



REPUBLIC OF CYPRUS

THE PROTECTION OF COMPETITION LAW OF 1989 (LAW 207 of 1989)

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THE PROTECTION OF COMPETITION LAW OF 1989

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LAW TO PROVIDE FOR THE CONTROL AND SUPPRESSION
OF RESTRICTIVE TRADE AGREEMENTS AND PRACTICES,
THE PROTECTION OF COMPETITION, THE ESTABLISHMENT
OF A COMMISSION FOR THE PROTECTION OF COMPETITION
AND OTHER RELATED MATTERS

The House of Representatives enacts as follows:

PART I

PRELIMINARY PROVISIONS

1. This Law shall be cited as the Protection of Competition Law of 1989. Short title
2. In this Law, unless the context otherwise requires— Interpretation

"agreement" means any arrangement between two enterprises, by virtue of which one of the parties has willingly undertaken the obligation to constrain its freedom to act in respect of the other party;

"Chairman" means the Chairman of the Commission for the Protection of Competition, and includes the person acting temporarily as Chairman;

"concerted practice" means any positive act which even if it is not a real agreement it nevertheless acts in a concerted manner in the business dealings of the enterprise;

"connected" in relation to any group of enterprises means any formal or informal, written or oral, legally enforceable or not, agreement, or concerted practice of two or more enterprises or the decision for trade association:

Provided that for purposes of this Law it shall not be deemed as connected the agreement or concerted practice—

(i) of the holding and subsidiary company if—

(a) they constitute a single economic entity within which the subsidiary has no real freedom to prescribe its own manner of acting; and

(b) the agreement or concerted practice relates exclusively to the delegation of activities between the holding and subsidiary company.

(ii) of two or more subsidiary companies provided they constitute a single economic entity with the holding company;

"consumer" means any natural or legal person including enterprises to whom a product is supplied;

"Commission" means the Commission for the Protection of Competition established under section 8 of this Law;

"dominant position" in relation to an enterprise, means the position of market power that an enterprise holds and makes it capable to obstruct the maintenance of an effective competition in the market of a particular product and enables it to act, in a substantial degree, independently from its competitors and customers and finally from the consumers;

"enterprise" means any natural or legal person which exercises financial or trade activities irrespective of whether its activities are profitable or not;

"good" means anything that can be bought and capable of constituting the object of a commercial transaction;

"merger" in relation to enterprises means the formation of a new enterprise in substitution for two or more existing enterprises or the absorption or buying off of one or more enterprises by another:

"Minister" means the Minister of Commerce and Industry;

"prescribed" means prescribed under section 38 of this Law;

"product" means any good and for purposes of this Law includes services;

"Service" means the Service for the Control of Prices and Protection of Consumers, of the Ministry of Industry and Commerce;

"services" means the undertaking and performance, for profit or remuneration, of obligations for any matter, except the production and supply of goods and includes professional services but does not include the provision of services to an employer under an employment contract;

"supply" includes sale, exchange, leasing, hire purchase and the offer for this purpose;

"trade" means any kind of financial activity and includes both the provision of goods and services;

"trade association" means any organisation whether legal entity or not, which represents the trade interests of other enterprises and takes decisions or comes into agreements for the promotion of those interests.

PART II

CONTROL AND SUPPRESSION OF RESTRICTIVE TRADE AGREEMENTS AND PRACTICES

Control of restrictive trade agreements or enterprise practices.

3. Any agreement or enterprise practice, which is capable or likely capable, because of the agreement or of the abuse of the dominant position of one or more enterprises in the market of a product to—

- (a) restrict free access in the market; or
- (b) to restrict to a substantial degree competition; or
- (c) prejudice the interests of the consumers,

shall be subject to control in accordance with the provisions of this Law.

Prohibition of restrictive enterprise agreements and invalidity of them

4.—(1) Any enterprise agreement having as its object or effect the elimination, restriction or distortion of competition, in particular an agreement which—

- (a) fixes, directly or indirectly, the purchase or reselling prices or other terms of transaction;
- (b) restricts or controls production, supply, technological development or investments;
- (c) distributes geographically or otherwise the markets or other resources of supply;
- (d) applies different terms for identical transactions so that certain enterprises are placed at a disadvantageous position regarding competition;
- (e) makes the entering into contracts conditional upon the acceptance by the other parties of additional obligations which by their nature or according to commercial usage have no connection with the subject-matter of these contracts,

shall be prohibited.

(2) Any prohibited agreement under this section shall be void ab initio.

(3) Enterprise agreements falling within the previous provisions of this section may, by exemption, be permitted and declared valid and effective either by virtue of an Order or after a decision of the Commission, provided the requirements of the next section concur.

5. – (1) An enterprise agreement or a category of agreements falling within the provisions of subsection (1) of section 4, may be permitted and declared valid by law and effective if the following requirements concur:

- (a) it contributes, with the reasonable participation of the consumers, in the resulting benefit, in the development of production or distribution of goods or in the promotion of technical or financial development;
- (b) it does not impose, on the enterprises concerned, restrictions unless they are absolutely necessary for the achievement of the above mentioned purposes; and
- (c) it does not afford the enterprises, to which the agreement relates, the possibility to eliminate competition from a substantial part of the market of the product concerned.

(2) The exemption under the provisions of subsection (1) of section 4 according to a category of agreements shall be granted by virtue of an Order of the Council of Ministers issued by the Council of Ministers after the previous reasoned opinion of the Commission published in the official gazette of the Republic is given.

(3) Agreements belonging to a category regulated by an Order issued under the provisions of subsection (2), are not required to be notified.

(4) The individual exemption of a particular agreement under the provisions of subsection (1) of section 4 shall be granted by a decision of the Commission in accordance with section 18 of this Law.

6.—(1) The abuse of a dominant position of an enterprise in the market of a product shall be prohibited.

(2) Abuse of a dominant position shall, in particular, consist of any act of one or more enterprises which possess a dominant position in the aggregate or part of the domestic market of a product, if this act has as its object or effect or a likely effect—

(a) the direct or indirect fixing of unfair purchase or selling prices or other unfair, under the circumstances, terms of transaction;

(b) the restriction of production or supply, or of the technological development to the loss of the consumers;

(c) the application of different terms for identical transactions, the result of which is that certain enterprises are placed in a disadvantageous position in respect of competition;

(d) the making of contracts conditional upon the acceptance by the other parties of additional obligations which by their nature or according to commercial usage, have no connection with the subject-matter of these contracts.

(3) The Commission shall have the discretion to call any enterprise which in its opinion possess, either on its own or jointly with other enterprises, a dominant position in the market of a product, to inform it of evidence in respect of its activities and arrangements with other enterprises.

7.—(1) There shall not fall within the provisions of this Law—

(a) the agreements or acts of state;

(b) the agreements or practices of enterprises whose activities are specially regulated by law to the extent they are regulated by this special arrangement;

Exemption from the provisions of section 4 either according to category or by an Order of the Council of Ministers, or according to a case, with an individual exemption upon the decision of the Commission.

Abuse of a dominant position

Exemptions and special arrangements.

- (c) agreements relating to wages and terms of employment and working conditions;
- (d) the mergers of enterprises, except their notification as required under the next subsection;
- (e) unless as otherwise specified by an Order of the Council of Ministers, issued after the reasoned opinion of the Commission is given, the enterprise agreements which have as their exclusive object the taking up, promotion or the boosting-up of the exports.

(2) The merger of enterprises must be notified to the Commission within three months from the day it took effect. In case where the merger is not notified in due course, the Commission may impose a fine from one-hundred-thousand up to two-hundred-thousand pounds.

PART III ESTABLISHMENT, OPERATION AND FUNCTIONS OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

Establishment of
the Commission

8. There shall be established an independent Commission, to be called "Commission for the Protection of Competition" which shall be competent to investigate infringements of sections 4 and 6, to reach decisions upon complaints and applications and give opinions according to the provisions of this Law.

Composition
of the
Commission

9.—(1) The Commission shall have seven members and shall consist of the Chairman and six other members appointed by decision of the Council of Ministers, on a proposal of the Minister.

(2) The Chairman of the Commission shall be appointed by the Council of Ministers and shall be a lawyer of a high standing and probity and the members shall be appointed on the basis of their possessing the specialized knowledge and experience in law, economics, trade or industry and shall be capable to contribute to the implementation of the purposes of this Law. At least three members shall be appointed from the private sector.

(3) The Chairman and the members shall be prohibited from having any financial or other interest likely to affect the impartiality of their judgment in the exercise of the functions of the Commission in accordance with this Law.

(4) The term of office of the Chairman and members of the Commission shall be of four years and may be renewed according to the appointment provisions of this section.

(5) There shall be permitted the temporary appointment of a President or member to serve in a temporary capacity where the President or the member is temporarily unable due to any reason to exercise his functions. This appointment shall be effected by the Council of Ministers on a proposal of the Minister in accordance with subsection (2) of this section.

(6) Where the office of the Chairman or member of the Commission becomes vacant before the expiry of the term of office of the Commission, the Council of Ministers, on a proposal of the Minister, shall appoint a new Chairman or member to serve for the unexpired portion of the term of office of the preceding holder of that office, according to subsection (2) of this section.

(7) The Chairman and the members of the Commission shall receive monthly emolument or emolument for every meeting as shall be determined by a decision of the Council of Ministers.

10.—(1) The office of the Chairman or of a member of the Commission shall become vacant—

- (a) in case of death;
- (b) in case of resignation effected by a letter addressed to the Council of Ministers; or
- (c) in case of removal from office declared by the Council of Ministers according to the provisions of the following subsection.

(2) The Council of Ministers shall remove from office the Chairman or any member of the Commission, if any of the following circumstances exist:

- (a) if he has been declared bankrupt under the existing legislation of the Republic or if an order for the appointment of a syndic has been made against him or if he has reached a settlement with his creditors;
- (b) if he has been declared insane or mentally incapable under the existing legislation of the Republic;
- (c) if he has been convicted of a criminal offence of dishonesty or of moral turpitude;
- (d) if he is incapable, by reason of physical incapacity or disease, to exercise his functions;
- (e) if he has acquired a financial or other interest which may affect the impartiality of his judgment and he did not submit his resignation;
- (f) if he has so abused his tenure of office as to render the continuance of his term of office prejudicial to the public interest; or
- (g) on the recommendation of the Commission in case of an unjustified abstention from the exercise of his functions and in particular in case of an unjustified absence from the meetings of the Commission for three consecutive times.

11.—(1) The Chairman shall preside over the Commission, shall convene a meeting in accordance with the provisions of the following section, and shall sign the minutes and any other important document.

(2) The Chairman shall be responsible for the execution of the decisions and for the exercise of the other functions of the Commission prescribed by law, and shall represent the Commission before the judicial or other authorities.

12.—(1) The Chairman shall convene the Commission to a meeting whenever it thinks necessary, but he has to convene a meeting the soonest the possible and, in any case, within a period of one month if at least two members of the Commission require it so in writing who shall, at the same time, specify the matters to be discussed.

(2) The summons of a meeting shall be in writing and shall be addressed to all the members of the Commission, at least seven days before the date that has been fixed for the meeting; by exemption, in emergency and justified cases, a meeting of the Commission shall be convened by a summons served to the members twenty-four hours before the date fixed for the meeting.

(3) The agenda shall be drawn up by the Chairman and shall be communicated together with the summons to a meeting. By exemption, if the Commission so decides, in emergency and justified cases a matter outside the agenda may be introduced for discussion both by the Chairman and by a member of the Commission.

Vacancy of an Office

Powers of the Chairman

Convening a meeting

Quorum and
decisions

13.-(1) The Commission shall be lawfully in session only if the Chairman and three of the members of the Commission are present at the meeting.

(2) The decisions of the Commission shall be taken by majority and in case of equality of votes, the Chairman shall have a casting vote.

Rules relating
the proceeding
before the
Commission

14.—(1) During the discussion before the Commission of the applications submitted under this Law for individual negative certification or individual exemption from the provisions of section 4 and of the complaints submitted under this Law, the persons who submitted the application or complaint may be present personally, either with a lawyer or by an authorised lawyer. This shall apply in the case of enterprises against of which the Commission took, by its own motion, action for infringements of sections 4 and 6 and in the case of third parties, whether natural or legal persons, having sufficient legitimate interest in the case discussed before the Commission.

(2) There shall be granted to all the above mentioned persons called to be present a reasonable, under the circumstances, time limit which under justified circumstances may be extended.

(3) There shall be granted to the above mentioned persons participating in the proceeding before the Commission every possible opportunity for the written unfolding of their case and for this purpose a reasonable time-limit shall be granted which under justified circumstances may be extended.

(4) The following rules shall apply, concerning the Commission:

- (a) the Commission shall not be obliged to communicate to the enterprise concerned the whole file formed by the Commission for the case; but it has to communicate to it all of those documents of the file upon which it intends to base its decision; or, if those documents are already accessible to the enterprise, it shall indicate them to the enterprise in writing so that this enterprise be informed in due course of all the documents that will be used by the Commission as evidence;
- (b) the Commission shall be prohibited from basing its decision on a document that has not been communicated or indicated to the enterprise concerned, according to the provisions of paragraph (a);
- (c) the Commission must communicate the whole document to the enterprise concerned and not just a simple extract;
- (d) the Commission must communicate to the enterprise concerned any other document compiled by it, and shall indicate the manner in which the Commission intends to use the documents that are available before it;
- (e) subject to the relevant provisions of this Law, the internal Regulation governing the work of the Commission shall be freely prescribed by the Commission itself.

15.—(1) The decisions of the Commission shall be fully reasoned and shall be communicated to every interested enterprise and shall be published according to the provisions of the Order, made by the Minister on the opinion of the Commission, and published in the official gazette of the Republic.

(2) The decisions of the Commission shall take effect from the date of their communication. A defective communication shall not affect the validity of the opinion.

Decisions
of the
Commission

PART IV

FUNCTIONS OF THE COMMISSION

16.—(1) The Commission shall be exclusively competent to grant individual negative certifications in accordance with the subsequent provisions of this section.

Individual
negative
certification

(2) On the application of the interested parties, the Commission shall certify, within a reasonable time limit from the date of submission of the relevant application, that, on the basis of the evidence submitted and that which has been made known to it, no infringement of the provisions of section 4 or 6 occurs. This negative certification may relate to an enterprise agreement or practice which is going to take effect and falls within the above provisions.

(3) The application shall be submitted in the prescribed form and shall include all the necessary, in the opinion of the Commission, information. The application may also be submitted by one of the parties, without the consent of the others. In this case, a copy of the application shall be communicated to the other parties as well, by the Commission.

(4) The Commission may at anytime require by the applicant or third parties additional evidence.

(5) The Commission shall publish a summary of the application and shall call every interested third-party to submit within a fixed time limit its observations regarding the application.

(6) Upon publication, the Commission must take into consideration the legitimate interests of the concerned enterprises for the protection of their enterprise secrets.

(7) The Commission may, at any time, revoke a previous decision made under the provisions of subsection (2), if subsequently new evidence is placed before it which do not justify the certification.

(8) Until the decision of the Commission is revoked, the enterprise agreements or practices, to which the issued negative certification under subsection (2) relates, shall be legally effective and valid, unless it is proved that the certification was issued after the Commission had been misled by the provision of inaccurate information or the concealing of the accurate. In this case, irrespective of any criminal or other liability, the negative certification shall be declared by a decision of the Commission of no effect.

(9) The intentional or negligent provision of inaccurate or misleading information on application for the granting of individual negative certification shall be punishable by a decision of the Commission with a fine of one-hundred up to two-thousand pounds.

17. The Commission may prescribe, by its notification published in the official gazette of the Republic, a category or categories of agreements which under the prescribed by the notification requirements shall be deemed as not falling within the provisions of section 4(1) of this Law and shall be at all times legally valid and effective.

Negative
certification by
category

18.—(1) The Commission shall be exclusively competent to grant individual exemptions from the provisions of section 4.

(2) The exemption shall be granted on the application of the interested parties provided that the notification is previously effected according to the provisions of section 21 of this Law.

Power of the
Commission to
grant individual
exemptions

(3) The application shall be submitted in the prescribed form and shall contain all the necessary, in the opinion of the Commission, information.

(4) The provisions of section 16 relating to proceedings and handling of applications for the granting of individual negative certification shall also apply in the case of application for the granting of individual exemption.

(5) In the exercise of its discretionary power, the Commission shall take into consideration all the relevant circumstances and shall permit the agreement as long as the prescribed requirements of subsection (1) of section 5 concur.

(6) In its relevant decision, the Commission—

(a) shall prescribe the time the exemption commences which shall not take place before the notification of section 21;

(b) shall prescribe the duration of the validity of the exemption which shall not exceed five years; and

(c) may impose terms in the granting of the exemption, similar to the purposes prescribed by subsection (1) of section 5.

(7) The decision of the Commission may be renewed, if the circumstances under which the decision was originally made, continue to concur. The renewal shall be granted on the application of the interested parties and shall be submitted to the Commission at least two months before the end of the exemption. The Commission may renew the exemption under these or new terms.

(8) The Commission may revoke or amend its decision for granting exemption—

(a) if a substantial real event on which its decision was based, has changed;

(b) if the terms under which the decision was made were observed;

(c) if the decision was due to the Commission being misled by the provision of inaccurate information or the concealing of accurate;

(d) in case of abuse of the exemption by the interested enterprises.

(9) In the cases (b), (c) and (d) of the preceding subsection, the Commission may give a retrospective effect to its revocation or amending decision, referring to the period during which an infringement of the term under which the decision was made was observed, or, to the period during which the decision of the Commission was reached after being misled or the abuse was observed, according to the case.

19.—(i) Old is the agreement effected before the entry into force of this Law.

(2) All the old agreements falling within the provisions of subsection (1) of section 4, as long as their individual exemption is required under section 18 of this Law, must be notified to the Commission according to the provisions of section 21, within a time limit of three months from the date of entry into force of this Law.

(3) If the Commission thinks that all the requirements of section 5 concur, it shall grant an exemption under section 18 with a retrospective effect from the date the agreement took effect; where the opposite occurs, it shall order or recommend the enterprises concerned or the trade association to terminate within a fixed time-limit the agreement or amend it in such a manner so as it no longer falls within the provisions of subsection (1) of section 4.

(4) The old agreements which are properly and in due course notified, shall be considered as temporarily valid and legally effective, until the relevant decision of the Commission is made.

(5) The imposition of a penalty for an old agreement which was notified in due course in accordance with subsection (2) for the period before the decision of the Commission, shall not be permitted.

Notification of
new agreements.

20.—(1) New is the agreement effected after the entry into force of this Law.

(2) All the new agreements falling within subsection (1) of section 4, as long as their individual exemption is required under section 18 of this Law, must be notified to the Commission according to the provisions of the next section.

(3) If the Commission thinks that all the requirements of section 5 concur, it shall grant an exemption under section 18 with a retrospective effect from the date of the notification, and the agreement shall be rendered at all times valid and legally effective for the time-period fixed by the decision of the Commission.

(4) If the Commission thinks that the requirements of section 5 do not concur and the exemption is not granted, the agreement shall be void ab initio; the temporary validity of the properly and in due course notifications of the old agreements under subsection (4) of the previous section shall not apply in the case of the notified under this section new agreements.

(5) The imposition of a penalty for an agreement notified under subsection (2) for the period after the notification and until the making of the relevant decision of the Commission, shall not be permitted.

Form and
contents of the
notification

21.—(1) The notification of old and new agreements as well as the application for an individual exemption, shall be effected in accordance with this form.

(2) The notification form shall be submitted to the Commission. The notification shall be completed from the date of receipt of the form by the Commission or from the date it was posted by a registered letter.

(3) The notification may be effected whether by all the interested enterprises or by one of them acting either by itself or for the rest, or by third parties properly authorised. In case the notification is not effected by all the enterprises concerned, the notification shall also be communicated to the rest of them.

(4) The Commission must also be notified of any substantive alteration in the agreement that was made after the notification.

(5) The notification must be full and accurate and contain all the necessary information for the consideration of the particular case by the Commission.

(6) The intentional or negligent provision of inaccurate or misleading information in a notification effected under the provisions of this section shall result in the invalidation of the notification and shall also be subject by the decision of the Commission, to the payment of a penalty of an amount of one hundred up to two-thousand pounds.

Functions of the
Commission
when it finds
infringements of
sections 4 and 6.

22.—(1) The Commission shall be exclusively competent to investigate infringements of sections 4 and 6.

(2) The Commission shall consider infringements of sections 4 and 6 either on its own motion or upon a complaint lodged to it by the Service or third parties in accordance with the provisions of section 28 of this Law.

(3) Where the Commission, in the course of the proceeding carried out before it, finds an infringement of the provisions of sections 4 and 6 of this Law, shall have the power—

- (a) to order or recommend to the enterprise or trade association concerned to terminate within a fixed time-period the infringement and avoid any repetition of it in the future or, in case the infringement was terminated before the making of the decision of the Commission to convict the infringement by a decision of reconnaissance;
- (b) to state that in case the infringement continues, a fine of an amount of twenty up to five-hundred pounds shall be owed for each day the infringement continues;
- (c) to impose a fine of an amount, according to the gravity and duration of the infringement, not exceeding ten percent of the combined annual revenue of the enterprise or trade association in the year within which the infringement took place or in the year which immediately preceded the infringement;
- (d) to order the taking of temporary measures in accordance with the following section.

Temporary
measures

23.—(1) The Commission shall have the power to order the taking of temporary measures and to impose such terms which under the circumstances it thinks necessary. These measures, whether positive or injunctory, must be of temporary and conservative nature and their extent must not to exceed what is reasonably necessary under the circumstances.

(2) The Commission shall act in accordance with the provisions of this section, either on its own motion or on the application of those concerned, as long as the following circumstances concur:

- (a) a reasonably strong prima facie case of an infringement of section 4 or 6 is set;
- (b) it is an emergency case; and
- (c) there is a serious risk of an irreparable damage to the interests of the person lodging the application or to the public interest.

(3) The application for provisional measures shall be admitted only as long as it is accompanied by a complaint made according to section 28 or follows the complaint or as long as it is submitted during the proceeding for infringement of section 4 or 6 before the Commission. In the application the required temporary measures shall be prescribed, and the person lodging the application may be called to pay a guarantee for damages that may be caused in the enterprise against which the temporary measures are ordered, in case no infringement is found.

PART V

POWERS OF THE COMMISSION RELATING TO THE COLLECTION OF INFORMATION AND INQUIRY

Power of the
Commission
to collect
information.

24.—(1) The Commission shall have the power to collect information that is necessary for the exercise of its functions under this Law, by addressing for this purpose a written request to enterprises or other natural or legal persons.

(2) In the request of the Commission there shall be accurately prescribed, the required information, the provisions of this Law on which the request is based, the reasoning of the request, a reasonable time limit fixed for the provision of information which may not be shorter than twenty days and the possible sanctions in case there is no compliance with the above obligation for the provision of information.

(3) The person to whom the request of the Commission is addressed shall be obliged to provide in due course, in full and accurately the required information, unless the provision of the information will prejudice any professional or other secret protected by law.

(4) In case—

- (a) of omission to provide the required information within the fixed time limit; or
- (b) of the intentional or negligent provision of inaccurate or misleading information,

the Commission shall have a power to impose a fine from one hundred up to two thousand pounds.

(5) In case of omission to provide the required information within the fixed time limit, the Commission shall also have the power to impose a penalty up to five hundred pounds for each day the infringement continues.

(6) The information provided to the Commission in the exercise of its power by virtue of this section may be used only for the purpose for which the information was required.

Power of the Commission to conduct an inquiry at the seat of the enterprises.

25.—(1) The Commission shall have the power, in the exercise of its functions under this Law, to conduct all the necessary inquiries in enterprises or trade associations and for this purpose to—

- (a) inspect books and other professional documents;
- (b) receive copies or extracts of books or professional documents;
- (c) require on the spot oral clarifications;
- (d) enter in all of the offices, premises and transportation means of the enterprises.

(2) The inquiries under subsection (1) shall be conducted by competent officers of the Service at the order of the Commission when a notice is previously given, or, in exceptional and emergency cases that are specially reasoned in the order, without a previous notice given, to the enterprise concerned.

(3) The order of the Commission shall be in writing and accurately state the subject matter and purpose of the inquiry, fix the date of commencement of the inquiry and state the provision on which this power of the Commission is based and the possible sanctions in case the enterprise refuses to comply with the order of the Commission.

(4) The enterprise in which the inquiry is conducted may consult its lawyer during the inquiry, but his presence is not legally required for the validity of the inquiry.

(5) The entry into a premise or the conduct of an inquiry into a premise shall not be permissible without a properly reasoned judicial order.

(6) The Commission shall have the power to impose on an enterprise or trade association a fine of one hundred pounds up to two thousand pounds, where this enterprise or trade association shows defficiently the required books or other professional documents or where the enterprise refuses to comply with the order of the Commission for inquiry.

(7) The Commission shall also have power to impose on the enterprise concerned a fine of twenty up to five hundred pounds for each day the enterprise omits to comply with the order of the Commission to conduct an inquiry under this section.

(8) The information acquired by the Commission in the exercise of its power under this section shall only be used for the purpose for which the inquiry was conducted.

Duty of secrecy

26.—(1) The Chairman and the members of the Commission, the officers of the Service and other public officers who by reason of their office or of the performance of their duties, obtain information which is confidential in nature, shall have a duty of secrecy and an obligation not to divulge such information except in so far as this is necessary for the application of the provisions of this Law.

(2) The duty to secrecy shall be also owed by any other natural or legal person who obtains such information on the application of this Law during the proceedings provided by this Law.

(3) Infringement of the duty to secrecy under this section shall constitute a criminal offence punishable in accordance with section 34 and in the case of public officers it shall constitute a disciplinary offence punishable in accordance with the relevant disciplinary provisions.

PART VI
COMMUNICATION OF INFORMATION AND COMPLAINTS
OF INFRINGEMENT

Duty of public officers to communicate information.

27.—(1) Public officers shall have a duty to communicate forthwith to the Commission any infringement of this Law which becomes known to them in their official capacity or in the course of performance of their official duties.

(2) The communication under subsection (1) shall constitute a proper performance of an official duty in accordance with the meaning of section 65 of the Public Service Law, whereas an omission to communicate an infringement under subsection (1) shall constitute a disciplinary offence punishable in accordance with the relevant disciplinary provisions.

33 of 1967
31 of 1980
78 of 1981
10 of 1983
48 of 1986
169 of 1986
70 of 1987
Complaint of infringement of sections

28.—(1) Any natural or legal person who has a legitimate interest in doing so, may lodge a complaint of infringement of the provisions of section 4 or section 6 of this Law.

(2) A person has a legitimate interest if he can prove that he has suffered or there is a serious or possible risk that he will suffer a substantial financial injury or that he will be placed at a disadvantageous position regarding competition, as a direct result of the infringement.

(3) The complaint shall be lodged in writing to the Commission, signed by the person making the complaint, state the nature of the legitimate interest for the complaint, state the real facts on which the alleged infringement is based and the reasons on which the allegation is based; upon receiving the complaint, the Commission is called to investigate the infringement, act in accordance with section 22 and exercise the powers conferred upon it by this Law. The complaint may be lodged in the prescribed form or it may be informal.

(4) The Commission shall have a duty to consider every complaint lodged in accordance with the provisions of this section, as long as it finds, after a proper preliminary inquiry conducted by the Service, that there is a prima facie case for the infringement mentioned in the complaint.

PART VII

FUNCTIONS OF THE SERVICE FOR THE CONTROL OF PRICES AND PROTECTION OF CONSUMERS, REGISTER OF NOTIFICATIONS OF AGREEMENTS AND REGISTER OF DECISIONS ON AGREEMENTS AND PRACTICES

29. The Service shall be competent for—

- (a) acting as the Secretariat of the Commission;
- (b) the maintainance of a Register of Notifications of Agreements and a Register of Decisions on Agreements and Practices according to the Provisions of sections 30 and 31 of this Law;
- (c) the collection and examination of the information necessary for the exercise of the functions of the Commission under this Law;
- (d) the introduction of complaints and submission of recomendations to the Commission;
- (e) the effecting of the necessary communications and publications in accordance with this Law.

Functions of the
Service

30.—(1) The Service shall be responsible for the maintenance of a Registry of Notifications of Agreements, in which all the notifications effected in accordance with the provisions of section 21 of this Law shall be registered.

Register of
Notifications of
Agreements.

(2) The Register kept under this section shall be public.

31.—(1) The Service shall be responsible for the maintenance of a Register of Decisions on Agreements or Practices, in which there shall be registered—

- (a) the decisions of the Commission on matters pertaining to the provisions of sections 4 and 6, as long as they were made irrevokable;
- (b) the decisions of the Supreme Court on these matters.

Register of
Decisions on
Agreements and
Practices

(2) The Register kept under this section shall be public.

PART VIII

CRIMINAL PROVISIONS

32. The person who continues to apply an agreement which is prohibited within the meaning of section 4 or abuses its dominant position within the meaning of section 6, in contravention of a decision of the Commission which orders the termination of the agreement or the abuse, shall commit a criminal offence punishable with imprisonment of up to one year or with a pecuniary penalty or with both of these penalties.

Criminal offence for
the application of a
prohibited
agreement or abuse
of dominant
position in
contravention of a
decision of the
Commission.

33. Any person who, knowingly and for the purpose of misleading the Commission, furnishes thereto false or inaccurate or defficient information or withholds the true information, shall commit a criminal offence punishable with imprisonment of up to one year or with a pecuniary penalty or with both of these penalties.

Criminal offence for
the provision of
false or for the
withholdings of true

Criminal
offence for
contravening
the duty to
secrecy

34. Any person who, intentionally and for the purpose of gaining an unlawful benefit, contravenes the duty to secrecy under section 26, shall commit a criminal offence punishable with imprisonment of up to one year or with a pecuniary penalty or with both of these penalties.

PART IX

MISCELLANEOUS PROVISIONS

Right
of action
for damages.

35.—(1) Any person who suffers any damage from any act or omission of an enterprise committed in contravention of section 4 or 6 of this Law, shall have a right to bring an action against this enterprise for the damages he has suffered.

(2) Subject to the usual rules that regulate the making of injunction orders, the person who has suffered damage under subsection (1) shall have the right to require from the Court the making of an injunction order to stop the continuance of the contravention of section 4 or 6.

Time limit in
the exercise
of the power
of the
Commission
to impose
pecuniary
sanctions

36.—(1) The Commission shall be deprived of its power to impose pecuniary sanctions for infringements of the provisions of this Law if it does not exercise this power within the following time-limits—

(a) within a time-limit of three years in case of infringements of provisions regarding notification of mergers in accordance with section 7(2), applications for negative certification in accordance with section 16(9), notifications of agreements in accordance with section 21(6), requirements of the Commission for the furnishing of information in accordance with section 24(4) and (5), and orders of the Commission for the conduct of inquiry in accordance with section 25(6) and (7); and

(b) within a time-limit of five years in the case of all other infringements, in accordance with section 22(3)(b) and (c).

(2) The time limit shall start to run from the date the infringement took place and where the infringement continued or repeated, from the date the infringement ended.

(3) The time-limit shall be interrupted with the commencement of the procedure before the Commission.

Taking of
judicial
measures for
collecting the
pecuniary
sanctions
imposed by
the
Commission
in accordance
with this
Law.
Form of
applications,
notifications
and
complaints.

37. Where there is an omission to pay a pecuniary sanction imposed by the Commission in accordance with this Law, the Commission shall take judicial measures and shall collect the owed amount as a civil debt owed to the Republic.

38.—(1) With the Order of the Minister made upon the opinion of the Commission and published in the official gazette of the Republic, there shall be prescribed the form, content and the manner of lodging and submitting:

(a) of the applications for individual negative certification or individual exemption under sections 16(3) and 18(3);

(b) of the notifications effected under section 21(1);

(c) of the complaints lodged under section 28(3);

(d) of any other related, to the above applications, notifications or complaints, matter.

(2) The manner of publication of the decisions or other documents of the Commission shall be prescribed by Order made in accordance with the above.

Service

39. For the summons before the Commission which are provided for under this Law or for the service of decisions and documents of the Commission and Service, the provisions for the service of pleadings shall apply mutatis mutandis.

40.—(1) The Commission shall prepare and submit to the Minister an annual report for its activities.

Report for the activities of the Commission

(2) The report mentioned in subsection (1) shall be submitted to the House of Representatives.

41.—(1) The Council of Ministers shall have the power to make Regulations for the purpose of prescribing any matter which under this Law needs or is susceptible to prescription.

Making of Regulation

(2) Regulations shall prescribe the fees owed upon applications—

(a) for granting the negative certifications of the Commission, in accordance with the provisions of section 16;

(b) for the granting of individual exemption under section 18;

(c) for the issuing of a certified extract of the Registers kept under sections 30 and 31.

(3) The Regulations made by virtue of this section may provide for criminal offences punishable with a pecuniary penalty of up to one thousand pounds.

(4) The Regulations made by virtue of this section shall be laid before the House of Representatives, which shall have the power to approve, amend or reject them within sixty days from the date they were laid. If the House of Representatives approves the Regulations with or without amendment, or if the time limit of sixty days has elapsed, the Regulations shall come into force from the date of their publication.

42. The Protection of Competition Law of 1983 is hereby repealed.

Repeal 62 of 1983.

43. This Law shall enter into force six months after the date on which it is published in the official gazette of the Republic.

Entry into force of this Law.

A LAW TO AMEND THE PROTECTION OF COMPETITION LAW

The House of Representatives enacts as follows:

1. This Law may be cited as the Protection of Competition (Amendment) Law of 1999 and shall be read as one with the Protection of Competition Law of 1989 (hereinafter referred to as “the principal law”) and the principal law and this law may together be cited as the Protection of Competition Laws of 1989 and 1999.

2. Section 2 of the principal law is hereby amended by the substitution of the following new definition for the definition of the term “Service”.

“Service” means the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism.

3. Section 6 of the principal law is amended by the insertion immediately after subsection (2) of the following new subsection (3), the existing subsection (3) being renumbered as subsection (4):

“(3) The improper exploitation by one or more enterprises of the financial relationship of dependency between one or more such enterprises and an enterprise which is a customer, supplier, producer, representative, distributor or commercial co-operator thereof, even regarding a particular kind of product or services, and which does not have a corresponding alternative solution, is prohibited.

Such improper exploitation of the financial relationship of dependency may consist especially of the imposition of arbitrary terms of transaction, discretionary treatment, the discontinuance of commercial relations by the assumption or transfer of the activities developed in a way which substantially influences competition, or the sudden and unjustified discontinuance of long term commercial relations.”.

4. The following new section is substituted for section 37 of the principal law:

“Way of collection of fines. 37. The fines imposed by the Commission under this Law shall be collected as if they were fines imposed by a Court in the exercise of criminal jurisdiction”.

Short title.
207 of
1989.

Amendment
of section 2
of principal
law.

Amendmen
et of section
6 of
principal
law.