

THE FAIR TRADING BILL, 2006

EXPLANATORY NOTE

(These notes form no part of the Bill, but are intended only to indicate its general purport)

The Bill seeks, *inter alia*, to establish a Fair Trading Commission (hereinafter referred to as “the Commission”), to promote and maintain effective competition in the economy and to ensure that competition is not distorted, restricted or prevented in Trinidad and Tobago to the detriment of the community. It would also establish a Community Competition Commission that would deal with issues involving anti-competitive conduct in another member state which has the effect of lessening competition in Trinidad and Tobago.

PART I

Preliminary

Clause 1 of the Bill would contain the short title of the Bill and provides that the Act shall come into operation on such day as is fixed by the President by Proclamation.

Clause 2 contains interpretation section and is self-explanatory.

Clause 3 would exclude the application of the Act to activities of employees, collective bargaining, activities of professional associations, and other business activities declared by the Minister by Order subject to affirmative resolution of Parliament.

PART II

The Fair Trading Commission

Clause 4 would provide for the establishment of a Fair Trading Commission.

Clause 5 would specify the functions of the Commission and those functions are generally to undertake investigations in relation to the conduct of business activities in Trinidad and Tobago.

Clause 6 would empower the Commission to apply to the Court for a determination of contraventions of the Act.

Clause 7 would specify the manner in which investigations of complaints are conducted. The Commission is required to serve on all relevant parties written notice of

initiation of an investigation. Once the investigation is completed, the Commission is required to prepare a report and furnish a copy to the relevant parties who will be entitled to make their submissions.

Clause 8 would specify the powers of the Commission with regard to investigation. Such powers are to require the production of documents, the verification of documents by affidavit and to summon and examine witnesses on oath. This clause would also require the Commission to afford to persons likely to be affected by its decision an opportunity to be heard on their behalf.

Clause 9 would empower the Commission to authorize “authorized officers” to search any premises with warrants issued by a Magistrate for the purpose of inspecting and removing documents related to its investigation.

Clauses 10, 11 and 12 would create certain offences related to the performances of the powers of the Commissions.

PART III

Mergers, Anti-Competitive Agreements and Monopolies

Clause 13 would define “mergers” for the purposes of the Act.

Clause 14 would prohibit all anti-competitive mergers but would enable the Commission to grant permission for mergers of enterprises if the proposed mergers are not detrimental to the consumer or to the economy. This clause would empower the Commission to take steps for the determination of mergers which have been effected without obtaining permission under clause 14

Clause 15 would provide that companies would be deemed to have merged where a director serves on the Board of Directors of two or more companies that are significant competitors and the director is likely to weld together the policies of those companies in such a way as to reduce competition.

Clause 16 would empower the Commission to initiate an investigation into joint ventures and other types of mergers for which no permission has been granted.

Clause 17 would provide special definitions of agreements which would be considered to be anti-competitive agreements and which are prohibited under this Act.

Anti-Competitive Agreements

Clause 18 would create the offence of entering into or giving effect to horizontal agreements or vertical agreements.

Clause 19 would enable the Commission to agree with businesses which have entered into anti-competitive agreements before the coming into operation of the Act to phase out and terminate the agreements.

Monopolies

Clause 20 would provide that an enterprise would have monopoly power in a market if by itself or together with an inter-connected body corporate, it occupies such a position of economic strength as would enable it to operate in the market without effective constraints from its competitors or potential competitors.

Clause 21 would provide that an enterprise which has monopoly power, abuses that power if it impedes the maintenance or development of effective competition in a market. This clause would also provide several examples of how an enterprise may abuse its monopoly power.

Clause 22 would empower the Commission to initiate an investigation if it has reason to believe that an enterprise has monopoly power in a market and has abused or is abusing that power. However an investigation would not be initiated unless the Commission is satisfied that the enterprise concerned controls more than forty per-cent of the market.

Clause 23 would require the Commission to prepare a report at the end of the investigation indicating the practices that constitute abuse of monopoly power and empower the Commission to request the cessation of those practices by the enterprises concerned within six months.

Clause 24 would enable the enterprise to submit to the Commission a time table for the removal of monopoly power.

Clause 25 would enable the Commission to apply to the High Court for an Order if there is a failure on the part of the enterprises to abide by the undertaking.

PART IV

Constitution of the Commission

Clause 26 would provide that the Commission shall consist of not less than three or not more than five Commissioners appointed by the President. It also provides for the Chairman to be appointed by the President.

Clause 27 would provide for the term of office of the Commissioners to be for a period not exceeding five years.

Clause 28 would empower the President to terminate the term of office of a Commissioner under specified circumstances.

Clause 29 would oblige the Chairman and Members of the Commission to subscribe to the oath of office.

Clause 30 would provide for temporary appointments.

Clause 31 would provide for the President to determine the remuneration of the Commissioners.

Clause 32 would provide that any member of the Commission may resign by letter addressed to the President.

Clause 33 would exempt the Commissioners from personal liability for any act done in good faith.

Clause 34 would require the Commissioners to declare their interest if they have any interest in the matters under investigation.

PART V

Staff of the Commission and related matters

Clause 35 would provide for the appointment of an Executive Director.

Clause 36 would provide for the appointment of a Secretary.

Clause 37 would provide for the appointment of authorized officers.

Clause 38 would provide for the appointment of staff of the Commission.

Clauses 39 and 40 would provide for the transfer of officers from the public service to the Commission on secondment and related matters.

Clause 41 would provide for the maintenance of pension rights of officers of the Commission and related matters.

PART VI

Finance, Report and Audit

Clause 42 would provide for the sources of Funds and resources of the Commission and the purposes for which the funds may be spent.

Clause 43 would require the Commission to maintain proper accounts and have them audited. This clause would also require the Minister to present to Parliament the Annual Report and the audited statement of Accounts of the Commission.

PART VII
Powers of the Court

Clause 44 would empower the Court to have the jurisdiction to hear and determine applications made to it by the Commission, appeals made against an order of the Commission by an aggrieved party and appeals made by the Regulated Industries Commission. The Court would be vested with the power to impose fines.

Clause 45 would provide for the aggrieved person to apply to the Court for the deferment of the order made by the Commission. The Court is empowered to order deferment.

Clause 46 would provide for the procedure for instituting appeals with the Tribunal.

PART VIII
Community Competition Commission

Clauses 47 would enable the Commission to refer to the Community Competition Commission any matter which involves anti-competitive conduct in a member state.

Clause 48 would specify the powers of the Community Competition Commission.

Clause 49 would detail the effect of the decisions of the Community Competition Commission.

PART IX
Miscellaneous and General

Clause 50 would provide for the maintenance of confidentiality.

Clause 51 would provide for hearing of the Court to be in public or in camera where the Court is of the opinion that any particular hearing should be in camera.

Clause 52 would empower the Minister to make regulations on the advice of the Commission to give effect to the Act. This clause would also empower the Rules Committee of the Supreme Court to make rules for any proceedings in any matter concerning the Court or Court of Appeal.

A BILL

An Act to provide for the establishment of a Fair Trading Commission,
to promote and maintain fair competition in the economy,
and for related matters.

Enactment Enacted by the Parliament of Trinidad and Tobago as follows:-

PART I

PRELIMINARY

Short title and
commencement

1. This Act may be cited as the Fair Trading Act, 2006
and shall come into operation on such day as is fixed by the
President by Proclamation.

Interpretation
and application

2. In this Act –

“authorized officer” means any person
appointed by the Commission under
section 37 ;

“Chairman” means the Chairman of the
Commission appointed as such, under
section 26(2);

“Commission” means the Fair Trading
Commission established under section
4;

“Commissioner” means the Commissioner
appointed under section 26(1);

“Community Competition Commission”
means the Commission established
under Article 167 of the Revised
Treaty of Chaguaramas Establishing
the Caribbean Community Including
the CARICOM Single Market and
Economy.

“Court” means the High Court, established
under the Supreme Court of Judicature
Act;

“document” includes electronic records;

“enterprise” means an individual, partnership or body (corporate or incorporate) engaged in business;

“Executive Director” means the officer appointed under section 35(1);

“market” means the available supply of specified goods and services for consumption in Trinidad and Tobago or for export from Trinidad and Tobago as well as such other goods or services which as a matter of fact or commercial sense are substitutable for them;

“Minister” means the Minister to whom responsibility for trade is assigned except as otherwise provided in this Act;

“merger” has the meaning assigned to it in section 13(1);

“person” includes a body corporate;

“Regulated Industries Commission” means the Regulated Industries Commission established under the Regulated Industries Commission Act, 1998.

No. 26 of 1998

Non-application
of Act

3.(1) This Act shall not apply to –

- (a) combinations or 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) the entering into of an agreement in so far as it contains a provision relating to

the use, licence or assignment of rights under or existing by virtue of any copyright, patent (other than patent rings) or trade mark;

- (d) any act done to give effect to a provision of any agreement referred to in paragraph (c);
- (e) activities of professional associations designed to develop or enforce professional standards of competition reasonably necessary for the protection of the public;
- (f) activities expressly authorized or required under any treaty or agreement to which Trinidad and Tobago is a party;
- (g) companies which fall within the purview of the Telecommunications Authority Act, 2001;
- (h) banks and non-bank financial institutions which fall within the purview of the Securities Industry Act, 1995; or
- (i) such other business or activity declared by the Minister by Order subject to affirmative resolution of Parliament.

Act No.4 of 2001

Act No. 32 of 1995

(2) The Act shall apply to public utilities within the meaning of the Regulated Industries Commission Act, 1998 save that the responsibility for enforcement of this Act in respect of public utilities shall be that of the Regulated Industries Commission.

(3) Where a merger or an anti-competitive agreement would fall within the purview of the Commission in circumstances where any of the companies involved is a public utility the Regulated Industries Commission shall not make any decision before it consults with the Commission.

PART II
THE FAIR TRADING COMMISSION

Establishment, powers and functions of the Commission

Commission
established and
incorporated

4. There is hereby established for the purpose of performing such duties and functions as are conferred upon it by this Act and by any other written law, a body corporate constituted in accordance with Part IV and hereafter called “the Commission”.

Functions of
Commission

5(1) The functions of the Commission are to –

(a) carry out subject to section 9, on its own initiative or at the request of any interested person such–

(i) investigations in relation to the conduct of business, as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act and the extent of such practices; and

(ii) other investigations as may be requested by any interested person or as it may consider necessary or desirable in connection with matters falling within the provisions of this Act”.

(b) 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;

(c) investigate on its own initiative or at the request of any person adversely affected and take such action as it considers necessary with respect to the abuse of a monopoly power by any enterprise; and

(d) carry out such other duties as may be prescribed by or pursuant to the Act.

(2) It shall be the duty of the Commission -

(a) to make available -

- (i) to persons engaged in business, general information with respect to their rights and obligations under this Act; and
- (ii) for the guidance of consumers, general information with respect to their rights and obligations under this Act or affecting the interests of consumers;
- (b) to undertake studies and publish reports and information regarding matters affecting the interests of consumers; and
- (c) to co-operate with and assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

General powers

6. For the purpose of discharging its functions under section 5, the Commission may make an application to the Court for the determination of a contravention of this Act.

Investigation of complaints

7.(1) In pursuance of its functions under section 5(a) the Commission may investigate the affairs of a business enterprise –

- (a) if after consideration of a complaint from any person, that the business enterprise is acting in contravention of this Act, the Commission is of the opinion that it is necessary that the affairs of such an enterprise should be investigated;
- (b) on its own initiative having regard to facts available to it, it is of the opinion that the business enterprise is acting in contravention of this Act; or
- (c) in accordance with regulations made by the Minister under section 53(2).

(2) The Commission shall serve on all relevant parties written notice of its intention to initiate an investigation under this Act in the form prescribed in the Second Schedule.

Second Schedule

(3) At the end of each investigation, the Commission shall prepare a report and furnish a copy of the report to the relevant parties to enable them to make their submissions within such period as the Commission may specify.

(4) The Commission shall prepare a final report of each investigation which shall include the submissions if any, made by the relevant parties and the comments of the Commission on those submissions.

Powers of the Commission with regard to investigation

8.(1) For the purpose of conducting any investigation with regard to the discharge of any of its functions under this Act, the Commission shall have the power to –

- (a) require the production of documents for examination;
- (b) require any document to be submitted to the Commission to be verified by affidavit; and
- (c) summon and examine witnesses on oath.

First Schedule

(2) All summonses for the attendance of witnesses or other persons or for the production of documents for the purpose of an investigation under this Act, shall be in the form given in the First Schedule and shall be signed by one of the Commissioners.

(3) All persons summoned to attend and give evidence, or produce books of accounts, minutes of meetings, or any documents at any sitting of the Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the High Court.

(4) Before making any decision consequent upon any investigation, the Commission shall hear any person who is likely to be affected by its decision.

(5) The Commission shall unless the circumstances warrants a hearing in camera, conduct all hearing in public.

(6) At any stage of an investigation under this Act, the Commission may discontinue the investigation if it is of the opinion that the matter does not justify further investigation.

(7) Where the Commission discontinues an investigation, under subsection (6) the parties who were involved in the investigation shall be so informed and the Commission shall give reasons for the discontinuation of the investigation.

Power of search

9.(1) For the purpose of ascertaining whether any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of this Act, the Commission shall apply to a Magistrate for a warrant to require an authorized officer to -

- (a) enter and search any premises; or
- (b) inspect and remove for the purpose of making copies, any documents or take extracts thereof.

(2) The authorized officer shall not enter any premises for the purpose of this Act, except with the warrant issued by the Magistrate.

(3) The Commission or the authorized officer shall, within fourteen days of the date of removal of any document under this section return the document to the person from whom they were taken.

(4) Any person who obstructs or impedes an authorized officer in the performance of his duties under this section is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

Offences against the Commission

10. A person who –

- (a) refuses or fails, without sufficient cause, to attend a sitting at the time and place specified in the summons served on him;
- (b) attends, but leaves any sitting of the Commission without the permission of the Commissioners;
- (c) refuses without sufficient cause to produce any books of accounts, minutes of meetings or documents in his possession or under his control and mentioned or referred to in the summons served on him;

- (d) at any sitting of the Commission wilfully insults any Commissioner or any officer of the Commission or wilfully interrupts the proceedings of the Commission;
- (e) fails to provide evidence as requested; or
- (f) makes a complaint to the Commission that a business enterprise is acting in contravention of this Act and the Commission finds the complaint to be vexatious, frivolous or malicious,

is liable on summary conviction to a fine of ten thousand dollars.

Destruction of records

11. A person who alters any record or destroys any record likely to be required for any investigation that has commenced under this Act, is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

Obstruction of investigation

12. A person who in any manner impedes, prevents or obstructs any investigation by the Commission under this Act, is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

PART III

MERGERS, ANTI-COMPETITIVE AGREEMENTS AND MONOPOLIES

MERGERS

13(1) Merger means the cessation of two or more enterprises from being distinct whether by purchase or lease of shares or assets, amalgamation, combination, joint venture or any other means through which influence over the policy of another enterprise is acquired.

(2) An anti-competitive merger is a merger which restricts or distorts competition in a market.

Mergers and qualifying mergers

14.(1) Subject to the provisions of this section from the commencement of this Act –

- (a) all anti-competitive mergers are prohibited; and

(b) enterprises shall not enter into a merger unless they obtain permission from the Commission where-

(i) their assets exceed fifty million dollars;
and

(ii) at least one of the enterprises carries on or intends to carry on business in
Trinidad and Tobago.

(2) Within one month of receipt of an application under paragraph(1)(b), or within such period as the Minister may by Order prescribe, the Commission shall make its determination whether to grant permission or not and inform the applicant enterprise of its determination.

(3) Where the Commission does not make a determination within one month or the prescribed period, the Commission shall be deemed to have granted approval for the merger.

(4) Before granting permission for a merger, the Commission shall –

(a) satisfy itself that the proposed merger would not affect competition or would not be detrimental to the consumer or the economy;
and

(b) consult with the Securities Exchange Commission to ensure that the procedure required under the Securities Industry Act, 1995 for mergers has been followed.

(5) The Minister may by Order vary the assets limit specified in subparagraph (1)(b)(i).

Interlocking
directorship

15. Where a director serves on the Board of Directors of two or more companies that are competitors and the director is likely to weld together the policies of those companies in a way that would reduce or eliminate competition between them, the companies in which he serves as director shall, subject to section 14(1) (b) apply to the Commission for permission to merge.

Order for
divestment

16.(1) Where the commission has reason to believe that two or more enterprises have merged and the enterprises have not obtained permission for the merger, the commission shall initiate an investigation into the matter.

(2) Where after investigation of the matter, the Commission is of the opinion that enterprises have structured themselves in such a way that they have merged within the meaning of this Part without the permission of the Commission as required under section 14, the Commission may apply to the Court for an Order for divestment of assets under section 44(1).

(4) At any time before the Commission makes an application for an Order under section 44 (1), the Commission and the enterprise may agree that the enterprise would divest within an agreed period, part of their combined business or operations, if the Commission is satisfied that such divestment would make the merger less likely to lessen competition in Trinidad and Tobago.

(5) An enterprise which fails to keep the undertaking given under subsection (4), is liable upon summary conviction to a fine of twenty-five thousand dollars and to a fine of one thousand dollars for each day the offence continues after conviction.

ANTI-COMPETITIVE AGREEMENT AND PRACTICES

Definition of
the Anti-
competitive
agreement
and practices

17.(1) An Agreement which -

- (a) fixes prices directly or indirectly other than in circumstances where the agreement is reasonably necessary to protect the interests of the parties concerned and not detrimental to the interests of the public;
- (b) limits or controls markets, technical development or investment;
- (c) shares markets or sources of supply;
- (d) applies dissimilar conditions to equivalent transactions and thus places some trading partners at a disadvantage to others; and
- (e) makes contracts subject to extraneous conditions,

is an anti-competitive agreement and is prohibited under this Act.

(2) Any decision or concerted practice of an association of enterprises, the object of which is the prevention, restriction or distortion of competition, is anti-competitive and prohibited under this Act.

(3) Where the Commission is of the opinion that an agreement, practice or decision is anti-competitive the Commission shall apply to the Court for an Order under section 44 (1) to determine the agreement, decision or practice is anti-competitive .

(4) An individual or company who has suffered loss as a result of an anti-competitive agreement may apply to the Court for damages.

Horizontal and vertical agreements

18.(1) It is an offence for groups of two or more businesses to enter into or give effect to a horizontal agreement which -

- (a) restricts, distorts or prevents competition;
- (b) has the object or effect of monopolizing the market in Trinidad and Tobago; or
- (c) fixes prices of commodities and services unreasonably high.

(2) For the purpose of this section “horizontal agreement” means an agreement between two or more businesses whose relationship is that of actual or potential competitors.

(3) It is an offence for two or more businesses to enter into or give effect to vertical agreements which have the effect of fixing prices.

(4) For the purpose of this section “vertical agreement” means an agreement between two or more businesses whose relationship is that of actual or potential customers, dealers or suppliers.

Transitional competitive amnesty

19.(1) Where an enterprise is party to or engaged in an anti-agreement or practice before the coming into force of this Act-

- (a) the enterprise shall notify the Commission within one month thereafter of the details of the anti-competitive agreement or practice;

- (b) the Commission may apply to the Court for an Order to determine the agreement or practice.

(2) At any time before the Commission applies for an Order under section 44(1), the Commission and the enterprise may enter into an agreement as to the manner and time table, for the phasing out or the termination of the anti-competitive agreement or practice.

(3) An enterprise which fails to terminate the anti-competitive agreement or practice within the time agreed to with the Commission, is liable on summary conviction to a fine of one hundred thousand dollars.

MONOPOLIES

Monopoly power

20. For the purposes of this Act-

- (a) an enterprise has monopoly power in a market, if by itself or together with an interconnected body corporate, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors; and
- (b) any two bodies corporate are to be treated as interconnected if one of them is a subsidiary of the other, or if both of them are subsidiaries of the same body corporate.

Abuse of monopoly power

21.(1) An enterprise which has monopoly power, abuses that power if it impedes the maintenance or development of effective competition in a particular market.

(2) Without prejudice to the generality of the foregoing, an enterprise abuses monopoly power if it –

- (a) restricts the entry of any person into that or any other market;
- (b) prevents or deters any person from engaging in competitive conduct in that or any other market;
- (c) eliminates or removes any person from that or any other market;

- (d) directly or indirectly imposes unfair purchase or selling prices;
- (e) limits production of goods or services to the prejudice of consumers;
- (f) makes the conclusion of agreements subject to acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements;
- (g) engages in exclusive dealing;
- (h) engages in market restriction; or
- (i) engages in tied selling.

(3) An enterprise shall not be treated as abusing monopoly power-

- (a) if it is shown that –
 - (i) its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress; and
 - (ii) consumers were allowed a fair share of the resulting benefits; and
- (b) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark.

(4) For the purposes of this section -

“exclusive dealing” means –

- (a) any practice whereby a supplier of goods, as a condition of supplying the goods to a customer requires that customer to -

- (i) deal only or primarily in goods supplied by or designated by the supplier or his nominee; or
 - (ii) refrain from dealing in a specified class or kind of goods except as supplied by the supplier or his nominee; and
- (b) any practice whereby a supplier of goods induces a customer to meet a condition referred to in paragraph (a), by offering to supply the goods to the customer on more favourable terms or conditions if the customer agrees to meet that condition;

“market restriction” means any practice whereby a supplier of goods, as a condition of supplying the goods to a customer, requires that customer to supply any goods only in a defined market, or exacts a penalty of any kind from the customer if he supplies any goods outside a defined market;

“tied selling” means –

- (a) any practice whereby a supplier of an article, as a condition of supplying the article (hereinafter referred to as “the article”) to a customer, requires the customer to -
 - (i) acquire any other article from the supplier or his nominee;
 - (ii) refrain from using or distributing, in

conjunction with the tied article, another article that is not of a brand or manufacturer designated by the supplier or the nominee; and

- (b) any practice whereby a supplier of an article induces a customer to meet a condition set out in paragraph (a), by offering to supply the tied article to the customer on more favourable terms or conditions if the customer agrees to meet that condition.

Investigations
re. abuses of
monopoly
power

22.(1) Where the Commission has reason to believe that an enterprise has monopoly power in a market and has abused or is abusing that power, the Commission shall initiate an investigation into the matter after issue of the Notice in the Form of the Second Schedule.

(2) The Commission shall not investigate an enterprise under this section, unless it is satisfied that the enterprise controls forty per cent of the market or more or such percentage as the Minister may by Order prescribe.

(3) For the purposes of subsection (2), an enterprise controls more than forty per cent of a market if -

- (a) where the market relates to the supply of goods or services of any description -
 - (i) forty percent (or the percentage prescribed) of all the goods or services of that description which are supplied in Trinidad and Tobago are supplied by or to that enterprise; or
 - (ii) forty percent (or the percentage prescribed) of all the goods or services of that description which are supplied in Trinidad and Tobago are supplied by or to a group of interconnected

bodies corporate and the enterprise is part of that group;

- (b) where the market relates to the export of goods of any description from Trinidad and Tobago -
- (i) forty per-cent (or the percentage prescribed) of all the goods of that description which are produced in Trinidad and Tobago are produced by that enterprise; or
 - (ii) forty per-cent (or the percentage prescribed) of all the goods of that description which are produced in Trinidad and Tobago are produced by a group of interconnected bodies corporate and the enterprise is part of that group,

and in those cases monopoly power shall be taken to exist both in relation to exports of goods of that description from Trinidad and Tobago generally and in relation to exports of goods of that description from Trinidad and Tobago to each country taken separately.

Order for
cessation of
monopoly
practice

23. At the end of each investigation the Commission shall prepare a report indicating the practices that constitute the abuse of monopoly power if any and submit same to the enterprise concerned with a request for the enterprise to cease the abusive practice within six months.

Time-table for
cessation of
monopoly power

24. Where within thirty days of receipt of the request, the enterprise concerned submits to the Commission the measures it would take and the timetable for giving effect to measures to remove the monopoly power it has on the market, and the Commission is satisfied of that undertaking, it shall so inform the enterprise in writing.

Application for an Order

25. Where the enterprise does not comply with the request under section 23 or does not fulfill the undertaking given under section 24, the Commission may apply to the High Court for an Order under section 44(1).

PART IV **CONSTITUTION OF THE COMMISSION**

Constitution of the Commission

26.(1) The Commission shall consist of not less than three nor more than five Commissioners appointed by the President from among persons appearing to him to be qualified by reason of their knowledge and experience in the fields of law, economics, accountancy, business or management.

(2) The President shall appoint a Commissioner as the Chairman of the Commission.

(3) All matters relating to the meetings of the Commission shall be decided by its members.

(4) Meetings of the Commission and the quorum for such meetings shall be two persons.

Term of office of Commissioners

27. Appointments of Commissioners shall be for such period not exceeding five years at any one time as the President shall specify at the time of the appointment but the appointments of the Commissioners shall not all be due to expire at the same time.

Termination of appointment

28.(1) The President may terminate the appointment of a Commissioner if he –

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings the office of the Chairman or a member of the Commission into disrepute;
- (d) is guilty of misconduct in relation to his duties; or

- (e) fails to carry out any of the duties or functions conferred or imposed on him under this Act.

(2) The appointment of any person as Commissioner and the termination of office of any person as Commissioner whether by death, resignation, revocation, effluxion of time or otherwise, shall be published in the *Gazette*.

Oath of Office

29. The Chairman and members section 26(2) and (1) respectively shall make and subscribe to an oath before the President that they will faithfully and to the best of their ability, discharge their duties and perform their functions having regard to the trust and confidence reposed on them.

Temporary appointment

30. If a Commissioner is unable to perform his duties by reason of his illness or other cause, the President may appoint another person to act as Commissioner in his stead until the termination of the illness or other cause of the Commissioner.

Remuneration

31. A Commissioner shall, in respect of his office, be paid a remuneration and allowances as the President may determine.

Resignation

32. A member of the Commission may at any time resign his office by tendering an instrument in writing addressed to the President and forwarded through the Minister.

Personal liability

33. No personal liability shall attach to any Commissioner for -

- (a) any act or omission of the Commission; or
- (b) anything done or permitted in good faith in the course of the operations of the Commission under this Act.

Declaration of interest

34 .(1) A Commissioner who is in any way whether directly or indirectly interested in a matter being investigated by the Commission, shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest.

(2) The disclosure under subsection (1), shall be recorded in the minutes of the Commission, and the Commissioner shall -

- (a) not take part after the disclosure in any deliberation or decision of the Commission with respect to that matter; or

- (b) be disregarded for the purpose of constituting a quorum of the Commission.

(3) A Commissioner who fails to comply with the provisions of this section, is liable on summary conviction to a fine of twenty-five thousand dollars, unless the Commissioner proves that he did not know that he had an interest in the matter being investigated.

PART V

STAFF OF THE COMMISSION AND RELATED MATTERS

- | | |
|---|---|
| Executive Director | <p>35.(1) The Commission shall appoint for a term not exceeding five years on such terms and conditions as may be approved by the Minister, an Executive Director who shall be the Chief Executive Officer of the Commission.</p> <p>(2) The Executive Director shall subject to the general directions of the Commission and shall be responsible to the Commission for the supervision of the work and staff of the Commission.</p> <p>(3) The appointment of the Executive Director and the termination of his appointment, whether by death, resignation or otherwise shall be published in the <i>Gazette</i>.</p> |
| Secretary | <p>36. The Commission shall appoint a Secretary on such terms and conditions, as it thinks fit, subject to such maximum limit of remuneration as the Minister may determine by Order.</p> |
| Authorized officers | <p>37. The Commission shall appoint such number of authorized officers as may be necessary on such terms and conditions as it thinks fit, subject to such maximum limit of remuneration as the Minister may determine.</p> |
| Appointment of staff | <p>38. The Commission may appoint on such terms and conditions as it thinks fit and subject to such maximum limit of remuneration as the Minister may determine such employees as it considers necessary for the due and efficient exercise and performance of its functions under this Act.</p> |
| Transfer of officers of the Government to Commission on | <p>39.(1) Subject to subsection (2) and to the approval of the Commission, the appropriate Service Commission and the officer, in any office in the Public Service may be transferred on</p> |

secondment secondment to the service of the Commission or from the service of the Commission to the Public Service.

(2) A period of transfer on secondment shall not in any case exceed three years.

Transfer of officers of Government to the Commission 40. Subject to the approval of the Commission, the appropriate Service Commission and the officer, an officer in the public service may be transferred to the service of the Commission and upon such transfer shall become a member of any pension scheme operated for the benefit of employees of the Commission.

Pension rights 41.(1) The Commission shall provide for the establishment and maintenance of a pension scheme or arrange for membership in a scheme for its employees upon terms to be agreed upon between the Commission and the relevant representative association or trade union.

(2) Without prejudice to subsection (1), the Commission may, under a pension scheme -

- (a) establish a contributory superannuation scheme and establish and contribute to a superannuation fund for the benefit of its employees;
- (b) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees;
- (c) enter into and carry into effect arrangements with any insurance company or other association or company for securing for any employee or surviving spouse or dependant, such gratuities, pensions or allowances as are authorized by this section; and
- (d) give donations or subscriptions to charitable institutions, benevolent funds and other objects calculated to benefit its employees.

PART VI

FINANCE, REPORT AND AUDIT

Funds of the Commission 42.(1) The funds and resources of the Commission shall consist of -

- (a) such amounts as may be appropriated by Parliament;
- (b) any grants for special purposes that may be made available by the Minister; and
- (c) any other moneys which may become payable to or vested in the Commission in respect of any matter incidental to its functions.

(2) The funds and resources of the Commission shall be applied to defray the following expenditure:

- (a) remuneration, fees and allowances of the Commissioners;
- (b) the salaries, fees, allowances and other payments due to the staff of the Commission;
- (c) capital and other operating expenses; including maintenance and insurance of any property of the Commission;
- (d) any other expenditure authorized by the Commission in the discharge of its duties, functions and contractual obligations; and
- (e) any other expenses authorized to be defrayed in the functioning of the Commission.

Accounts, audit and annual report

43.(1) The Commission shall -

- (a) keep proper accounts and records in respect of its transactions and affairs; and
- (b) in respect of each financial year, prepare a statement of accounts in a form which conforms with established commercial accounting practices.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by an auditor authorized by him for such purpose.

(3) Within three months of the beginning of the financial year, the Commission shall submit to the Minister, a

statement of its projected income and expenditure for the following financial year.

(4) The Commission shall, not later than 30th June in every year, submit to the Minister in respect of the preceding financial year -

- (a) a copy of the audited statement of accounts; and
- (b) an annual report in respect of the preceding year.

(5) The Minister shall cause a copy of the annual report and of the audited statement to be laid before Parliament within twenty-eight days of the receipt of the report and if Parliament is not then in session within twenty-eight days of its resumption.

(6) The financial year of the Commission shall be the financial year as defined in accordance with section 3 of the Constitution of the Republic of Trinidad and Tobago.

(7) Notwithstanding subsection (6), the Commission may, with the approval of the Minister, vary its financial year.

PART VII

POWERS OF THE COURT

Jurisdiction
of Court

44.(1) The Court shall have jurisdiction to hear and determine -

- (a) applications made by the Commission for an Order to -
 - (i) prohibit or restrict the transfer of shares;
 - (ii) prohibit an agreement, practice or decision for from being made or carried out;
 - (iii) terminate an agreement or practice;
 - (iv) prohibit the acquisition of the assets of one company by another company except such acquisition as are

permitted under mergers referred to in section 14;

- (v) require a company to divest specified assets or shares; or
- (vii) disqualify persistent offenders from serving as company directors;
- (b) reviews of any decision made by the Commission at the request of any party;
- (c) applications for deferment under section 45; and
- (d) appeals made by the Regulated Industries Commission, or any company falling within the purview of the Regulated Industries Commission.

(2) Where an enterprise contravenes any of the provisions of this Act, the Court may impose a fine not exceeding ten per-cent of the annual turnover of the enterprise concerned.

(3) In imposing the fine, the Court shall take into account -

- (a) its estimate of the economic cost of the agreement to the customers of the goods or services in question;
- (b) the time for which the agreement was in effect;
- (c) whether the commission of the offence under this Act, is the first offence; and
- (d) any other matter the Court may consider as having a bearing on the seriousness of the offence.

Applications
and Orders for
deferment

45.(1) Where the Commission has made a decision under section 16(1), an aggrieved person may apply to the Court for a deferment of the order on the grounds that it is unreasonable having regard to all the circumstances of the case, and the Court may make an Order for such deferment.

(2) An application for deferment under subsection (1), may be made whether or not an appeal against the order was filed at the time of the making of the application, save however, that the appeal shall be filed in accordance with the provisions of section 46.

(3) Where an appeal is not filed in accordance with section 46, an Order for deferment made under this section shall lapse at the expiry of the time for the filing of the appeal.

(4) On the determination of an appeal against the order made by the Commission, the Court may discharge the Order for deferment.

Appeals from
decisions of
the Court

46. The appellant or the Commission or other complainant or respondent, if dissatisfied with the decision of the Court may, within twenty-one days after the delivery of the decision or within such other time as may be prescribed, appeal against such decision in accordance with the Civil Proceedings Rules, 1998.

Hearing and
determination of
appeals

47.(1) Subject to subsection (2), the Court of Appeal may dispose of an appeal by -

- (a) dismissing it;
- (b) allowing it;
- (c) allowing it and modifying the decision or action of the Court ; or
- (d) allowing it and referring the decision or action back to the Court for reconsideration.

(2) The Court of Appeal may, in accordance with Rules made under section 53(1), make an Order for the payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof including costs incurred in the summoning and attendance of necessary witnesses.

PART VIII

COMMUNITY COMPETITION COMMISSION

Referrals to
Community
Competition

48.(1) Where an inquiry or investigation by the Commission involves anti- competitive conduct in another Member State, which has the effect of lessening competition in Trinidad and Tobago, the

Commission Commission shall under the hand of the Chairman refer the matter to the Community Competition Commission established under the Treaty.

(2) In referring the matter to the Community Competition Commission, the Chairman shall send all documents relevant to the enquiry or investigation.

(3) In this section “Member State” means a member state of the Community excluding an Associate Member within the meaning of Article 231 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Single Market and Economy.

Powers of Community Competition Commission 49.(1) The Community Competition Commission shall have the power to undertake such investigations as may be necessary in Trinidad and Tobago.

Commission (2) The Community Competition Commission shall, in relation to any matter referred to it or any request made to it under this Part, have the same powers of the Commission in Trinidad and Tobago given under Parts II and III of this Act .

Effect of decisions of Community Competition Commission 50. A decision of the Community Competition Commission under this Act shall be binding on all parties to which it relates and is enforceable in Trinidad and Tobago in accordance with Rules made by the Supreme Court under the Supreme Court of Judicature Act, as though it were a judgment of the High Court.

PART IX

MISCELLANEOUS AND GENERAL

Confidentiality 51.(1) The Commission and any person concerned with the administration of this Act shall regard as secret and confidential, all documents, information or matters disclosed in the administration of this Act except those disclosures which the Commission considers necessary in the discharge of its functions.

(2) It shall be an offence for any person in the service of the Commission to disclose to any other person who is not in the service of the Commission any trade secret of any business which may come to his knowledge in the course of discharging his duties under this Act.

(3) Any person who contravenes subsection (2) is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for two years.

Hearing normally
to be open to
the public

52. The proceedings of the Court shall be open to the public except in the case where the Court is of the opinion that the proceedings should be in camera.

Rules and
Regulations

53.(1) The Rules Committee of the Supreme Court may make rules –

- (a) for the registration and enforcement of a decision of the Community Competition Commission;
- (b) for any proceedings in any matter, under this Act concerning the Court or the Court of Appeal.

(2) The Minister may on the advice of the Commission make Regulations for giving effect to the provisions of this Act and in particular -

- (a) for any matter required to be prescribed;
- (b) to prescribe guidance to the Commission on the criteria for determining whether a proposed merger will affect competition or be detrimental to the consumer or the economy;
- (c) to prescribe guidance for the Commission determining that an enterprise has monopoly power;
- (d) to prescribe guidance to the Commission in the assessment of agreements, practices and decisions and determining abuses of monopoly power; and
- (e) for setting statutory time limits for the completion of investigations and reports thereon conducted by the Commission.

FIRST SCHEDULE

[Section 8(2)]

SUMMONS TO WITNESS

To A. B.[*name of person summoned, and his calling and residence*].

You are hereby summoned to appear before.....[*here name the commissioners*] appointed by the President to enquire[*state briefly the subject of enquiry*] at[*place*] upon theday of, 200, ato'clock, and to give evidence with respect to such enquiry. [*If the person summoned is to produce any documents, add*] and you are required to bring with you[*specify the books; plans, and documents required*]. Therefore fail not at your peril.

Given under the hand ofCommissioner thisday of, 2005.

.....
Commissioner.

SECOND SCHEDULE

[Section 7(2)]

THE FAIR TRADING ACT

NOTICE OF INTENTION TO INITIATE AN INVESTIGATION

under section 7(2) of the Fair Trading Act, 2006

From: The Fair Trading Commission

*To:
(names of the relevant parties)*

*Notice is hereby given that the Fair Trading Commission (“the Commission”) in
pursuance of the power given to it under section 7(2) of the Fair Trading Act, 2006 intends
to initiate an investigation in respect of
(details of the reason for the investigation)*

.....
.....

*Notice is also given that the Commission may in pursuance of the power given to it
under section 8(1)-*

- (a) require the production of documents for examination;*
- (b) require any document to be submitted to the Commission to be verified
by Affidavit; and*
- (c) commission and examine any witnesses on oath.*

*The Commission shall communicate with you further as to the date, time and
documents and/or other material required for the investigation.*

I confirm the above.

Speaker.

Passed in the Senate this day of , 2005 .

Clerk of the Senate.

I confirm the above.

President of the Senate.

20th January, 2006