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- (b) publish that document in such manner as it thinks fit.

(4) The Tribunal may exclude from what it publishes under subparagraph (3)(b) information of a specified description.

23. (1) Where —

Costs

- (a) the Tribunal disposes of an appeal or an appeal is withdrawn before the Tribunal disposes of it; and
- (c) the Tribunal thinks that a party to the appeal acted vexatiously, frivolously or unreasonably in bringing the appeal or otherwise in relation to the appeal,

it may order that party to pay to the other party the whole or a part of the costs incurred by the other party in relation to the appeal.

24. An order of the Tribunal under paragraph 21 may be enforced as if it was an order of a court.

Enforcement
of order of
Tribunal

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 25th September, 2009.



Veronique Bresson
Clerk of the National Assembly

(3) In the case of an appeal against a determination to impose a penalty, the Tribunal —

- (a) has no power by virtue of subparagraph (2)(c) to increase the penalty; but
- (b) may extend the period within which the penalty is to be paid;

(4) Subparagraph (3) does not affect —

- (a) the Tribunal's power to give directions to the Commission under subparagraph (2)(d); or
- (b) what the Commission can do where a matter is remitted to it under subparagraph (2)(d).

Decision of
Tribunal

22.(1) A decision of the Tribunal shall be taken by majority of members present and voting at a meeting.

(2) A decision of the Tribunal disposing of an appeal shall—

- (a) state whether it was unanimous or taken by majority; and
- (b) be recorded in a document which —
 - (i) contains a statement of the reasons for the decision and any other specified information; and
 - (ii) is signed and dated by a member.

(3) Where the Tribunal disposes of an appeal it shall —

- (a) send to each party to the appeal a copy of the document mentioned in subparagraph (2)(b); and



FAIR TRADING COMMISSION ACT, 2009

(Act No. 17 of 2009)

I assent



J. A. Michel
President

26th October, 2009

AN ACT to provide for the establishment of a Fair Trading Commission, to safeguard the interests of consumers, to monitor and investigate the conduct of business enterprises, to promote and maintain effective competition in the economy, and to provide for matters connected therewith

ENACTED by the President and National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Fair Trading Commission Act, 2009.

Short title

Interpretation

2. In this Act —

“Board” means the Board of Commissioners appointed under section 5(1)(a);

“business” —

(a) means the carrying on of any commercial activity for gain or reward; and

(b) includes —

(i) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in goods for gain or reward; and

(ii) acquiring, supplying and otherwise dealing in services for gain or reward;

“Commission” means the Fair Trading Commission established under section 3(1);

“Commissioner” means a member of the Board;

“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 a person, firm, partnership, corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes its branches,

(j) for the suspension of determinations of the Commission;

(k) for the suspension of decisions of the Tribunal;

(l) for the awarding of costs;

(m) for the Tribunal to reconsider its decision disposing of an appeal where it has reason to believe that the decision was wrongly made because of an administrative error made by a member of its staff;

(n) for the publication of reports of the Tribunal's decision;

(o) for conferring on the Tribunal such ancillary powers as the Minister thinks necessary for the proper discharge of its duties.

21.(1) The Tribunal shall decide an appeal by reference to the grounds of appeal set out in the notice of appeal.

Disposal of
appeal

(2) In disposing of an appeal the Tribunal may do one or more of the following —

(a) confirm the determination appealed against;

(b) quash that determination;

(c) vary that determination;

(d) remit the matter to the Commission for reconsideration and determination in accordance with the directions, if any, given to it by the Tribunal;

(e) give the Commission directions for the purpose of giving effect to its decision.

Rules on
procedure

20.(1) The Minister may make rules for regulating the exercise of the rights of appeal conferred by this Act and the practice and procedure of the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules may make provision for the following—

- (a) about the holding of hearings by the Tribunal including for such hearings to be held in private;
- (b) about persons who may appear on behalf of a party to an appeal;
- (c) setting time limits in relation to anything that is to be done for the purposes of an appeal or for such limits to be set by the Tribunal;
- (d) about fees payable for the filing of notice of appeal with the Commission or for the performance of any other function by the Tribunal.
- (e) for time limits to be extended by the Tribunal;
- (f) conferring powers on the Tribunal to give such directions to the parties to an appeal as it thinks fit for purposes connected with the conduct and disposal of the appeal;
- (g) about withdrawals of appeal;
- (h) placing restrictions on the disclosure of information and documents or for such restrictions to be imposed by the Tribunal;
- (i) about the consequences of a failure to comply with a requirement imposed by or under any rule, including for the immediate dismissal or allowing of an appeal if the Tribunal thinks fit;

subsidiaries, affiliates or other entities directly or indirectly controlled by it;

“Minister” means the Minister responsible for Trade;

“prescribed” means prescribed by regulations;

“service provider” means an enterprise which provides a service;

“Tribunal” means the Appeal Tribunal established under section 44(1).

PART II - ESTABLISHMENT OF FAIR TRADING COMMISSION

3.(1) There is established a Commission to be known as the Fair Trading Commission. Establishment

(2) The Commission is a body corporate.

4.(1) The functions of the Commission are to enforce any written laws relating to consumer protection, fair competition and other written law which it has jurisdiction to administer. Functions and powers

(2) The Commission shall carry out its functions in such a manner as —

- (a) to promote efficiency and competitiveness among; and
- (b) to improve the standards of service, quality of goods distributed and services supplied by,

business enterprises and service providers over which it has jurisdiction.

(3) The Commission shall have all powers necessary for the performance of its functions and discharge of its duties and without prejudice to the generality of this section, may —

- (a) keep under review commercial activities to ensure that practices that may adversely or unfairly affect the interests of consumers and businesses are prevented or terminated;
- (b) take such action as it considers necessary —
 - (i) to prevent the abuse of a dominant position by an enterprise;
 - (ii) to eliminate anti-competitive practices; and
 - (iii) to prevent or control anti-competitive mergers;
- (c) receive and evaluate consumer complaints;
- (d) educate or assist consumers in resolving complaints;
- (e) investigate whether enterprises are engaged in restrictive business practices;
- (f) monitor the standards of services supplied by service providers to ensure compliance; and
- (g) determine the standard of services applicable to service providers.

(4) The Commission shall do all that is necessary and expedient for the proper performance of its functions and discharge of its duties, and shall inform persons engaged in

16.(1) The Tribunal shall, on its own initiative or on the application of a party, refer a question of law arising in a proceeding before it for determination by the Supreme Court.

Reference of
question to
court

(2) If a question of law arising in a proceeding is referred to the Supreme Court, the Tribunal shall not —

- (a) make a decision to which the question is relevant until the question is determined by the Supreme Court; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the question by the Supreme Court.

17.(1) The Tribunal may decide on its own procedures, except in so far as its procedures are prescribed by rules under this Act.

Power to
regulate
procedure not
provided for

(2) The Tribunal is to conduct its proceedings without procedural formality but must observe natural justice.

(3) The Tribunal may permit and regulate the use in any proceedings of any telecommunication facility that the Tribunal considers will assist in the determination of an appeal.

18. The Tribunal shall sit at such times and in such places as the Chairperson may direct.

Sittings

19.(1) Subject to subparagraph (2), the Tribunal may, on an appeal, consider any evidence that it thinks relevant, whether or not it was available to the Commission at the time it made the determination appealed against:

Evidence

Provided that the Tribunal gives a party to the appeal sufficient time to adduce evidence in reply.

(2) Rules may make provision restricting the evidence that the Tribunal may consider on an appeal in specified circumstances.

(3) The alternate of a member may, in the event of the absence of that member, act as member and while so acting as a member, has and may exercise and discharge all the powers and duties of that member, respectively.

Power to hold
office concurrently
with other office

10. A member of the Tribunal may hold that office concurrently with any other office.

Presiding Officer

11. The Chairperson shall preside at all sittings of the Tribunal at which he or she is present.

Quorum

12. The Chairperson and two other members constitute a quorum at any sitting of the Tribunal.

Protection of
members acting in
good faith

13. No action lies against a member for anything the member may say or do or omit to do while acting in good faith in the intended performance of the functions of a member.

Appointment of
special adviser

14.(1) The Chairperson of the Tribunal may appoint as special adviser for a proceeding, a person whose specialised knowledge or experience is such that he or she will be able to assist the Tribunal in that proceeding.

(2) A special adviser appointed under subparagraph (1) may sit with the Tribunal and assist at its request but is not a member.

Direction for
performance of
functions

15.(1) The Tribunal shall have regard to any direction concerning the policies of the Government given to the Tribunal by written Memorandum signed by the Minister.

(2) The Minister shall not give a direction to the Tribunal in respect of an appeal before the Tribunal or a direction that would derogate from the duty of the Tribunal to act judicially.

trade or commerce and consumers in general of its powers, duties and functions as are set out in —

- (a) this Act; and
- (b) any written laws relating to consumer protection, fair competition and other written laws which it has jurisdiction to administer.

(5) The Commission may on its own initiative or at the request of a person having an interest in a matter —

- (a) carry out such investigations as will enable it to prevent the use of trading practices which contravene any written law relating to consumer protection, fair competition and any other written law which it has jurisdiction to administer;
- (b) enquire into the practices of any professional association to ensure that such practices are not contrary to any written law relating to consumer protection, fair competition and any other written law that it has jurisdiction to administer;
- (c) undertake studies and publish reports and information regarding matters affecting the interests of consumers and enterprises;
- (d) co-operate with consumer interests for the purpose of enforcing compliance with any written law relating to consumer protection and fair competition;
- (e) make available —
 - (i) to persons engaged in business, general information with respect to their rights and obligations; and

- (ii) to consumers, general information with respect to the rights and obligations of persons that affect the interests of consumers; and

- (f) to assist a national body in developing and promoting the observance of standards of conduct for the purpose of ensuring good business practice.

Appointment of
Board

5.(1) The President upon the advice of the Minister appoints —

- (a) a Board comprising 5 Commissioners, and the Chief Executive Officer who shall be an ex officio member of the Board; and
- (b) the Chairperson of the Board from among the Commissioners appointed under paragraph (a).

(2) The Commissioners appointed under subsection (1)(a) shall be persons from the public and private sector appointed by virtue of their qualifications and experience in law, economics, accountancy or commerce.

Term of office

6.(1) Every Commissioner shall, subject to subsections (2) and (3) be appointed for a term of 3 years.

(2) A Commissioner may be re-appointed.

(3) A Commissioner may resign from office at any time by giving not less than 28 days notice in writing.

Disqualification

7. A person shall not be appointed as a Commissioner if he or she —

- (a) has in terms of a written law in any country—

- (a) the member dies;
- (b) the member's term of office expires;
- (c) the member resigns from office under paragraph 5;
- (d) the member is convicted of an offence; or
- (e) the member is removed from office under paragraph 6.

8.(1) Where the Minister is satisfied that —

Temporary
member

- (a) a member is absent or temporarily incapable of performing the functions of a member; or
- (b) the office of a member is vacant,

the Minister may appoint a person to act in the place of that member during the period of absence or incapacity or until the vacancy is filled.

(2) An acting member appointed under this paragraph has the powers, duties and entitlements of a member.

(3) An appointment under this section and an act done while a person is acting as a member of the Tribunal shall not be questioned in any proceeding on the grounds that the occasion for the appointment had not arisen or had ceased.

9.(1) The Minister may appoint a person to be the alternate of a specified member of the Board and may terminate the appointment at any time.

Alternate
member

(2) The alternate of a member may resign the office of alternate member by notice in writing delivered to the Minister.

- (a) a Chairperson who shall be an Attorney-at-Law; and
- (b) 3 other members who shall have knowledge and experience in economics, business or consumer affairs.

(2) The Tribunal appoints a Secretary who, in addition to any other duties conferred on him or her shall be responsible for convening all sittings of the members.

Appointment

3. The Minister responsible for Trade shall appoint the members and cause their names to be published in the *Gazette*.

Duration of office

4.(1) A member holds office for such term as is specified in the member's instrument of appointment.

(2) A member is eligible for reappointment.

Resignation from office

5. A member may resign his or her office by giving not less than two months notice in writing.

Removal from office

6. The Minister may remove a member from office if he or she is satisfied that —

- (a) the member is permanently incapable of performing his or her duties;
- (b) the member has engaged in dishonourable conduct;
- (c) the member is incompetent; or
- (d) the member has neglected his or her duty.

Vacancy in office

7. The office of a member of the Tribunal becomes vacant if —

- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (ii) made an assignment to, or arrangement or composition, with his or her creditors which has not been rescinded or set aside;

(b) has been convicted —

- (i) in Seychelles, of a criminal offence involving fraud or dishonesty; or
- (ii) outside Seychelles, of an offence which, if committed in Seychelles, would have been an offence involving fraud or dishonesty.

8.(1) The President may remove a Commissioner from office upon being satisfied that the Commissioner—

Removal from office

- (a) is for whatever reason, incapable of performing the functions of a Commissioner;
- (b) has neglected the duty of a Commissioner or has engaged in misconduct; or
- (c) has been absent, without leave of the Board, from 3 consecutive meetings of the Board.

(2) A Commissioner unless he or she resigns under section 6(3) or is removed from office under this section, continues in office until a successor comes into office, notwithstanding that his or her term has expired.

9.(1) Where a vacancy occurs in the office of

Filling of vacancies

Commissioner, the President upon the advice of the Minister, shall appoint a person to replace the Commissioner.

(2) A person appointed under subsection (1) shall hold office for the remainder of the term for which the Commissioner who resigned or was removed was appointed.

Presiding
officer

10.(1) The Chairperson shall preside at all meetings of the Board at which he or she is present.

(2) If the Chairperson is absent from a meeting of the Board, the members present shall elect from among themselves a member to preside, and the member shall, with respect to that meeting or any business transacted, perform the functions and exercise the powers of the Chairperson.

Disclosure of
interest

11.(1) A Commissioner who is present at a meeting of the Board in which he or she —

- (a) is directly or indirectly interested, in a private capacity; or
- (b) has a close relative who is directly or indirectly interested, in a private capacity,

in the subject of consideration, shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting.

Prohibition of
publication or
disclosure of
information

12.(1) A Commissioner shall not, without the consent in writing given by or on behalf of the Board, publish or disclose to an unauthorised person, otherwise than in the course of duties of that person, the contents of any document,

Commission for the purpose of investigation

into.....

.....

.....

.....

(State briefly the subject matter of investigation)

to be held at.....on the.....
day of.....at.....o'clock
and to give evidence concerning the matters herein questioned;
(if the person is summoned to produce any documents, add)
and to bring with you and produce at such time and place
(specify the documents, time and place).

Dated this.....day of.....

.....
Commissioner
Fair Trading Commission

SCHEDULE 2

(Section 44(4))

THE APPEAL TRIBUNAL

Interpretation

1. In this Schedule

“member” means a member of the Tribunal;

“Secretary” means the Secretary of the Tribunal appointed under paragraph 2(2);

2.(1) The Tribunal consists of —

Composition

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

(2) An action under subsection (1) may be submitted before the Commission at any time within 3 years of the date that the cause of action arose.

Contempt of
Commission

56. A person who insults, interrupts or otherwise commits any contempt of the Commission commits an offence and is liable on conviction to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

Regulations

57.(1) The Minister may make regulations for giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations—

- (a) for amending a Schedule;
- (b) for prescribing the form under this Act;
- (c) for fees or charges —
 - (i) for applications and appeals;
 - (ii) in connection with services given under this Act.

(3) Regulations made under subsection (1) may provide that any person who contravenes them commits an offence and is liable on conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years.

SCHEDULE 1 (section 33(4))

FORM OF SUMMONS TO A WITNESS

To (AB name of person summoned; and his or her address)

You are hereby summoned to attend before the Fair Trading

communication or information whatsoever, which relates to or which has come to the knowledge of that Commissioner in the course of his or her duties under this Act.

(2) A Commissioner who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years.

13.(1) The Board may meet at such times as the Chairperson may determine.

Meetings

(2) The decision of the majority of the Commissioners present and voting at any meeting of the Board is considered to be the decision of the Board and, in the event of an equality of votes, the Chairperson shall have a casting vote.

(3) No act, decision or proceeding of the Board shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any Commissioner being defective if, the act was done or authorised or the decision was taken or the proceeding took place by or in accordance with a majority vote of the persons who at the time were entitled to act as members.

14.(1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer appointed under section 20.

Seal

(2) The affixing of the seal shall be authenticated by any Commissioner or one other person authorised in that behalf by a resolution of the Board.

(3) A document purported to be under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to have been executed or issued, as the case may be, without any further proof, unless the contrary is proved.

15. Three Commissioners shall constitute a quorum for any meeting of the Board.

Quorum

Duty to give reasons

16. The Commission shall prepare and publish its decisions together with the reasons for such decisions.

Guidelines

17.(1) The Commission shall within one year of its establishment, issue —

- (a) guidelines on the economic and legal analysis which shall be used for the determination of cases under this Act; and
- (b) guidelines on the principles which shall be used for the determination of penalties or remedies imposed under this Act, any written law relating to consumer protection, fair competition and other written law which it has jurisdiction to administer, and manner in which turnover is to be calculated.

(2) The Commission may, from time to time review and issue the revised versions of its guidelines.

Proceedings

18. The Board may regulate its own proceedings.

Remuneration

19. The Commissioners are to be paid such remuneration out of the funds of the Commission as may be determined by the Minister.

PART III - STAFF OF COMMISSION

Chief Executive Officer

20. The President shall, upon the advice of the Minister appoint a Chief Executive Officer on such terms and conditions of appointment as the President may determine.

Functions of Chief Executive Officer

21. The Chief Executive Officer shall be —

- (a) responsible to the Commission for the administration of this Act, any written law

(2) Where the person referred to in subsection (1) is a person other than an individual, every director or officer of that entity is severally liable to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both, unless the director or officer can prove that he or she took all necessary and proper means to obey and carry out the direction of the Commission.

54.(1) Every enterprise that fails or refuses to obey an order of the Commission made under this Act is liable on conviction to a fine not exceeding 400, 000 rupees and, in the case of a continuing offence, to a further fine of 10,000 rupees for each day or part thereof during which the offence continues.

(2) Where it is proved that an enterprise has failed to obey an order of the Commission made under this Act, every director and officer of the enterprise is liable on conviction to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both, unless that individual proves that all necessary and proper means in his or her power were taken to obey and carry out the order of the Commission.

55.(1) Every person which engages in conduct that constitutes —

- (a) a contravention of any of the obligations or prohibitions imposed by this Act;
- (b) the inducing by threats, promises or otherwise, of the contravention of any provision;
- (c) being knowingly concerned in or party to any contravention referred to in paragraph (a); or
- (d) conspiring with any other person to contravene any provision referred to in paragraph (a),

Non-compliance with order of Commission

Other contravention of Act

Destruction of records

51.(1) A person which destroys or alters any document which that person is required to produce to the Commission, or causes such document to be destroyed or altered commits an offence and is liable —

- (a) where the person is an individual, to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both; and
- (b) where the person is a person other than an individual, to a fine not exceeding 400, 000 rupees.

(2) Where the person referred to in subsection (1) is a person other than an individual, every director or officer of that entity is severally liable to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both, unless the director or officer can prove that he or she took all necessary and proper means to prevent such document from being destroyed or altered.

Giving false or misleading information to Commission

52. A person who gives to the Commission or an authorised officer any information which he or she knows to be false or misleading commits an offence and is liable to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Failure to comply

53.(1) A person which refuses or fails to comply with a direction or order of the Commission commits an offence and is liable —

- (a) where the person is an individual, to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.
- (b) where the person is a person other than an individual, to a fine not exceeding 400,000 rupees.

relating to consumer protection, fair competition and other written law which it has jurisdiction to administer; and

- (b) responsible for the supervision of the staff and work of the Commission.

22. The Commission shall employ such other members of staff as it considers necessary, on such terms and conditions as it considers fit.

Appointment of other members of staff

23. The members of staff employed under section 22 shall investigate such matters as are stipulated by the Chief Executive Officer and report their findings to him or her.

Functions of staff

24.(1) The Commission may appoint or engage persons having special or technical knowledge to assist the Commission in the performance of its functions.

Appointment of experts

(2) A person appointed or engaged under subsection (1) shall receive such remuneration and allowances as the Commission determines.

25. A member of staff or an expert retained to assist the Commission having any direct interest in a matter under investigation shall not participate in any deliberations or any part of the investigation process in relation to the matter.

Disclosure of interests

26.(1) A member of staff or an expert retained by the Commission shall not otherwise than in the discharge of duties of the member of staff or expert retained, without the consent in writing given by the Board, publish or disclose to an unauthorised person, the contents of any document, communication or information whatsoever, which relates to any enterprise or any investigation being undertaken by the Commission.

Confidential information

(2) A person referred to under subsection (1) who contravenes that subsection commits an offence and is liable, upon conviction to a fine not exceeding 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both.

PART IV - FINANCES OF COMMISSION

Funds

27.(1) The funds of the Commission consist of —

- (a) moneys appropriated by the Appropriation Act and paid to the Commission; and
- (b) moneys lawfully charged by the Commission.

(2) The funds of the Commission may be applied by the Commission —

- (a) in payment of —
 - (i) expenses incurred by the Commission in the performance of its functions; and
 - (ii) such remuneration and allowances due to the Commissioners, the staff of the Commission and any experts retained by the Commission; and
- (b) to create any reserves determined by the Commission.

Accounts and audit

28.(1) The financial year of the Commission shall be the calendar year.

(2) The Commission shall keep proper accounts and other relevant records in the form and manner approved by the Auditor General.

(3) Article 158 of the Constitution shall apply in respect of the auditing of the accounts of the Commission.

PART VIII - APPEAL FROM TRIBUNAL

45.(1) A party aggrieved by a decision of the Tribunal may appeal against the decision to the Supreme Court.

Appeal to Supreme Court

(2) An appeal shall be prosecuted in the manner provided by rules made by the Chief Justice.

46.(1) On appeal, the Supreme Court may—

- (a) affirm, reverse, amend, alter an order or direction of the Tribunal;
- (b) remit the matter to be further determined by the Tribunal with its opinion on the matter; or
- (c) make such orders as it thinks fit.

Powers of Supreme Court on appeal

47. An appeal shall not operate as a stay of an order or direction given by the Tribunal, except an order imposing a financial penalty on an enterprise.

Stay of execution on appeal

PART IX - MISCELLANEOUS

48. Any person performing functions under this Act shall be deemed to be a public officer for the purposes of the Public Officers (Protection) Act and of sections 372 and 373 of the Penal Code.

Liability
Cap 192
Cap 158

49. A person who, in any manner, impedes, prevents or obstructs any investigation by the Commission or any authorised officer in the execution of an inquiry commits an offence and is liable to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Obstruction of investigation

50. A person who obstructs the execution of a warrant issued under section 34(2)(b) commits an offence and is liable on conviction to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

Obstruction of execution of warrant

of its establishment, issue procedural rules that shall govern the conduct of hearings before the Commission.

(2) In formulating and issuing the procedural rules, the Commission shall have regard—

- (a) to the principles of natural justice;
- (b) the need for fairness between the parties; and
- (c) subject to paragraphs (a) and (b), the need for expeditious determination of any matter before the Commission.

Decision of
Commission

42.(1) At the conclusion of a hearing, the Commission shall make such orders as it may consider appropriate which shall state its decision and, where necessary, a time within which the order is to be complied with.

(2) A certified copy of the order shall be served upon the business enterprise against which it is made within 14 days of the date that it is made and at that time notice thereof shall be given to the other parties to the proceedings.

Publication of
decisions

43. The Commission shall within one month of giving a decision publish that decision in writing with supporting reasons.

PART VII - APPEAL TRIBUNAL

Establishment

44.(1) The Appeal Tribunal is established.

(2) The Tribunal is a Tribunal of record.

(3) The Tribunal shall perform its functions in accordance with this Act.

(4) Schedule 2 makes further provision about the Tribunal.

29.(1) The Commission shall, not later than 4 months after the end of each financial year, submit to the Minister —

Financial
statement

- (a) a report of the activities and operations of the Commission throughout the preceding financial year in such detail as the Minister may direct; and
- (b) a statement of the audited accounts of the Commission for the preceding financial year pursuant to section 28.

(2) A copy of the report and a statement of the audited accounts of the Commission referred to in subsection (1) shall be printed and submitted to the National Assembly not later than 3 months from the date of receipt thereof by the Minister.

PART V - COMPLAINTS TO, INVESTIGATIONS BY AND PROCEDURES BEFORE COMMISSION

30.(1) The Commission may initiate a complaint against an enterprise.

Initiation of
complaint by
Commission
or any other
person

(2) Every person who is aggrieved by an act done by an enterprise may make a complaint to the Commission against that enterprise.

31.(1) A complaint under section 30(2) may be made —

Form of
complaint

- (a) in writing to the Commission; or
- (b) orally before a member of the staff of the Commission designated by the Chief Executive Officer.

(2) Where a person makes an oral complaint pursuant to subsection (1)(b), that complaint shall be recorded in writing by the member of staff and —

- (a) shall be read and signed by the complainant; or
- (b) where the person is visually impaired, unable to read or write, shall be read to that person and marked by him or her.

(3) A complaint made under subsection (1) shall set out any action undertaken by a business enterprise which is in breach of any written law that the Commission has jurisdiction to administer.

Evaluation of
complaint

32.(1) Upon the making of a complaint under section 31, the Commission shall proceed to investigate the complaint unless it is satisfied that—

- (a) the complaint is trivial, frivolous or vexatious;
- (b) the complaint is not made in good faith; or
- (c) the complainant does not have sufficient interest in the matter.

(2) The Commission may decide not to investigate a complaint against an enterprise where in response to a complaint made directly to an enterprise, the complainant, in the opinion of the Commission, has obtained reasonable redress.

Investigative
powers of
Commission

33.(1) For the purpose of the performance of its functions under this Act or any written law that the Commission has jurisdiction to administer, the Commission shall have power—

- (a) to hold inquiries;
- (b) to administer oaths;
- (c) to summon and examine witnesses;

37. Where the Chief Executive Officer determines that there may be a breach of any written law relating to consumer protection, fair competition or other written law which the Commission has jurisdiction to administer, the Chief Executive Officer shall—

Service of
complaint

- (a) in a timely manner serve a copy of the finding of its investigation, or a copy of the complaint, on the business enterprise; and
- (b) submit a report of the finding of its investigation to the Board.

PART VI - HEARINGS BEFORE COMMISSION

38. The Commission shall have exclusive jurisdiction to hear and determine matters under any written law relating to consumer protection, fair competition or other written law which it has jurisdiction to administer.

Jurisdiction

39.(1) The Commission shall fix a time and place for a hearing in respect of a complaint.

Fixing of hearing

(2) At a hearing before the Board in respect of a breach of any written law relating to consumer protection, fair competition or other written law which the Commission has jurisdiction to administer, the complainant is entitled to be heard in person or represented.

40. A hearing of the Commission shall take place in public but the Commission may—

Hearings

- (a) whenever the circumstances so warrant; or
- (b) whenever it considers appropriate, conduct a hearing in private.

41.(1) The Commission shall, within a period of 2 months

Rules

Commission, which may retain it, taking reasonable care to ensure that it is preserved, until the conclusion of the investigation.

(8) Where a book, document or article has been seized under subsection (2), a magistrate may on the application of an interested party order that the book, document or article be returned to the person from whom it was seized, or the person who is otherwise legally entitled thereto, if the magistrate is satisfied that the book, document or article will not be required for the purposes of the investigation.

(9) The person from whom any book, document or article is seized under subsection (2) is entitled at all reasonable times, and subject to such reasonable conditions as may be imposed by the Commission, to inspect the book, document or article and, in the case of a book or document, to obtain a copy of it.

(10) The Commission shall be given at least 7 days notice of an order made under subsection (8).

Copies of
document or
book of account

35. Where a document or book of account has been seized, inspected or examined by an officer of the Commission under section 34, the officer may make or cause to be made one or more copies of it, and a document purporting to be certified by the officer to be a copy made pursuant to this section is admissible in evidence and has the same probative value as the original document.

Termination of
investigation

36.(1) The Commission may, at any stage, terminate an investigation where it is of the opinion that the matter being investigated does not justify further investigation, and shall make a report in writing stating the reasons for the termination.

(2) A report made under subsection (1) shall be submitted to the Minister within 3 months of the termination of the investigation.

- (d) to compel the production of such books, records, papers and documents as it may consider necessary or proper for any proceeding, investigation or hearing held by it;
- (e) to examine any documents produced;
- (f) to require that any document submitted to the Commission be verified by affidavit;
- (g) to seize documents;
- (h) to adjourn investigations;
- (i) to make test purchases;
- (j) to inspect goods; and
- (k) to do all necessary and proper acts in the lawful exercise of its powers or the performance of its functions.

(2) The Commission shall have the power to hear orally a person who —

- (a) in its opinion will be able to furnish any information required by it; or
- (b) will be affected by an investigation or hearing.

(3) The Commission shall hear a person under subsection (2)(b), if the person has made a written request for a hearing showing that he or she is an interested party likely to be affected by the result of the investigation or hearing, or that there are particular reasons why he or she should be heard orally.

(4) A summons for the attendance of a witness or other

persons or for the production of documents for the purpose of an investigation may be made in the form specified in Schedule 1.

(5) A summon shall be signed by one of the Commissioners and may be served personally or by registered post.

(6) A person who without lawful or reasonable excuse, fails to attend a hearing or to produce a document or other material when required to do so under this section commits an offence and is liable on conviction, in the case of—

- (a) an individual, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years; or
- (b) a person other than an individual to a fine not exceeding 400,000 rupees.

Search and
seizure

34.(1) Where during an investigation, the Commission has reasonable cause to suspect that—

- (a) an offence has been committed under this Act, any written law relating to consumer protection, fair competition or other written law which it has jurisdiction to administer; and
- (b) any book, document or article relating to the offence is being kept or concealed in a building or place,

the Commission shall apply to a magistrate for a search warrant to search and seize that book, document or article.

(2) Where a magistrate is satisfied that—

- (a) there is reasonable ground for suspecting that an offence has been committed; and

- (b) evidence of the commission of that offence is to be found in any book, document or article that is likely to be found in a building or place,

the magistrate may at any time issue a search warrant authorising the officer of the Commission named in the warrant to enter and search such building or place specified in the warrant for such book, document or article and to seize and take away such book, document or article.

(3) Where a magistrate is satisfied that the authorised officer has reasonable grounds to believe that a person, in executing the warrant, has been or will be refused access to any premises or document, the magistrate may direct a police officer to take such steps as are reasonably necessary to enter the premises and to enable the warrant to be executed.

(4) The owner, occupier or person in charge of any premises in respect of which an authorised officer enters pursuant to a warrant issued under this section shall provide the officer with all reasonable facilities and assistance in the exercise of his or her powers.

(5) A person who alters or interferes with any book, document or article seized under this Act commits an offence and is liable on conviction to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.

(6) The officer of the Commission referred to under subsection (2) is not personally liable for any loss or damage arising from the execution of a search warrant under this section.

(7) Where the officer has seized any book, document or article under subsection (2), he or she shall take it to the