

COMPETITION ACT, 2007

Date of commencement: 1st April, 2008.

Arrangement of Sections

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Exemptions.
4. Application to State corporations.
5. Certain law not affected.

PART II

COMPETITION COMMISSION

6. Establishment of the Commission.
7. Independence of the Commission.
8. Composition of the Commission.
9. Tenure of office and vacancies.
10. Allowances of members.
11. Functions of the Commission.
12. Obtaining information.
13. Power of the Commission.
14. Proceedings of the Commission.
15. Committees of the Commission.
16. Disclosure of interest.
17. Immunity of members.

PART III

SECRETARIAT

18. Secretariat of the Commission.
19. Executive Director.
20. Other employees.
21. Disclosure of interest by employees.
22. Oath of secrecy.
23. Prohibition of publication or disclosure of information.
24. Immunity of employees.

PART IV

FINANCIAL PROVISIONS

25. Funds of the Commission.
26. Application of funds.
27. Financial year.
28. Accounts.
29. Annual reports.

PART V

ANTI-COMPETITIVE TRADE PRACTICES

30. Prohibitions.
31. Anti-competitive trade practices.
32. Other anti-competitive trade practices.
33. Unfair trading.
34. Abuse of dominance.
35. Mergers and acquisitions.
36. Monopolies and concentration of economic power.
37. Authorisation of allowable acts.

PART VI

MISCELLANEOUS

38. Investigating officers.
39. Power of entry and inspection.
40. Appeals.
41. Operation of order.
42. Offences and penalties.
43. Regulations.

An Act to provide for the encouragement of competition in the economy by controlling anti-competitive trade practices, mergers and acquisitions, protecting consumer welfare and providing for an institutional mechanism for implementing the objectives of the Act and other matters incidental thereto.

PART I

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Competition Act, 2007 and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires —

“agreement” when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable;

“anti-competitive trade practices” means the trade practices enumerated in sections 30, 31, 32 and 34;

“Commission” means the Competition Commission established in terms of section 6;

“consumer” includes any person —

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

(b) to whom a service is rendered;

“Court” means the High Court of Swaziland;

“dominant position” means a position in a market in which an enterprise as a supplier or an acquirer of goods and services either alone or together with any interconnected body corporate, is in a position to act independently of competitors and consumers over the production, acquisition, supply or price of goods or services in that market;

“enterprise” includes firms, associations irrespective of whether they are controlled by a private person or by the Government;

“goods or services” when used with respect to particular goods or services, includes any other goods or services that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;

“horizontal relationship” means a relationship between competitors;

“vertical relationship” means the relationship between a firm and its suppliers, its customers or to both;

“person” includes a local authority, and any association of persons whether incorporated or not;

“merger” means the acquisition of a controlling interest in —

(i) any trade involved in the production or distribution of any goods or services; or

(ii) an asset which is or may be utilised for or in connection with the production or distribution of any commodity;

“Minister” means the Minister responsible for Enterprise;

“monopoly” means a situation where a single person exercises, or two or more persons with a substantial economic connection, exercise substantial control of a market for any goods or services;

“premises” includes land, any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“price” includes valuable consideration in any form, whether direct or indirect and includes any consideration that relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any matter or thing;

“resale price maintenance” means a situation where a supplier or manufacturer specifies the minimum or maximum price at which the product should be re-sold to customers;

“sale” includes an agreement to sell or offer for sale and includes 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;

“trade practice” 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 of any goods, whether real or personal, or of any service.

Exemptions.

3. (1) This Act applies to all economic activity within the country or having an effect in the country except the following trade practices are exempted from the provisions of this Act —

- (a) trade practices which are directly and necessarily associated with the exercise of exclusive or preferential trading privileges conferred on any person by an Act of Parliament or by an agency of the Government acting in accordance with the authority conferred on it by an Act of Parliament;
- (b) trade practices which are directly and necessarily associated with the licensing of participants in certain trades and professions by agencies of the Government acting in accordance with authority conferred on them by an Act of Parliament.

(2) Nothing in this Act shall apply to —

- (a) activities of employees for their own reasonable protection as employees;
- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- (c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
- (d) those elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

- (e) any act done to give effect to a provision of an agreement referred to in paragraph (d);
- (f) activities expressly approved or required under a treaty or agreement to which Swaziland is party;
- (g) those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public; and
- (h) such business or activity as the Minister may, by notice published in the Gazette, specify.

Application to State corporations.

4. Except in so far as it is exempted from the application of the provisions of this Act by section 3 or any other law, every body corporate in which the Government holds one or more shares, whether as a sole, majority or minority shareholder and which is carrying on any trade is a person to whom this Act applies and who may be investigated by the Commission, who is subject to an order of the Commission, and against whom a prosecution may be brought in respect of an offence against any provision of this Act.

Certain law not affected.

5. (1) Nothing in this Act limits or affects any rule of law relating to restraint of trade not inconsistent with any of the provisions of this Act.
- (2) Nothing in this Act limits or affects any rule of law relating to breaches of confidence.
- (3) No rule of law referred to in subsections (1) or (2) affects the interpretation of any of the provisions of this Act.

PART II

COMPETITION COMMISSION

Establishment of the Commission.

6. There is established a body to be known as the Swaziland Competition Commission which shall be a body corporate with perpetual succession and capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may, by law, do or perform.

Independence of the Commission.

7. Subject to the provisions of this Act the Commission shall be independent of control of any person, including but not limited to any statutory body, Government or any other entity, in the discharge of its functions.

Composition of the Commission.

8. (1) The Commission shall consist of —
- (a) a representative of the Ministry responsible for Enterprise;

- (b) a representative of the Ministry responsible for Finance;
- (c) a representative of the Ministry responsible for Economic Planning and Development;
- (d) a member nominated by the Swaziland Chamber of Commerce and Industry;
- (e) a member nominated by the Economics Association of Swaziland;
- (f) a member nominated by the Swaziland Consumers Association;
- (g) a member nominated by the Swaziland Institute of Accountants;
- (h) a member nominated by the Law Society of Swaziland; and
- (i) a member appointed by the Minister by virtue of the person's knowledge of or experience in economics, industry, law, consumer affairs or the conduct of public affairs.

(2) All members shall be nominated by their institutions and appointed by Minister.

(3) The Minister shall designate one of the members as chairperson and the members shall elect, amongst themselves, a vice-chairperson on their first meeting.

(4) A member appointed in terms of subsection (1)(a), (b) and (c) shall not be elected as chairperson or vice-chairperson.

Tenure of office and vacancies.

9. (1) A member of the Commission shall hold office for a period of not more than 3 years and shall be eligible for reappointment for another term.

(2) Members shall not be retired at the same time.

(3) An office of a member shall become vacant where the member —

- (a) resigns by giving one month notice in writing to the Minister;
- (b) dies;
- (c) is absent, without valid excuse, from three consecutive meetings of the Commission;
- (d) becomes of unsound mind;
- (e) becomes insolvent; or
- (f) participates, directly or indirectly, in an activity which is in contravention of this Act.

(4) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 8 (1) under which the former member was appointed.

(5) Where the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

Allowances of members.

10. The members of the Commission shall be paid such allowances as the Minister may, in consultation with the Minister responsible for Finance, determine.

Functions of the Commission.

11. (1) The Commission shall monitor, regulate, control and prevent acts or behaviour which are likely to adversely affect competition in the country.

(2) Without limiting the generality of subsection (1), the Commission shall perform the following functions —

- (a) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business, including the abuse of a dominant position, so as to determine whether any enterprise is carrying on anti-competitive trade practices and the extent of such practices and issue such orders or directives it deems necessary to ensure compliance with this Act;
- (b) carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger and issue such orders or directives it deems necessary to ensure compliance with this Act;
- (c) take such actions as it considers necessary or expedient to regulate the creation of a merger or to prevent or redress the abuse of a dominant position by any enterprise;
- (d) provide persons, engaged in business, with information regarding their rights and duties under this Act;
- (e) provide information for the guidance of consumers regarding their rights under this Act;
- (f) undertake studies and make available to the public reports regarding the operation of the Act;
- (g) co-operate with and assist any association or body of persons to develop and promote the observance of the standards of conduct for the purpose of ensuring compliance with the provisions of this Act;
- (h) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister, including the determination of penalties to be imposed for the infringement of this Act; and
- (i) review this Act and any other legislation which inhibit fair competition and make proposals to the Minister for the amendment of such legislation;
- (j) co-operate with regional and international bodies engaged in the enforcement of competition law and the promotion of a competition culture;
- (k) enter into discussions on contentious issues with any regulatory authority in order to harmonise and ensure consistent application of the competition principles;
- (l) do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

Obtaining information.

12. The Commission shall obtain such information as it considers necessary to assist it in its investigations and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

Power of the Commission.

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

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) administer oaths;
- (d) require that any document submitted to the Commission be verified by affidavit; and
- (e) adjourn any investigation from time to time.

(2) The Commission may hear oral submissions from any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if the person has made a written request for a hearing, showing that the person is an interested party likely to be affected by the result of the investigation or that there are particular reasons why that person should be heard orally.

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

(4) If the information specified in subsections (3) is not furnished to the satisfaction of the Commission, it may make a finding on the basis of the information available before it.

Proceedings of the Commission.

14. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such times as the chairperson may determine.

(3) A special meeting of the Commission may be called by the chairperson upon written notice of not less than seven days received from any member of the commission and shall be called if at least four members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of a notice, in terms of subsection (3), a special meeting may be called upon giving a shorter notice.

(5) Six members present shall form the quorum of any meeting of the Commission.

(6) The decision of the Commission shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the chairperson or other person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) The chairperson shall preside at any meeting of the Commission and in the absence of the chairperson, the vice-chairperson shall preside.

(8) In the absence of both the chairperson and vice-chairperson such member as the chairperson may designate or such member as the members present and forming a quorum may elect from among their number shall preside for the purpose of that meeting.

(9) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to at-

tend any meeting of the Commission or of any of the committees established under section 15 and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

(11) The validity of the proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

Committees of the Commission.

15. (1) The Commission may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Commission may appoint, as members of a committee established in terms of subsection (1), persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee established under subsection (1) may regulate its own procedure.

Disclosure of interest.

16. (1) Where any member is present at meeting of the Commission or of any committee of the Commission at which any matter which is the subject of consideration is a matter in which that person or the person's immediate family member or the person's professional or business partner is directly or indirectly interested in a private or professional capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose such interests and unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of or vote on, any question touching on such matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

Immunity of members.

17. An action, suit or other proceedings shall not lie against any member of the Commission in respect of any act done, in good faith, in the course of carrying out the provisions of this Act.

PART III SECRETARIAT

Secretariat of the Commission.

18. The Secretariat of the Commission shall be made up of the Executive Director and other employees of the Commission as may be appointed under this Act and the Secretariat shall be the investigative arm of the Commission.

Executive Director.

19. (1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director of the Commission who shall be the chief executive officer of the Commission and shall, in addition, perform such duties as the Commission shall assign to the office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day-to-day administration of the Commission.

(3) The Executive Director or such other officer of the Commission as the Executive Director may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter.

(4) Section 16 shall apply, *mutatis mutandis*, to the Executive Director and on such other officer as may be designated by the Executive Director.

Other employees.

20. (1) The Commission may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging the Executive Director's duties and responsibilities.

(2) The Commission may delegate to the Executive Director the appointment of employees of such junior ranks as the Commission shall specify.

Disclosure of interest by employees.

21. (1) An employee of the Commission who or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Executive Director who shall take such decision as the Executive Director considers appropriate in each case and submit a report thereon to the Commission.

Oath of secrecy.

22. Every —

- (a) member of the Commission;
- (b) member of a committee of the Commission; and
- (c) employee of the Commission,

shall, upon assumption of office, take such oath of secrecy as may be approved by the Commission or as may otherwise be prescribed under this Act.

Prohibition of publication or disclosure of information.

23. (1) A person shall not, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of the person's

duties, contents of any document, communication or information which relates to, and which has come to his/her knowledge in the course of that person's duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Emalangeni or to imprisonment to a term not exceeding three years.

Immunity of employees.

24. No action, suit or other proceedings shall be brought or instituted personally against any employee in respect of any act done, in good faith, in the course of carrying out of the provisions of this Act.

PART IV

FINANCIAL PROVISIONS

Funds of the Commission.

25. (1) The funds of the Commission shall consist of such monies as may —

- (a) be appropriated by Parliament for the purposes of the Commission;
- (b) be obtained as a result of the levy that may be imposed in this Act;
- (c) be paid to the Commission by way of grants or donations;
- (d) be received by the Commission under subsection (2); or
- (e) otherwise vest or accrue to the Commission.

(2) The Commission may charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Commission.

(3) The Commission may, subject to approval of Minister, invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

(4) The Commission may, subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside of Swaziland, such money as it may require for the discharge of its functions.

Application of funds.

26. There shall be paid out of the funds of the Commission —

- (a) the salaries, allowances, loan, gratuities and pensions of the staff of the Commission and other payments for the recruitment and retention of staff;
- (b) such reasonable travelling and subsistence allowances for members of any committee of the Commission when engaged on the business of the Commission and at such rates as the Commission may determine; and
- (c) any other expenses incurred by the Commission in the performance of its functions.

Financial year.

27. The financial year of the Commission shall be the same as the Government financial year.

Accounts.

28. (1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

Annual reports.

29. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report —

(a) an audited financial statement; and

(b) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall lay such report before Parliament.

ANTI-COMPETITIVE TRADE PRACTICES

Prohibitions.

30. (1) Any category of agreements, decisions or concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition to an appreciable extent in the country or in any substantial part of it are prohibited.

(2) Enterprises engaged on the market in rival or potential rival activities shall not engage in the practices enumerated in subsection (5) where such practices limit access to markets or otherwise unduly restrain competition.

(3) Subsection (1) shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(4) This section applies to formal, informal, written and unwritten agreements or arrangements.

(5) For the purposes of subsection (1), the following are prohibited —

(a) agreements to fix prices;

(b) collusive tendering and bid-rigging;

(c) market or customer allocation agreements;

(d) subject to any law to the contrary, allocation by quota as to sales or production; or

- (e) collective action to enforce arrangements.

Anti-competitive trade practices.

31. Enterprises shall refrain from the following acts or behaviour if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general —

- (a) predatory behaviour towards competitors including the use of predatory cost pricing to damage, hinder or eliminate competition;
- (b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside affiliated enterprises;
- (c) making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;
- (d) making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier to the consignee;
- (e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- (f) resale price maintenance;
- (g) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale, supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
- (h) refusals to supply goods or services to potential purchasers; or
- (i) denials of access to an arrangement or association which is crucial to competition.

Other anti-competitive trade practices by associations.

32. The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices —

- (a) 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; or
- (b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to —
 - (i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

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

Unfair trading.

33. (1) A person shall not, in relation to a consumer —
- (a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;
 - (b) in connection with the supply of goods or services, make any warranty —
 - (i) limited to a particular geographic area or sales point;
 - (ii) falsely representing that products are of a particular style, model or origin;
 - (iii) falsely representing that the goods are new and or of specified age; or
 - (iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;
 - (c) exclude liability for defective goods;
 - (d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quality of any products or services;
 - (e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;
 - (f) engage in pyramid selling of goods and services;
 - (g) engage in bait selling;
 - (h) offer gifts or prizes with no intention of supplying them; and
 - (i) put out an advertisement which is misleading or deceptive.
- (2) A person shall not do any of the acts that are prohibited under the Fair Trading Act, 2001.

Abuse of dominance.

34. Any person that has a dominant position in the market shall not use that power to carry out any of the practices enumerated under sections 30 and 31.

Mergers and acquisitions.

35. (1) A merger shall not be carried out without the authorisation of the Commission and a person who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself/herself or his/her agent, participates in effecting —

- (a) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services;
- (b) a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand Emalangeneni or to imprisonment to a term not exceeding five years or to both.

(2) A merger or takeover made in contravention of subsection (1) shall not have any legal effect and no rights or obligations imposed on the participating parties, by any agreement in respect of the merger or takeover, shall be legally enforceable unless an application for condonation has been made to and granted by the Commission.

(3) The Commission shall, within a reasonable time after the receipt of an application or the date on which the applicants provide the information sought by the Commission if the date is later, make an order concerning an application for authorisation of a merger or takeover.

Monopolies and concentration of economic power.

36. (1) The Commission shall keep the structure of production of goods and services in the country under review to determine where concentrations of economic power or anti-competitive trade practices exist whose detrimental impact on competition and the economy outweigh the efficiency advantages, if any.

(2) For the purposes of subsection (1) but without limiting the generality thereof, the Commission shall consider whether —

- (a) a person controls a chain of distributing units the value of whose sales accounts for a significant portion of the relevant market;
- (b) a person, by virtue of controlling two or more physically distinct enterprises which manufacture substantially similar goods, supplies a significant portion of the domestic market at unreasonably low prices; or
- (c) a person has substantial shares in a manufacturing enterprise and whether the person simultaneously has a beneficial interest, however small, of outstanding shares in one or two wholesale or retail enterprises which distribute products of the manufacturing enterprise.

Authorisation of allowable acts.

37. (1) The Commission may authorise any act, agreement or understanding which is not prohibited by this Act, that is, one which is not necessarily illegal unless abused if that act, agreement or understanding is consistent with the objectives of this Act and the Commission considers that, on balance, the advantages to the country, outweigh the disadvantages.

(2) The Commission shall not authorise acts, agreements or understandings of any kind described in sections 31, 32, 33 and 34.

PART IV

MISCELLANEOUS

Investigating officers.

38. (1) The Commission may designate any of its employees to be investigating officers for the purposes of this Act.

(2) Investigating officers shall carry out their functions under this Act subject to such directions as the Commission may give them.

(3) The Commission shall cause every investigating officer to be furnished with a certificate of appointment, which the investigating officer shall exhibit on demand by any interested person before carrying out any function under this Act.

Power of entry and inspection.

39. (1) An investigating officer may at all reasonable times and on the production of a search warrant obtained from a court of law —

(a) enter any premises on or which there is reasonably suspected to be any book, record or document relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation;

(b) require any person upon the premises —

(i) to disclose all information at the person's disposal; and

(ii) to produce any book, record or document or copy thereof or extract therefrom,

that may relate, in any way, to any anti-competitive trade, unfair trade practice, merger, takeover or monopoly situation referred to in paragraph (a); and

(c) make copies of or take extracts from any book, record or documents referred to in paragraph (b).

(2) Any person who, without lawful excuse —

(a) hinders or prevents an investigating officer from exercising any power under subsection (1);

(b) fails or refuses to comply with any requirement of an investigating officer under subsection (1); or

(c) upon being required under subsection (1) to disclose any information, fails or refuses to do so or provides information that is false or which that person does not believe, on reasonable grounds, to be true,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeni or to imprisonment to a term not exceeding two years or to both.

Appeals.

40. The Commission shall have power to issue orders or directives it deems necessary to secure compliance with this Act or its decisions and any person aggrieved by a decision of the Commission made under this Act or under any regulations made hereunder may, within thirty

days after the date on which a notice of that decision is served on that person, appeal to the Court.

Operation of order.

41. Where an appeal is brought against any decision of the Commission any final or interim directive or order of the Commission based on such decision shall remain in force pending the determination of the appeal, unless the Court otherwise orders.

Offences and penalties.

42. (1) Any person who —
- (a) contravenes or fails to comply with any provision of this Act, or any directive or order lawfully given, or any requirement lawfully imposed under this Act for which no penalty is provided;
 - (b) omits or refuses —
 - (i) to furnish any information when required by the Commission to do so; or
 - (ii) to produce any documents when required to do so by a notice sent by the Commission; or
 - (c) knowingly furnishes any false information to the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand Emalangeni or to imprisonment to a term not exceeding 5 years or to both.

(2) Where the offence is committed by a body corporate, every director and officer of such body corporate, or if the body of persons is a firm, every partner of that firm, shall be guilty of that offence, provided that such director, officer or partner shall not be guilty of the offence if he/she proves, on a balance of probability that such offence was committed without his/her knowledge or consent, or that he/she exercised all due diligence to prevent the commission of the offence.

Regulations.

43. The Minister may, on the advice of the Commission, make regulations for carrying into effect the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for —

- (a) anything required to be prescribed under, or for the purposes of, this Act including penalties to be imposed for infringements of this Act;
- (b) any forms required for the purposes of this Act;
- (c) fees payable in respect of any service provided by the Commission; and
- (d) the prescription of levies which the Commission may impose in respect of its services.