

**COMPETITION ACT, 2007**  
**PASSED 3<sup>RD</sup> SEPTEMBER 2007**  
**NO. 4 OF 2007**

ARRANGEMENT OF SECTIONS

Section

**PART I – PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Inter-connected bodies
4. Definition of merger situation
5. Application of this Act and exceptions

**PART II – THE COMPETITION COMMISSION**

6. Establishment of the Competition Commission
7. Composition of the Commission
8. Term of office of Commissioners
9. Terms of appointment of Commissioners
10. Removal from office of Commissioners
11. Vacancies and temporary Commissioners
12. Meeting of the Commission
13. Declaration of interests by Commissioners
14. Transaction of business without meeting

**PART III – FUNCTIONS OF THE COMMISSION**

15. Functions of the Commission
16. Power of the Commission to delegate
17. Independence of the Commission
18. Commission to publish guidelines and procedural rules
19. Limitation of liability

**PART IV – STAFF OF THE COMMISSION**

20. Executive Secretary and other staff of the Commission

**PART V – FINANCES OF THE COMMISSION**

21. Funding of the Commission
22. Fees and other charges
23. Accounts and audit
24. Annual reports

**PART VI – RESTRICTIVE BUSINESS PRACTICES**

25. Prohibition of collusive agreements

26. Prohibition of bid rigging agreements
27. Severability of provisions of collusive or bid rigging agreements
28. Consequences of participation in restrictive agreements subject to prohibition
29. Horizontal agreements subject to investigation
30. Vertical agreements subject to investigation
31. Monopoly situations subject to investigation
32. Merger situations subject to investigation
33. Regulations for the control of mergers
34. Share of supply
35. Assessment criteria

#### **PART VII – INVESTIGATION BY OR ON BEHALF OF THE COMMISSION**

36. Meaning of investigation under this Part
37. Conditions for investigation and delegation of power to investigate
38. Assistance by Department of State and State agencies
39. Power of the Commission to obtain information
40. General power to enter premises
41. Entry into and search of premises
42. General provisions in respect of entry into premises
43. Privilege in respect of disclosure of information, etc.

#### **PART VIII – HEARING BY THE COMMISSION**

44. Meaning of investigation under this Part
45. Convening hearing
46. Attendance, etc. at hearing
47. Commission to hold hearing before imposing penalties or giving directions
48. Hearing to be governed by procedural rules

#### **PART IX – PENALTIES AND REMEDIES**

49. Restrictive agreements subject to prohibition – directions and penalties
50. Restrictive agreements subject to investigation and monopoly situations - directions
51. Mergers – directions
52. Interim measures
53. Undertakings
54. Review of directions and undertakings
55. Enforcement of directions and undertakings

#### **PART X – APPEALS**

56. Decisions, etc. of the Commission defined

- 57. Commission to give reasons for decisions, etc.
- 58. Appeals

**PART XI – MISCELLANEOUS**

- 59. Disclosure of information
- 60. Supplying false information
- 61. Regulations

**SCHEDULE 1 : Matters to which this Act does not apply**

**SCHEDULE 2 : Rules of Professional Bodies to which  
this Act does not apply**

# COMPETITION ACT, 2007

**AN ACT** to promote competition in the supply of goods and services by establishing a Commission, by prohibiting collusive agreements and bid rigging, by providing for investigation and control of other types of restrictive agreements and of monopoly and merger situations, by promoting understanding of the benefits of competition and to provide for other matters connected therewith.

[ See section 1]

**ENACTED** by the President and the National Assembly.

## PART I - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Competition Act, 2007.

(2) This Act shall come into force on such date or dates as the Secretary of State may appoint by notice published in the *Gazette* and different dates may be appointed for different purposes and for different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

“agreement” means an agreement between enterprises which is implemented or intended to be implemented in The Gambia, irrespective of the form in which it is made, and includes an oral agreement and a concerted practice;

“assets”, in relation to an enterprise, means assets of the enterprise, of all kinds, including physical assets, businesses, shares and other financial securities, brands and intangible assets, including goodwill, intellectual property rights and know-how;

“bid rigging agreement” has the meaning given to it under section 26;

“collusive agreement” has the meaning given to it under section 25;

“Commission” means the Competition Commission established under section 6;

“Commissioner” means a person appointed as a Commissioner under section 7(1);

“company” means a body corporate incorporated with or without limited liability in any part of the world;

“concerted practice” means a practice involving contacts or communications between competitors falling short of an actual agreement but nonetheless restricting competition between them;

“consumer” means a person to whom goods or services are supplied in the course of a business carried on by the person supplying them, and who does not receive them in the course of a business carried on by him or her;

“Court” means the High Court of The Gambia;

“direction” means a direction given by the Commission under Part IX;

“document” includes information recorded in written, electronic or any other form;

“enterprise” means a person or group of persons, whether or not incorporated, that carries on a business, and includes an entity owned wholly or partly by the State to the extent that it carries on a business that is lawfully carried on or is capable of being lawfully carried on in The Gambia by any other enterprise;

“Executive Secretary” means the person appointed as Executive Secretary of the Commission under section 19 or a person carrying out the functions of that office;

“goods” includes buildings and other structures;

“group”, in relation to an enterprise that is a company, means that company, any other

company that is its holding company or subsidiary and any other company that is a subsidiary of the holding company;

“hearing” means a hearing convened by the Commission to receive representations or submissions from concerned persons and to examine the parties or other persons on matters being considered by the Commission;

“horizontal agreement” means an agreement between enterprises each of which operates, for the purpose of the agreement, in the same market and would thus normally be competitors in that market;

“intellectual property rights”, in relation to an enterprise, means any right the enterprise enjoys under laws relating to copyright, design, patents or trade marks;

“inter-connected”, in relation to bodies corporate, has the meaning given to it under section 3;

“market” means a market in The Gambia or in any part of The Gambia;

“monopoly situation” means the situation that exists in the circumstance specified in section 31 (1);

“price” includes a charge of any description;

“restrictive agreement subject to prohibition” means a collusive agreement or a bid rigging agreement;

“restrictive agreement subject to investigation” means a horizontal agreement to which section 29 applies or a vertical agreement to which section 30 applies;

“regulations” means regulations made under this Act;

“Secretariat” means the Secretariat of the Commission;

“Secretary of State” means the Secretary of State responsible for trade;

“services” includes the undertaking and performance of any engagement, whether professional or not, for gain or reward, other than the supply of goods, but does not include the rendering of any services under a contract of employment;

“State agency” means the Central Bank of The Gambia, The Gambia Public Utilities Regulatory Authority or any other agency that is designated to be a State agency by regulations made by the Secretary of State under section 16 (3);

“statutory monopoly” means an activity conducted by an entity, whether or not owned wholly or partly by the State, on the basis of statutory provisions that preclude other entities from conducting the same activity;

Cap 95:01

“subsidiary” has the meaning given to it by the Companies Act;

“supply” includes, in relation to-

- (a) goods, the supply (including re-supply) by way of sales, exchange, lease, hire or hire-purchase of the goods; and
- (b) services, the provision by way of sales, grant or conferment of the services;

“undertaking” means an undertaking accepted by the Commission in accordance with section 53;

“vertical agreement” means an agreement between enterprises each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or resell certain goods or services;

(2) A reference in this Act to a Part, section or Schedule by number only is a reference to the Part or section of that number in this Act or to the Schedule of that number to this Act.

Inter-connected  
bodies

**3.** Any two bodies corporate are to be treated as inter-connected if one of them is a subsidiary of the other or if both of them are subsidiaries of the same body corporate.

Definition of  
merger situation

**4.** (1) A merger situation exists if any two or more enterprises cease to be distinct enterprises.

(2) Any two or more enterprises cease to be distinct enterprises if they are brought under common ownership or common control whether or not the business to which each of them formerly belonged continues to be carried on under the same or different ownership or control.

(3) Enterprises are treated as being under common control if -

(a) they are enterprises of inter-connected bodies corporate;

(b) their businesses are carried on by two or more bodies corporate of which one and the same person has control; or

(c) they are, on the one hand, an enterprise carried on by a body corporate and, on the other hand, an enterprise carried on by a person or group of persons having control of that body corporate.

(4) A person or group of persons is treated for the purpose of subsections (2) and (3) as having control of a body corporate or an enterprise if that person or group of persons, without having a controlling interest in the body corporate or in the enterprise, is nonetheless able, directly or indirectly, to control or materially to influence -

(a) the policy of that body corporate; or

(b) the policy of any person in carrying on that enterprise.

(5) For the purpose of subsection (2), insofar as it relates to bringing two or more enterprises under common control, a person or group of persons is treated as bringing an enterprise under its control if-

- (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise;
- (b) in the case of an enterprise carried on by a body corporate, that person or group of persons acquires a controlling interest in that body corporate; or
- (c) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.

Application of Act and exceptions

**5. (1)** A reference in this Act to the supply or acquisition of goods and services shall be construed as the supply or acquisition of goods and services in The Gambia.

(2) This Act does not apply to-

Schedule 1

(a) the matters listed in Schedule 1; and

Schedule 2

(b) such rules of professional bodies as are set out in Schedule 2 pursuant to any designation made by the Secretary of State under subsection (3)(c).

(3) The Secretary of State may, by regulations-

Schedule 2

- (a) vary the amount referred to in paragraph 8 of Schedule 1 (annual turnover of enterprises);
- (b) prescribe that any matter in Schedule 1, excluded from the application of the Act, shall no longer be so excluded;
- (c) designate the professional bodies whose rules are to be eligible in whole or in part for exclusion from this Act and the particular rules of those bodies that are to be so excluded by virtue of Schedule 2.

Schedules 1  
and 2

(4) While regulations made under subsection (3) are in force, Schedules 1 and 2 are taken to have been amended accordingly.

## **PART II – THE COMPETITION COMMISSION**

Establishment of  
the Competition  
Commission

**6.** (1) There is hereby established a Commission to be known as the Competition Commission.

(2) The Commission is a body corporate with perpetual succession and common seal.

(3) The Commission may-

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of property; and

(c) so far as it is possible for a body corporate to do so, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(4) The application of the common seal of the Commission shall be authenticated by the signature of the Chairperson or, in his or her absence, by the Executive Secretary,

(5) A document bearing the imprint of the seal of the Commission is to be taken to be properly sealed unless the contrary is proved.

(6) Except to the extent that this Act otherwise provides, the Commission shall be independent of the Secretary of State and of any other control by the State.

(7) Subject to sections 12 and 18, the Commission may regulate its own proceedings.

Composition of  
the Commission

**7.** (1) The Commission shall consist of five Commissioners appointed by the President after consultation with the Public Service Commission.

(2) Insofar as practicable, the Commissioners shall be persons who have knowledge or experience relevant to the Commission's functions.

(3) The President shall appoint one of the Commissioners to be the Chairperson of the Commission,

(4) The rights and obligations of the Commission, and the performance of its function, shall not be affected by any vacancy in its membership or any defect in the appointment of a Commissioner.

Term of office of Commissioners

**8.** (1) Except as provided by sections 11 (1) and 13 (2), the Commissioners shall hold office for a term of at least three years but not more than five years and may, on the expiry of their terms of appointment, be reappointed.

(2) The term of appointment of a Commissioner shall be such that it does not terminate at the same or nearly the same time as that of any other Commissioner.

(3) A Commissioner may resign from office at any time by giving one month's written notice of resignation to the President.

Terms of appointment of Commissioners

**9.** (1) The Commissioners shall be appointed on terms and conditions determined by the President.

(2) The terms of appointment shall indicate that Commissioners are expected to perform their functions on a part-time basis.

(3) A Commissioner shall be paid allowances determined by the Secretary of State.

Removal from office of Commissioners

**10.** A Commissioner shall not be removed from office unless-

(a) the Secretary of State has advised the President that the Commissioner has been absent from at least three consecutive meetings of the Commission without the permission of the Secretary of State and as a result of those absences the Commissioner is failing to carry out his or her functions as a Commissioner;

(b) at least two legally qualified medical practitioners have certified to the President that the Commissioner is incapacitated by physical or mental illness to such an

extent as to render the Commissioner incapable of carrying out his or her functions as a Commissioner;

- (c) the Commissioner has become bankrupt;
- (d) the Commissioner is convicted of a felonious offence or an offence involving moral turpitude; or
- (e) the Commissioner is sentenced by a court to any term of imprisonment.

Vacancies and temporary Commissioners

**11.** (1) If for any reason, a Commissioner cannot carry out his or her functions as a Commissioner for more than six months, the President may appoint another person to carry out those functions until the Commissioner is again able to carry out the functions.

(2) A Commissioner appointed to fill a vacancy under subsection (1) and holding office at the end of the term of the previous Commissioner is eligible for reappointment on the expiry of that term.

Meeting of the Commission

**12.** (1) The Commission shall meet at least three times during any period of twelve months.

(2) At a meeting of the Commission-

- (a) the Chairperson of the Commission shall preside but, in his or her absence, the other Commissioners shall elect one of their number to preside;
- (b) a majority of the Commissioners shall form a quorum; and
- (c) subject to subsection (4), each Commissioner shall have one vote on matters brought up for deliberation.

(3) The Commission shall adopt each of its decisions by a simple majority vote, provided that a minimum of three votes are cast in favour of the decision.

(4) If there is equality of votes, the Commissioner presiding as Chairperson shall have a casting

vote.

(5) The Commission shall not make a decision with respect to-

- (a) a restrictive agreement subject to prohibition;
- (b) a matter liable to investigation by virtue of section 29, 30, 31 or 32; or
- (c) a penalty, direction or undertaking,

except at a meeting of the Commission held in accordance with this section.

Disclosure of interests by Commissioners

**13.** (1) If a Commissioner has a direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to a matter considered at a meeting-

- (a) the Commissioner shall disclose the nature of the interest at the meeting;
- (b) the disclosure shall be recorded in the minutes of the meeting; and
- (c) the Commissioner shall withdraw from any deliberations of the Commission in respect of the matter and not vote upon it.

(2) If, by virtue of the effect of this section, the Commission is unable to achieve the quorum required under section 12 (2)(b) for a decision on a matter falling within section 12 (5), the President may, on the request of the Secretary of State, appoint a temporary Commissioner or temporary Commissioners with power solely to enable the Commission to make that decision.

(3) A Commissioner who contravenes the provisions of subsection (1)(a) or (c) may be removed from office by the President.

Transaction of business without meetings

**14.** (1) Except as provided by subsection (2), a decision is a valid decision of the Commission even though it was not made at a meeting of the Commission if-

- (a) it is signed or assented to by a majority

of the Commissioners; and

- (b) proper notice of the proposed decision was given to each Commissioner.

(2) The Commission has no power to make a decision in accordance with this section in respect of-

- (a) a restrictive agreement subject to prohibition;
- (b) a matter liable to investigation by virtue of section 29, 30, 31 or 32; or
- (c) a penalty, direction or undertaking.

### **PART III – FUNCTIONS OF THE COMMISSION**

Functions of the Commission

**15.** The functions of the Commission are to-

- (a) either on its own initiative or on the complaint of any person (including the State), inquire into suspected breaches of the prohibition of restrictive agreements falling within the provisions of sections 25 and 26;
- (b) either on its own initiative or on the complaint of any person (including the State), undertake an investigation of a matter falling within the provisions of section 29, 30, 31 or 32;
- (c) authorize the gathering of information required for an assessment of each case on the basis of the powers of investigation conferred by Part VII;
- (d) conduct, as required, any hearings with interested persons or parties;
- (e) prepare and publish reasoned decisions on each case where it has made a determination in respect of a restrictive agreement subject to prohibition or concluded an investigation (including a case where no penalty or remedial action is imposed);

- (f) determine what penalty or other remedy is appropriate for it to impose and what action an enterprise should take to ensure compliance with the penalty or remedy;
- (g) monitor compliance with a penalty or remedy and take any step required to enforce compliance;
- (h) publish and otherwise promote and advertise the provisions of this Act, and the activities of the Commission;
- (i) advise on any action taken or proposed to be taken by the State or any public body that may adversely affect competition in the supply of goods and services (including matters excluded from the scope of this Act under section 5 (2) and whether the exclusion should continue);
- (j) act as an advocate for competition in The Gambia;
- (k) undertake general studies on the effectiveness of competition in individual sectors of the economy in The Gambia;
- (l) collect information for the performance of the Commission's functions;
- (m) perform any other functions imposed on it by legislation.

Power of the Commission to delegate

**16.** (1) Subject to subsection (8), the Commission may delegate, to the bodies mentioned in subsection (2), the functions or tasks of -

- (a) collecting and evaluating evidence relating to the possible existence of a restrictive agreement subject to prohibition;
- (b) investigating a restrictive agreement subject to investigation, a monopoly situation or a merger situation;

- (c) carrying out inquiries to establish whether or not an enterprise has complied with a direction or an undertaking;
- (d) performing such other functions and tasks as the Commission considers appropriate.

(2) The bodies to which the functions or tasks specified in (1) may be delegated are -

- (a) a Department of State; or
- (b) a State agency.

(3) The Secretary of State may, by regulations, designate any agency, established by or under statute, to be a State agency to undertake functions or tasks delegated under subsection (1).

(4) A delegation shall be in writing signed by the Chairperson of the Commission.

(5) A function or task delegated under subsection (1), when exercised or carried out by the delegated body, shall, for the purposes of this Act, be taken to have been exercised or carried out by the Commission.

(6) A delegation of a function or task by the Commission under subsection (1) does not prevent the Commission from exercising the function or carrying out the task itself.

(7) The Commission shall publish in the *Gazette* a copy of each instrument making, varying or revoking a delegation under subsection (1).

(8) The Commission shall not delegate-

- (a) the power to delegate in accordance with subsection (1);
- (b) the power to hold a hearing;
- (c) the power to make a decision in relation to a restrictive agreement subject to prohibition or to a matter liable to investigation by the Commission under

section 29, 30, 31 or 32; or

(d) the power to determine a penalty, to impose a direction or to accept an undertaking.

(9) The Commission shall, before making a delegation, ensure that the body to whom the function or task is to be delegated-

(a) has no interest, direct or indirect, in the matter to be investigated; and

(b) has no other interest that could in any way influence a decision or recommendation that could be made by the body under the delegation.

(10) The Commission may revoke a delegation if it becomes aware that the body has an interest mentioned in subsection (9).

(11) If a function or task of the Commission is delegated to a Department or State agency, that Department or agency shall have, in addition to its powers to carry out its own functions, the same powers as the Commission has under this Act to carry out the function or task.

(12) The Department or State agency is not to be limited by the terms of any other Act in the exercise of the function or task delegated to it by the Commission.

(13) The Secretary of State may direct that a function or task-

(a) delegated under subsection (1) (d) should not continue to be delegated; or

(b) that a function or task should be delegated under subsection (1)(d).

(14) The Commission shall comply with any direction given under subsection (13).

Independence  
of the  
Commission

**17.** (1) Except as otherwise provided by this section, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions.

(2) The Commission shall act in all matters and at all times independently and impartially.

(3) Notwithstanding the provisions of subsection (1), the Secretary of State may, subject to subsection (4), require the Commission, by order -

- (a) not to carry out an investigation in respect of an enterprise specified in the order;
- (b) to discontinue an investigation it has started in respect of an enterprise specified in the order;
- (c) not to impose any penalty on an enterprise specified in the order; or
- (d) not to impose any penalty or other remedy, unless it has been approved by the Secretary of State.

(4) The Secretary of State shall not make an order under subsection (3) unless he or she is satisfied that the action specified in the order is necessary and required -

- (a) in the interest of national security; or
- (b) to comply with The Gambia's international obligations.

(5) An order made under subsection (3) shall have no effect until it has been published in the *Gazette* and must identify the grounds relied on by Secretary of State to make the order.

Commission to publish guidelines and procedural rules

18. (1) The Commission shall publish -

- (a) guidelines on the economic and legal analysis to be used in determining cases under this Act; and
- (b) procedural rules specifying the various procedures it intends to follow when carrying out its functions under this Act.

(2) The Commission may, from time to time, publish revisions of its guidelines and procedural rules.

(3) The guidelines may be prepared by the Commission or may be in the form of a document prepared by another person that has the approval of the Commission.

(4) The Commission shall, in particular, publish procedural rules in respect of -

- (a) the handling of complaints;
- (b) the conduct of investigations;
- (c) the conduct of hearings;
- (d) the basis on which penalties and remedies will be determined; and
- (e) the establishment of indicative time limits within which each phase of an enquiry or investigation will normally be completed.

(5) It is a defence in proceedings under this Act to show that the Commission failed, without reasonable cause, to act in accordance with a procedural rule published under this section that was applicable to the case.

(6) In formulating and publishing procedural rules, the Commission shall have regard to -

- (a) the rules of natural justice;
- (b) the need for fairness between parties; and
- (c) subject to paragraphs (a) and (b), the need for the expeditious determination of matters by the Commission.

Limitation of liability

19. (1) A person or body to whom this section applies is not liable in damages for anything done or omitted to be done in the performance or purported performance of a function of the Commission, unless it is shown that the act or omission was in bad faith.

(2) This section applies to -

- (a) the Commission;

- (b) a Commissioner, the Executive Secretary or a person who is acting as the Executive Secretary or a person who is, or is acting as, an officer, employee or agent of the Commission or performing a function on behalf of the Commission; and
- (c) the Secretariat or a person performing a function on behalf of the Secretariat.

#### **PART IV - STAFF OF THE COMMISSION**

Executive Secretary and other staff of the Commission

20. (1) There shall be an Executive Secretary of Commission appointed by the President after consultation with the Public Service Commission and the Commission.

(2) The Executive Secretary shall be the chief executive of the Commission and head of the Secretariat of the Commission.

(3) The Executive Secretary shall be appointed on terms and conditions determined by the President.

(4) The Executive Secretary shall-

- (a) prepare for, and take minutes of, the Commission's meetings and hearings and record its decisions;
- (b) carry out administrative functions on behalf of the Commission, including making arrangements for the delegation of functions as provided for by section 16;
- (c) assist the Commission to prepare guidelines, procedural rules and reports;
- (d) receive, on behalf of the Commission, any complaints about alleged anti-competitive practices;
- (e) receive, and deal with correspondence and other communications on behalf of the Commission.
- (f) carry out any other functions as required by the Commission.

(5) If there is a vacancy in the post of Executive Secretary or the Executive Secretary is unable to carry out his or her functions, the President may appoint another person to act as the Executive Secretary or to carry out the Executive Secretary's functions until an Executive Secretary is appointed or the Executive Secretary is again able to carry out his or her functions.

(6) The Commission shall appoint such other staff as it deems necessary to assist the Executive Secretary and the Commission in the performance of their functions and tasks under this Act.

(7) The staff of the Commission shall be appointed on terms and conditions approved by the Secretary of State.

(8) The Commission shall be responsible for the discipline and removal of employees of the Commission.

(9) The Commission shall adopt suitable policies in respect of conditions of service of its staff, which shall be in accordance with approved Government policy.

(10) The Commission shall, with the approval of the Secretary of State, make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Commission.

(11) The Commission shall, for the purpose of achieving maximum efficiency in the discharge of its functions, institute schemes for the training of its employees in administrative and other areas relevant to the functions of the Commission with a view to securing the benefit of their knowledge, experience and expertise in the conduct of the operations of the Commission.

## **PART V – FINANCES OF THE COMMISSION**

Funding for the Commission

21. (1) Except as provided by section 22, the costs of running the Commission shall be provided for by appropriation by the National Assembly.

(2) The costs referred to subsection (1) include -

- (a) the allowances payable to the Commissioners;
- (b) the operating costs of the Commission and its Secretariat, including the salaries and allowances of the Executive Secretary and other staff, equipment and premises required for meetings and hearings of the Commission; and
- (c) such other funds as the Commission requires to carry out its functions.

Fees and other charges

22. (1) The Secretary of State may, by regulations, prescribe the fees and other charges to be paid by parties to restrictive business practices examined or investigated by the Commission under the provisions of Part VI.

(2) The fees shall be retained by the Commission and used to defray the costs of the Commission in carrying out examinations or investigations.

Accounts and audit

23. (1) The Commission shall, not later than three months before the end of each financial year, make and submit to the Secretary of State for approval, estimates of the income and expenditure of the Commission for the ensuing year.

(2) The Commission shall keep proper records and accounts of its income and expenditure and shall prepare a statement of accounts in respect of each financial year.

(3) The Commission shall, within three months of the end of the preceding financial year, submit to the Auditor-General for auditing, its statement of accounts for that year.

(4) The audited accounts of the Commission and the Auditor-General's report on those accounts shall form part of the Auditor-General's overall annual report to the National Assembly.

Annual reports

24. (1) The Secretariat shall prepare on behalf of the Commission a report on the activities of the Commission during each financial year.

(2) The Commission shall provide the Secretary of State with the report no later than two months after the end of the financial year.

(3) The Secretary of State shall, within three months after the end of the financial year, lay a copy of the report before the National Assembly.

## **PART VI - RESTRICTIVE BUSINESS PRACTICES**

### **Sub-Part 1 – Restrictive agreements subject to prohibition**

Prohibition of collusive agreements

25. (1) A provision of an agreement by virtue of which it is a collusive agreement as defined by subsection (2) is prohibited and void.

(2) An agreement is a collusive agreement if -

(a) it is a horizontal agreement; and

(b) it has the object or effect of preventing, restricting or distorting competition, by in any way-

(i) fixing the selling or purchase price of goods or services, or

(ii) sharing markets or sources of supply.

(3) Subsection (2) does not apply to an agreement to which the only parties are inter-connected bodies.

Prohibition of bid rigging agreements

26. (1) A provision of an agreement by virtue of which it is a bid rigging agreement as defined by subsection (2) is prohibited and void.

(2) An agreement is a bid rigging agreement if it is a horizontal agreement between enterprises whereby –

(a) one of the parties to the agreement agrees not to submit a bid or tender in

response to a call or request for bids or tenders; or

- (b) the parties to the agreement agree on the price, terms or conditions of a bid or tender to be submitted in response to a call or request for bids or tenders.

(3) Subsection (2) does not apply to an agreement-

- (a) to which the only parties are interconnected bodies; or
- (b) the terms of which are made known to the person making the call or request for bids or tenders at or before the time when any bid or tender is made by a party to the agreement.

Severability of provisions of collusive or bid rigging agreement

27. If an agreement containing provisions by virtue of which it is a collusive agreement or a bid rigging agreement also contains other provisions that do not fall within the provisions of sections 25 (1) and 26 (1), those other provisions are not prohibited and shall continue to have effect to the extent that they are capable of having effect in the absence of the voided provisions.

Consequences of participation in restrictive agreements subject to prohibition

28. A restrictive agreement subject to prohibition is prohibited in all circumstances and any enterprise which is found, after the application of the provisions of Parts VII and VIII, to be a party to such an agreement is liable to-

- (a) a penalty or other remedy imposed by the Commission in accordance with the provisions of Part IX; and
- (b) a civil action by any person who has suffered or may suffer loss or damage by virtue of the agreement.

**Sub-Part 2 - Restrictive agreements subject to investigation**

Horizontal agreements subject to investigation

29. A horizontal agreement that is not a collusive agreement is subject to investigation by the Commission if -

- (a) the parties to the agreement together supply thirty *per cent* or more, or acquire thirty *per cent* or more, of goods and services of any description; and
- (b) the Commission has reasonable grounds to believe that the agreement has the object or effect of preventing, restricting or distorting competition.

Vertical agreements subject to investigation

30. A vertical agreement is subject to investigation by the Commission if the Commission has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is liable to investigation by virtue of section 31(2).

### **Sub-Part 3 – Monopoly situations**

Monopoly situations subject to investigation

31. (1) A monopoly situation exists in relation to the supply of goods or services of any description if -

- (a) thirty *per cent* or more of those goods or services are supplied, or acquired, by one enterprise; or
- (b) seventy *per cent* or more of those goods or services are supplied, or acquired, by three or fewer enterprises.

(2) Where a monopoly situation exists, it is subject to investigation by the Commission if the Commission has reasonable grounds to believe that the enterprise or enterprises in the monopoly situation is or are engaging in conduct that -

- (a) has the object or effect of preventing, restricting or distorting competition; or
- (b) in any other way constitutes exploitation of the monopoly situation.

### **Sub-Part 4 – Mergers**

Merger situation subject to

32. Where a merger situation exists, it is subject

investigation

to investigation by the Commission if -

- (a) at least one of the parties to the merger situation carries on business in The Gambia or operates by or under the control of a body corporate incorporated in The Gambia; and
- (b) either -
  - (i) both of the parties to the merger supply or acquire goods or services of any description and will, following the merger, together supply or acquire thirty *per cent* or more of all those goods and services; or
  - (ii) one of the parties to the merger alone supplies or acquires, prior to the merger, thirty *per cent* or more of goods or services of any description; and
- (c) the Commission has reasonable grounds to believe that the creation of the merger situation has resulted, or is likely to result, in a substantial lessening of competition within any market or markets for goods or services.

Regulations for the control of mergers

33. (1) The Secretary of State may make regulations prescribing measures relating to the control of mergers.

(2) The measures to be prescribed may include but are not to be limited to -

- (a) requiring parties to a merger situation to notify the Commission of a merger –
  - (i) falling within the scope of section 32 (a) and (b), or
  - (ii) meeting other specified criteria,  
  
either in advance of its implementation in The Gambia or within a defined period following the implementation;
- (b) imposing penalties, including the suspension of the implementation of a

completed merger, for non-notification of a merger situation falling within the scope of section 32(a) and (b) or within any other specified criteria;

- (c) setting time limits within which the Commission must respond to the notification of a merger situation pursuant to paragraph (a) by informing the parties –
  - (i) that the Commission intends to proceed to an investigation on the basis of concerns arising under section 32(c), or
  - (ii) that the Commission has no concerns arising under section 32(c);
- (d) requiring parties, if the Commission proceeds to conduct an investigation –
  - (i) not to implement a proposed or uncompleted merger until the Commission gives its agreement, or
  - (ii) to suspend the implementation of a completed merger until the Commission agrees to the implementation.

#### **Sub-Part 5 – Share of supply, etc.**

Share of supply

34. (1) For the purpose of establishing whether the share of supply criteria set out in section 29(a), 31(1)(a) or (b), or 32(b)(i) or (ii) are satisfied, the share of the group as a whole is to be used if an enterprise –

- (a) is a subsidiary of a group; or
- (b) is otherwise party to agreements by which enterprises are inter-connected within a group.

(2) The criteria for determining when goods or services are to be treated as goods or services of a separate description shall be the criteria that, in any particular case, appear to the Commission to be the most appropriate in the circumstances.

(3) The criteria for determining whether the share of supply or acquisition mentioned in section 29(a), 31(1)(a) or (b), 32(b) (i) or (ii) is fulfilled, shall be the criteria that, in any particular case, appear to the Commission to be most appropriate in the circumstances.

(4) When the Commission has opened an investigation because it is satisfied that the applicable criteria for share of supply or acquisition have been fulfilled, the Commission shall decide whether-

- (a) the goods or services used in calculating the share of supply or acquisition also constitute the relevant market for the purpose of assessing the effects on competition ; or
- (b) some alternative definition of the market should be substituted for that purpose.

(5) The Secretary of State may, by regulations, vary a percentage mentioned in section 29(a), 31(1)(a) or (b) or 32(b)(i) or (ii).

#### **Sub-Part 6 – Assessment criteria to be used in investigation**

Assessment  
criteria

35. (1) The Commission shall, in relation to restrictive agreements subject to prohibition, establish whether, on the facts of the case, parties have breached the prohibition.

(2) The Commission shall, when investigating a matter falling within the provisions of section 29, 30, 31, or 32, first determine whether competition in any market is adversely affected in that, in the case of -

- (a) a restrictive agreement subject to investigation, the agreement has the object or effect of preventing, restricting or distorting competition;
- (b) a monopoly situation, the conduct of one or more parties –

- (i) has the object or effect of preventing, restricting or distorting competition, or
  - (ii) in any other way constitutes exploitation of the monopoly situation; or
- (c) a merger situation, the creation of a merger situation has resulted, or is likely to result, in a substantial lessening of competition within any market or markets for goods and services.

(3) If an investigation into one of the matters described in subsection (2) leads to a finding by the Commission that there are adverse effects for competition in a particular case, the Commission shall, before deciding on any appropriate remedial action to be taken as provided for under Part IX, consider-

- (a) if any of the offsetting public benefits specified in subsection (4) are present; and
- (b) whether and to what extent the benefits, if they are present, should be taken into account in determining the remedial action (if any) to be taken.

(4) A benefit shall be considered for the purposes of subsection (3)(a) if it is attributable to the agreement subject to investigation, the monopoly situation or the merger situation and it directly contributes to -

- (a) maintaining lower prices, higher quality or greater choice for users and consumers;
- (b) promoting or maintaining the efficient production, distribution or provision of existing goods and services;
- (c) developing new or improved goods and services; and
- (d) enhancing the effectiveness of the Government's programme for the development of the economy of The

Gambia.

**PART VII – INVESTIGATIONS BY OR ON  
BEHALF OF THE COMMISSION**

**Sub-Part 1 – Delegation of Commission’s  
power to investigate**

Meaning of  
investigation  
under this Part

36. In this Part, “investigation” includes an investigation -

- (a) to establish whether an enterprise is a party to a restrictive agreement subject to prohibition;
- (b) of a matter subject to investigation by the Commission in accordance with section 29, 30,31 or 32; and
- (c) to establish whether an enterprise has failed to comply with a direction or undertaking.

Conditions for  
investigation  
and delegation  
of power to  
investigate

37. (1) The Commission is under no duty to carry out investigations itself until such time as the Secretary of State certifies by Notice in the *Gazette* that the Commission and its Secretariat have been given the staff and resources to undertake such investigations under this Act.

(2) Until the Secretary of State issues the Notice referred to in subsection (1), it is the duty of the Commission, using its power of delegation under section 16 (1) and after consultation with one or more of the bodies specified in section 16 (2), to arrange for –

- (a) an investigation to be carried on its behalf by a Department of State or State agency specified in section 16 (2); and
- (b) that Department of State or State agency to report its findings to the Commission.

(3) Where a power has been delegated to a Department of State or State agency in accordance with subsection (2)(a), all the powers to obtain information conferred on the Commission under this Part may be exercised by the Department of State or State agency and all the

powers conferred on an officer of the Commission under this Part may be duly exercised by a duly authorised officer or agent of that Department of State or State agency.

Assistance by  
Department of  
State or State  
agency

38. (1) A Department of State or State agency requested by the Commission to carry out an investigation on behalf of the Commission shall comply with the request.

(2) A Department of State or State agency may decline to comply with the request if the Secretary of State with responsibility for the relevant Department of State or the chief executive officer of the State agency certifies to the Commission that the Department or agency does not have, and is not likely to have, the financial or human resources available to carry out the investigation and that the resources cannot reasonably be obtained.

(3) In the circumstances described in subsection (2), the Secretary of State shall take such steps as may be required to enable the investigation to proceed.

### **Sub-Part 2 – Power to obtain information**

Power of the  
Commission to  
obtain  
information

39. (1) This section applies where the Commission has –

- (a) reasonable grounds to suspect that an enterprise is a party to a restrictive agreement subject to prohibition;
- (b) opened an investigation into a case falling within the provisions of section 29, 30, 31 or 32; or
- (c) reasonable grounds to believe that an enterprise has failed to comply with a direction or an undertaking.

(2) The Commission may serve a written notice on an enterprise or on any other person that appears to be in possession of relevant information or documents.

(3) The Commission may, in the notice, require the enterprise or person on whom it is served to

do all or any of the following -

- (a) provide to the Commission, either forthwith or within a time specified in the notice, information or documents that the Commission reasonably requires for its investigation;
- (b) answer questions in respect of any information the Commission requires for the purposes of its investigation, either forthwith or at a time and place specified in the notice.

(4) A person who -

- (a) fails to comply with a notice served under subsection (2); or
- (b) knowingly or recklessly provides information that is false, misleading or incomplete,

commits an offence and is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment, or if a body corporate, to a fine of not less than five hundred thousand dalasis.

General power  
to enter  
premises.

40. (1) An officer or agent of the Commission may at any reasonable time enter –

- (a) premises occupied; or
- (b) any other premises where information or documents are kept,

by an enterprise or a person on whom a notice has been served under section 39 (2).

(2) The officer or agent shall, if required, produce evidence of his or her authority to enter the premises.

(3) An officer or agent of the Commission may enter premises under subsection (1) to –

- (a) obtain the information or documents mentioned in section 39 (3)(a);

- (b) put the questions referred to in section 39 (3)(b); or
- (c) exercise the powers conferred by subsection (4) in respect of documents required to be provided.

(4) The powers that may be exercised under subsection (3) in respect of documents required to be provided includes power, if the documents -

- (a) are provided, to retain or take copies of them, their contents or extracts from them, as is practicable; and
- (b) are not provided, to require the person to whom the requirement was directed to state to the best of his or her knowledge and belief, where they are.

Entry into and search of premises

41. (1) Where a Judge or Magistrate is satisfied by information on oath that -

- (a) there are reasonable grounds to suspect that an enterprise is a party to a restrictive agreement subject to prohibition;
- (b) the Commission is carrying out an investigation under section 29, 30, 31 or 32; or
- (c) there are reasonable grounds to believe that a party has failed to comply with a direction or undertaking; and
- (d) at least one of the circumstances specified in subsection (2) exists,

the Judge or Magistrate may grant a warrant that authorises entry to premises.

(2) The circumstances referred to in subsection (1) (d) are that -

- (a) a specified enterprise or person has failed in any respect to comply with a notice served on the enterprise or person under section 39 (2);

- (b) there are reasonable grounds for suspecting the completeness of any information or documents provided in response to a notice served under section 39 (2);
- (c) if a notice were to be served on a specified enterprise or person under section 39 (2), it would not be complied with, or documents to which it might relate would be removed, concealed, tampered with or destroyed; or
- (d) entry has not been possible using the power specified in section 40.

(3) A warrant under subsection (1) may authorise an officer of the Court, accompanied by an officer or agent of the Commission, together with any other person named in the warrant, to enter the premises specified in the warrant, using such force as is reasonably necessary, for the purpose mentioned in subsection (4).

(4) A person who has entered premises in accordance with a warrant under subsection (1) may -

- (a) search the premises;
- (b) obtain information or take possession of any document or electronic device that appears to be relevant to the investigation;
- (c) take steps necessary to prevent interference with the document or electronic device;
- (d) take copies of or extracts from the document or electronic device;
- (e) require a person named in the warrant to answer questions relevant to the investigation; and
- (f) if information, document or electronic device cannot be found, require a person appearing to be in possession of relevant information to state where it is and how it

may be retrieved.

General provisions in respect of entry into premises

42. (1) Subject to subsection (2), a document or electronic device taken under section 41 (4)(b) may be retained for one year.

(2) If, within the year specified in subsection (1), proceedings to which the document or electronic device is relevant are commenced against any person, the document or electronic device may be retained until the conclusion of those proceedings, including any appeal.

(3) A person who requires a document or electronic device taken under section 41 (4)(b) for his or her business and who asks for the document or electronic device must be provided with a copy of the document or of contents of the electronic device, if practicable, as soon as possible.

(4) A person who -

- (a) without reasonable excuse, fails to comply with a requirement imposed on him or her under section 39 or 40; or
- (b) obstructs a person exercising a power conferred by section 39 or 40,

commits an offence and is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment or, if a body corporate, to a fine of not less than five hundred thousand dalasis.

Privilege in respect of disclosure of information, etc.

43. (1) Nothing in this Part requires a person to disclose or produce information, document or other material if the person would in an action in a court be entitled to refuse to disclose or produce it on the grounds of legal professional privilege.

(2) Notwithstanding subsection (1), a legal practitioner shall disclose the name and address of a client to the Commission when required to do so by the Commission in the exercise of its powers under this Act.

## **PART VIII – HEARING BY THE COMMISSION**

Meaning of investigation under this Part

44. In this Part, "investigation" includes an investigation -

- (a) to establish whether an enterprise is a party to a restrictive agreement subject to prohibition;
- (b) of a matter subject to investigation by the Commission in accordance with section 29, 30, 31 or 32; and
- (c) to establish whether an enterprise has failed to comply with a direction or undertaking.

Convening hearing

45. (1) This section applies where the Commission has opened an investigation.

(2) The Commission may at any time, and shall if a party under investigation so requests, convene a hearing at which it can hear the views of any person it considers has a relevant interest in the case.

(3) The Commission may decline to hold a hearing requested in accordance with subsection (2) until it is satisfied that it has obtained sufficient information to do so either as a result of the exercise of the powers specified in Part VII or otherwise.

Attendance, etc. at hearing

46. (1) The Commission may require the attendance of a person at a hearing and may require the production of documents and other material.

(2) A person who fails to attend a hearing or to produce a document or other material when required to do so under subsection (1) commits an offence and is liable on conviction, in the case of-

- (a) an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment; or
- (b) a body corporate, to a fine of not less than five hundred thousand dalasis.

(3) The Commission may require evidence at a

hearing to be given under oath.

(4) A witness who declines to take the oath or fails to answer, fully, truthfully and satisfactorily, questions put by the Commission at a hearing commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

Commission to hold hearing before imposing penalties or giving directions

47. (1) The Commission shall not impose a penalty on an enterprise or give a direction unless it has held a hearing.

(2) Notwithstanding subsection (1), the Commission may impose a penalty or make a direction if the enterprise concerned has elected not to attend a hearing requested by the Commission or has failed to attend a hearing when required to do so by the Commission.

Hearing governed by procedural rules

48. (1) A Commissioner shall not attend a hearing if the Commissioner has a direct or indirect interest in the outcome of the investigation to which the hearing relates.

(2) A hearing shall be governed by and be conducted in accordance with rules, for the time being in effect, published by the Commission pursuant to section 18.

## **PART IX – PENALTIES AND REMEDIES**

Restrictive agreement subject to prohibition – directions and penalties

49. (1) This section applies if the Commission determines that an enterprise is a party to a restrictive agreement subject to prohibition.

(2) The Commission may give the enterprise such directions as the Commission considers appropriate to ensure that the enterprise ceases to be a party to the restrictive agreement.

(3) A direction may, in particular, require the enterprise to terminate or modify the agreement.

(4) A direction given under this section shall be in writing.

(5) The Commission may, in addition to, or in

place of, giving a direction, make an order imposing a financial penalty on the enterprise.

(6) The Commission shall not impose a financial penalty unless it is satisfied that the breach of the prohibition was committed intentionally or negligently.

(7) The amount of the penalty must not exceed ten *per cent* of the turnover of the enterprise in The Gambia during the period of the breach of the prohibition up to a maximum period of three years.

(8) The Secretary of State may, by regulations, prescribe the manner in which turnover is to be calculated for the purpose of subsection (7).

(9) An order imposing a penalty under subsection (5) shall be in writing and specify the date before which the penalty is required to be paid.

(10) The date specified under subsection (9) shall not be earlier than the end of the period within which an appeal against the order may be brought in accordance with section 58.

(11) If a penalty has not been paid within the specified date and-

- (a) no appeal against the order was brought in accordance with section 59; or
- (b) an appeal was made but dismissed or withdrawn,

the Commission may apply to the court for an order to enforce the Commission's order against the enterprise concerned.

Restrictive agreements subject to investigation and monopoly situations - directions

50. (1) This section applies if the Commission determines, after investigation, that an enterprise is a party to a restrictive agreement subject to investigation or is in a monopoly situation and that-

- (a) in relation to the restrictive agreement subject to investigation, the agreement has the object or effect of preventing, restricting or distorting competition; or

(b) in relation to the monopoly situation, any conduct of the enterprise –

(i) has the object or effect of preventing, restricting or distorting competition, or

(ii) in any other way, constitutes exploitation of the monopoly situation.

(2) The Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to –

(a) remedy, mitigate or prevent the adverse effects on competition that the Commission has identified; or

(b) remedy, mitigate or prevent any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.

(3) In determining, in any particular case the remedial measures required to be taken, the Commission shall have regard to the extent to which any of the offsetting benefits specified in section 35 (4) are present in that case.

(4) Subject to subsections (2) and (3), a direction under this section may include, but is not limited to, a requirement that the enterprise to which it is given shall -

(a) terminate or amend an agreement;

(b) cease or amend a practice or course of conduct, including conduct in relation to prices;

(c) supply goods or services, or grant access to facilities;

(d) separate or divest itself of any enterprise or assets;

(e) provide the Commission with specified

information on a continuing basis.

(5) A direction given under this section shall be in writing.

Mergers -  
directions

51. (1) This section applies if the Commission determines, after investigation, that –

- (a) an enterprise is a party to a merger situation; and
- (b) the creation of the merger situation has resulted, or is likely to result, in a substantial lessening of competition within a market for goods or services.

(2) The Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to-

- (a) remedy, mitigate or prevent the substantial lessening of competition; and
- (b) remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.

(3) In the case of a prospective merger, a direction may require an enterprise to -

- (a) desist from completion or implementation of the merger insofar as it relates to a market in The Gambia;
- (b) divest such assets as are specified in the direction within the period also so specified in the direction, before the merger can be completed or implemented;
- (c) adopt, or desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of proceeding with the merger.

(4) In the case of a completed merger, a direction may require an enterprise to -

- (a) divest itself of such assets as are

specified in the direction within the period also specified in the direction;

- (b) adopt, or to desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of maintaining or proceeding with the merger.

(5) A direction given under this section shall be in writing.

(6) Whether or not the Secretary of State has made regulations under section 33, he or she may, by regulations, prescribe a time limit within which the Commission shall decide whether or not it intends to conduct an investigation of a merger situation to which section 32 applies.

(7) The Secretary of State shall, in prescribing a limit under subsection (6), have regard to the date on which the parties to the merger situation ceased to become distinct entities.

Interim  
measures

52. (1) This section applies if the Commission has reasonable grounds to suspect that an enterprise is a party to a restrictive agreement subject to prohibition, has not completed its examination of the matter, but believes that there is the risk of serious or irreparable damage to a particular person as a consequence of the agreement.

(2) This section also applies where an enterprise is a party to an agreement to which section 29 or 30 applies, to a monopoly situation or to a merger situation, on which the Commission has opened but not completed an investigation, and where the Commission is satisfied that -

- (a) there is *prima facie* evidence that competition is being prevented, restricted, distorted or substantially lessened and that, in consequence, serious or irreparable damage may be caused to a particular person; or
- (b) the enterprise is taking steps (for example, the integration of activities or the disposal of assets) that would effectively pre-empt remedial action

being taken that would restore the conditions of competition existing prior to the investigation.

(3) The Commission may give such directions as it considers appropriate if, as a matter of urgency, it considers it is necessary to do so to -

- (a) prevent serious or irreparable damage to a particular person or category of persons;
- (b) protect the public interest; or
- (c) prevent pre-emptive action being taken by the enterprise under investigation.

(4) A direction given under this section shall be in writing.

(5) The Commission shall give an enterprise to which it intends to give a direction the opportunity to make representations to the Commission before the direction is given.

#### Undertakings

53. (1) An enterprise may offer an undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation.

(2) The undertaking may be offered before the start of the investigation or at any stage during the investigation.

(3) The Commission may determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition.

(4) An undertaking accepted by the Commission shall be published by the Commission in the form of a decision of the Commission.

(5) An undertaking accepted by the Commission shall have effect as if it were a direction.

Review of directions and undertakings

54. (1) The Commission shall keep the compliance with directions and the performance of undertakings under review.

(2) The Commission may-

(a) agree to vary or terminate a direction; or

(b) accept a variation to an undertaking or release an enterprise from an undertaking,

if it is satisfied that there has been a material change of circumstances.

Enforcement of directions and undertakings

55. (1) This section applies if the Commission determines that an enterprise has failed, without reasonable excuse, to comply with a direction or undertaking.

(2) The Commission shall consider any representations the enterprise wishes to make before making a determination.

(3) The Commission may apply to the Court for an order requiring the enterprise to make good the default within a time specified in the order.

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

## **PART X – APPEALS**

Decision, etc. of the Commission defined

56. This Part applies to every decision or determination the Commission makes or any direction it gives under this Act, other than a decision, determination or direction of a purely administrative nature not directly relevant to any enterprise.

Commission to give reasons for decision, etc.

57. The Commission shall set out in each decision, direction or determination the reasons for the decision, direction or determination.

Appeals

58. (1) A person aggrieved by a decision of the Commission to the effect that an enterprise is or is not in breach of the prohibition specified in section 25 or 26 may appeal to the Court against the decision, and, where the Commission's decision is that there has been a breach of the prohibition,

against -

- (a) all or part of any direction given by the Commission pursuant to section 49 (2); and
- (b) the imposition of a financial penalty by the Commission pursuant to section 49 (5) or the level of the penalty.

(2) On an appeal under subsection (1), the Court may fully review the facts and evidence on which the Commission relied -

- (a) in reaching its decision;
- (b) in formulating any directions; or
- (c) in determining the level and proportionality of any financial penalty.

(3) Where the Commission takes a decision following an investigation into a restrictive agreement subject to investigation, into a monopoly situation or into a merger situation, either to impose or not to impose a direction pursuant to section 50 or 51, a person aggrieved by that decision or by the terms of any direction, may appeal to the Court against that decision.

(4) On an appeal under subsection (3), the Court shall not re-hear any evidence and has no power to do more than -

- (a) ascertain if there was any procedural deficiency on the part of the Commission;
- (b) ascertain if there was any manifest error in the evaluation of evidence by the Commission; or
- (c) review the proportionality or practicability of the action specified in the direction.

(5) On an appeal under subsection (1) or (3), the Court may -

- (a) confirm the decision of the Commission;

- (b) order the Commission to vary its decision or direction, or such part of it as the Court may specify;
  - (c) order the Commission to revoke its decision or direction in whole or in part; or
  - (d) order the Commission to re-hear the whole or any part of the evidence presented to it and any new or other evidence the Court may specify.
- (6) On an appeal under subsection (1), the Court has the power to order the Commission to -
- (a) increase or decrease any financial penalty it has imposed; or
  - (b) revoke any financial penalty it has imposed.
- (7) The Commission shall comply with an order made under subsection (5).
- (8) The notice of an appeal under this section shall specify the grounds of the appeal in specific terms.
- (9) The procedural rules to be established by the Commission under section 18 shall specify the period within which an appeal under this section shall be lodged following the publication of the Commission's decision.
- (10) The Secretary of State may, after consulting the Chief Justice, make Rules of Court in respect of appeals under this section.
- (11) Except in the case of an appeal against the imposition or level of a financial penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates unless the Court orders otherwise.

## **PART XI – MISCELLANEOUS**

Disclosure of information

59. (1) A person shall not disclose information with respect to a particular business or the affairs of an individual that has been obtained under or by

virtue of a provision of this Act while the business continues to be carried on or during the lifetime of the individual.

(2) Subsection (1) does not apply to a disclosure of information -

- (a) made with the consent of the person carrying on the business or the individual concerned;
- (b) made in circumstances where the information is in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it;
- (c) that is already in the public domain;
- (d) made to facilitate the performance of a function of the Commission;
- (e) made in proceedings under this Act;
- (f) made in connection with the investigation of a criminal offence; or
- (g) made to facilitate the performance of a function specified by regulations made by the Secretary of State.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment or, if a body corporate, to a fine of not less than five hundred thousand dalasis.

Supplying false information

60. (1) A person who knowingly or recklessly provides the Commission or any other person entitled to information under this Act with information that is false or misleading in a material particular commits an offence if the information is provided in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission to exercise a function under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction, if an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment and, if a body corporate, to a fine of not less than five hundred thousand dalasis.

Regulations

61. (1) The Secretary of State may make regulations generally for the better carrying into effect of the provisions of this Act.

(2) Regulations made under this Act may -

- (a) make different provisions in relation to different cases or circumstances; and
- (b) contain such incidental, consequential and transitional provisions as the Secretary of State considers to be necessary or expedient.

(3) Except in the circumstance described in subsection (4), the Secretary of State shall consult the Commission before making regulations under this Act.

(4) The circumstance referred to in subsection (3) is that the first members of the Commission have yet to be appointed.

### **SCHEDULE 1** (Section 5 (2))

#### **Matters to which this Act does not apply**

1. The activities of a statutory monopoly.
2. A practice or an agreement expressly required or authorised by an enactment or by any scheme or other instrument made under an enactment, including matters falling within the terms of a licence issued pursuant to a regulatory regime established by statute for the purpose of economic or prudential regulation.
3. A practice of employers or an agreement to which employers are party, and any conduct engaged in by an enterprise, insofar as the practice agreement or conduct relates to the

remuneration, terms or conditions of employment of employees.

4. A practice, conduct or an agreement insofar as it relates to the export of goods from The Gambia or the supply of services outside The Gambia.

5. An agreement or conduct insofar as it relates to the protection, exercise, licensing or assignment of rights under, or existing by virtue of, laws relating to copyright, design rights, patents or trade marks or other intellectual property rights.

6. A practice, conduct or an agreement approved or required under an international agreement to which the State of The Gambia is a party.

7. An agreement or conduct, insofar as it relates solely to activities within a Free Zone under the control of The Gambia Investment Promotion and Free Zones Agency established under The Gambia Investment Promotion Act, 2001.

2001 No. 2

8. An enterprise with an annual turnover in The Gambia not exceeding two hundred and fifty thousand dalasis based on the enterprise's accounts for the immediately preceding financial year.

## **SCHEDULE 2** (Section 5 (3))

### **Rules of Professional Bodies to which this Act does not apply**

1. This Act does not apply to those rules of the professional bodies that are specified by the Secretary of State by regulations made under section 5 (3)(c).

2. In this Schedule, "rules" means the regulations, codes of practice and statements of principle that regulate a professional service or the persons providing, or wishing to provide, a professional service.

## **OBJECTS AND REASONS**

In the long term economic development blueprint,

Vision 2020, the Government set out its market oriented programme of development and emphasized its commitment to a vibrant private sector and to the introduction of a Competition Bill. Competition is one of the main engines of economic development.

The adoption of this Bill will give confidence to those wishing to invest in The Gambia, by helping to provide a more predictable business environment.

**ABDOU COLLEY  
SECRETARY OF STATE FOR TRADE,  
INDUSTRY AND EMPLOYMENT**