

CHAPTER 285

THE FAIR COMPETITION ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 285

THE FAIR COMPETITION ACT Act No. 11 of 2001 s. 51 and 4th Sch.

An Act to encourage competition in the economy by prohibiting restrictive trade practices, regulating monopolies, concentrations of economic power and prices, to protect the consumer and to provide for other related matters. Act No. 11 of 2001 s 51 and 4th Sch.

[12th July, 1996]

Acts Nos.

4 of 1994

11 of 2001

PART I

PRELIMINARY (ss 1-3L)

[PCh285s1]1. Short title Act No. 11 of 2001 s. 51 and 4th Sch.

This Act may be cited as the Fair Competition Act.

[PCh285s2]2. Interpretation Act No. 11 of 2001 s. 51 and 4th Sch.

In this Act, unless the context requires otherwise—

"Authority" means the Surface and Marine Transport Regulatory Authority Act *, the Energy and Water Utilities Regulatory Authority Act *, or any other Authority on which its functions or appeals will be dealt with by the Commission;

"business records" include—

(a) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, and other persons, and includes a person carrying on business as a broker;

(b) any information recorded or stored by means of a computer or other device and any material subsequently derived from information so recorded or stored;

"Chairman" means the Chairman for Fair Competition appointed under section 3;

"Commission" means the Fair Competition Commission established under section 3;

"commission agent" means any person who receives or orders goods on account of others, or who solicits orders for goods on behalf of other person, and includes a person carrying on business as a broker;

"competitor" means a person who produces, distributes, or supplies substantially similar goods or services, at the same stage of production or distribution of goods or supply of services, in relation to another person;

"consent agreement" means an agreement concluded pursuant to subsection (3) of section 25;

"consumer" includes any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale; but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacture of any other goods or articles for sale;

"customer" means a person who purchases goods or services from another person;

"distribution" includes any act by which goods or services are sold or supplied by one person to another person;

"distributor" means a person who engages regularly in distribution or who participates in some act or set of acts of distribution which is the subject of an action under this Act;

"downstream processor" means a manufacturer who adds value to goods supplied or manufactured by another person;

"fair competition" means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply, or price, in the course of trade, or any property whether real or personal, or of any services;

"fair market price" means a price at which the market for goods or services clears with sufficient competition without the occurrence of shortages or build up excess inventories;

"goods" include—

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

and

- (d) gas or electricity;

"intermediate goods" means goods used as inputs in manufacturing;

"manufacture" or manufacturing" includes any artificial process which transforms goods in order to add value to them for the purpose of resale and any operation of packing or repacking not linked to another form of transformation within a single enterprise;

"member" means a member of the Fair Competition Commission;

"Minister" means the Minister for the time being responsible for the Fair Competition Commission;

"monopoly undertaking" means a dominant undertaking, or an undertaking which, together with not more than two other independent undertakings—

- (a) produces, supplies, distributes or otherwise controls not less than one-third of the total goods of any description that are produced, supplied or distributed in the country or any substantial part thereof; or

(b) provides or otherwise controls not less than one-third of the services of any category that is rendered in the country or any substantial part thereof;

"price" in relation to the sale of goods or to the performance of services, every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the sale of the goods or services, although ostensibly relating to any other matter or thing;

"reasonable unit cost" means the average total cost of producing goods or services at the producers normal scale of output, with all productive factors being remunerated at fair market rates;

"retail trade" means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing and includes any act or set of acts of sale to consumers which is the subject of an action under this Act;

"retailer" means a person regularly engaged in retail trade, or who participates in some act or set of acts of retail trade which is the subject of an action under this Act;

"sale" includes an agreement to sell or offer for sale, and an "offer for sale" shall be deemed to include the exposing of goods for sale the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

"service" includes the sale of goods, where the goods are sold in conjunction with the rendering of a service;

"supplier" in relation to a service, includes a person who performs the service and a person who arranges the performance of the service, and in relation to goods or services, it means a person who sells or supplies goods or services to another person;

"supply" in relation to goods, includes supply or resupply by way of sale, exchange, lease, hire or hire purchase;

"trade" includes commerce;

"trade association" means a body of persons, whether incorporated or not, which is formed for the purposes of furthering the trade interests of its members or of persons represented by its members;

"Tribunal" means the Fair Competition Tribunal established by section 4;

"wholesale trade" means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing and includes any act or set of acts of sale for either of those purposes which is the subject of an action under this Act.

[PCh285s3]3. Establishment of the Fair Competition Commission Act No. 11 of 2001 s. 51 and 4th Sch.

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

(2) Subject to the provisions of this Act, the Fair Competition Commission shall be responsible for the control, management and efficient performance of the functions of the Commissions under this Act.

(3) The Fair Competition Commission shall be a body corporate with perpetual succession and subject to this Act and shall—

- (a) be capable of suing and being sued in its corporate name;
- (b) be capable of acquiring, holding and disposing of real and personal property;
- (c) have power to exercise and perform the powers and functions conferred on it by or under this Act;
- (d) have power to do and suffer all such other acts and things a body corporate may by law do and suffer.

(4) The common seal of the Fair Competition Commission shall be judicially noticed and shall be duly affixed if witnessed under the hand of the Chairman or Secretary of the Fair Competition Commission.

(5) The Fair Competition Commission shall be constituted by five members as follows—

- (a) a full-time Executive Chairman who shall be appointed by the President;
 - (b) four other members who may be full-time or part-time as determined by the Minister at the time of their respective appointments,
- and by such number of associate members as the Minister may from time to time approve.

(6) The Chairman, any other full-time members and any full-time associate members shall not engage in any other paid employment or remunerated activities during their terms to office.

(7) A person other than a member or associate member of the Fair Competition Commission shall be appointed as Secretary of the Fair Competition Commission and,

unless the context requires otherwise, the provisions of this Act relating to the appointment and removal of members shall also apply to the Secretary.

(8) The members of the Commission shall be appointed by Minister and, subject to this section, shall be appointed—

(a) for fixed terms of between three and five years as specified in the instrument of appointment; and

(b) on such other terms and conditions as determined by the Minister at the time of the appointment.

(9) Before appointing a person as a member of the Fair Competition Commission, the Minister shall satisfy himself that the person is qualified for the appointment because of his knowledge of, or experience in an industry, commerce, economics, law or public administration or in any other related field.

(10) With the approval of the Minister, the Chairman may from time to time appoint persons with special expertise relevant to the functions of the Fair Competition Commission as associate members.

(11) The terms and conditions of appointment of an associate member shall be as determined by the Fair Competition Commission subject to the Minister's approval.

(12) The members of the Fair Competition Commission may not be removed from office except in accordance with the provisions of section 3A of the Act.

(13) Members may resign by giving written notice of resignation to the Minister.

(14) Members shall be eligible for reappointment for one further consecutive term but shall not be eligible for re-appointment thereafter.

(15) No civil liability will attach to any member, associate member or employee of the Commission in his personal capacity as a result of any act or thing done in good faith in the performance or exercise, or purported performance or exercise, or any function or power of the Commission.

[PCh285s3A]3A. President's power to remove a member from office Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The President may remove a member (which, for the purposes of this section, includes the Executive Chairman) from office at any time if—

(a) the member is declared bankrupt, takes the benefit of any law for the relief of insolvent debtors or assigns the member's remuneration for the benefit of creditors;

(b) the member is convicted of a criminal offence;

(c) the President decides the member should be removed because of a conflict of interest, whether or not the member is required by section 3B to resign;

(d) the President decides the member incapable of carrying out the member's duties because of ill health or physical or mental impairment;

(e) the member fails to attend at least two thirds of all meetings of the Authority in any period of twelve consecutive months; or

(f) the member has committed a material breach of a code of conduct to which the Commission is subject or a material breach of the provision of this Act.

(2) Before removing a member from office the President shall inform a member in writing stating the grounds for removal.

[PCh285s3B]3B. Conflict of interest Act No. 11 of 2001 s. 51 and 4th Sch.

(1) A member or employee of the Commission has a conflict of interest for the purposes of this Act if that person has or acquires any pecuniary or other interest that could conflict with the proper performance as a member or employee of the Commission.

(2) If at any time a member of the Commission has a conflict of interest in relation to—

(a) any matter before the Commission for consideration or determination; or

(b) any matter the Commission could reasonably expect might come before it for consideration or determination,

the member shall immediately disclose the conflict of interest to the other members of the Commission and refrain from taking part, or any further part, in the consideration or determination of the matter.

(3) Where the Chairman becomes aware that a member has a conflict of interest in relation to any matter before the Commission, the Chairman shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the Chairman has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict to the Minister by written notice.

(5) Upon the Commission becoming aware of any conflict of interest it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Commission and the member with the conflict of interest must not vote on this determination.

(6) Where the Commission determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided in subsection (5), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Commission within 30 days.

(7) The Commission must report to the Minister any determination by the Commission that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Commission.

(8) The Annual Report of the Commission must disclose details of all conflicts of interest and determinations arising during the period covered by the Report.

[PCh285s3C]3C. Codes of conduct Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Commission shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and employees of the Commission in the performance of their duties, within twelve months of the commencement of this Act.

(2) Subject to subsection (1), before adopting any code of conduct the Competition Commission shall publish it in the Gazette.

(3) The Fair Competition Commission shall include in its Annual Report a report on compliance with the codes during the period covered by the Annual Report.

(4) Codes of conduct adopted or prescribed under this section shall be binding on the Fair Competition Commission and its employees.

[PCh285s3D]3D. Employees and consultant Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Competition Commission shall employ such staff as it considers appropriate to enable it to perform its functions and exercise its powers.

(2) The Competition Commission may engage consultants and experts, as it considers appropriate, to assist it to perform its functions and exercise its powers.

(3) The Competition Commission shall establish a competitive selection procedure for the appointment of all employees, consultants and experts.

(4) The Competition Commission shall comply with the competitive selection procedure established under subsection (3) whenever it appoints employees, consultants or experts unless, because of the urgency of the appointment or other special circumstances, the procedure is not reasonably practical in any particular case.

(5) The terms and conditions on which the Competition Commission employs staff and engages consultants and experts shall be as determined by the Commission but must include the following—

(a) an employee, consultant or expert must, without delay, notify the Competition Commission in writing of any conflict of interest as soon as it arises and failure to comply with this requirement, whether wilfully or inadvertently, will be a ground for immediate dismissal;

(b) where the Competition Commission becomes aware of a conflict of interest, whether as a result of a notification under paragraph (a) or by an other means, the Competition Commission may, in its absolute discretion—

(i) direct the person not to participate in the consideration of any matter in relation to which the person has the conflict of interest and, in that case, the person must comply with the direction; or

(ii) dismiss the person.

(6) Before employing or engaging any person, the Commission must obtain from the person a written declaration of any existing conflict of interest.

(7) Persons employed by the Fair Competition Commission as full-time employees shall not undertake any other paid employment or remunerated activities.

(8) The Fair Competition Commission may enter into agreements with government departments and other government authorities and agencies to share the services of particular employees, as the Chairman considers appropriate.

(9) The Fair Competition Commission will include in its Annual Report a report of its competitive selection procedure and its employment practices.

[PCh285s3E]3E. Meetings of the Competition Commission Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Fair Competition Commission shall hold meetings not less than six times in any period of twelve months and the interval between successive meetings shall not on any occasion exceed two months.

(2) The Secretary shall convene meetings of the Commission as directed by the Chairman or if requested in writing by at least half of the members.

(3) Subject to subsection (1) and (2), the Chairman may convene meetings of the Competition Commission, after consultation with the members, at such times and places as he or she sees fit.

(4) The Chairman shall preside at meetings of the Fair Competition Commission and the members may appoint from amongst themselves a Deputy Chairman to preside meetings in his absence.

(5) A quorum will be three members including the Chairman or a Deputy Chairman.

(6) All questions shall be decided by a majority of votes of the members present and voting and, in the event of an equality of votes, the presiding member shall have a deliberative and a casting vote.

(7) The Chairman may decide that particular meetings of the Commission should be held by telephone, closed circuit television or other method of communication as the Chairman thinks fit.

(8) A minute of a resolution signed by all members of the Competition Commission shall constitute a valid resolution of the Commission as if it were duly passed at a validly constituted meeting of the Commission.

[PCh285s3F]3F. Delegation Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman may delegate to a member of the Commission, to preside a meeting either generally or otherwise as provided by the instrument of delegation, any of its powers other than this power of delegation and its powers to revoke or vary a delegation.

(2) A delegated power must be exercised in accordance with the instrument of delegation.

(3) A delegation may be revoked or varied at will and does not prevent the exercise of a power by the Fair Competition Commission.

[PCh285s3G]3G. Confidentiality Act No. 11 of 2001 s. 51 and 4th Sch.

(1) For the purposes of this section "material" includes any information, document or evidence.

(2) A claim for confidentiality may be made at any time before the material is disclosed to persons outside the Commission other than on the condition that it be kept confidential without any breach of the provisions of this section.

(3) In the case of oral evidence, the claim may be made orally at the time of giving the evidence and in all other cases it shall be in writing, signed by the person making the claim specifying the material and stating the reason for the claim.

(4) If the Chairman is satisfied that the material is of a confidential nature and—

(a) its disclosure could adversely affect the competitive position of any person;

or

(b) is commercially sensitive for some other reason.

(5) The Chairman must notify the person making a claim for confidentiality of the Commission's decision under subsection (4).

(6) If the Authority decides not to grant confidentiality in respect of the material or any part of it, the claimant may appeal against the decision to the Fair Competition Tribunal by filing a notice of appeal within twenty-one days and in that event the material must be treated as confidential—

(a) during the twenty-one day appeal period; and

(b) if the claimant files an appeal, until the Fair Competition Tribunal determines the appeal.

(7) The Fair Competition Tribunal may grant the claim for confidentiality in whole or in part.

(8) If a claim for confidentiality—

(a) is made in relation to material supplied to the Commission voluntarily; and

(b) the Commission decides not to grant confidentiality in whole or in part for the material,

the person who supplied the material may withdraw it together with other material supplied with it.

(9) A person performing a function under this Act, shall be guilty of an offence if he discloses confidential information otherwise than as authorised under this section.

(10) Confidential information may be disclosed if—

(a) the disclosure is made to another person who is also performing a function under this Act;

(b) the disclosure is made with the consent of the person who gave the material;

(c) the disclosure is authorised or required under any other Act or law;

(d) the disclosure is authorised or required by a court or tribunal constituted by law;

(e) the Chairman is of the opinion that the disclosure of the material would not cause detriment to the person supplying it or the person to whom it relates;

(f) the Chairman is of the opinion that although the disclosure of the material would cause detriment to the person supplying it or the person to whom it relates, the public benefit in disclosing it outweighs the detriment.

(11) If the Chairman is of the opinion required by paragraphs (e) or (f), he shall give the person who supplied the material and the person to whom it relates a written notice—

(a) stating that the Commission wishes to disclose the material, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and

(b) stating that the Commission is of the opinion required by paragraph (e) or (f) and setting out detailed reasons why it is of that opinion.

(12) The Chairman must not disclose the information for 21 days during which the person who supplied the information or the person to whom it relates may appeal to the Tribunal.

[PCh285s3H]3H. Funds of the Commission Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Funds of the Commission will comprise—

(a) fees collected by the Commission;

(b) all other payment or property due to the Commission in respect of any matter incidental to its functions;

(c) any grants, donations, bequests or other contribution made to the Commission; and

(d) funds allocated to the Commission from the funds of the Authority for the work done.

(2) The Commission may make rules prescribing filing fees, setting fees, licence fees and other fees to be paid by persons in connection with the procedures of the Commission.

(3) The Commission shall disclose details of the sources of its funds in the Annual Report.

[PCh285s3I]3I. Accounts and financial audit Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Commission shall keep books of accounts and maintain proper records of its operations in accordance with accounting standards.

(2) The accounts of the Commission may at any time and shall, at the end of each financial year, be audited by a person registered as an auditor under the Accountants and Auditors (Registration) Act * appointed by the Commission on such terms and conditions as the Commission may determine.

[PCh285s3J]3J. Audit of performance Acts Nos. 33 of 1972; 11 of 2001 s. 51 and 4th Sch.

(1) The Controller and Auditor General shall at the request of the Minister conduct an audit of the performance by the Commission of its functions including its performance in relation to key performance indicators, on such terms and conditions as the Minister may determine.

(2) The key performance indicators under subsection (1) shall be as directed by the Minister or, in the absence of such direction, as determined by the Auditor General.

[PCh285s3K]3K. Annual report Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Before 30th September each year, the Chairman shall prepare an Annual Report in respect of the year up to the immediately preceding 30th June and submit it to the Minister.

(2) The Annual Report shall provide detailed information regarding the exercise of the functions and powers of the Commission during the year to which it relates and shall include:

- (a) A copy of the audited accounts of the Commission;
- (b) a copy of any report of the Controller and Auditor-General on any performance audit carried out by Controller and Auditor-General during the year to which the Annual Report relates;
- (c) such information and other material as the Commission may be required by this Act or the regulations to include in the annual report;
- (d) such additional information or other material as the Minister may request in writing.

(3) The Minister shall cause a copy of the Annual Report to be laid before the National Assembly within two months after receiving it from the Chairman or at the next meeting of the National Assembly.

[PCh285s3L]3L. Preparation of a report Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman shall cause to be prepared a budget and submit to the Minister for information and approval before the end of each financial year a budget for the

following financial year showing estimates of its receipts and expenditures for the following financial year.

(2) At the Minister's request, the Chairman shall commission the Commission's auditor to assess and report on the extent to which the budget represents a fair and reasonable projection of the income and expenditure of the Commission for the relevant year.

PART II

ESTABLISHMENT OF THE FAIR COMPETITION TRIBUNAL (ss 4-14) Act No. 11 of 2001 s. 51 and 4th Sch.

[PCh285s4]4. Establishment and composition of the Tribunal Act No. 11 of 2001 s. 51 and 4th Sch.

(1) There shall be established a tribunal which shall be known as the Fair Competition Tribunal to exercise the functions conferred upon it by this Act.

(2) The Tribunal shall consist of—

(a) a Chairman who shall be a person holding or is qualified to hold high judicial office, and appointed by the President after consultation with the Chief Justice, and shall serve on a full time basis; and

(b) not less than two and not more than four other members appointed by the President after consultation with the Attorney General.

(3) No person shall be appointed as a member of the Tribunal other than the Chairman, unless he qualifies for appointment by virtue of his knowledge of, or experience in industry, commerce, economics, law or public administration.

(4) For the purposes of this section the expression "high judicial office" means the office of a Judge of the Court of Appeal or the High Court of the United Republic.

(5) A member of the Tribunal shall hold office for the period not exceeding three years and he is eligible for re-appointment for another term of three years only, prior to the expiration of that period as specified in the instrument of his appointment unless—

(a) he resigns his office by written notification under his hand addressed to the President; or

(b) the President, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(6) The quorum for a meeting of the Tribunal shall be the Chairman and two other members.

[PCh285s5]5. Judgment of Tribunal and execution of judgment

(1) A judgment or order of the Tribunal on any matter before it shall, subject to subsection (2), be final.

(2) Judgment and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.

[PCh285s6]6. Functions and procedure of Tribunal Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Tribunal shall have jurisdiction—

(a) to hear and determine any complaint on a fair competition referred to it under the provisions of this Act;

- (b) to carry out functions conferred on it by or under the EWURA Act *;
- (c) to carry out functions conferred on it by or under the SUMATRA Act *;
- (d) to hear and determine appeals on any complaints referred to under the EWURA Act *, the SUMATRA Act * and any other written laws enacted for the purpose of regulating competition on trade and to exercise such other jurisdiction as may be conferred upon this Act;
- (e) to inquire into any matter referred to it and to give orders in accordance with the provisions of this Act;
- (f) to exercise such other functions and powers as are conferred upon it by this Act.

(2) The Tribunal shall in the exercise of its functions under this Act be guided by the rules of natural justice.

(3) Without prejudice to the general effect of subsection (2) of section 5 the Tribunal shall in the discharge of its functions under this Act have all the powers of the High Court in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad.

(4) The Tribunal shall at any time be deemed to be duly constituted if the Chairman and two other members are present.

(5) Any decision shall be deemed to be a decision of the Tribunal if it is supported by a majority of the members.

(6) A witness before the Tribunal shall have the immunities and privileges as if he were a witness before the High Court.

[PCh285s7]7. Registrar and other staff of the Tribunal

The Minister shall after consultation with the Chief Justice appoint an officer to be known as the Registrar of the Tribunal, and shall provide to the Tribunal the services of such other officers as the Tribunal may reasonably require for the carrying out of its functions under this Act.

[PCh285s8]8. Expenses and allowances

The members of the Tribunal, the Registrar and staff of the Tribunal shall be paid such remunerations and allowances as the Minister shall determine.

[PCh285s9]9. Obstruction of Tribunal

(1) Any person who—

(a) when summoned, fails or refuses to attend without reasonable excuse;

(b) having attended as a witness refuses or fails to take an oath or make an affirmation as required by the Tribunal;

(c) makes any statement before the Tribunal which he knows to be false or which he has no reason to believe to be true;

(d) omits or suppresses any information required by the Tribunal in the discharge of its functions or relevant to the discharge of those functions; or

(e) in any manner misleads, obstructs insults or disturbs the Tribunal, commits an offence, and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

[PCh285s10]10. Rules of the Tribunal

The Minister may make rules—

(a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;

(b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;

(c) prescribing the manner in which the Tribunal shall be convened and places where and the time at which the sitting shall be held;

(d) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

[PCh285s11]11. Procedure on appeals to the Tribunal

Without prejudice to section 10 in an appeal under this Act—

(a) the appellant shall appear before the Tribunal either in person or by an advocate on the day and at the time fixed for the hearing of the appeal but if it is proved to the satisfaction of the Tribunal that owing to absence of the appellant from the country, sickness, or other reasonable cause, he is prevented from attending at the hearing of the appeal on the day and at the time fixed for that purpose, the Tribunal may postpone the

hearing of the appeal for such reasonable time as it thinks necessary;

(b) the costs of the appeal shall be at the discretion of the Tribunal.

[PCh285s12]12. Hearing and determination of appeal

(1) The Tribunal may in any case if it considers it in the interests of the parties or of any of them and it is not contrary to the interest of other persons concerned or the public interest, order that the hearing or any part of it shall be held in camera.

(2) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it, whether heard in public or in camera; but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal or of any decision of the Tribunal.

(3) In its determination of any appeal, the Tribunal may confirm, modify, or reverse the order appealed against, or any part of that order.

[PCh285s13]13. Tribunal may refer appeals back for reconsideration Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Notwithstanding anything contained in section 12, the Tribunal may in any case, instead of determining any appeal under that section, direct the Chairman to reconsider, either generally or in respect of any specified matter the whole or any specified part of the matter to which the appeal relates.

(2) In giving any direction under this section, the Tribunal shall—

(a) advise the Chairman of its reasons for so doing; and

(b) give to the Chairman such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(3) In reconsidering the matter so referred back, the Chairman shall have regard to the Tribunal's reasons for giving a direction under subsection (1) and to the Tribunal's directions under subsection (2).

[PCh285s14]14. Provisions pending determination of appeal Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Where an appeal is brought under section 28 against any order of the Chairman under section 26 the order to which the appeal relates shall, unless the Tribunal otherwise orders, be held in abeyance pending the determination of the appeal.

(2) Where an appeal is brought under section 33 against any order, of the Minister under section 32 the merger or takeover to which the appeal relates may not be consummated pending the determination of the appeal.

PART III

PROVISIONS RELATING TO RESTRICTIVE TRADE PRACTICES (ss 15-29) Act No. 11 of 2001 s. 51 and 4th Sch.

[PCh285s15]15. Meaning of "restrictive trade practice" Act No. 11 of 2001 s. 51 and 4th Sch.

(1) For the purposes of this Act, "restrictive trade practice" refers to an act performed by one or more persons engaged in production or distribution of goods or services which—

(a) in respect of other persons offering the skills, motivation and minimum seed capital required in order to compete at fair market prices in any field or production or distribution, reduces or eliminates their opportunities so to participate; or

(b) in respect of other persons able and willing to pay fair market prices for goods or services either for production, for resale or final consumption, reduces or eliminates their opportunities to acquire those goods or services.

(2) For the purposes of subsection (1) reduction or elimination of opportunities is to be measured with reference to the situation that would pertain in the absence of the practices in question.

[PCh285s16]16. Categories of trade agreements declared to be restrictive trade practices Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The following categories of agreements are declared to be restrictive trade practices—

(a) an agreement or arrangement between persons engaged in the business of selling goods or services to engage in conduct—

(i) hindering or preventing the sale or supply or purchase of goods or services between persons engaged in the selling and buying of goods or services; or

(ii) limiting or restricting the terms and conditions of sale or purchase between persons engaged in the selling or buying of goods or services;

(b) an agreement or arrangement between manufacturers, wholesalers, retailers, or contractors to buy, or offer to buy goods at prices or on terms agreed upon between themselves;

(c) an agreement or arrangement between manufacturers, wholesalers, retailers or contractors or any combination of persons other than a partnership, engaged in the selling of goods or the performance of services, to sell goods, or perform services, at prices or on terms agreed upon between the parties to any such agreement or arrangement;

(d) an agreement or arrangement between manufacturers or between wholesalers, to sell goods on the condition that prices charged by or conditions of sale applicable to retailers shall be the prices or conditions of sale stipulated by those manufacturers or wholesalers;

(e) a discriminatory agreement or arrangement between sellers or between sellers and buyers to grant rebates to buyers of goods calculated with reference to the quantity or value of the total purchases by those buyers from those sellers;

(f) an agreement or arrangement between sellers not to sell goods in any particular form or of any particular kind to buyers or to any class of buyers; or an agreement or arrangement between resellers not to buy goods in any particular form or of any particular kind from sellers or any class of sellers;

(g) an agreement or arrangement between manufacturers of wholesalers or retailers not to employ or to restrict or favour the employment of any method, machinery, process, labour, land or other resources;

(h) an agreement or arrangement between persons whether as producers, wholesalers, retailers or buyers, to limit or restrict the output or supply of any goods, or

withhold or destroy supplies of goods, or allocate territories or markets for the disposal of goods; or

(i) an agreement or arrangement to enforce the carrying out of an agreement or arrangement referred to in this subsection.

(2) No agreement or arrangement belonging to a category enumerated in subsection (1) shall be enforceable in legal proceedings after the commencement of this Act, nor shall any person bring a suit against any other person by reason of failure to observe or adhere to the terms of that agreement or arrangement or by reason of damages arising from that failure.

(3) An agreement or arrangement enumerated in subsection (1) shall be regarded as a restrictive trade practice for the purposes of this Act whether or not the agreement or arrangement is intended to be enforceable by legal proceedings.

(4) Where an agreement is made by a trade association, the agreement shall be deemed to be made by the association and by all persons who are members of the association or represented thereon as if each of those persons were a party to the agreement.

(5) Nothing contained in subsection (1) shall apply in respect of any agreement or arrangement between consumers relating to goods and services which are bought by them for consumption and not for resale.

[PCh285s17]17. Application to trade associations Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The following practices conducted by or on behalf of a trade association are declared to be restrictive trade practices—

(a) the unjustifiable exclusion from a trade association of any person carrying on or intending to carry on, in good faith, the trade in relation to which the association is formed; and in determining whether an exclusion from such an association is unjustifiable the Chairman may examine, in addition to any other matters which he considers relevant, not only to the application of any rules of that association but also the reasonableness of those rules;

(b) the making directly of a recommendation by a trade association to its members or to any class of its members—

(i) which relates to the prices charged or to be charged by such members or any such class of members or to the margins included in the prices or to the pricing formula used in the calculation of those prices; or

(ii) which relates to the terms of sale, including discount, credit, delivery, product and service guarantee terms, of such members or any such class of members and which directly affects prices, profit margins included in the prices, or the pricing formula used in the calculation of price.

(2) A recommendation by a trade association as described in paragraph (b) of subsection (1) shall be deemed to be a restrictive trade practice notwithstanding that any statement in the recommendation may or may not be complied with as the members or class of members to whom the recommendation is made think fit.

(3) A recommendation made by any person for the purpose of or having the effect of, whether directly or indirectly, enabling any trade association to defeat or evade the provisions of this Act shall be deemed to have been made by that trade association.

(4) Where a specific recommendation, whether express or implied is made by or on behalf of a trade association to its members or to any class of its members concerning the action to be taken or not to be taken by them in relation to any matter affecting the trading conditions of those members, the provisions of this Act shall apply as if membership of the association constituted an agreement under which the members agreed with the association and with each other to comply with the recommendations, notwithstanding anything to the contrary in the constitution or rules of the association.

(5) Notwithstanding anything in section 16(4) or subsection (4) of this section, a member of a trade association who expressly notifies the association in writing that he disassociates himself entirely from an agreement made by that association or, as the case may be, that he will not take action or will refrain from action of a kind referred to in an express or implied recommendation made by that association shall not, in the absence of proof to the contrary, be deemed to be a party to that agreement or, as the case may be, a member of the association who has agreed to comply with the recommendation.

[PCh285s18]18. Refusal or discrimination in supply as a restrictive trade practice Act No. 11 of 2001 s. 51 and 4th Sch.

(1) For the purposes of this section, sections 19 and 20, "discrimination" means the act of a person in selling or supplying or offering to sell or supply, goods or services to another person, whether for use in production for resale or final trade consumption, under

conditions less favourable to that person than those on which he sells or supplies or offers to sell or supply substantially similar goods or services to third persons.

(2) Conditions of sale or supply may be deemed to be less favourable under the following circumstances—

(a) goods or services are delivered or made available after a significant longer period of time following receipt of an order, provided that such treatment shall not be deemed to constitute discrimination if more rapid delivery is openly offered to each purchaser on condition of payment of a uniform premium; or

(b) goods or services are sold or supplied at higher prices, provided that the provisions of quantity discounts which are normal for the trade in question shall not be deemed to constitute discrimination; or

(c) goods or services are sold or supplied on less favourable credit terms, provided that differential credit terms reflecting the established credit worthiness or lack thereof of different purchasers shall not be deemed to constitute discrimination; or

(d) in a situation of shortage, such as one prompted by import restrictions, a person sells or supplies goods or services to non-favoured purchasers in quantities less than their normal proportionate share in his sale or supplies.

(3) A person commits a restrictive trade practice within the meaning of this Act, who, whether as principal or agent, and whether by himself or his agent—

(a) being a manufacturer refuses to sell or supply or to continue to sell or supply or who discriminates in selling or supplying goods to another manufacturer, wholesaler, or a supplier of services;

(b) being a wholesaler or a supplier of services, refuses to sell or supply, or discriminates in selling or supplying, goods to a manufacturer, a retailer, or a supplier of services;

(c) being a retailer refuses to sell or supply or discriminates in selling or supplying goods to a manufacturer, a supplier of services or final consumer; or

(d) being a supplier of services refuses to sell or supply or discriminates in selling or supplying services to a manufacturer, a wholesaler, a retailer or another supplier of services.

[PCh285s19]19. Specific instances of refusal or discrimination in supply as a restrictive trade practice Act No. 11 of 2001 s. 51 and 4th Sch.

Without prejudice to the generality of section 18, a person commits a restrictive trade practice within the meaning of this Act who, whether as principal or agent, and whether by himself or his agent—

(a) being an organisation which manufactures intermediate goods used in part as inputs by down-stream processors, or being in control of such an enterprise, having also a beneficial interest in one or more of such down-stream processors, and being a regular or part-time seller or supplier of such intermediate goods to one or more down-stream processors in which he has no beneficial interest, refuses to sell or supply, or discriminates in selling or supplying such intermediate goods to one or more down-stream processors;

(b) refuses to sell or supply or discriminates in selling or supplying goods or services to another person except on the condition that the other persons also purchases other goods and services from him or from a third person nominated by him but nothing in

this paragraph shall render unlawful a condition against the separate sale of any goods customarily forming part of a unified set or forming part of a single or composite article;

(c) being a retailer of goods or supplier of services indicates in the course of bargaining with another person, being a purchaser or prospective purchaser of goods or services—

(i) that he will sell goods or supply services to that person only if the other person sells or arranges the sale of second-hand goods to the seller or to a person nominated by the seller; or

(ii) that the terms and conditions on which he will sell those goods or supply those services will be less favourable than those upon which he would make them available if the purchaser were to sell or to arrange the sale of second-hand goods to the seller or to a person nominated by the seller:

Provided that it shall not be a restrictive trade practice for a seller to stipulate the terms and conditions for second-hand goods in part exchange for reconditioned goods of the same kind if the second-hand goods are required for reconditioning or resale;

(d) refuses to sell or supply or discriminates in selling or supplying goods or services to any other person on the ground—

(i) that other person intends or is likely to resale or supply the goods or services, or has in the past sold or supplied similar goods or services, at a price that is or was lower than a specified amount or lower than some other price proposed,

recommended, determined, charged, collected, or paid by any person or trade association;
or

(ii) that the other person refuses to impose, or to agree to impose, on any third person to whom he resells or supplies the goods or services, the condition that the resale or supply may not take place at a price lower than a specified amount or lower than some other price proposed, recommended, determined, charged, collected, or paid by any person or trade association.

[PCh285s20]20. Predatory trade practice to repress competition prohibited Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Any person who, whether as principal or agent, and whether by himself or his agent, commits predatory trade practice with the intention, whether exclusively or in common with other objects, of accomplishing any of the following purposes—

(a) to drive a competitor out of business, or to deter a person from establishing a competitive business in the country or in any specific area of location within the country;
or

(b) to induce a competitor to sell assets to, or merge with, another party, whether that party is the offender himself or a third person; or

(c) to induce a competitor to shut down whether temporarily or permanently an existing manufacturing facility or wholesale or retail outlet or outlet for the sale or services, or to deter a person from establishing any such facility or outlet in any one or more location in the country; or

(d) to induce a competitor to desist from producing or trading in any goods or services, or to deter a person from producing or trading in any goods or services, commits an offence.

(2) For the purposes of this section a "predatory trade practice" shall be deemed to have been committed with the intention, exclusively or partially, of accomplishing any of the purposes described in subsection (1) if any outcome described in that subsection occurs subsequent to the occurrence of the practice, or if it may reasonably be inferred that successful execution of the practice would ordinarily be followed by that outcome.

(3) For the purposes of this section "predatory trade practice" includes the following—

(a) a person sells or supplies, or threatens to sell or supply, goods or services at certain prices which prices are found by the Chairman to be below their average variable cost, or intended to drive a competitor out of business or to deter a person from establishing a competing business in the country;

(b) a person offers money or other consideration of value to a purchaser of goods or services on the condition that the purchaser refrains or agrees to refrain from purchasing the goods or services from some other person or persons unless such consideration is given by way of a normal trade discount;

(c) a person threatens an existing or potential competitor with bodily harm, damage to property, or other disadvantageous consequences if the competitor undertakes or continues or refuses to agree not to undertake or continue specified lawful fair competition;

(d) a person threatens another person with bodily harm, damage to property or other disadvantageous consequences if the other person purchases goods or obtains services from a third person or refuses to agree to refrain from making purchases from the third person;

(e) a person offers inducements to existing or potential suppliers of goods or services to an existing or potential competitor to withhold such supplies or to furnish them on terms and conditions that discriminate against the competitor, or he threatens the suppliers with bodily harm, damage to property or other disadvantageous consequences if they fail to carry out or agree to withhold the supplies or to furnish them on terms and conditions that discriminate against the competitor.

(4) Any person who commits an offence under this section is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding twelve months and if such person is a body corporate the penalty shall be a fine not exceeding five million shillings.

[PCh285s21]21. Collusive tendering prohibited

(1) It shall be an offence—

(a) for two or more persons, being either manufacturers, wholesalers, retailers, or contractors, or suppliers of services, to tender for the supply or purchase of any goods or services at prices, or on terms, agreed, or arranged between them; or

(b) for two or more persons to agree or arrange for all or any of them to abstain from tendering for the supply or purchase of any goods or services, tenders for the supply or purchase of which have been invited.

(2) It shall not be a defence in proceedings for an offence under this section—

(a) that the invitation to tender or the tender was not made or submitted in writing; or

(b) that the invitation to tender or the tender was not described as such or was given some other description; or

(c) that the invitation to tender was extended to some or all of the parties to the agreement or arrangement at different times; or

(d) that the tender of any party to the agreement or arrangement was submitted before that party had consulted with all or some of the other parties to the agreement or arrangement on the prices or the terms that those other parties were to submit or on the question as to whether all or some of those parties should abstain from tendering.

(3) Nothing in this section shall apply to a tender made by two or more persons jointly at the express request or with the prior express consent of the person inviting the tender, whether made in the name of one person or in the names of two or more persons, where the tender is made with the intention that if it is successful the supply or purchase of the goods or services purchased, as the case may be, or may be shared by two or more persons.

(4) Any person who commits an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

[PCh285s22]22. Collusive bidding at auction sale an offence

(1) It shall be an offence for any two or more persons, being either manufacturers, wholesalers, retailers, or contractors, to enter into any agreement or arrangement as to the price or prices which any of them will bid at any auction sale of goods, or any agreement or arrangement whereby any party to that agreement agrees to abstain from bidding at any auction sale of goods.

(2) Any person who commits an offence under this section is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

[PCh285s23]23. Complaints regarding restrictive trade practices Act No. 11 of 2001 s. 51 and 4th Sch.

Any person who considers himself to be aggrieved as a result of a restrictive trade practice may submit a complaint to the Chairman in the prescribed form.

[PCh285s24]24. Power of the Chairman to investigate complaints Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman shall investigate a complaint made under section 23 which appears to him to have merit and he may also initiate investigations into alleged restrictive trade practices of which he takes cognizance by other means including but not limited to references by agencies of the Government.

(2) The Chairman, or any person authorised in writing by him, may require access to copies of such records of fair competition, business transactions, and enterprise ownership and control as he may reasonably need to investigate complaints under section 23 and without limiting the generality of the foregoing, he or his authorised agent may—

(a) address to any person currently or previously engaged in trading in goods or services to which the allegations refer, or to any person currently or previously connected with a relevant trade association, questions concerning the existence or otherwise of agreements, minutes of meetings or memoranda, correspondence, instructions to employees, or other records relating to the alleged fair competition and demand a response to the questions within a reasonable time;

(b) require any person currently or previously engaged in trading in goods or services to which the allegations refer to grant him access to records indicating the specifications of goods or services traded, persons from whom they have been sold or supplied, quantities and dates of purchases, sales and deliveries, prices charged, paid, and collected, terms and conditions of payment, credit provided, periods of delivery, manner of shipment and other relevant information; or

(c) require any person possessing records such as those described in this subsection to give them copies of records or alternatively to submit the record to him for copying by the Chairman.

(3) Where the Chairman deems it necessary for the purpose of verifying the specification of any goods whose trade is the subject of allegations under this section, or of verifying the movement of such goods in the course of trade, he or a person authorised in writing by him may enter any premises in the occupation or under the control of a trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or other person believed to be engaged in trading in those goods, and may inspect the premises and any goods situated thereon.

(4) Upon entering premises in pursuance of the powers conferred by subsection (3) the Chairman or any other person authorised by him in writing shall, before proceeding to conduct an inspection of the premises or goods situated thereon, inform the person present who is or who reasonably appears to be for the time being in charge of the premises of his intention to exercise his powers under this Act.

[PCh285s25]25. Powers of Chairman in respect of restrictive trade practices Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman may take any of the following steps with respect to a person alleged to be engaged or to have been engaged in a restrictive trade practice—

(a) inform the person in writing that allegations have been made and that specific evidence has been presented to substantiate the allegations, and invite the person to comment on the allegations and the evidence and to indicate what remedies the person would propose in order to bring his fair competition into conformity with this Act; or

(b) inform the person that in his opinion the weight of evidence supports allegations that have been made concerning the occurrence of a restrictive trade practice, and the person to take specific steps to discontinue such practices and, in addition, compensate for the past effects of such practices by taking positive steps to assist one or more existing or potential suppliers, competitors or customers to participate actively in producing or trading in the goods or services to which the allegations relate.

(2) In either of the cases referred to in paragraph (a) or (b) of subsection (1) the Chairman shall require the person alleged to have committed a restrictive trade practice to respond to this communication by a certain date, and additionally he may require the

person to take the corrective steps described in paragraph (b) of subsection (1) by a certain date and to furnish him with evidence that the steps have been taken by that date.

(3) If the person alleged to have committed a restrictive trade practice does not respond to the Chairman's communication by the indicated date, or the Chairman deems the person's response not to remove the grounds for the allegation, or the person fails to implement measures which he has agreed in his response, the Chairman shall require the person to negotiate a consent agreement satisfactory to the Chairman, stipulating that the person will desist from specified practices and will take such specified measures to compensate for the past effect of such practices.

(4) The Chairman shall cause a consent agreement entered into under subsection (3) to be published in the Gazette as early as practicable and he shall send copies of the agreement to any person who complains to him of the fair competition in question, and also to any other person whom he deems to be affected by the agreement.

[PCh285s26]26. Order regulating restrictive trade practices Act No. 11 of 2001 s. 51 and 4th Sch.

(1) If a person considered by the Chairman to be committing or to have committed a restrictive trade practice under this Act fails to take steps satisfactory to the Chairman under section 25 or, having signed a consent agreement under subsection (3) of section 25, fails to abide by the terms of the agreement, or commits a restrictive trade practice not covered by the agreement, the Chairman shall make an order regulating that practice.

(2) The order issued under subsection (1) shall require a person committing or deemed to have committed a restrictive trade practice to desist from the restrictive trade

practice prohibited by this Act and may also require him to take certain positive steps to assist existing or potential suppliers, competitors, or customers, in order to compensate for the past effects of those practices.

(3) An order made under subsection (1) shall specify the effective dates by which the actions specified therein must be undertaken, which dates shall be no sooner than twenty-eight days following the date of publication of the notice in the Gazette.

[PCh285s27]27. Actions following joint trade practices of several persons Act No. 11 of 2001 s. 51 and 4th Sch.

(1) In any case where one or more restrictive trade practices are alleged to be committed or to have been committed by two or more persons acting in consent, whether expressly or implicitly, the Chairman may classify all such persons as objects of a single investigation, and two or more such persons may be invited to negotiate and sign a single consent agreement.

(2) The Chairman may address a single order to two or more persons, and in general whether the context allows the word "person" in sections 25, 26 and 27 may be interpreted to mean two or more persons alleged to be committing or to have committed one or more restrictive trade practices in consent.

[PCh285s28]28. Appeals from the Chairman's order Act No. 11 of 2001 s. 51 and 4th Sch.

A person aggrieved by the order of the Chairman under section 26 may appeal to the Tribunal against the order within twenty-eight days of the making of the order.

[PCh285s29]29. Offence and penalty Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Any person who, whether as principal or agent—

(a) having not lodged an appeal in accordance with section 28 against an order of the Chairman made under section 26, contravenes or fails to comply with the order; or

(b) after the Tribunal has pronounced its decision on an appeal made under section 28, contravenes or fails to comply with any portion of an order of the Chairman under section 28 which is confirmed by the Tribunal or as modified by the Tribunal, commits an offence.

(2) Any person who commits an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

(3) If the Court is satisfied that a monetary value can reasonably be placed on the damage including loss of income suffered by a person, as a result of restrictive trade practice committed by a person guilty of an offence under section 21 or 22, or subsection (1) of this section, the convicted person shall, in addition to any other penalty which may otherwise be imposed, be liable to a fine of two times that monetary value, which the Court shall order to be paid to the person suffering the damage.

PART IV

CONTROL OF MONOPOLIES AND CONCENTRATION OF ECONOMIC POWER

(ss 30-40)

[PCh285s30]30. Interpretation

(1) In this Part, unless the context requires otherwise—

"beneficial interest" or interest" means ownership of shares or a proportion of the assets of an enterprise engaged in production, distribution, or the supply of services;

"control" means the power to make major decisions in respect of the conduct of the affairs of an enterprise after no more than nominal consultation with other persons, whether directors or other officers of the enterprise;

"market" in relation to any goods or services, means the total value of transactions measured in prices at the stage of production or distribution under examination based on the recent year for which they are available;

"merger or takeover" means a transaction or other action which involves the implementation of a merger or takeover proposal;

"merger or takeover proposal" means—

(a) proposal relating to the acquisition or disposition of any shares in a company which, together with shares, if any to which the transferee already has a beneficial interest, carry the right to exercise or control the exercise—

(i) in the case of a private company, of more than fifty percent of the voting power at any general meeting of the transferor company; or

(ii) in the case of a company other than a private company, of fifty percent or more of the voting power at any general meeting of the transferor company; or

(b) a proposal for the acquisition or disposition of—

(i) the whole of the equity capital of the business of a person or body of persons, other than a company; or

(ii) a portion in the equity capital of the business of any person or body of persons, other than a company being a portion which, together with the portion in the equity capital of the business to which the transferee is already beneficially entitled or in which the transferee is already beneficially interested, gives the transferee the whole, or more than fifty percent, of the equity capital of the business: or

(c) a proposal relating to the acquisition or disposition of—

(i) the whole of the assets of a section of a business, whether or not the business or the section of the business is carried on by a company; or

(ii) a portion of the assets of a section of a business whether or not the business or that section of the business is carried on by a company, being a portion of those assets which, together with any equity capital already held in that section by the transferee, represents the whole of, or more than fifty percent of the value of, the assets used in carrying on that section of the business; or

(d) a proposal not being a proposal coming within paragraph (b) or paragraph (c) relating to the acquisition or disposition of the tangible and intangible assets employed in the business or section of a business if the total value of the assets to which the proposal relates, together with any equity capital already held in the business or the section of the business, is more than fifty percent of the combined value of the tangible assets employed in connection with the business or section of a business whether the business or section of a business is carried on by a company or not; or

(e) a proposal which if effected would result in the establishment of a new business to acquire, by any of the means set out in paragraphs (a) to (d), a controlling

interest in two or more independently owned businesses or in one or more sections of at least two such businesses, being sections capable in themselves of being operated as businesses; or

(f) a proposal, not being a proposal coming within the foregoing paragraphs of this definition, under which a company or business or section of a business whether incorporated or not ceases to be carried on at all and does so under or in consequence of any arrangement or transaction entered into for the purpose of, or having the effect of, preventing or restricting competition between that company, business, or section of a business and the other party to the arrangement or transaction or any body corporate that is interconnected with that party;

"nominee" in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of the first-mentioned person or who holds shares directly or indirectly on behalf of the person;

"participant" in relation to a merger or takeover proposal or to a merger takeover, means—

(a) where the proposal is of the kind described in paragraph (a) of the definition of that term, the transferee and the transferor company;

(b) where the proposal is of the kind described in paragraph (b) of the definition of that term, the transferee and the business whose capital or portion of whose capital is the subject of the offer or offers involved in the proposal;

(c) where the proposal is of the kind described in paragraph (c) of the definition of the term, the transferee and the business, whether a company or not whose assets or portion of the assets are the subject of the offer or offers involved in the proposal;

(d) where the proposal is of the kind described in paragraph (d) of the definition of that term, the business whose assets are the subject of the proposal;

(e) where the proposal is of the kind described in paragraph (e) of the definition of that term, each business or section of a business involved in the proposal;

(f) where the proposal is of the kind described in paragraph (f) of the definition of that term, the parties to the arrangement of transaction and the company, business, or section of a business which is to cease to be carried on;

"private company" has the same meaning as in the Companies Act *;

"section of a business" means a section of a business which is capable in itself of being operated independently;

"share" in relation to a company, includes stock, any beneficial interest in any share, and any perpetual debenture or perpetual debenture stock;

"transferee" means a persons who, whether or not in consent with any other person, and whether by himself or his agent, is intended to receive a merger or takeover proposal, or proposes to acquire shares in a company, or the whole or a portion of a section of a business, or the whole or part of the tangible or intangible assets of a business or a section of a business;

"transferor" means the owner of a business the capital or assets of which are sought to be acquired or disposed of in whole or in part under a merger or takeover proposal;

"transferor company" means a company whose shares, or any of them are sought to be acquired or disposed of under a merger or takeover proposal.

(2) For the purposes of this section, a person appointed as the receiver or manager of the property of a body corporate or as the liquidator of a body corporate is not solely a transferee by reason of his appointment.

(3) The reference in paragraph (a) of the definition of the term "merger or takeover proposal" in subsection (1), and the references in subsection (4), to shares to which the transferee is beneficially entitled shall each be read as including a reference to—

(a) shares held by any person or body corporate as a trustee for a nominee or agent of the transferee; and

(b) shares in or over which the transferee has any right, title, interest, or control over the vote; and

(c) shares which the transferee is or will be entitled to acquire under any option or on the fulfilment of any condition under any other shares or financial interest in, the transferor Company; and

(d) if the transferee is a company, shares to which any interconnected bodies corporate are already beneficially entitled, or which any such interconnected bodies corporate are or will be entitled to acquire in that manner.

(4) Where—

(a) in the case of a proposal of the kind described in paragraph (a) of the definition of the term "merger or takeover proposal" in subsection (1) the transferee is already beneficially entitled to, or already has a beneficial interest in, any shares in the company to which the proposal relates, being shares which carry the right to exercise or control the exercise of more than fifty percent of the voting power at any general meeting of the transferor company;

(b) in the case of a proposal of the kind described in paragraph (b)(ii) of the definition of the term "merger or takeover proposal" in subsection (1) the transferee is already beneficially entitled to more than fifty percent of the equity capital of the business to which the proposal relates;

(c) in the case of a proposal of the kind described in paragraph (a) of the definition of the term "merger or takeover proposal" in subsection (1), the transferee already holds, in the assets used in the carrying on of the section of the business to which the proposal relates, equity capital that represents more than fifty percent of the value of those assets; or

(d) in the case of a proposal of the kind described in paragraph (d) of the definition of the term "merger or takeover proposal" in subsection (1) the transferee already owns tangible or intangible assets employed in connection with the business or section of the business to which the proposal relates, being assets which have a value that is more than fifty percent of the combined value of the tangible and intangible assets employed in connection with the business or section of the business, that proposal shall not be a merger or takeover proposal within the meaning of the definition.

(5) For the purposes of paragraph (c) (ii) and paragraph (d) of the definition of the term "merger or takeover proposal" in subsection (1) the value of the assets of the section of the business involved in the merger or takeover proposal shall be determined by reference to the value at which the assets less any current liabilities attributable to the section of the business are shown in the books of the relevant business, less any relevant provisions for depreciation.

[PCh285s31]31. Identifying unwarranted concentrations of economic power Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Minister shall keep under review the structure of production and distribution of goods and services in the country to determine where concentrations of economic power exist whose detrimental impact on the economy out-weighs the efficiency advantages, if any, of integration in production and distribution; and in identifying unwarranted concentration of economic power he shall pay particular attention to the following factors—

(a) a person controls a chain of distributing units the value of whose sales exceeds one-third of the relevant market for the category of goods sold by the chain, comprising the national market in the case of a national chain or a regional or urban market in the case of a regional or urban chain respectively; or

(b) a person, by virtue of controlling two or more physically distinct units which manufacture substantially similar products, supplies more than one-third of the value, at ex-factory prices, of the domestic market for the category of the goods into the country but excluding exports of the goods from the country; or

(c) a person has a beneficial interest, exceeding twenty percent of outstanding shares, in a manufacturing enterprise, and simultaneously has a beneficial interest, however small, of outstanding shares, in one or more wholesale or retail enterprises which distribute products of the manufacturing enterprise; or

(d) a person has a beneficial interest, exceeding twenty percent of outstanding shares, in a wholesale distributing enterprise, and simultaneously has a beneficial interest, however small, in one or more retail enterprises which distribute goods supplied by that wholesale enterprise.

(2) The Minister may direct the Commission to investigate any economic sector which he has reason to believe may feature one or more factors relating to unwarranted concentrations of economic power; and for that purpose the Chairman shall be entitled to require any participant in that sector to grant him or any person authorised in writing by him access to records relating to patterns of ownership and percentages of sales accounted for by leading enterprises in the sector.

(3) The Chairman may require any person possessing the records referred to in subsection (2) to give him copies of the records or alternatively to submit the records to him for copying.

(4) For the purpose of this section, an unwarranted concentration of economic power shall be deemed to be prejudicial to the public interest if, having regard to the economic conditions prevailing in the country and to all other factors which are relevant in the particular circumstance, the effect thereof is or would be—

(a) to increase unreasonably the cost relating to the production, supply, or distribution of goods or the provision of any service; or

(b) to increase unreasonably–

(i) the price at which goods are sold; or

(ii) the profits derived from the production, supply or distribution of goods from the performance of any service; or

(c) to reduce or limit unreasonably competition in the production, supply or distribution of any goods, including their sale or purchase, or the provision of any service; or

(d) to result in a deterioration in the quality of any goods or in the performance of any service.

(5) Notwithstanding the provisions of this section, the Chairman may on his own motion initiate an investigation on any of the issues which may be investigated under this section and shall report his findings to the Minister.

[PCh285s32]32. Orders of the Minister to dispose of interests Act No. 11 of 2001 s. 51 and 4th Sch.

(1) After receiving the report of the Chairman on an investigation under subsection (2) or subsection (5) of section 31 the Minister may make an order directing any person whom he deems to hold an unwarranted concentration of economic power in any sector to dispose of such portion of his interests in production or distribution or the supply of services as the Minister deems necessary to remove the unwarranted concentration.

(2) A disposal of interest in pursuance to an order made under subsection (1) may be accompanied by sale of all or part of a person's beneficial interests in an enterprise, or by sale of one or more units in a group or chain of manufacturers or distributors or suppliers of services controlled by the person.

(3) No order shall be issued under this section that would have the effect of subdividing a manufacturing facility whose degree of physical integration is such that the introduction of independent management units controlling different components reduce its efficiency and substantially raise production costs per unit of output.

(4) An order made under this section shall allow sufficient time for orderly disposal of interests so as not to cause undue loss of value to the person to whom the order is addressed.

[PCh285s33]33. Appeals from the Minister's order

A person aggrieved by an order of the Minister made under section 32 may appeal to the Tribunal against that decision within thirty days after the date on which notice of that decision has been served on him and the decision of the Tribunal shall be final.

[PCh285s34]34. Offence and penalty

(1) Any person who, whether as principal or agent, and whether by himself or his agent—

(a) having lodged no appeal within the time allotted for appeals under section 33 against an order of the Minister made under section 32, contravenes or fails to comply with such order; or

(b) after the Tribunal has pronounced its decision on the appeal, contravenes or fails to comply with any portion of an order of the Minister made under section 32 which is confirmed by the Tribunal or as modified by the Tribunal, commits an offence.

(2) Any person who commits an offence under this section shall be compelled by the Court to comply with the order of the Minister or of the Tribunal, as the case may be and if there is no such compliance that person or the directors of the company shall be jointly liable to a fine not exceeding three million shillings for every day the offence persists.

[PCh285s35]35. Minister's approval required for mergers and takeovers

(1) Any person who, whether as principal or agent, and whether by himself or his agent, in the absence of an authorising order by the Minister, participates in consummating—

(a) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar commodities, or engaged in supplying substantially similar services; or

(b) a takeover of one or more such enterprises by another such enterprise, or by a person who controls another such enterprise, commits an offence.

(2) No merger or takeover as described in subsection (1) carried out in the absence of an authorising order by the Minister, shall have effect, and no obligations imposed on

the participating parties by any agreement in respect of the merger or takeover shall be enforceable in legal proceedings.

(3) Any person who commits an offence under this section is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

[PCh285s36]36. Application to the Chairman for merger or takeover Act No. 11 of 2001 s. 51 and 4th Sch.

Any person may apply to the Chairman, for an order authorising a merger or takeover as described in section 35.

[PCh285s37]37. Investigation by the Chairman Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman shall investigate any application under section 36 and for that purpose the Chairman shall be entitled to require any participant in any economic sector within which a merger or takeover under section 35 is proposed to take place to grant to the Chairman or to any person authorised in writing by him access to records relating to patterns of ownership and percentages of sales accounted for by participants in the proposed merger or takeover or by other leading enterprises in the relevant sector.

(2) The Chairman may require any person possessing such records to give him copies of those records or alternatively to submit such records to him for copying by the office of the Chairman.

[PCh285s38]38. Criteria for evaluating applications for approval Act No. 11 of 2001 s. 51 and 4th Sch.

In evaluating an application under section 36 for the purpose of formulating a recommendation to the Minister, the Chairman shall have due regard to the following criteria—

(a) a merger or takeover will be advantageous to the country to the extent that the participants produce goods and services entering into international trade and the merger or takeover will yield a substantially more efficient unit with lower production costs and greater marketing thrust, thus enabling it to compete more effectively with imports, expand the country exports and thereby increase employment;

(b) a merger or takeover will be disadvantageous to the extent that it reduces competition in the domestic market and increases the ability of producers of the goods or services in question to manipulate domestic prices in accordance with the principles of oligopolistic interdependence;

(c) a merger or takeover will not merely be disadvantageous for the only reason that it encourages capital-intensive production technology in lieu of labour-intensive technology.

[PCh285s39]39. Order of the Minister on mergers and takeovers Act No. 11 of 2001 s. 51 and 4th Sch.

(1) After considering the recommendation of the Chairman made under section 38 the Minister may make an order concerning the application for authorisation of a merger or takeover.

(2) An order made under subsection (1) may approve or reject the application, or it may approve the application on condition that certain steps be taken to reduce the negative effects of the merger or takeover on competition.

(3) The Minister shall cause an order made under subsection (1) to be published in the Gazette as soon as reasonably practicable after it is made.

[PCh285s40]40. Appeals from orders of the Minister

Any person aggrieved by an order of the Minister made under section 39 may appeal to the Tribunal against that decision within thirty days after the date on which a notice of that decision has been served on him.

PART V

REGULATION AND DISPLAY OF PRICES (ss 41-50)

[PCh285s41]41. Interpretation of Part V

In this Part, unless the context requires otherwise—

"cost" means the cost determined in the manner prescribed by an order under section 44;

"invoice" includes a record of credit sale;

"maximum price" means the maximum lawful price at which goods may be sold in wholesale or retail quantities or otherwise, as the case may be in accordance with this Act, and includes any consideration for an option to purchase.

"maximum service charge" means the maximum lawful charge at which any service may be rendered in accordance with this Act;

"overcharge" means a sale of any goods at a price in excess of the maximum price or rendering a service at a charge in excess of the maximum service charge;

"percentage fixed goods" means goods or any quantities of goods in respect of which the maximum percentage of profit on cost is fixed under section 43;

"price-controlled goods" means percentage fixed goods and price-regulated goods;

"price-controlled service" means a service the maximum charge for which has been fixed by an order made under section 42;

"price-regulated goods" means goods the maximum price of which has been fixed by an order made under section 42;

"selling price" means the actual net price charged to the purchaser of the goods concerned, after all discounts and other allowances have been deducted;

"trader" includes—

(a) any person, other than a commission agent or clearing or forwarding agent, who is required to take out a licence under the Business licensing Act;

(b) any person who carries on the business of supplying goods or rendering services whether or not the person is required to take out a licence under the Business Licensing Act *; and

(c) any person carrying on business in the course of which he supplies goods or renders services for the purposes of or in performance of a contract by him for work, labour and materials;

"transporter" means any person who carries on the business of transporting goods on behalf of another person.

[PCh285s42]42. Power to fix maximum prices

(1) The Minister may by an order published in the Gazette—

(a) fix maximum prices for the sale, either wholesale or retail, which may include charges for packing and delivery, of any goods by—

(i) any person to another person; or

(ii) their manufacturer to or through the agency of a trader in those goods; or

(iii) a trader in those goods to another trader of such goods; or

(iv) a trader in those goods to a person who is not a trader in such goods; or

(v) a person who is not a trader in any particular goods to a trader in those goods;

(b) fix the maximum service charge that may be made for any service;

(c) prohibit any person carrying on business or gainful occupation specified in the order from increasing the price of any goods sold by him in the course of such business or occupation above the price which was ordinarily charged by him for like or similar goods, or the charge which was ordinarily made by him for any like or similar service, on a date or during a period specified in the order; and in any proceeding brought for failing to comply with an order made under this paragraph the burden of proving the price ordinarily charged or the charge ordinarily made on the date or during the period specified shall be upon the defendant;

(d) prescribe the type of packing, weight, size, quality, marking and the processing and ingredients of any goods manufactured in the country;

(e) prescribe the amount of the deposit which any person selling any price-controlled goods subject to the condition that any container of those goods is to be returned may require in respect of any such container, and prescribe the amount, which may exceed the amount of the deposit which such person shall, on the return of the container, refund to the person by whom the container is returned and the conditions subject to which the refund shall become payable;

(f) exclude anything from the operation of all or any of the provisions of this Act.

(2) For the purposes of this section, the Minister may fix the maximum price or any maximum charge in respect of the sale of any goods or the rendering of any service by declaring in any manner how the maximum price or charge shall be ascertained, and, without prejudice to the generality of the foregoing, may fix any such maximum price or charge either by declaring the maximum price or charge irrespective of the price of goods shall be a price not exceeding the cost to the seller plus a stated sum or a stated percentage of such cost or a stated maximum profit.

(3) Under this section, the Minister may—

(a) fix a maximum price or a maximum service charge for any area in the country which differs from the maximum price or maximum service charge fixed in respect of like or similar goods or services for another area or other areas;

(b) fix a maximum price for goods which includes any charge made for any service, whether a price controlled service or not, rendered in relation to the sale of those goods;

(c) fix a maximum service charge for any service which includes any price or charge for the sale of goods whether price controlled goods or not, sold in connection with that service.

(4) For the purposes of this section, the power of the Minister shall be limited to the goods and services produced by monopoly undertakings.

[PCh285s43]43. Power to prescribe percentage fixed goods

(1) The Minister may by an order published in the Gazette prescribe any goods of which the maximum price shall, except where the price is fixed under section 42, be the cost of such goods to the importer, manufacturer or producer, plus the percentage of profit set forth in the order, and plus, in addition as a separate item, such transport charges as are permitted by subsection (2).

(2) Every importer, commission agent, manufacturer or producer of percentage fixed goods shall, on first sale, endorse on the invoice the maximum retail price which may be charged for such goods sold at the place at which the importer or commission agent has taken delivery of the goods, or at which the goods have been manufactured or produced,, and every trader when reselling those goods, except when selling retail to consumer, shall endorse on his invoice the maximum retail price endorsed on the invoice of the importer or of previous seller invoice, adding thereto, as a separate item, the expenses (if any)

ordinarily incurred of transporting the goods from the place of business of the importer or of previous seller to his own place of business.

(3) A trader who acquires for resale any percentage fixed goods by the transfer of such goods from one department or branch of his business to another, or from an associated business or from any business in which he has a financial interest other than that of a shareholder, or in which he has an interest in the management or control thereof, whether such department, branch, associated business or other business is in the country, or in any other country, shall, when selling those goods, endorse on his invoice the maximum retail price of the goods, which shall be the price which would be permissible had he himself imported the goods direct from the country of origin.

(4) Every trader when reselling goods under subsection (3), except when selling retail to a consumer shall endorse on his invoice the maximum retail price endorsed on the first or previous invoice, adding thereto, as a separate item, the cost (if any) ordinarily incurred of transporting the goods from the first or previous place of business of the seller to his own place of business.

(5) Any person who sells or transfers percentage fixed goods otherwise than in accordance with the provisions of this section, or who omits to do anything which he is required to do under this or who, purporting to give any information or to make any endorsement required by him under this section gives any false information or makes any false endorsement required by him under this section commits an offence.

[PCh285s44]44. Determination of cost

The Minister may by order published in the Gazette, declare the method by which the cost of any goods or of any service shall be determined, and may in such order declare different methods of determining the cost in respect of different classes of goods, transaction or sellers.

[PCh285s45]45. Orders to be laid before the National Assembly

All orders made under sections 42, 43 and 44 shall be laid before the National Assembly as soon as may be, after they are made, and if a resolution is passed that the order be annulled, it shall thenceforth be void, but without prejudice to the validity of anything done thereunder, or to the making of any new order.

[PCh285s46]46. Auction sales Act No. 11 of 2001 s. 51 and 4th Sch.

(1) No price-controlled goods shall be sold by auction except under and in accordance with the conditions of a permit issued by the Chairman and the Chairman may grant such a permit to any auctioneer either generally in respect of any class of such goods or specifically in respect of any particular sale, and may in such permit impose such conditions relating to the maximum prices at which the goods may be sold as he may consider necessary in order to avoid the contravention of this Act.

(2) Any person who sells any price-controlled goods by auction without a permit granted under this section or otherwise than in accordance with the conditions imposed in such permit commits an offence.

[PCh285s47]47. Publicity of orders and lists of maximum prices and charges Act No. 11 of 2001 s. 51 and 4th Sch.

Copies of any order made under this Act or lists of maximum prices or maximum service charges fixed under this Act shall be displayed in such places and published in different newspapers in the prices country as the Chairman may consider necessary to bring such matter to the notice of the public.

[PCh285s48]48. Traders, etc., required to display maximum prices Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman may, by notice published in the Gazette, require any trader or other person, or any class of traders or other persons, supplying price-controlled goods or rendering price-controlled services to display a list in Kiswahili and in any other language or languages specified in the notice, in a prominent manner and in a conspicuous position, so that it may easily be read by customers in those parts of his or their business premises where business is done, of the current maximum prices for such price-controlled goods as are mentioned in the order which he or they may supply, or the maximum service charge for any price-controlled service as are specified in the notice which he or they render.

(2) A notice under this section may apply to the whole country or to any area or areas thereof, and may provide for the form in which any such list of maximum prices or maximum service charges which it requires to be displayed shall be arranged.

[PCh285s49]49. Traders to supply invoice

(1) Every trader, manufacturer, producer or commission agent—

(a) shall, at the time of sale, supply to every purchaser from him of goods in wholesale quantities an original invoice containing the following particulars:

(i) the name and address of seller;

- (ii) the name of the purchaser;
- (iii) the date of the sale;
- (iv) a description sufficiently exact as to identify the goods;
- (v) the net quantity of the goods sold;
- (vi) the price or charges charged therefor, showing any authorised

transport charge separately; and

(vii) in the case of imported goods, other than price-regulated goods, the customs entry number and date; and

(b) shall retain in his records a duplicate copy of the invoice.

(2) Every trader, manufacturer, producer or commission agent—

(a) shall, at the time of sale, supply to every purchaser from him of goods in retail quantities an original invoice containing the following particulars, unless the purchaser at the time of sale dispenses with this requirement—

- (i) the name and address of the seller;
- (ii) the date of the sale;
- (iii) a description sufficiently exact to identify the goods;
- (iv) the net quantity of the goods sold; and
- (v) the price or charges charged therefor; and

(b) shall retain in his records a duplicate copy of the invoice.

(3) Every transporter shall—

(a) as soon as practicable after completion of the transport of any price controlled goods, supply to the person for whom the goods have been transported an original invoice containing the following particulars—

- (i) the name and address of the transporter;
 - (ii) the date on which the transportation took place;
 - (iii) a description sufficiently exact to identify the goods transported;
 - (iv) a description sufficiently exact to identify the conveyance in which the goods were transported;
 - (v) the place from which and the place to which the goods were transported;
 - (vi) the quantity of the goods transported; and
 - (vii) the rate or rates charged therefor; and
- (b) retain in his records a duplicate copy of the invoice.

(4) For the purposes of this section, the seller shall specify in writing the price or charge which he assigns to each class of price-controlled goods included in the transaction.

(5) Every person who renders any price-controlled service for which a charge has been made or is to be made shall, as soon as possible after that service has been rendered, supply to that person an invoice describing the service and showing the charge which has been or is to be made for that service, including the selling price of any materials used in his records

(6) Any person who fails to comply with the provisions of this section or with any conditions imposed under subsection (5) commits an offence.

[PCh285s50]50. Books of account Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Every trader, manufacturer, producer, commission agent, clearing and forwarding agent or other person supplying any price-controlled goods or rendering any price-controlled service shall keep such books of account or other records in respect of his dealing in price-controlled goods or price-controlled services and shall make such entries therein, as may be prescribed, and shall preserve such books of account or records after the date of the last entry therein for a period of two years, or such other period as the Chairman may allow.

(2) If any retail trader, commission agent, clearing and forwarding agent or other person supplying any price-controlled goods or rendering any price-controlled service shows to the satisfaction of the Chairman that the application of this section would impose undue hardship the Chairman may exempt such retail trader, commission agent, clearing and forwarding agent or other person from complying with the provisions of this section subject to such conditions and for such time as he may consider necessary.

(3) Any person who fails to comply with the provisions of this section or with any conditions imposed thereunder commits an offence.

PART VI

CONSUMER PROTECTION (ss 51-93)

[PCh285s51]51. Interpretation

(1) In this Part—

"express warranty" in relation to goods, means an undertaking, assertion or representation in relation to—

(a) the quality performance of characteristics of the goods;

(b) the provision of services that are or may at any time be required in respect of the goods;

(c) the supply of parts that are or may at any time be required for the goods; or

(d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made from part, given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods, the natural tendency of which is to induce persons to acquire the goods;

"manufactured" includes grown, extracted, produced, processed and assembled.

(2) For the purposes of this Part, where a person makes a representation with respect to any future matter, including doing of, or the refusing to do, any act and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(3) For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person shall, unless he adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

(4) Subsection (1) shall be deemed not to limit by implication the meaning of a reference in this Part to a misleading representation, a presentation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

(5) A reference to goods shall, unless the contrary intention appears be read as reference to goods of a kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference to a person who acquires goods from a consumer does not include a reference to a person who acquires goods for the purpose of re-supply.

(7) A reference to the quality of goods includes a reference to the state or condition of goods.

(8) A reference to antecedent negotiations in relation to the acquisition of goods by a consumer shall be read as a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of business carried on by the other person whereby the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer.

(9) If—

- (a) a person holds himself out to the public as the manufacturer of goods;
- (b) a person causes or permits his name, a name by which he carries on business or his brand or mark to be applied to goods supplied by him; or
- (c) a person causes or permits another person, in connection with the supply or possible supply of goods by that other person, or in connection with the promotion by that

other person by any means of the supply or use of goods, to hold out the person to the public as the manufacturer of the goods,

the person shall be deemed, for the purposes of this Part, to have manufactured the goods.

(10) If—

(a) goods are imported into the country by a person who is not the manufacturer of the goods; and

(b) at the time of the importation the manufacturer of the goods does not have a place of business in the country, he shall be deemed, for the purposes of this Part, to have manufactured the goods.

(11) For the purposes of subsection (9)(b)—

(a) a name, brand or mark shall be deemed to be applied to goods if—

(i) it is woven in, impressed on, worked into or annexed or affixed to the goods; or

(ii) it is applied to a covering, label, reel or thing in or with which the goods are supplied; and

(b) where a person's name in which he carries on business or his brand or mark is applied to goods, it shall be presumed, unless the contrary is established, that he caused or permitted the name, brand or mark to be applied to the goods.

(12) The reference in subsection (11) to a covering includes a reference to a stomper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that subsection to a label includes a reference to a brand or ticket.

(13) If goods are imported into the country on behalf of a person, such person shall be deemed, for the purposes of this Part, to have imported the goods into the country.

(14) For the purposes of this Part, goods shall be taken to be supplied to a consumer notwithstanding that, at the time of the supply, they are affixed to land or premises.

[PCh285s52]52. Misleading or deceptive conduct

(1) No person shall, in trade engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Part shall be taken as limiting by implication the generality of subsection (1).

[PCh285s53]53. Unconscionable conduct

(1) No person shall, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

(2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person (in this subsection referred to as the "consumer"), the Tribunal may have regard to—

(a) the relevant strength of the bargaining positions of the person and the consumer;

(b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;

(c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the person in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than a body corporate.

(3) A person shall not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a person by reason only that he institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purposes of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person—

(a) the court shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may take regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(5) A reference in this section to goods or services is a reference to goods or services of kind ordinarily acquired for personal, domestic or household use or consumption.

(6) A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purposes of re-supply or for the purpose of using them up or transforming them in trade or commerce.

[PCh285s54]54. False or misleading representation

No person shall, in connection with supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services—

(a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had particular history or particular previous use;

(b) falsely represent that services are of a particular standard, quality or grade;

(c) falsely represent that goods are new;

(d) falsely represent that a particular person has agreed to acquire goods or services;

(e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;

(f) represent that he has a sponsorship, approval or affiliation he does not have;

(g) make a false or misleading representation with respect to the price of goods or service;

(h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;

(i) make a false or misleading representation concerning the place of origin of goods;

(j) make a false or misleading representation concerning the need for any goods or service;

(k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

[PCh285s55]55. Cash price to be stated in certain circumstances

No person shall, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless he also specified the cash price for the goods or services.

[PCh285s56]56. Misleading conduct

No person shall, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

[PCh285s57]57. Certain misleading conduct in relation to services

No person shall, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose of the quantity of any services.

[PCh285s58]58. Bait advertising

(1) No person shall, advertise for supply at a specified price, goods or services if there are reasonable grounds, of which he is aware, or ought reasonably to be aware, for believing that he will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(2) Any person who has, in trade, advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

(3) In a prosecution of a person in relation to a failure to offer goods or services to a person, in this subsection referred to as the "customer" in accordance with subsection (2), it is a defence for that person if he establishes that—

(a) he offered to supply, or to procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or

(b) he offered to supply immediately, or to procure another person to supply within a reasonable time equivalent goods or services to the customer in a reasonable quantity and at the price at which the first mentioned goods or services were advertised, and, in either case, where the offer was accepted by the customer, he has so supplied, or procured another person to supply goods or services.

[PCh285s59]59. Accepting payment without intending or being able to supply as ordered

No person shall accept payment or other consideration for goods or services where, at the time of the acceptance—

(a) he intends—

(i) not to supply the goods or services; or

(ii) to supply goods or services material different from the goods or services in respect of which the payment or other consideration is accepted; or

(b) there are reasonable grounds, of which he is aware or ought reasonably to be aware, for believing that he will not be able to supply the goods or services within the period specified by him or, if no period is specified, within a reasonable time.

[PCh285s60]60. Misleading representations about certain business activities

(1) No person shall make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that he has represented as one that can be, to a considerable extent, carried on at or from a person's place of residence.

(2) Where a person, invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the persons concerned of work, or the investment of money by the persons concerned and the performance by them of work associated with the investment, he shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in the material particular.

[PCh285s61]61. Harassment or coercion

No person shall use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

[PCh285s62]62. Application of provisions of this Part to prescribed information

(1) Nothing in section 52, 54, 56, 57 or 60, applies to a prescribed publication of matter by a prescribed information provider, other than—

(a) a publication of matter in connection with—

(i) the supply or possible supply of goods or services; or

(ii) the promotion by any means of the supply or use of goods or services,

where the goods or services were relevant goods or services in relation to the prescribed information provider; or the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with—

(i) a person who supplies goods or services of that kind; or

(ii) a body corporate that is related to a body corporate that supplies goods or services of that kind; or

(b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if—

(a) in any case the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or

(b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of "prescribed information provider" in subsection (3), whether or not the person is also a prescribed information provider by virtue of another operation of that definition the publication was by way of radio or television broadcast by the prescribed information provider.

(3) In this section—

"prescribed information provider" means a person who carries on business of providing information;

"relevant goods or services", in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

[PCh285s63]63. Warning notice to public Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Notwithstanding the provisions of this Act, the Chairman may publish a notice in writing in the Gazette containing—

(a) a statement that goods of a kind specified in the notice are under investigation to determine whether the goods will or may cause injury to any person; or

(b) a warning of possible risks involved in the use of goods of a kind specified in the notice.

(2) Where an investigation referred to in subsection (1) has been completed the Chairman shall, as soon as practicable after the investigation has been completed, by notice in writing published in the Gazette, announce the results of the investigation, and

may announce in the notice whether, and if so, what action is proposed to be taken in relation to the goods under this Part.

[PCh285s64]64. Product safety standards

(1) No person shall supply goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind—

(a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;

(b) in respect of which there is in force a notice under this section declaring the goods to be unsafe goods; or

(c) in respect of which there is in force a notice under this section imposing a permanent ban on the goods.

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

(a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;

(b) testing of the goods during, or after the completion of, manufacture or processing; and

(c) the form and content of markings, warnings or instructions to accompany the goods, as is reasonably necessary to prevent or reduce risk of injury to any person.

(3) No person shall export goods the supply in the country of which is prohibited by subsection (1) unless the Minister has, by notice in writing given to such person, approval of the export of those goods.

(4) Where the Minister approves the export of goods under subsection (3), the Minister shall cause a statement setting out particulars of the approval to be laid before the National Assembly at the next sitting after the approval is given.

(5) Where it appears to the Minister that goods of a particular kind will or may cause injury to any person, the Minister may, by notice published in the Gazette, declare the goods to be unsafe goods, and shall forthwith impose a temporary ban on the goods.

(6) A notice and the temporary ban under subsection (5) shall remain in force until the end of three months after the publication of the notice in the Gazette, unless it is revoked before the end of that period.

(7) Where—

(a) a period of three months has elapsed after the date of publication of the notice in the Gazette declaring goods to be unsafe goods and a temporary ban has been imposed; and

(b) the supplier has failed to make good the defect, the Minister may, by notice in writing published in the Gazette, impose a permanent ban.

(8) Where—

(a) the supplying of goods by any person constitutes a contravention of this section by reason that the goods do not comply with a prescribed consumer product safety standard;

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the goods had complied with that standard the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

(9) Where—

(a) the supplying of goods by any person constitutes a contravention of this section by reason that there is in force a notice under this section declaring the goods to be unsafe goods or imposing a temporary or permanent ban on the goods; and

(b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of the goods or by reason of not having particular information as to a characteristic of the goods,

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

[PCh285s65]65. Product information

(1) Subject to the provisions of the Standards Act *, no person shall supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless he has complied with that standard in relation to those goods.

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

(a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finishing or packaging of the goods; and

(b) the form and manner in which that information is to be disclosed on or with the goods,

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

(3) Where—

(a) the supplying of goods by any person constitutes a contravention of this section by reason that he has not complied with a prescribed consumer product information standard in relation to the goods;

(b) a person suffers loss or damage by reason of not having particular information in relation to the goods; and

(c) the person would not have suffered the loss or damage if the goods had complied with that standard,

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods.

[PCh285s66]66. Power of Minister to declare product safety information

(1) The Minister may, by notice published in the Gazette, declare that, in respect of goods of a kind specified in the notice, a particular standard, or particular part of a standard, prepared or approved by the Bureau of Standards or by a prescribed association or body, or such a standard or part of a standard with additions or variations specified in the notice, is a consumer product safety standard for the purposes of section 64 or a consumer product information standard for the purposes of section 65.

(2) Where a notice is so published, the standard, or the part of the standard, referred to in the notice, or the standard or part of a standard so referred to with additions or variations specified in the notice, as the case may be, shall be deemed to be a prescribed consumer product safety standard for the purposes of section 64 or a prescribed consumer product information standard for the purposes of section 65, as the case may be.

(3) Subsection (1) does not authorise the publication of a notice in relation to goods of a particular kind if the standard or the part of the standard referred to in the notice, or the standard or the part of the standard so referred to with additions and variations specified in the notice, is inconsistent with a standard prescribed in relation to goods of that kind by regulations made for the purposes of section 64 or 65.

[PCh285s67]67. Compulsory product recall

(1) Where any person supplies goods that are intended to be used, or are of a kind likely to be used, by a consumer, and—

(a) it appears to the Minister that the goods are goods of a kind which will or may cause injury to any person;

(b) the goods are goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard; or

(c) the goods are goods of a kind in relation to which there is in force a notice under subsection (5) or (7) of section 64.

(2) Where it appears to the Minister that the supplier has not taken satisfactory action to prevent the goods causing injury to any person, the Minister may, by notice in writing published in the Gazette, require the supplier—

(a) to take action within the period specified in the notice to recall the goods;

(b) disclose to the public, or to a class or persons specified in the notice, in the manner and within the period specified in the notice, one or more of the following—

(i) the nature of a defect in, or a dangerous characteristic of, the goods identified or the notice;

(ii) the circumstances, being circumstances identified in the notice, in which the use of the goods is dangerous; or

(iii) procedures for disposing of the goods specified in the notice; or

(c) to inform the public, or a class of persons specified in the notice, in the manner and within the period specified in the notice that the supplier undertakes to do whichever of the following the supplier thinks is appropriate—

(i) except where the notice identifies a dangerous characteristic of the goods, repair the goods;

(ii) replace the goods;

(iii) refund to a person to whom the goods were supplied whether by the supplier or by another person the price of the goods,

within the period specified in the notice.

(3) Notwithstanding paragraph (c) subsection (2) where the Minister in a notice under subsection (1), requires the supplier to take action under paragraph (c) of subsection (2), the Minister may specify in the notice that, where—

(a) the supplier chooses to refund the price of the goods; and

(b) a period of more than twelve months has elapsed since a person, whether or not the person to whom the refund is to be made acquired the goods from the supplier, the amount of a refund may be reduced by the supplier by an amount attributable to the use which a person has had of the goods, being an amount calculated in a manner specified in the notice.

(4) The Minister may, by notice in writing published in the Gazette, give directions as to the manner in which the supplier is to carry out a recall of goods required under subsection (1) and (2).

(5) Where the supplier, under subsection (2) undertakes to repair goods, the supplier shall cause the goods to be repaired so that—

(a) any defect in the goods identified in the notice under subsection (1) is remedied; and

(b) if there is a prescribed consumer product safety standard in respect of the goods the goods comply with that standard.

(6) Where the supplier, under subsection (2) undertakes to replace goods, the supplier shall replace the goods with like goods which—

(a) if a defect in, or a dangerous characteristic of, the first mentioned goods was identified in the notice under subsection (2) do not contain that defect or have that characteristic; and

(b) if there is a prescribed consumer product safety standard in respect of goods of that kind, comply with that standard.

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

(8) Where goods are recalled, whether voluntarily or in accordance with a requirement made by the Minister under paragraph (b) of subsection (2) a person who has supplied or supplier of any of the recalled goods to another person outside the country shall, as soon as practicable after the supply of those goods, give a notice in writing to that other person—

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

(9) Where a person is required under subsection (8) to give a notice in writing to another person, the first mentioned person shall, within ten days after giving that notice, provide the Minister with a copy of the notice.

(10) Any person who contravenes subsection (9) commits an offence and is liable on conviction—

- (a) in the case of a person not being a body corporate, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months; or
- (b) in the case of a person being a body corporate, to a fine not exceeding five million shillings.

[PCh285s68]68. Compliance with product recall order

Where a notice under subsection (1) of section 67 is in force in relation to any person, such person—

- (a) shall comply with the requirements and directions in the notice; and
- (b) shall not—
 - (i) where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of the kind to which the notice relates and which contain that defect and have that characteristic; or
 - (ii) in any other case supply goods of the kind to which the notice relates.

[PCh285s69]69. Loss or damage caused by contravention of product recall order

Where—

- (a) a person contravenes section 68 by—
 - (i) supplying goods of a kind in relation to which a notice under subsection (1) of section 67 is in force; or
 - (ii) failing to comply with the requirements of such a notice; and
- (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information as to a characteristic of the goods,

the person shall be deemed for the purposes of this Act to have suffered the loss or damage by the supplying of the goods, or by the failure of the supplier to comply with the notice, as the case may be.

[PCh285s70]70. Notification of voluntary recall Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Notwithstanding the provisions of this Act where a person takes voluntarily action to recall goods because the goods will or may cause injury to any person, he shall, within two days after taking that action, give a notice in writing to the Chairman—

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

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

- (a) in the case of a person not being a body corporate to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months; or
- (b) in the case of a person being a body corporate to a fine not exceeding five million shillings.

[PCh285s71]71. Copies of certain notices to be given to supplier or be published in certain newspapers Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Where the Chairman publishes a notice in the Gazette under subsection (1) of section 63 the Chairman shall, within fourteen days—

(a) cause a copy of the notice to be given to each person who, to the knowledge of the Chairman, supplies goods of the kind to which the notice relates; or

(b) cause a copy of the notice to be published in a newspaper circulating in each part of the country where goods of the kind to which the notice relates are, to the knowledge of the Chairman supplied.

(2) Any failure to comply with subsection (1) in relation to a notice does not invalidate the notice.

[PCh285s72]72. Conflict of laws

Where—

(a) the proper law of a contract for the supply by any person of goods or services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of the United Republic;

(b) a contract for the supply by any person of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting provisions of the law of some other country or of any part of the United Republic for all or any of the provisions of this Part,

this Part applies to the contract notwithstanding that term.

[PCh285s73]73. Application of this Part to contracts not to exclude or modify

(1) Any term of a contract, including a term that is not set out in the contract by another term of the contract, that purports to exclude, restrict or modify has the effect of excluding, restricting or modifying—

(a) the application of all or any of the provisions of this Part;

- (b) the exercise of a right conferred by such a provision;
 - (c) any liability of the person for breach of a condition or warranty implied by such a provision; or
 - (d) the application of section 108,
- is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this Part or the application of section 108 unless the term does so expressly or is inconsistent with that provision or section.

[PCh285s74]74. Limitation of liability for breach of certain conditions or warranties

(1) Subject to this section, a term of a contract for the supply by a person of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under this section by reason only that the term limits this liability for a breach of a condition or warranty, other than a condition or warranty implied by section 76 to—

- (a) in the case of goods—
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
- (b) in the case of services—
 - (i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the supplier to rely on that term of the contract.

(3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court shall have regard to all the circumstances of the case and in particular to the following matters—

(a) the strength of the bargaining position of the supplier and the person to whom the goods or services were supplied (in this subsection referred to as "the buyer") relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term, having regard, among other things, to any custom of the trade and any previous course of dealing between the parties; and

(d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

[PCh285s75]75. Implied undertaking as to title encumbrances and quiet possession

(1) Where in a contract for the supply of goods by a supplier or a consumer, other than a contract to which subsection (3) applies, there is—

(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and

(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

(2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in paragraph (c) of subsection (1) by reason only of the existence of a floating charge over assets of the supplier unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) In a contract for the supply of goods by the supplier to a consumer in the case of which there appears from the contract or as to be inferred from the circumstances of the contract and intention that the supplier should transfer only such title as he or a third person may have, there is—

(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and

(b) (i) the supplier;

(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have, that person; and

(iii) any one claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made, will not disturb the consumer's quiet possession of the goods.

[PCh285s76]76. Supply by description

(1) Where there is a contract for the supply, otherwise than by way of sale by auction, by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and , if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

[PCh285s77]77. Implied undertakings as to quality or fitness

(1) Where a person supplies otherwise than by way of sale by auction, goods to a consumer in the course of a business, there is an implied condition that the goods supplied

under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section—

(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or

(b) if the consumer examines the goods before the contract which that examination ought to reveal.

(2) Where a person supplies, otherwise than by way of sale by auction, goods to a consumer in the course of a business and the consumer expressly or by implication, makes known to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of that person.

(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another person as they apply to a contract for the supply of goods made by a person in the course of a business, except where that person is not supplying in the course of a business and either the consumer knows that fact of consumer before the contract is made.

[PCh285s78]78. Supply by sample

Where in a contract for the supply otherwise than by way of sale by auction by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample—

(a) there is an implied condition that the bulk will correspond with the sample in quality;

(b) there is an implied condition that the consumer will have reasonable opportunity of comparing the bulk with the sample; and

(c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.

[PCh285s79]79. Liability for loss or damage from breach of certain contracts

(1) Where—

(a) a supplier supplies goods, or causes goods to be supplied to a certain linked credit provider of the supplier and a contracts consumer enters into a contract with the linked credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer; or

(b) a consumer enters into a contract with linked credit provider of a supplier for the provisions of credit in respect of the supply by the supplier of goods or services, or goods and services, to the consumer,

and the consumer suffers loss or damage as a result of misrepresentation, breach of contract, or failure of consideration in relation to the contract, or as a result of a breach of a condition that is implied in the contract by virtue of sections 76, 77, 78 or of a warranty

that is implied in the contract by virtue of section 80, the supplier and the linked credit provider are, subject to this section jointly and severally liable to the consumer for the amount of the loss or damage, and the consumer may recover that amount by action in accordance with this section in a court of competent jurisdiction.

(2) Where—

(a) a supplier supplies goods, or causes goods to be supplied, to a credit provider who is not a linked credit provider of the supplier;

(b) a consumer enters into a contract with the credit provider for the provision of credit in respect of the supply by way of sale, lease, hire or hire-purchase of the goods to the consumer;

(c) antecedent negotiations in relation to the contract were conducted with the consumer by or on behalf of the supplier; and

(d) the credit provider did not take physical possession of the goods before they were delivered to the consumer,

or where a consumer enters into a contract with a credit provider for the provision of credit in respect of the supply of services to the consumer by a supplier of which the credit provider is not a linked credit provider, and the consumer suffers loss or damage as a result of a breach of a condition that is implied in the contract by virtue of sections 76, 77 or 78 or of a warranty that is implied in the contract by virtue of section 80, the credit provider is not under any liability to the consumer for the amount of the loss or damage, but the consumer may recover that amount by action in a court of competent jurisdiction against the supplier.

(3) A linked credit provider of a particular supplier is not liable to a consumer by virtue of subsection (1) in proceedings arising under that subsection if the credit provider establishes—

(a) that the credit provided by the credit provider to the consumer was the result of an approach made to the credit provider by the consumer that was not induced by the supplier;

(b) where the proceedings relate to the supply by way of lease, hire or hire-purchase of goods by the linked credit provider to the consumer, that—

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming linked credit provider of the supplier, the credit provider had not had cause to suspect that—

(aa) the consumer might be entitled to recover an amount of loss or damage suffered as a result of misrepresentation or breach of a condition or warranty referred to in subsection (1); and

(bb) the supplier might be unable to meet the liabilities of the supplier liabilities as and when they fall due;

(c) where the proceedings relate to a contract of sale with respect to which a tied loan contract applies, that—

(i) after due inquiry before becoming a linked credit provider of the supplier, the credit provider was satisfied that the reputation of the supplier in respect of the supplier's financial standing and business conduct was good; and

(ii) after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that—

(aa) the consumer might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as result of misrepresentation, breach of contract or failure of consideration in relation to the contract or as a result of breach of a subsection (1); and

(bb) the supplier might be unable to meet the liabilities of the supplier as and when they fall due; or

(d) where the proceedings relate to a contract of sale with respect to which a tied continuing credit contract entered into by the linked credit provider applies, that, having regard to—

(i) the nature and volume of business carried on by the linked credit provider; and

(ii) such other matters as appear to be relevant in the circumstances of the case,

the linked credit provider, before becoming aware of the contract of sale or of proposals for the making of the contract of sale (whichever the linked credit provider first became aware of) had not cause to suspect that a person entering into such a contract

with the supplier might be entitled to claim damages against or recover a sum of money from, the supplier for misrepresentation, breach of contract, failure of consideration, breach of a condition or breach of a warranty as referred to in subsection (1).

(4) Subject to subsection (5), in any proceedings in relation to a contract referred to in paragraphs (a) or (b) of subsection (1) which a credit provider claims damages or an amount of money from a consumer, the consumer may set up the liability of the credit provider under subsection (1) in diminution or extinction of the consumer's liability.

(5) Subject to subsection (6), a consumer may not, in respect of a liability for which, by reason of this section, a supplier and a linked credit provider are jointly and severally liable—

(a) bring proceedings to recover an amount of loss or damage from the credit provider; or

(b) where proceedings are brought against the consumer by the credit provider, make a counter claim or exercise the right conferred by subsection (4) against the credit provider,

unless the consumer brings the action against the supplier and the credit provider jointly or, in the case of a counter claim or right conferred by subsection (4), claims in the proceedings against the supplier in respect of the liability by third party proceedings or otherwise.

(6) Subsection (5), paragraph (a) of subsection (8) and subsection (9) do not apply in relation to proceedings where—

(a) the supplier has been dissolved or is commenced to be wound up; or

(b) in the opinion of the court in which the proceedings are taken it is not reasonably likely that a judgment obtained against the supplier would be satisfactory and the court has on the application of the consumer, declared that subsection (5) and paragraph (a) of subsection (8) and subsection (9) do not apply in relation to the proceedings.

(7) The liability of a linked credit provider to a consumer for damages or a sum of money in respect of a contract referred to in subsection (1) shall not exceed the sum of—

(a) the amount financed under the tied loan contract, tied continuing credit contract, lease contract, contract of hire or contract of hire purchase;

(b) the amount of interest (if any) or damages in the nature of interest allowed or awarded against the linked credit provider by the court; and

(c) the amount of costs (if any) awarded by the court against the linked credit provider or supplier or both.

(8) Where in proceedings arising under subsection (1), judgment is given against a supplier and a linked credit provider, the judgment—

(a) shall not be enforced against the linked credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than thirty days; and

(b) may be enforced against the linked credit provider only to the extent of—

(i) the amount calculated in accordance with subsection (7); or

(ii) so much of the judgment debt as has not been satisfied by the supplier,

whichever is the lesser.

(9) Unless the linked credit provider and supplier otherwise agree, the supplier is liable to the linked credit provider for the amount of a loss suffered by the linked credit provider, being an amount not exceeding the maximum amount of the linked credit provider's liability under subsection (7) and, unless the court otherwise determines, the amount of costs (if any) reasonably incurred by the linked credit provider in defending the proceedings by reason of which the liability was incurred.

(10) Notwithstanding any other law, where proceedings arise under subsection (1), judgment is given against a supplier and a linked credit provider or against a linked credit provider for an amount of loss or damage, the court in which the proceedings are taken shall, on the application of the consumer, unless good cause is shown to the contrary, award interest to the consumer against the supplier and credit provider or against the credit provider, as the case may be upon the whole or a part of the amount, from the time when the consumer became entitled to recover the amount until the date on which the judgment is given, at whichever of the following rates is the greater—

(a) where the amount payable by the consumer to the credit provider for the obtaining of credit in connection with the goods or services to which the proceedings relate may be calculated at a percentage rate per annum, that rate or, if more than one such rate may be calculated, the lower or lowest of those rates;

(b) eight percent or such other rate as is prescribed.

(11) In determining whether good cause is shown against awarding interest under subsection (10) on the whole or part of an amount of loss or damage, the court shall take into account any payment made into court by the supplier or credit provider.

(12) Where a judgment given in proceedings arising under subsection (1) is enforced against a linked credit provider of a particular supplier, the credit provider is subrogated to the extent of the judgment so enforced to any rights that the consumer would have had but for the judgment against the supplier or any other person.

(13) In this section—

"credit provider" means a person providing, or proposing to provide, in the course to a business carried on by him, credit to consumers in relation to the acquisition of goods or services;

"linked credit provider" in relation to a supplier, means a credit provider—

(a) with whom the supplier has a contract, arrangement or understanding relating to—

(i) the supply to the supplier of goods in which the supplier deals;

(ii) the business carried on by the supplier of supplying goods or services; or

(iii) the provision to persons to whom goods or services are supplied by the supplier of credit in respect of payment for those goods or services;

(b) to whom the supplier, by arrangement with the credit provider, regularly refers persons for the purpose of obtaining credit;

(c) whose forms of contract or forms of application or offers for credit are, by arrangement with the credit provider, made available to persons by the supplier; or

(d) with whom the supplier has a contract, arrangement or understanding under which contracts or applications or offers for credit from the credit provider may be signed by persons at premises of the supplier;

"tied continuing credit contract" means a continuing credit contract under which a credit provider provides credit in respect of the payment by a consumer for goods or services supplied by a supplier in relation to whom the credit provider is a linked credit provider;

"tied loan contract" means a loan contract entered into between a credit provider and a consumer where—

(a) the credit provider knows or ought to reasonably know that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods and services supplied by a supplier; and

(b) at the time the loan contract is entered into the credit provider as a linked credit provider of the supplier.

[PCh285s80]80. Warranties in relation to the supply of services

(1) In every contract for the supply by a supplier in the course of business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where a person supplies services other than services of a professional nature provided by a qualified architect or engineer, to a consumer in the course of a business and the consumer, expressly or by implication, makes known to him any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit or are of such a nature and quality that for that purpose they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely or that it is unreasonable for him to rely on the person's skill or judgment.

(3) A reference in this section to services does not include a reference to services that are, or are to be, provided, granted or conferred under—

(a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or

(b) a contract of insurance.

[PCh285s81]81. Action in respect of unsuitable goods

(1) Where—

(a) a person supplies goods manufactured by him to another person who acquires the goods for re-supply;

(b) a person, whether or not the person who acquired the goods from another person, supplies the goods otherwise than by way of sale by auction to a consumer;

(c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the person, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connection with the acquisition of the goods were conducted;

(d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and

(e) the consumer or a person who acquires the goods from, or derives title to the goods through or under the consumer, suffers loss or damage by reason that the goods are not reasonably fit for that purpose, he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Subsection (1) does not apply—

(a) if the goods are not reasonably fit for the purpose referred to in that subsection by reason of—

(i) an act or default of any person, or a servant or agent of the person;
or

(ii) a cause independent of human control, occurring after the goods have left the control of the person; or

(b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the person.

[PCh285s82]82. Action in respect of false descriptions

(1) Where—

(a) a person supplies goods manufactured by the person to another person who acquires the goods for re-supply;

(b) a person, whether or not the person who acquired the goods from the person supplies the goods, otherwise than by way of sale by auction, to a consumer by description;

(c) the goods do not correspond with the description; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under the consumer, suffers loss or damage by reason that the goods do not correspond with the description,

he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Subsection (1) does not apply if the goods do not correspond with the description referred to in that subsection by reason of—

(a) an act or default of any person;

(b) a cause independent of human control, occurring after the goods have left the control of the person.

(3) A person is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods—

(a) by or on behalf of him;

(b) with his consent whether express or implied.

(4) If the goods referred to in subsection (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(5) A supply of goods is not prevented from being a supply by description for the purpose of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.

[PCh285s83]83. Action in respect of goods of unmerchantable quality

(1) Where—

(a) a person supplies goods manufactured by him to another person who acquires the goods for re-supply;

(b) a person, whether or not the person acquired the goods from him supplies the goods, otherwise than by way of sale by auction, to a consumer;

(c) the goods are not of merchantable quality; and

(d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality,

such person is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Subsection (1) does not apply—

- (a) if the goods are not of merchantable quality by reason of—
 - (i) an act or default of any person; or
 - (ii) a cause independent of human control, occurring after the goods have left the control of the person;
- (b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer; or
- (c) if the consumer examines the goods before the contract is made, as regards defects that the examination ought to reveal.

(3) Goods of any kind are of merchantable quality within the meaning of this section if they are as fit for the purpose for which goods of that kind are commonly bought as it is reasonable to expect having regard to—

- (a) any description applied to the goods by him;
- (b) the price received by him for the goods if relevant;
- (c) all the other relevant circumstances.

[PCh285s84]84. Action in respect of non-correspondence samples, etc.

- (1) Where—
 - (a) a person supplies goods manufactured by him to another person who acquires the goods for re-supply;
 - (b) a person, whether or not the person who acquired the goods from another person, supplies the goods, otherwise than by way of sale by auction to a consumer;
 - (c) goods are supplied to the consumer by reference to a sample;

(d) the bulk of the goods does not correspond with the sample in quality or the goods have a defect, rendering them unmerchantable, that is not, or would not be, apparent on reasonable examination of the sample; and

(e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect,

he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the loss or damage by action against him in a court of competent jurisdiction.

(2) Subsection (1) does not apply where—

(a) the sample is not supplied by the person;

(b) the supply by sample is made without the express or implied concurrence of the person; or

(c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to—

(i) default of any person or any cause independent of human control, occurring after the goods have left the control of the person;

(ii) other circumstances that were beyond the control of him and that it could not reasonably be expected to have been foreseen.

[PCh285s85]85. Action in respect of failure to provide facilities for repairs or parts

(1) Where—

(a) a person supplies goods, otherwise than by way of sale by auction, manufactured by him to a consumer;

(b) a person, supplies goods manufactured by him to another person who acquires the goods for re-supply and person whether or not the person acquired the goods from him supplies the goods otherwise than by way of sale by auction to a consumer, and

(c) at a time (in this section referred to as the "relevant time") after the acquisition of the goods by the consumer—

(i) the goods required to be repaired but facilities for their repair are not reasonably available to the consumer or a person who acquires the goods from or derives title to the goods through or under, the consumer; or

(ii) a part is required for the goods but is not reasonably available to the consumer or a person who acquires the goods from or derives title to the goods through or under, the consumer;

(d) the person acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the part was reasonably available to the consumer or that other person at the relevant time; and

(e) the consumer or that other person suffers loss or damage by reason of the failure of the supplier to ensure that facilities for the repair of goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time, he is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) Subsection (1) does not apply where the person took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he acquired the goods that—

(a) he did not promise that facilities for the repair of the goods, or that parts for the goods, would be available; or

(b) he did not promise that facilities for the repair of the goods, or that parts for the goods, would be available after a specified period, being a period that expired before the relevant time.

(3) Where the person took reasonable action to ensure that the consumer acquiring the goods would be given notice at or before the time when he acquired the goods that he did not promise that—

(a) facilities for the repair of the goods, being facilities of a kind specified in the notice, would be available;

(b) parts for the goods, being parts of a kind specified in the notice, would be available; or

(c) facilities for the repair of the goods would be available at, or parts for the goods would be available from, a place or places specified in the notice,

he is not liable to compensate the consumer, or a person who acquires the goods from, or derives title to the goods through or under, the consumer for loss or damage suffered by the consumer or that other person by reason of the failure of the person to ensure that facilities or parts of the kind specified in the notice, were available, or parts for the goods were available from a place or places specified in the notice, as the case may be.

(4) In determining whether a person acted unreasonably in failing to ensure that facilities for the repair of goods were, or that a part was, reasonably available to a person at the relevant time, a court shall have regard to all the circumstances of the case, and in particular to the existence, at the relevant time, of circumstances that prevented those facilities or that part being so available, being circumstances beyond the control of the person.

[PCh285s86]86. Action in respect of non-compliance with express warranty

(1) Where—

(a) a person supplies goods, otherwise than by way of sale by auction manufactured by him to a consumer; or

(b) a person supplies goods manufactured by him to another person who acquires the goods for re-supply and a person, whether or not the person acquired the goods from him supplies the goods, otherwise than by way of sale by auction, to a consumer; and

(c) a person fails to comply with an express warranty given or made by him in relation to the goods; and

(d) the consumer who acquires the goods from him suffers loss or damage by reason of the failure,

he is liable to compensate the consumer for the loss or damage and the consumer may recover the amount of the compensation by action against him in a court of competent jurisdiction.

(2) For the purposes of any action instituted by a person against a person under this section, where—

(a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply or use of goods; and

(b) the undertaking, assertion or representation would, if it had been given or made by him or a person acting on his behalf, have constituted an express warranty in relation to the goods,

it shall be presumed that the undertaking, assertion or representation was given or made by him or a person acting on his behalf unless he proves that he did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.

[PCh285s87]87. Right of seller to recover against manufacturer or importer

Where—

(a) a person (in this section referred to as the "seller") is under a liability to another person in respect of loss or damage suffered by the consumer as a result of a breach of a condition or warranty implied by a provision of his part in a contract for the supply of goods, whether or not the goods are of a kind ordinarily acquired for personal, domestic or household use, or consumption by the seller to the consumer; and

(b) a third person (in this section referred to as the "manufacturer")—

(i) is liable to compensate the consumer in respect of the same loss or damage by reason of the provisions of this Part; or

(ii) in a case where the goods referred to in paragraph (a) are not of a kind ordinarily acquired for personal, domestic or household use or consumption would, if the provisions of sections 81, 82, 83 and 84 applied in relation to those goods, be liable to compensate the consumer in respect of the same loss or damage by reason of any of those provisions,

the manufacturer is liable to indemnify the seller in respect of the liability of the seller to the consumer and the seller may, in respect of the manufacturer's liability to indemnify the seller, institute an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the seller could have obtained if the liability of the manufacturer to indemnify the seller had arisen under a contract of indemnity made between the manufacturer and the seller.

[PCh285s88]88. Time for commencing actions

(1) Subject to this section, an action under a provision of this Part may be commenced at any time within three years after the day on which the cause of action accrued.

(2) For the purposes of this section, a cause of action shall be deemed to have accrued—

(a) in the case of an action other than an action under section 87, on the day on which the consumer or a person who acquired the goods from or derived title to the goods through or under, consumer first became aware, or ought reasonably to have become aware—

(i) in the case of an action under section 87, that the goods were not reasonably fit for the purpose referred to in that section;

(ii) in the case of an action under section 82, that the goods did not correspond with the description referred to in that section;

(iii) in the case of an action under section 83, that the goods were not of merchantable quality;

(iv) in the case of an action under section 84, that the bulk of the goods did not correspond with the sample in quality or the goods had the defect referred to in the section;

(v) in the case of an action under section 85, that the goods required to be repaid or that the part was required for the goods, as the case may be; or

(vi) in the case of an action under section 86, of the failure of the corporation to comply with the express warranty referred to in that section; or

(b) in the case of an action under section 87, on—

(i) the day, or the first day, as the case may be, on which the seller referred to in that section made a payment in respect of, or otherwise discharged in whole or in part, the liability of that seller to the consumer or that other person; or

(ii) the day on which a proceeding was instituted by the consumer or that other person against the seller in respect of, that liability or, if more than one such proceedings was instituted, the day on which the first such proceeding was instituted, whichever was the earlier.

(3) In an action under a provisions of this Part, it is a defence if the defendant proves that the action was not commenced within ten years after the time of the first supply to consumer of the goods to which the action relates.

[PCh285s89]89. Application of division not to be excluded or modified

(1) Any term of a contract, including a term that is not set out in the contract but is incorporated in the contract by another term of the contract, that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any liability of a person to compensate or indemnify another person that may arise under this Part is void.

(2) A term of a contract shall not be taken to exclude, restrict or modify the application of any provision of this Part unless the term does so expressly or is inconsistent with that provision.

(3) Nothing in this section applies to a term of a contract referred to in subsection (4) of section 90.

[PCh285s90]90. Limitation in certain circumstances of liability of manufacturer to seller

(1) Notwithstanding section 87 but subject to this section, in the case of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of a manufacturer to a seller is limited to a liability to pay to the seller an amount equal to—

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods;
- (c) the cost of having the goods repaired, whichever is the lowest amount.

(2) Subsection (1) does not apply in relation to particular goods if the seller established that it is not fair or reasonable for the liability of the manufacturer in respect of those goods to be limited as mentioned in subsection (1).

(3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a seller in respect of goods to be limited as mentioned in subsection (1), a court shall have regard to all the circumstances of the case and, in particular to—

- (a) the availability of suitable alternative sources of supply of the goods;
- (b) the availability of equivalent goods; and
- (c) whether the goods were manufactured, processed or adapted to the special order of the seller.

(4) This section is subject to any term of a contract between the manufacturer and the seller imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

(5) In this section, the expressions "manufacturer" and "seller" have the same respective meanings as in section 87.

[PCh285s91]91. Rescission of contracts

(1) Where—

- (a) a person supplies goods to a consumer in the course of a business; and
- (b) there is a breach of a condition that is, by virtue of a provision in this Part, implied in the contract for the supply of the goods,

the consumer is, subject to this section, entitled to rescind the contract by—

(i) causing to be served on the supplier a notice in writing signed by him giving particulars of the breach; or

(ii) causing the goods to be returned to the supplier and giving to him either orally or in writing, particulars of the breach.

(2) Where a consumer purports to rescind under this section a contract for the supply of goods by any person, the purported rescission does not have any effect if—

(a) the notice is not served or the goods are not returned within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods;

(b) in the case of a rescission effected by services of notice, after the delivery of the goods to the consumer but before the notice is served—

(i) the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods;

(ii) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or

(iii) the goods were damaged by abnormal use; or

(c) in the case of a rescission effected by return of the goods, while the goods were in the possession of the consumer—

(i) the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or

(ii) the goods were damaged by abnormal use.

(3) Where a contract for the supply of goods by any person to a consumer has been rescinded in accordance with this section—

(a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to him, the property in the goods re-vests in the supplier upon the service of the notice or the return of the goods; and

(b) the consumer may recover from the supplier as a debt, the amount or value of any consideration paid or provided by him for the goods.

(4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other Act.

[PCh285s92]92. Standard form contract Act No. 11 of 2001 s. 51 and 4th Sch.

Whenever the terms and conditions which are to govern any consumer transaction are to be included, whether wholly or in part, in a standard form contract shall be registered with the Chairman in accordance with the regulations to be made by the Minister under this Act.

[PCh285s93]93. Costs

(1) For the purpose of this Part all costs incurred by a party to a litigation before a court or Tribunal as the case may be shall be borne by each party.

(2) Notwithstanding the provisions of subsection (1) the Tribunal or court may, if it is of the opinion that the circumstances of the case so warrant, order one of the parties to bear all the costs.

PART VII

GENERAL PROVISIONS (ss 94-116)

[PCh285s94]94. Power to obtain information Act No. 11 of 2001 s. 51 and 4th Sch.

(1) For the purposes of assisting any person—

(a) to determine whether any goods or any service shall be made the subject of an order under this Act in fixing the prices therefor; or

(b) to decide the manner in which the powers conferred on him by this Act shall be exercised in respect of any goods or any service, the Minister may, by notice published in the Gazette, or by notice in writing served on such person, require any trader, manufacturer, producer, transporter or any other person supplying any goods or rendering any service—

(i) to furnish to the Chairman, either verbally or in writing, and in such form as the Minister may specify in such notice, any information in relation to his trade or business, either by way of periodical return or otherwise;

(ii) to produce for inspection by the Chairman any books, accounts or other documents relating to his trade or business, and to submit to the Chairman samples of any goods in which he deals.

(2) No person shall be required under subsection (1) to furnish any balance-sheet or profit and loss account, but this subsection shall not prevent the requiring of information by reason only that it is or might be contained as an item in such a balance-sheet or profit and loss account.

(3) Any notice authorised to be served under subsection (1) on any person believed to be carrying on any trade or business therein mentioned shall be deemed to be duly served if it is addressed to him by the description of "the occupier" of the premises upon

which the trade or business in question is believed to be carried on, and delivered to some person, not appearing to be merely a subordinate employee, on the premises.

(4) No information relating to any particular trade or business obtained under this section shall be published or otherwise disclosed without the prior consent in writing of the person by whom the information was furnished.

(5) Nothing in this section shall restrict the disclosure of information—

(a) to any Minister responsible for, or any officer of, any Ministry or Department of the Government;

(b) to any person or any authority having any functions in relation to the development or regulation of trade or business in the country; or

(c) to any person for the purpose of legal proceedings, or the use of such information in any manner which the Minister thinks necessary or expedient in connection with the purposes of this Act.

[PCh285s95]95. General powers of the Chairman Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman or any person authorised in writing by the Chairman, or any police officer of or above the rank of inspector, is empowered—

(a) to enter any premises in the occupation or under the control of any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or any other person supplying any goods or rendering any price-controlled service;

(b) to inspect any such premises as are specified in paragraph (a);

(c) to examine any books, accounts or other documents relating to the trade or business of any person specified in paragraph (a), and to require a copy of any such book, account or other document or of the record of any transaction which he has reasonable cause to believe relates to price-controlled goods or price-controlled services to be provided and to be certified by such person; and where any such books, accounts or other documents or records are in a language other than Kiswahili language, and he is satisfied that any such person can provide or obtain a translation, and further to require that any such books, accounts or other documents to be deposited at his office for examination; or

(d) to require, by notice in writing served upon any person specified in paragraph (a) such person to furnish verbally or in writing and in such form as may be required, such information in relation to his trade or business as may be specified in such notice.

(2) Upon entering any premises in pursuance of the powers conferred by paragraph (a) of subsection (1) the Chairman or any other person so authorised to enter the premises, or any police officer of or above the rank of inspector, shall before proceeding to exercise any of the powers conferred by subsection (1), inform the person present on such premises who is or who reasonably appears to be for the time being in charge of such premises of his intention to exercise his powers under subsection (1).

(3) When any books, accounts or other documents are deposited in pursuance of paragraph (c) of subsection (1) the person who has required the deposit of such books, accounts or other documents shall—

(a) furnish the owner thereof with a receipt therefor;

(b) be responsible to the owner for the safe custody of the books accounts or other documents; and

(c) return the books, accounts or other documents to the owner within thirty days.

(4) Nothing in subsection (3) shall be construed as requiring any person to return or be responsible for the safe custody of any books, accounts or other documents which have been handed to the police or which have been produced as exhibits in proceedings before any court.

(5) The Chairman is empowered—

(a) to require, by notice published in the Gazette, in respect of any goods, that when exposed or offered for sale, they shall bear such mark or label as may be specified in such notice for the purpose of indicating their quality, grade, weight or other measure, price or place of origin;

(b) to prohibit or regulate in like manner, the sale, purchase, disposal or movement by any person of any price-controlled goods in such manner as he may direct;

(c) to require, by notice in writing served upon such person, any person who is in possession of any price-controlled goods to sell the goods to that person and in such manner and at such price or charge as he may specify in the notice;

(d) to require, in like manner, any trader, manufacturer, producer or commission agent to submit to him samples of any price-controlled goods in which he deals;

(e) to direct, in like manner, the place in which any price-controlled goods may be stored;

(f) to demand, in like manner, from any person in apparent possession of any price-controlled goods, who alleges that such goods or any of them have already been sold by him, the immediate production of the invoice, contract or other documentary evidence of the sale.

(6) The Chairman may—

(a) by notice published in the Gazette or by a notice in writing served upon, or left at the place of business of, any trader, manufacturer, producer, commission agent, clearing and forwarding agent or transporter or any person who renders any service—

(i) require, in relation to any price-controlled goods or any price-controlled service, any such person as and from a date to be specified in such order to endorse on any sales invoice any information, directions or such other particulars as may be specified in such notice;

(ii) require, in relation to any price-controlled goods or any price-controlled service, that such information, directions or other particulars shall be declared in writing to an intending purchaser or other person before any sale or rendering of service;

(b) determine—

(i) what constitutes a wholesale or retail quantity;

(ii) what constitutes a wholesale or a retail transaction;

(c) with the approval of the Minister, prohibit or regulate the movement of any goods.

(7) The Chairman shall acknowledge all correspondence pertaining to price changes within sixty days of the receipt of that correspondence.

(8) Whenever a person has overcharged in respect of any price-controlled goods which he has sold or in respect of any price-controlled service which he has rendered, the Chairman may, irrespective of any action that may have been taken or that may be taken against the person under this Act, direct to him to refund a sum equal to twice the overcharge.

(9) The sum to be refunded shall within a time specified by the Chairman, be paid to him, and he shall refund to the purchaser the amount constituting the overcharge and such other sum as he may in his absolute discretion consider reasonable, and shall pay the balance, if any, into the Consolidated Fund.

(10) Where it appears that, in determining the selling price or price-controlled goods, the seller thereof has complied with this Act but that the price charged by any previous seller of those goods was in excess of the maximum price, the Chairman may direct the previous seller to refund a sum equal to twice the amount by which the price which he would have been required to pay for the goods, if the provisions of this Act had been observed by each of the person who dealt with the goods up to the time of their acquisition by such purchaser.

(11) The sum to be refunded shall be paid to the Chairman who shall refund to the ultimate purchaser the amount by which the price paid by the purchaser exceeded the

maximum price which he would have been required to pay for the goods if the provisions of this Act had been observed by each of the persons who dealt in those goods up to the time of their acquisition by the purchaser, and such other sum, not exceeding the balance of the sum refunded by the seller, as he may consider reasonable, and shall pay the balance, if any into the Consolidated Fund.

(12) For the purposes of this section, "trader" includes an auctioneer.

[PCh285s96]96. Delegation of powers Act No. 11 of 2001 s. 51 and 4th Sch.

The Chairman may, with the approval of the Minister, delegate in writing all or any of his powers, duties or functions under this Act, either generally, or in any area in the country, or for such periods or purposes as he may specify, to any person approved by the Minister, and may at any time revoke or vary that delegation.

[PCh285s97]97. Power to revoke or vary permits, etc. Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman may, at any time and from time to time, and without assigning any reason therefor, cancel, revoke, amend or vary any permit, exemption or permission which he may have granted under this Act.

(2) Any person aggrieved by the decision of the Chairman may appeal to the Minister within twenty one days from the day of communication to the person concerned of the Chairman's decision; and the decision of the Minister shall be final.

[PCh285s98]98. Certificates Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman or any public officer authorised by him may in writing certify—

(a) the maximum price that has been fixed for any wholesale or retail sale of any price-regulated goods;

(b) what constitutes a wholesale or what is wholesale or retail quantity;

(c) the precise amount of the overcharge invoiced in any transaction, subject to proof that such transaction has constituted an offence involving overcharge;

(d) that any exemption or permission which may be given under this Act by the Chairman has or has not been given;

(e) the maximum percentage of profit allowed upon the sale of any percentage fixed goods;

(f) in any proceedings concerning the price at which price-controlled goods were sold, if such price is not expressed in Tanzanian shillings, then the equivalent selling price in Tanzanian shillings;

(g) the maximum service charge that has been fixed for any price-controlled service.

(2) In any proceedings instituted in any court under this Act, any fact so certified by the Chairman or any public officer authorised by him shall be admitted without further proof as prima facie evidence of the fact so certified.

(3) In any proceedings in any court arising out of the provisions of this Act, the certificate of the Chairman or any public officer authorised by him as to what constitutes a wholesale or a retail sale, or as to what constitutes a wholesale or retail quantity, in respect of the subject matter of such proceedings shall be final and conclusive.

[PCh285s99]99. Power to enter and search Act No. 11 of 2001 s. 51 and 4th Sch.

If a magistrate is satisfied by information on oath that there is reasonable grounds for suspecting that an offence has been committed under this Act, and that evidence of the commission of the offence is to be found on any premises specified in the information, he may grant a search warrant authorising the Chairman or any officer authorised by the Chairman or any police officer to enter the premises at any time within one month from the date of the warrant, and to search the premises and seize any goods found on the premises which the person so authorised has reasonable ground for believing to be evidence of the commission of the offence.

[PCh285s100]100. Power of entry and seizure Act No. 11 of 2001 s. 51 and 4th Sch.

(1) The Chairman or any officer authorised by him or any police officer of or above the rank of inspector, if he has reasonable cause to believe that any offence under this Act is being committed on any premises, or if he has reasonable cause to believe that any goods in respect of which there is reasonable ground for suspecting that any such offence has been committed, are in or upon any premises, and that the delay which would occur in obtaining a search warrant as provided under section 99 would defeat the purposes of this Act, may enter and search the premises without a search warrant for the purpose of ascertaining if an offence is being committed or whether or not the goods are in or upon such premises, and may inspect such goods and any documents relating to them, and may seize any goods or documents on such premises which the person so searching or inspecting has reasonable cause to believe to be evidence of the commission of such an offence.

(2) The provisions of subsection (3) and (4) of section 38 the Criminal Procedure Act * relating to search and seizure so far as may be, shall apply in respect of subsection (1) of this section.

(3) No prosecution against any person for an offence under subsection (2) shall be instituted except with the written consent of the Director of Public Prosecutions.

(4) The Chairman or any officer authorised by him may, in connection with the investigation of any allegation of any alleged offence arising out of a test purchase involving payment with marked money, search any person for the marked money, or enter and search premises, or search any box or receptacle and the contents thereof, at the place at which such test purchase has been made, and may seize any marked money so found.

[PCh285s101]101. Power to search vehicles and seize goods

(1) If any police officer, has reason to believe that any vehicle contains any goods which are being transported in-contravention of any of the provisions of this Act, he may order that vehicle to stop, and may examine the contents thereof, and if that person fails to stop he commits an offence.

(2) Where any vehicle has been stopped under subsection (1), the person stopping the vehicle may take it with its goods to the nearest police station, and the officer in charge of the police station may thereupon seize any goods found therein, being goods which the officer has reasonable cause to believe are goods in respect of which an offence under this Act is or has been committed.

[PCh285s102]102. Procedure on seizure of goods Act No. 11 of 2001 s. 51 and 4th Sch.

Where any goods have been seized under sections 99, 100 or 101 the person who has seized the goods shall forthwith report to a magistrate the fact of the seizure, and if a magistrate is satisfied that the goods are of a perishable nature, or that, by reason of the fact the market for goods is seasonal, or for other good reasons, to delay the disposal of the goods would otherwise unduly prejudice the owner thereof, he may authorise the Chairman to sell or otherwise dispose of the goods.

[PCh285s103]103. Retention and disposal of seized goods

(1) Where any vehicle, goods or money has been seized under sections 99, 100 or 101 the vehicle, goods or money may be retained for a period not exceeding thirty days, or, if within the period proceedings are commenced for any offence under this Act, until the final determination of those proceedings.

(2) Where proceedings are taken for any offence under this Act, the court by or before which the alleged offender is tried may make such order as to the forfeiture of the vehicle or goods in respect of which such offence was committed, or as to the disposal of any vehicle, goods or money seized in connection therewith, as the court shall see fit.

(3) In this section, "goods" shall be construed as including the proceeds of the sale of any goods, where such goods have been sold in accordance with section 102.

[PCh285s104]104. Offence to sell or purchase above maximum price

(1) Any person who sells any price-controlled goods or renders any price-controlled service at a price or charge which exceeds the maximum price or the maximum service charge, as the case may be, commits an offence.

(2) Subject to section 112, any person who purchases or offers to purchase any price-controlled goods at a price or charge which exceeds the maximum price for the goods, or who pays, or offers to pay for any price-controlled service a charge which exceeds the maximum service charge fixed therefor, commits an offence.

[PCh285s105]105. Refusal to sell goods Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Any person carrying on a business in the course of which any goods are supplied, and who has in his possession a stock of the goods, and who—

(a) falsely denies that he has the goods in his possession or ownership; or

(b) refuses or fails, except with the permission of the Chairman to supply the goods in reasonable quantities upon tender of immediate payment to the maximum price thereof, in the case of price-controlled goods or the price indicated by any mark or label born by the goods in the case of any other goods, or refuses or fails to expose or offer for sale such goods continuously when required by the Chairman, commits an offence.

(2) It shall be a good defence for a person charged with an offence under paragraph (b) of subsection (1) to prove that the supply of the goods would involve a breach of an obligation lawfully imposed on him.

(3) The servant or agent of any person carrying on a business in the course of which any price-controlled goods are supplied shall be deemed to have in his possession a stock of such goods if any such goods are being kept or stored in the premises where he is employed and if he sells such goods on behalf of his employer in the ordinary course of his employment.

[PCh285s106]106. Illegal conditions Act No. 11 of 2001 s. 51 and 4th Sch.

Any trader, manufacturer, producer or commission agent to whom an offer to buy price-controlled goods has been made and who except with the permission of the Chairman imposes any condition of sale other than a condition requiring immediate payment on delivery thereof or prescribing term within which payment must be made or delivery taken, or a condition requiring a deposit in respect of any container of such goods, commits an offence.

[PCh285s107]107. Offence to obstruct authorities

Any person who—

(a) obstructs or hinders any person authorised by this Act to enter and inspect or search any premises or to stop and search any vehicle or to examine any books, accounts or other documents or to seize any vehicle, goods or money; or

(b) refuses or delays or fails to produce any books, accounts or other documents or certified copies or translations thereof relating to his trade or business which he may be required under this Act to produce; or

(c) refuses or delays or fails to furnish any information or in purported compliance with any requirement of this Act, knowingly or without reasonable grounds for believing the same to be true furnishes information which is false or misleading in any material particular, whether upon demand being made by a person authorised by this Act to demand the same or otherwise; or

(d) publishes or otherwise discloses any information in contravention of any provision of this Act; or

(e) refuses or delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, given, issued, served or published under this Act,
commits an offence.

[PCh285s108]108. Penalties

(1) Any person who commits an offence under this Part is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding five years, or to both that fine and imprisonment.

(2) Where the offence in respect of which a person is convicted is an offence under subsection (1) of section 104, that person shall, in addition to any other penalty which may be imposed, be liable to a fine of not less than five times the value of the overcharge, and in such a case the court may order that there shall be paid therefrom to the purchaser such as may in the opinion of the court serve to compensate him for any loss of time or any expenses which he may have incurred.

(3) Where any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter, or person rendering any services has been found guilty of an offence under this Act, the court may, in addition to any other penalty to which the convicted person may be liable, make such order, having effect during such period, as the court thinks fit, for preventing the offender from carrying on, or being concerned directly or indirectly in the carrying on of, the business in the course of which the transaction constituting the offence was effected, or any branch of that business, or in any business or branch of a business of a similar character.

(4) Where a person charged with any offence under this Act is a body corporate, every person who, at the time of the commission of the offence, was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with that body corporate, and where the body corporate is convicted of the offence, every such director, manager or officer shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(5) Any partner in any firm shall be answerable for the acts or omissions of any other partner in the same firm in so far as they concern the firm; and, if any partner commits any act or makes any omission which is an offence under this Act, every partner in the firm shall be jointly and severally liable to the penalties provided by this Act.

(6) Any employer who employs in his shop, store or other place or business any agent, clerk, servant or other person shall be answerable for the acts or omissions of that agent, clerk, servant or other person in so far as they concern the business of such employer; and if such agent, clerk servant or other person commits any act or makes any omission which is an offence under this Act, or which would be an offence if made or committed by such employer, such employer and his agent, clerk, servant or other person shall be jointly and severally liable to the penalties provided under this Act.

(7) Notwithstanding the provisions of the Magistrates' Courts Act * or of the Criminal Procedure Act * relating to the jurisdiction of subordinate courts, any subordinate court may impose any penalty or any combination of penalties prescribed under this Part.

[PCh285s109]109. Burden of proof Act No. 11 of 2001 s. 51 and 4th Sch.

In any proceedings in any court instituted for an offence under this Part, the production by the Chairman, or any person authorised by him in writing, or by any police officer, or by a public prosecutor within the meaning of the Criminal Procedure Act * of an original invoice a duplicate invoice or a triplicate invoice purporting to have been found in the possession of the seller or a copy of such invoice certified by the Chairman or by the seller shall, except where the prosecution alleges the falsity of the contents of such invoice, be prima facie evidence of a sale by the seller and of all the facts contained in such invoice, duplicate invoice or certified copy; and for the purposes of this subsection, "sale" includes the rendering of services.

[PCh285s110]110. Actions by consumer organisations Act No. 11 of 2001 s. 51 and 4th Sch.

(1) Without prejudice to the provisions of this Act, any recognised consumer organisation may initiate a consumer action before the Tribunal or any court of competent jurisdiction.

(2) For the purpose of this section a recognised consumer organisation means an organisation registered and is officially recognised by the Chairman as a consumer organisation.

[PCh285s111]111. What is not a defence

In any proceedings against any person for an offence under section 104 it shall be no defence—

(a) that the defendant has purchased such goods at a price which exceeds the maximum price thereof under this Part; or

(b) that any invoice or other document showing the price at which the goods were sold was endorsed to the effect that no responsibility could be accepted in respect of any error or omission in the invoice or document, or was endorsed with the letters "E" and "OE" or any other symbol or letters of a like nature indicating that the statements in such invoice or documents were subject to correction.

[PCh285s112]112. Protection against liability in certain cases Act No. 11 of 2001 s. 51 and 4th Sch.

(1) No proceedings shall be instituted under this Part against any person, being a person duly authorised by the Chairman, who has knowingly purchased any price-controlled goods at a price in excess of the maximum price, or who has paid a charge for any price-controlled service in excess of the maximum service charge, with the intention of procuring evidence for the purpose of prosecuting the seller or person rendering the price-controlled service for an offence under this Part.

(2) No proceedings shall be instituted against any person who knowingly purchases any price-controlled goods at a price in excess of the maximum price, or who knowingly pays a charge for any price-controlled service in excess of the maximum service charge, for an offence under this Part in respect of such purchases, if that person notifies the Chairman of such transaction within seven days from the date of the transaction, or within such longer period as the Chairman may, in his discretion, allow.

[PCh285s113]113. Chairman to consult other bodies Act No. 11 of 2001 s. 51 and 4th Sch.

(1) For the avoidance of doubt, the Chairman shall, before making any order or issuing a notice under this Act, in respect of a subject matter which falls under the jurisdiction of any other body, seek advice from that body.

(2) Subject to subsection (1) where the Chairman refuses to follow the advice given, he shall state the reasons for such refusal.

[PCh285s114]114. General penalty

Any person who is convicted of an offence under this Act for which no specific penalty is provided shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment and if the person is a body corporate, the penalty shall be a fine not exceeding five million shillings.

[PCh285s115]115. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act.

[PCh285s116]116. Repeal of Act No. 19 of 1973

[Repeals the Regulation of Prices Act.]