

### **Action to restrain competition**

**34.(1)** No person shall conspire, combine, agree or arrange with another person to

- (a) limit the facilities for transporting, producing, manufacturing, storing or dealing in any goods or supplying any service;
- (b) prevent, limit or lessen, the manufacture or production of any goods to enhance unreasonably the price thereof;
- (c) lessen unduly competition in the production, manufacture, purchase, sale, supply, rental or transportation of any goods;
- (d) lessen, limit or prevent competition in the provision of insurance on persons concerned in or property related to the production, storage, transportation or dealing in any good or the provision of services;
- (e) otherwise unduly restrain or injure competition.

(2) Nothing in subsection (1) applies to a case where the arrangements are related to the introduction or maintenance of

- (a) standards for products or for the quality of service that are reasonably necessary for the protection of the public;
- (b) standards of competence and integrity that are required
  - (i) in the practice of a trade or profession relating to the service; or
  - (ii) in the collection and dissemination of information relating to the service.

**Bid-rigging**

**35.(1)** Subject to subsection (2), it is unlawful for two or more persons to enter into an agreement whereby

- (a) one or more of them agree to undertake not to submit a bid in response to a call or request for bids or tenders; or
- (b) as bidders or tenderers they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves.

(2) This section shall not apply in respect of an agreement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.

## PART VII

## ENFORCEMENT AND APPEALS

**Appeals**

**36.(1)** Where pursuant to section 30 of the *Fair Trading Commission Act*, Cap. 326B a notice has been served on a business enterprise, any person who is aggrieved by a finding of the Commission may, within 15 days after the date of receipt of the notice, appeal to a Judge in Chambers.

- (2) The Judge in Chambers may
- (a) confirm, modify or reverse the Commission's finding or any part thereof; or
  - (b) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.



- (3) In giving any direction under this section the Judge shall
- (a) advise the Commission of his reasons for doing so; and
  - (b) give to the Commission such directions as he thinks just concerning the reconsideration of the whole or any part of the matter that is referred for reconsideration.
- (4) In reconsidering the matter, the Commission shall have regard to the Judge's reasons for giving a direction under subsections (2) and (3).

### **Powers of Court**

**37.(1)** Where the Court is satisfied on an application by the Commission that any person has

- (a) contravened any of the obligations or prohibitions imposed in Part III, IV or VI; or
- (b) failed to comply with any direction of the Commission,

the Court may grant an injunction restraining the person from engaging in the conduct that constitutes the contravention or failure.

- (2) In exercising its powers under this section, the Court shall have regard to
- (a) the nature and extent of the default;
  - (b) the nature and extent of any loss suffered by any person as a result of the default;
  - (c) the circumstances of the default; and
  - (d) any previous determination against the person.
- (3) The Court may, in addition to a penalty imposed under this section, order the payment of compensation to a person who has suffered loss as a result of any anti-competitive agreement or trade practice.
- (4) The standard of proof in proceedings under this section shall be the standard of proof applicable in civil proceedings.

**Directions of Commission pending appeal**

**38.** Where an appeal is brought against any findings of the Commission, any direction of the Commission that is based on such findings shall remain in force pending the determination of the appeal, unless the Judge otherwise orders.

## PART VIII

## OFFENCES

**Obstruction of investigation or inquiry**

**39.** Subject to section 7(4), any person who, in any manner, impedes, prevents or obstructs any investigation or inquiry by the Commission under this Act or any authorised officer in the execution of his duties under this Act is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for a term of 6 months or to both.

**Destruction of records**

**40.** A person who destroys or alters any document which that person is required to produce to the Commission, or causes such document to be destroyed or altered, is guilty of an offence and is liable on conviction on indictment

- (a) where the person is an individual, to a fine of \$150 000 or to imprisonment for a term of 6 months or to both; and
- (b) where the person is a corporate entity, to a fine of \$500 000 or to imprisonment for a term of 6 months or to both.

**Failure to produce information**

**41.** Section 45 of the *Fair Trading Commission Act*, Cap. 326B applies with such modifications and adaptations as are required to a person who fails to produce any document or to supply any information to the Commission when required to do so.

**Giving false or misleading information to Commission**

**42.** A person who gives to the Commission or an authorised officer any information which he knows to be false or misleading is guilty of an offence and is liable on conviction to a fine of \$150 000 or to imprisonment for a term of 6 months or to both.

**Failure to comply**

**43.(1)** A person who

- (a) contravenes any provision under Part III, IV or VI is guilty of an offence and, where no other penalty has been imposed in respect of the offence, is liable on conviction on indictment
  - (i) where the person is an individual, to a fine of \$150 000 or to imprisonment for a term of 6 months or to both;
  - (ii) where the person is a corporate entity, to a fine of \$500 000 or to imprisonment for a term of 6 months or to both;
- (b) refuses or fails to comply with a direction or order of the Commission under this Act is guilty of an offence and is liable on conviction on indictment
  - (i) where the person is an individual, to a fine of \$150 000 or to imprisonment for a term of 6 months or to both;
  - (ii) where the person is a corporate entity, to a fine of \$500 000 or to imprisonment for a term of 6 months or to both.

(2) Where the person referred to in subsection (1) is a corporate entity, every director or officer of that entity is severally liable to a fine of \$150 000 or to imprisonment for 6 months unless the director or officer can prove that he took all necessary and proper means to obey and carry out the direction of the Commission and that he was not at fault for the failure to obey the direction.

**Civil liability**

- 44.(1)** Every person who engages in conduct that constitutes
- (a) a contravention of any of the obligations or prohibitions imposed in Part III, IV or VI;
  - (b) aiding, abetting, counselling or procuring the contravention of any provision referred to in paragraph (a);
  - (c) the inducing by threats, promises or otherwise, of the contravention of any provision;
  - (d) being knowingly concerned in or party to any contravention referred to in paragraph (a); or
  - (e) conspiring with any other person to contravene any provision referred to in paragraph (a),

is liable in damages for any loss caused to any other person by such conduct.

- (2) An action under subsection (1) may be commenced at any time within 3 years from the time when the cause of action arose.

**PART IX****THE COMMUNITY COMPETITION COMMISSION****References to Community Competition Commission**

**45.** Where an inquiry or investigation by the Commission involves anti-competitive business conduct by an enterprise in another Member State of the Caribbean Community, which has the effect of lessening competition in Barbados, the Commission shall refer the matter to the Community Competition Commission.

**Powers of Community Competition Commission**

**46.(1)** The Community Competition Commission shall have the powers set out in the *Schedule* to this Act.

(2) The Community Competition Commission shall, in relation to any matter referred to it under section 45, have power to do any act specified in subsection (1) to (5) of section 6.

(3) The provisions of this Act shall apply with necessary modifications in relation to any investigation or inquiry being carried out by the Community Competition Commission under this Act.

**Community Competition Commission**

**47.** A decision of the Community Competition Commission under this Act shall be binding on all parties to which it relates and is enforceable in the High Court to the same extent as a decision made by the Commission.

## PART X

## MISCELLANEOUS

**Power to prohibit disclosure of information**

**48.(1)** The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the Commission's operations.

(2) A person who publishes or communicates any information, documents or evidence, the publication of which is prohibited under subsection (1) is guilty of an offence and liable on conviction to a fine of \$150 000 or to imprisonment for a term of 6 months or to both.

**Confidentiality**

**49.(1)** The Commission and every person concerned or employed in the administration of this Act shall regard as secret and confidential, all documents, information or matters disclosed in the administration of this Act except those disclosures which the Commission considers necessary in the discharge of its functions.

(2) It shall be an offence for any person in the service of the Commission to disclose to any other person who is not in the service of the Commission any trade secret of any enterprise which may come to his knowledge in the course of discharging his duties under this Act.

(3) A person who is guilty of an offence under this section is liable on conviction on indictment to a fine of \$150 000 or to imprisonment for a term of 6 months or to both.

**Rules**

**50.** The Commission may, with the approval of the Minister, make rules generally for giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, may make rules

- (a) prescribing the procedures to be followed in respect of applications and notices; and
- (b) respecting the proceedings of the Commission.

**Transitional**

**51.** The Commission shall not take action under section 15 if, within 3 months after the commencement of this Act, the parties concerned notify the Commission of the details of the anti-competitive agreement or practice and agree with the Commission as to the manner and the period within which that agreement or practice will be terminated, and have otherwise settled the matter.

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**SCHEDULE***(Section 46)**Powers of the Community Competition Commission*

The Community Competition Commission shall have the power

- (a) to monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the Caricom Single Market and Economy;
- (b) in accordance with this Act, in the conduct of its investigations to
  - (i) secure the attendance of any person before it to give evidence;
  - (ii) require the discovery or production of any document or part thereof; and
  - (iii) take such other action as may be necessary in furtherance of the investigation;
- (c) on the basis of its investigations to make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty;
- (d) to the extent required to remedy or penalise anti-competitive business conduct
  - (i) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 170;
  - (ii) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this chapter;

- (iii) order payment of compensation to persons affected; and
- (iv) impose fines for breaches of the rules of competition.