

THE FAIR COMPETITION ACT

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SCHEDULE.

THE FAIR COMPETITION ACT

[9th March, 1993.]

Acts
9 of 1993,
22 of 2001,
36 of 2017
Sch.

1. This Act may be cited as the Fair Competition Act.

Short title.

PART I. *Preliminary*

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

Inter-
pretation.

(a) in relation to goods, includes obtain by way of gift, purchase or exchange, and by way of lease, hire or hire purchase;

(b) in relation to services, includes accept;

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services;

“agreement” includes any agreement, arrangement or understanding whether oral or in writing or whether or not it is or is intended to be legally enforceable;

“authorized officer” means any officer of the Commission authorized by the Commission to assist it in the performance of its functions under this Act;

“business” means any activity that is carried on for gain or reward or in the course of which goods or services are manufactured, produced or supplied, including the export of goods from Jamaica;

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

“consumer” means any person who is either—

(a) a person to whom goods are or are intended to be supplied in the course of a business carried on by the supplier or potential supplier;

(b) a person for whom services are supplied in the course of a business carried on by the supplier or potential supplier;

and who does not seek to receive the goods or services in the course of a business carried on by him;

“Court” means the Supreme Court;

“dealer” means a person carrying on a business of supplying goods, whether by wholesale or retail;

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S. 2.

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“employee” means a person who works under a contract of employment;

“enterprise” means any person who carries on business in Jamaica, but does not include a person who—

- (a) works under a contract of employment; or
- (b) holds office as director or secretary of a company and in either case is acting in that capacity;

“functions” includes powers and duties;

“goods” means all kinds of property other than real property, money, securities or choses in action;

“group”, where the reference is to a group of persons fulfilling specified conditions (other than the condition of being interconnected companies), means any two or more persons fulfilling those conditions, whether or not, apart from fulfilling them they would be regarded as constituting a group;

"group of interconnected companies" means a group consisting of two or more companies all of which are interconnected with each other;

"interconnected company" shall be construed in accordance with subsection (2) (a);

"price" includes any charge or fee, by whatever name called;

"service" means a service of any description whether industrial, trade, professional or otherwise;

"supply"—

(a) in relation to goods, includes supply or resupply by way of gift, sale, exchange, lease, hire or hire purchase;

(b) in relation to services, does not include the rendering of any services, under a contract of employment but includes—

(i) the performance of engagements, for gain or reward (including professional engagements) for any matter; and

(ii) the rendering of services to order, and the provision of services by making them available to potential users,

and "supplier" shall be construed accordingly;

"trade" means any trade, business, industry, profession or occupation, relating to the supply or acquisition of goods or services.

(2) For the purposes of this Act—

(a) any two companies are to be treated as interconnected companies if one of them is a company of which the other is a subsidiary or if both of them are subsidiaries of the same company;

(b) a group of interconnected companies shall be treated as a single enterprise.

(3) Every reference in this Act to the term "market" is a reference to a market in Jamaica for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

(4) References in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition.

(5) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including competition from goods or services supplied or likely to be supplied by persons not resident or carrying on business in Jamaica.

Application
of Act.

3. Nothing in this Act shall 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 or trade mark;
- (d) the entering into or carrying out of such an agreement or the engagement in such business practice, as is authorized by the Commissioner under Part V;
- (e) any act done to give effect to a provision of an arrangement referred to in paragraph (c);

- (f) activities expressly approved or required under any treaty or agreement to which Jamaica is a party;
- (g) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public;
- (h) such other business or activity declared by the Minister by order subject to affirmative resolution.

PART II. *The Fair Trading Commission*

4.—(1) There is hereby established for the purposes of this Act, a body to be called the Fair Trading Commission which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

Establish-
ment of
Commis-
sion.

(2) The provisions of the Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

Schedule.

5.—(1) The functions of the Commission shall be—

Functions
of the
Commis-
sion.
22/2001
S. 3.

- (a) to carry out, on its own initiative or at the request of any person such investigations or inquires in relation to the conduct of business in Jamaica 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;
- (b) to carry out such other investigations or inquires as may be requested by the Minister or as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;
- (c) to 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;

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S. 3.

- (d) to 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 dominant position by any enterprise; and
- (e) to carry out such other duties as may be prescribed by or pursuant to the Act.

(2) It shall be the duty of the Commissioner—

- (a) to make available—
 - (i) to persons engaged in business, general information with respect to their rights and obligations under this Act;
 - (ii) for the guidance of consumers, general information with respect to the rights and obligations of persons under this Act affecting the interests of consumers;
- (b) to undertake studies and publish reports and information regarding matters affecting the interests of consumers;
- (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.

Commission shall seek information.
22/2001
S. 4.

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

Powers of the Commission.

7.—(1) For the purposes of carrying out its functions under this Act, the Commission is hereby empowered 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;
- (e) adjourn any investigation or inquiry from time to time. 22/2001
S. 5.

(2) The Commission may hear orally any person who, in its opinion, will be affected by an investigation or inquiry under this Act, and shall so hear the person if the person has made a written request for a hearing, showing that he is an interested party likely to be affected by the result of the investigation or inquiry or that there are particular reasons why he should be heard orally. 22/2001
S. 5.

(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 him or services supplied by him as the Commission may think necessary to determine whether the conduct of the business in relation to the goods or services constitutes an uncompetitive practice.

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

8. Hearings of the Commission shall take place in public but the Commission may, whenever the circumstances so warrant, conduct a hearing in private. Hearings to be held in public.

9.—(1) The Minister may give to the Commission such directions of a general nature as the Minister considers necessary in the public interest as to the policy to be followed by the Commission. Minister may give directions.

(2) The Commission shall give effect to any directions given pursuant to subsection (1).

Powers of
entry and
search, etc.

10.—(1) Subject to this section, the Commission may, 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, require an authorized officer to enter and search any premises and inspect and remove for the purpose of making copies, any documents or extracts therefrom in the possession or under the control of any person.

(2) An authorized officer shall not exercise the powers conferred by subsection (1) unless he obtains a warrant authorizing him to exercise those powers in accordance with subsection (4).

(3) Where a Justice of the Peace is satisfied on information on oath that there is reasonable ground for believing that any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of this Act, the Justice of the Peace may by warrant under his hand, permit an authorized officer to exercise the powers conferred by subsection (1) in relation to any premises specified in the warrant, so, however, that such warrant shall not authorize the detention of a document for a period exceeding seven days.

(4) An authorized officer shall—

- (a) on entering any premises pursuant to a warrant issued under subsection (3), produce evidence of his authority to enter the premises and evidence of his identity;
- (b) upon completing a search authorized under this section, leave a receipt listing documents or extracts therefrom removed for the purposes of this section.

(5) The occupier or person in charge of any premises entered pursuant to this section shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his functions under this section.

11.—(1) At any stage of an investigation or inquiry under this Act, if the Commission is of the opinion that the matter being investigated or subject to inquiry does not justify further investigation or inquiry the Commission may discontinue the investigation or inquiry;

Discontin-
uance of
investiga-
tion.
22/2001
S.6(a)(i)(ii).

(2) The Commission shall, on discontinuing an investigation or inquiry, make a report in writing to the Minister stating the information obtained and the reason for discontinuing the investigation or inquiry.

22/2001
S.6(b)(i)(ii).
22/2001
S.6(b)(i)(ii).

Financial Provisions, Accounts and Reports

12. The funds of the Commission shall consist of—

Funds of
Commis-
sion.

- (a) such sums as may be appropriated by Parliament for the purposes of this Act;
- (b) any other moneys which may in any manner become payable to or vested in the Commission in respect of any matter incidental to his functions.

13.—(1) The accounts of the Commission shall be audited annually by the Auditor-General or by any auditor or auditors approved by him and a statement of accounts so audited shall form part of the annual report referred to in section 14 (1).

Accounts
and audit.

(2) The Commission shall, in each year, before a date specified by the Minister—

- (a) submit to the Minister a statement of accounts audited in accordance with subsection (1);

- (b) submit to the Minister for approval estimates of revenue and expenditure for the financial year next following.

Reports.

14.—(1) The Commission shall, within three months after the end of each financial year, or within such longer period as the Minister may in special circumstances allow, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Commission during the preceding financial year.

(2) The Commission may from time to time furnish to the Minister a report relating to any particular matter or matters investigated, or being investigated which, in the opinion of the Commission, require the special attention of the Minister.

(3) The Minister shall cause a copy of a report submitted under this section to be laid on the Table of the House of Representatives and of the Senate.

Appointment of Staff

Appointment of Executive Director, Secretary and other employees.

15.—(1) The Commission shall appoint and employ an Executive Director who shall hold office for a period of seven years and may be re-appointed for periods not exceeding five years at a time.

(2) The Executive Director shall be in charge of the day to day management of the Commission.

(3) Subject to subsection (4), the Executive Director shall receive such emoluments and be subject to such terms and conditions of service as may from time to time be prescribed by or under any law or by a resolution of the House of Representatives.

(4) The emoluments and terms and conditions of service of the Executive Director, other than allowances

that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

(5) The emoluments for the time being payable to the Executive Director by virtue of this Act shall be charged on and paid out of the Consolidated Fund.

(6) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such other officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act:

Provided that—

(a) no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister; and

(b) no appointment shall be made without the prior approval of the Minister to any post to which a salary in excess of the prescribed rate is assigned.

(7) In subsection (6) "the prescribed rate" means a rate of \$100,000 per annum or such higher rate as the Minister may, by order, prescribe.

(8) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government to any office with the Commission, and any officer so appointed shall, during such appointment, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

16. The Commission may enter into arrangements respecting schemes, whether by way of insurance policies or not, for medical benefits, pensions, gratuities and other retiring or disability or death benefits relating to employees

Pensions,
gratuities
and other
retiring
benefits.

of the Commission and such arrangements may include provisions for the grant of benefits to the dependants and the legal personal representatives of such employees.

PART III. *Control of Uncompetitive Practice*

Provisions
of agree-
ment having
effect of
lessening
competi-
tion.

17.—(1) This section applies to agreements which contain provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market.

(2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that—

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) affect tenders to be submitted in response to a request for bids;
- (e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts,

being provisions which have or are likely to have the effect referred to in subsection (1).

(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable.

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V or which the Commission is satisfied—

(a) contributes to—

(i) the improvement of production or distribution of goods and services; or

(ii) the promotion of technical or economic progress,

while allowing consumers a fair share of the resulting benefit;

(b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or

(c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

18.—(1) For the purposes of this Act, a provision of an agreement is an exclusionary provision if—

Agreements containing exclusionary provisions void.

(a) the agreement is entered into or arrived at between persons of whom any two or more are in competition with each other; and

(b) the effect of the provision is to prevent, restrict or limit the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons either generally or in particular circumstances or in particular conditions, by all or any of the parties to the agreement or, if a party is a company, by an interconnected company.

(2) For the purposes of subsection (1), a person is in competition with another person if that person or any inter-

connected company is, or is likely to be or, but for the relevant provision, would be or would be likely to be, in competition with the other person or with an interconnected company, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.

(3) No person shall give effect to an exclusionary provision of an agreement.

Existence
of dominant
position.

19. For the purposes of this Act an enterprise holds a dominant position in a market if by itself or together with an interconnected company, 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.

Abuse of
dominant
position.

20.—(1) An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular but without prejudice to the generality of the foregoing, 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 or other uncompetitive practices;
- (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.

(2) An enterprise shall not be treated as abusing a dominant position—

(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 benefit;

(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.

21.—(1) Where the Commission finds that an enterprise has abused or is abusing a dominant position and that such abuse has had, is having or is likely to have the effect of lessening competition substantially in a market, the Commission shall—

Action in
relation to
abuse of
dominant
position.
22/2001
S. 7.

(a) notify the enterprise of its finding; and

(b) direct the enterprise to take such steps as are necessary and reasonable to overcome the effects of abuse in the market concerned.

(2) In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of lessening competition substantially in a market, the Commission shall consider whether the practice is a result of superior competitive performance.

(3) For the purposes of this section, an act is not an uncompetitive practice if it is engaged in pursuant only to the exercise of any right or enjoyment of an interest

derived under any Act pertaining to intellectual or industrial property.

PART IV. *Resale Price Maintenance*

Collective Resale Price Maintenance

Collective
agreements
by sup-
pliers pro-
hibited.

22.—(1) It is unlawful for any two or more enterprises, being suppliers of goods, to enter into or carry out any agreement by virtue of which they undertake—

- (a) to withhold supplies of goods from dealers (whether parties to the agreement or not) who resell or have resold goods in breach of any condition as to the price at which those goods may be resold;
- (b) to refuse to supply goods to such dealers except on terms and conditions which are less favourable than those applicable in the case of other dealers carrying on business in similar circumstances;
- (c) to supply goods only to persons who undertake or have undertaken to do any of the acts described in paragraph (a) or (b).

(2) It is unlawful for any two or more enterprises referred to in subsection (1) to enter into or carry out any agreement authorizing—

- (a) the recovery of penalties (however described) by or on behalf of the parties to the agreement from dealers who resell or have resold goods in breach of any such condition as described in subsection (1) (a); or
- (b) the conduct of any proceedings in connection therewith.

Collective
agreement
by dealers.

23.—(1) It is unlawful for any two or more enterprises, being dealers in any goods, to enter into or carry out any agreement by which they undertake—

(a) to withhold orders for supplies of goods from suppliers (whether parties to the agreement or not)

(i) who supply or have supplied goods without imposing such a condition as is described in section 22 (1) (a); or

(ii) who refrain or have refrained from taking steps to ensure compliance with such conditions in respect of goods supplied by them; or

(b) to discriminate in their handling of goods against goods supplied by those suppliers.

(2) It is unlawful for any two or more enterprises referred to in subsection (1) to enter into or carry out an agreement authorizing—

(a) the recovery of penalties (however described) by or on behalf of the parties to the agreement from the suppliers referred to in subsection (1); or

(b) the conduct of any proceedings in connection therewith.

24. Sections 22 and 23 apply in relation to an association whose members consist of or include—

Application of sections 22 and 23 to associations.

(a) enterprises which are suppliers or dealers in any goods; or

(b) representatives of such enterprises, as they apply to an enterprise.

Individual Minimum Resale Price Maintenance

25.—(1) Any term or condition of an agreement for the sale of goods by a supplier to a dealer is void to the extent that it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods in Jamaica.

Minimum resale price maintained by contract or agreement.

(2) Subject to subsections (3) and (4), it is unlawful for a supplier of goods (including an association or person acting on behalf of such supplier) to—

- (a) include in an agreement for the sale of goods, a term or condition which is void by virtue of this section;
- (b) require, as a condition of supplying goods to a dealer, the inclusion in the agreement of any term or condition, or the giving of any undertaking to the like effect;
- (c) notify to dealers, or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods in Jamaica.

(3) Paragraph (a) of subsection (2) does not affect the enforceability of an agreement except in respect of the term or condition which is void by virtue of this section.

(4) Nothing in paragraph (c) of subsection (2) shall be construed as precluding a supplier (or an association or person acting on behalf of a supplier) from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods supplied or to be supplied by the supplier.

Patented
goods under
section 25.

26.—(1) Section 25 applies to patented goods (including goods made by a patented process) as it applies to other goods.

(2) Notice of any term or condition which is void by virtue of section 25, or which would be so void if included in an agreement relating to the sale of any such goods, is of no effect for the purpose of limiting the right of a dealer to dispose of those goods without infringement of the patent.

(3) Nothing in section 25 and in this section affects the validity, as between the parties and their successors, of any term or condition—

(a) of a licence granted by the proprietor of a patent or by a licensee under any such licence; or

(b) of any assignment of a patent,
so far as it regulates the price at which goods produced or processed by the licensee or assignee may be sold by him.

27.—(1) It is unlawful for a supplier to withhold supplies of any goods from a dealer seeking to obtain them for resale on the ground that the dealer—

Maintenance of minimum resale prices by other means.

(a) has sold goods obtained either directly or indirectly from that supplier, at a price below the resale price or has supplied such goods either directly or indirectly to a third party who had done so; or

(b) is likely, if the goods are supplied by him, to sell them at a price below that price, or supply them either directly or indirectly to a third party who would be likely to do so.

(2) In this section “the resale price”, in relation to a sale of any description, means—

(a) any price notified to the dealer or otherwise published by or on behalf of a supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description; or

(b) any price prescribed or purporting to be prescribed for that purpose by an agreement between the dealer and any such supplier.

(3) Where under this section it would be unlawful for a supplier to withhold supplies of goods, it is also un-

lawful for him to cause or procure any other supplier to do so.

Interpreta-
tion.

28.—(1) For the purposes of this Part, a supplier of goods shall be treated as withholding supplies from a dealer—

- (a) if he refuses or fails to supply those goods to the order of the dealer;
- (b) if he refuses to supply those goods to that dealer except at prices, or on terms or conditions as to credit, discount or other matters, which are significantly less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or
- (c) if, although he enters into an agreement to supply goods to the dealer, he treats him in a manner significantly less favourable than that in which he normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the agreement.

(2) A supplier shall not be treated as withholding supplies of goods on any ground mentioned in section 27 (1) if, in addition to that ground, he has other grounds which, standing alone, would have led him to withhold those supplies.

(3) Subject to subsection (4), if, in proceedings brought against a supplier of goods in respect of a contravention of section 27 (1), it is proved that supplies of goods were withheld by the supplier from a dealer, and it is further proved that—

- (a) during a period ending immediately before the supplies were so withheld, the supplier was doing business with the dealer or was supplying goods of

the same description to other dealers carrying on business in similar circumstances; and

- (b) the dealer, to the knowledge of the supplier, had within the preceding six months acted as described in section 27 (1) (a) or had indicated his intention to act as described in section 27 (1) (b) in relation to the goods in question,

it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had so acted or was likely so to act.

(4) Subsection (3) does not apply where the proof that supplies were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods supplied or to be supplied.

PART V. *Authorizations*

29.—(1) Subject to subsection (2), any person who proposes to enter into or carry out an agreement or to engage in a business practice which in the opinion of that person, is an agreement or practice affected or prohibited by this Act, may apply to the Commission for an authorization to do so.

Grant of
authoriza-
tion.

(2) In respect of an application under subsection (1), the Commission—

- (a) may notwithstanding any other provision of the Act, if it is satisfied that the agreement or practice, as the case may be, is likely to promote the public benefit grant an authorization subject to such terms and conditions as it thinks fit; or
- (b) may refuse to grant an authorization and if it does so, the Commission shall inform the applicant in writing of its reasons for refusal.

Effect of
authoriza-
tion.

30. While an authorization granted under section 29 remains in force, nothing in this Act shall prevent the person to whom it is granted from giving effect to any agreement or any provision of an agreement or from engaging in any practice to which the authorization relates.

Revocation
of authori-
zation.

31.—(1) Subject to subsection (2), the Commission may revoke or amend an authorization if it is satisfied that—

(a) the authorization was granted on information that was false or misleading;

(b) there has been a breach of any terms or conditions subject to which the authorization was granted.

(2) The Commission shall, before revoking or amending an authorization, serve on the relevant applicant a notice in writing specifying the default and inform him of his right to apply to the Commission to be heard on the matter within such time as may be specified in the notice.

Register of
authori-
zations.

32.—(1) The Commission shall keep a register, in such form as it may determine, of authorizations granted under this Part.

(2) The register shall be kept at the office of the Commission and shall be available for inspection by members of the public at all reasonable times.

PART VI. *Exclusive Dealing, Tied Selling and Market Restriction*

Exclusive
dealing.

33.—(1) 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 subparagraph (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—

22/2001
S. 8.

- (a) any practice whereby a supplier of goods or services, as a condition of supplying the goods or services (in this section referred to as "tied goods" or "tied services", respectively) to a customer, requires the customer to—
- (i) acquire any other goods or services from the supplier or his nominee; or
 - (ii) refrain from using or distributing, in conjunction with the tied goods any other goods that are not of a brand or manufacture designated by the supplier or his nominee; or
- (b) any practice whereby a supplier of goods or services induces a customer to meet a condition set out in paragraph (a) by offering to supply the tied goods or tied services to the customer on more favourable terms or conditions if the customer agrees to meet that condition.

(2) Where on investigation the Commission finds that an enterprise is engaging in tied selling, the Commission shall prohibit that enterprise from so doing.

(3) Where on investigation the Commission finds that exclusive dealing or market restriction, because it is engaged in by a major supplier of goods in a market or because it is widespread in a market, is likely to—

(a) impede entry into or expansion of an enterprise in the market;

(b) impede introduction of goods into or expansion of sales of goods in the market; or

(c) have any other exclusionary effect in the market, with the result that competition is or is likely to be lessened substantially, the Commission may prohibit that supplier from continuing to engage in market restriction or exclusive dealing and to take such other action as, in the Commission's opinion, is necessary to restore or stimulate competition in relation to the goods.

(4) The Commission shall not take action under this section where, in its opinion, exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of goods into a market or of new goods into a market and this section shall not apply in respect of exclusive dealing or market restriction between or among interconnected companies.

PART VII. *Offences against Competition*

34.—(1) A person who is engaged in the business of producing or supplying goods or supplying services shall not, directly or indirectly—

Price fixing.

22/2001
S. 9(a).

- (a) by agreement, threat, promise or any like means, attempt to influence upward or discourage the reduction of, the price at which any other person supplies or offers to supply or advertises goods or services;

22/2001
S. 9(a).

- (b) refuse to supply goods or services to or otherwise discriminate against any other person engaged in business;

22/2001
S. 9(a).

- (c) refuse to supply goods or services to or otherwise discriminate against any other person engaged in business because of the low pricing policy of that other person.

22/2001
S. 9(a).

(2) Subsection (1) does not apply where the person attempting to influence the conduct of another person and that other person are—

- (a) interconnected companies; or
(b) principal and agent.

(3) For the purposes of this section, a suggestion by a producer or supplier of goods of a resale price or minimum resale price in respect thereof, however arrived at, is proof of an attempt to influence the person to whom the suggestion is made, unless it is proved that the person making the suggestion, in so doing, also made it clear to the person to whom it was made that he was under no obligation to accept it and would in no way suffer in his business relations with the person making the suggestion or with any other person if he failed to accept the suggestion.

(4) For the purposes of this section, the publication by a supplier of goods other than a retailer, of an advertisement that mentions a resale price for the goods is an attempt to influence

upward the selling price of any person into whose hands the goods come for resale unless the price is so expressed as to make it clear to any person who becomes aware of the advertisement that the goods may be sold at a lower price.

Conspiracy.

35.—(1) No person shall conspire, combine, agree or arrange with another person to—

- (a) limit unduly the facilities for transporting, producing, manufacturing, storing or dealing in any goods or supplying any service;
- (b) prevent, limit or lessen unduly, the manufacture or production of any goods or to enhance unreasonably the price thereof;
- (c) lessen unduly, competition in the production, manufacture, purchase, barter, sale, supply, rental or transportation of any goods or in the price of insurance on persons or property;
- (d) otherwise restrain or injure competition unduly.

(2) Nothing in subsection (1) applies to a conspiracy, combination, agreement or arrangement which relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public—

- (a) in the practice of a trade or profession relating to the service; or
- (b) in the collection and dissemination of information relating to the service.

Bid-rigging.

36.—(1) Subject to subsection (2), it is unlawful for two or more persons to enter into an agreement whereby—

- (a) one or more of them agree or undertake not to submit a bid in response to a call or request for bids or tenders; or
- (b) as bidders or tenderers they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves.

(2) This section shall not apply in respect of an agreement that is entered into or a submission that is arrived at only by companies each of which is, in respect of everyone of the others, an affiliate.

37.—(1) A person shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or for the purpose of promoting, directly or indirectly, any business interest, by any means— Misleading advertising.

- (a) make a representation to the public that is false or misleading or is likely to be misleading in a material respect; 22/2001
S.10(a).
- (b) make a representation to the public in the form of a statement, warranty or guarantee of performance, efficacy or length of life of goods that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation;
- (c) falsely represent to the public in the form of a statement, warranty or guarantee that services are— 22/2001
S. 10 (b).
 - (i) of a particular kind, standard, quality, or quantity; or
 - (ii) supplied by a particular person or by a person of a particular trade, qualification or skill;
- (d) make a representation to the public in a form that purports to be—
 - (i) a warranty or guarantee of any goods; or
 - (ii) a promise to replace, maintain or repeat an article or any part thereof or to repeat or continue service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out;

- (e) make a materially misleading representation to the public concerning the price at which any goods or services or like goods or services have been, are or will be ordinarily supplied.

(2) For the purposes of paragraph (e) of subsection (1), a representation as to price to be construed as referring to the price at which the goods or services have been supplied generally in the relevant market unless it is clearly specified to be the price at which the goods or services have been supplied by the person by whom or on whose behalf the representation is made.

(3) For the purposes of this section and section 38, the following types of representation shall be deemed to be made to the public by and only by the person who caused it to be expressed, made or contained, that is to say, a representation that is—

- (a) expressed on an article offered or displayed for sale;
- (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale;
- (c) expressed on a display in the place where the article is sold;
- (d) made in the course of selling the article to the ultimate consumer;
- (e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner made available to a member of the public.

(4) Where the person referred to in subsection (3) is outside of Jamaica, the representation shall be deemed to be made—

- (a) in the case described in paragraph (a), (b) or (e) of that subsection, by the person who imported the article; and
- (b) in a case described in paragraph (c) of that subsection, by the person who imported the display into Jamaica.

(5) Subject to subsections (3) and (4), every person who, for the purpose of promoting, directly or indirectly, the supply or use of any goods or any business interest, supplies to a wholesaler, retailer or other distributor of goods any material or thing that contains a representation of a kind referred to in subsection (1) shall be deemed to have made that representation to the public.

38. A person shall not, for the purpose of promoting, directly or indirectly, the supply or use of any goods, or for the purpose of promoting, directly or indirectly, any business interest—

Representation as to reasonable test and publication of testimonials.

- (a) make a representation to the public that a test as to the performance, efficacy or length of life of the goods has been made by any person; or
- (b) publish a testimonial with respect to the goods, unless he can establish that—
 - (i) the representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, as the case may be; or
 - (ii) before the representation or testimonial was made or published, it was approved and permission to make or publish it was given in writing by the person who made the test or gave the testimonial, as the case may be,

and it accords with the representation or testimonial previously made, published or approved.

Double
ticketing.

39. A person shall not supply any article at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the article in the quantity in which it is so supplied at the time at which it is so supplied—

- (a) on the article, its wrapper or container;
- (b) on anything attached to, inserted in or accompanying the article, its wrapper or container or anything on which the article is mounted for display or sale; or
- (c) on a display or advertisement at the place at which the article is purchased.

Sale at
bargain
price.

40.—(1) For the purposes of this section, "bargain price" means—

- (a) a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or
- (b) a price so represented in an advertisement, that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the goods advertised or like articles are ordinarily sold.

22/2001
S. 11.

(2) A person shall not advertise at a bargain price, goods or services which he does not supply in reasonable quantities having regard to the nature of the market in which he carries on business, the nature and size of the business carried on by him and the nature of the advertisement.

(3) Subsection (2) does not apply where the person who is advertising proves that—

- (a) he took reasonable steps to obtain in adequate time a quantity of the article that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond his control that he could not reasonably have anticipated;
- (b) he obtained a quantity of the article that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed his reasonable expectations; or
- (c) after he became unable to supply the article in accordance with the advertisement, he undertook to supply the same article or equivalent article of equal or better quality at the bargain price and within a reasonable time to all persons who requested the article and who were not supplied therewith during the time when the bargain price applied and that he fulfilled the undertaking.

41.—(1) A person who advertises goods for sale or rent in a market shall not, during the period and in the market to which the advertisement relates, supply goods at a price that is higher than that advertised.

Sale above
advertised
price.

(2) This section shall not apply in respect of—

- (a) an advertisement that appears in a catalogue or other publication in which it is prominently stated that the prices contained therein are subject to error if the person establishes that the price advertised is in error;

- (b) an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement.

(3) For the purposes of this section, the market to which an advertisement relates shall be deemed to be the market to which it could reasonably be expected to reach, unless the advertisement defines market specifically by reference to a geographical area, store, sale by catalogue or otherwise.

Obstruction
of investi-
gation.
22/2001
S. 12.

42. A person who in any manner impedes, prevents or obstructs an investigation or inquiry by the Commission under this Act or an authorized officer in the execution of his duties under this Act is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Destruction
of records,
etc.

43. Every person who—

- (a) refuses to produce any document, record or thing, or to supply any information, when required to do so by the Commission under this Act; or
- (b) destroys or alters or causes to be destroyed or altered, any document, record or thing required to be so produced or in respect of which a warrant is issued under this Act,

22/2001
S. 13.

is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Giving false
or mislead-
ing infor-
mation to
Commis-
sion.
22/2001
S. 14.

44. Any person who gives to the Commission or an authorized officer any information which he knows to be false or misleading is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

45. Any person who—

- (a) refuses or fails to comply with a requirement of the Commission under this Act;
- (b) having been required to appear before the Commission—
 - (i) without reasonable excuse refuses or fails so to appear and give evidence;
 - (ii) refuses to take an oath or make an affirmation as a witness;
 - (iii) refuses to answer any question put to him,

Failure to
attend and
give
evidence.

is guilty of an offence and liable on conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

22/2001
S. 15.

PART VIII. *Enforcement, Remedies and Appeals*

46. If the Court is satisfied on an application by the Commission that any person—

- (a) has contravened any of the obligations or prohibitions imposed in Part III, IV, VI or VII; or
- (b) has failed to comply with any direction of the Commission,

Application
for enforce-
ment.

the Court may exercise any of the powers referred to in section 47.

47.—(1) Pursuant to section 45 the Court may—

- (a) order the offending person to pay to the Crown such pecuniary penalty not exceeding one million dollars in the case of an individual and not exceeding five million dollars in the case of a person other than an individual;

Powers of
Court.

- (b) grant an injunction restraining the offending person from engaging in conduct described in paragraph (a) or (b) of section 45,

in respect of each contravention or failure referred to in section 45.

(2) *In exercising its powers under this section the Court shall have regard to—*

- (a) the nature and extent of the default;
- (b) the nature and extent of any loss suffered by any person as a result of the default;
- (c) the circumstances of the default;
- (d) any previous determination against the offending person.

(3) The standard of proof in proceedings under this section and section 46 shall be the standard of proof applicable in civil proceedings.

Civil
liability.

48.—(1) Every person who engages in conduct which constitutes—

- (a) a contravention of any of the obligations or prohibitions imposed in Parts III, IV, VI or VII;
- (b) aiding, abetting, counselling or procuring the contravention of any such provision;
- (c) inducing by threats, promises, or otherwise the contravention of any such provision;
- (d) being knowingly conceived in or party to any such contravention; or
- (e) conspiring with any other person to contravene any such provision,

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

(2) An action under subsection (1) may be commenced at any time within three years from the time when the cause of action arose.

49.—(1) Any person who is aggrieved by a finding of the Commission may within fifteen days after the date of that finding, appeal to a Judge in Chambers.

Appeals
against
finding of
Commis-
sion.

(2) The Judge in Chambers may—

- (a) confirm, modify or reserve the findings of the Commission or any part thereof; or
- (b) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section, the Judge shall—

- (a) advise the Commission of his reasons for doing so; and
- (b) give to the Commission such directions as he thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(4) In reconsideration of the matter, the Commission shall have regard to the Judge's reasons for giving a direction under subsection (1) and the Judge's directions under subsection (3).

50. Where an appeal is brought against any findings of the Commission any directions or order of the Commission based on such findings shall remain in force pending the determination of the appeal, unless the Judge otherwise orders.

Operation
of order
pending
determina-
tion of
appeal.

PART IX.—*General*

Exemption
from in-
come tax,
stamp
duties,
transfer tax
and customs
duty.

51.—(1) The income of the Commission shall be exempt from income tax.

(2) The Commission shall be exempt from stamp duty on all instruments executed by it or on its behalf.

(3) There shall be exempt from taxation under the Transfer Tax Act any transfer by the Commission of property belonging to it or of any right or interest created in, over or otherwise with respect to any such property.

36/2017
Sch.

(4) No customs duty or other similar impost (other than general consumption tax) shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the Commission and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Commission in the performance of its functions.

Regulations.

52. The Commission may, with the approval of the Minister, make regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations—

- (a) prescribing the procedure to be followed in respect of applications and notices to, and proceedings of, the Commission;
- (b) prescribing any other matters which are required by this Act to be prescribed.

Powers of
Commis-
sion to
prohibit
disclosure of
information,
documents
and evidence.

53.—(1) The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the operations of the Commission.

(2) Every person who publishes or communicates any such information, documents or evidence the publica-

tion of which is prohibited by the Commission under subsection (1) is guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

54. Subject to any provision to the contrary in or under this or any other Act, this Act binds the Crown.

Application
to the
Crown.

SCHEDULE

(Section 4)

The Fair Trading Commission

Constitution of Commission.

1.—(1) The Commission shall consist of such number of persons not being less than three nor more than five as the Minister may from time to time appoint.

(2) The Executive Director shall be a member *ex officio* of the Commission.

Appointment of directors.

2.—(1) The members referred to in paragraph 1 (1) shall be appointed by the Minister by instrument in writing.

(2) A member other than the Executive Director, shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years, as the Minister may specify in the instrument appointing the member and each member shall be eligible for reappointment.

Chairman.

3. The Minister shall appoint one of the members of the Commission referred to in paragraph 1 (1) to be chairman thereof.

Acting appointments.

4. If the chairman or any other member of the Commission is absent or unable to act, the Minister may appoint any person to act in the place of the chairman or other member.

Resignations.

5.—(1) Any member other than the chairman or the Executive Director may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of that instrument, that member shall cease to be a member of the Commission.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date on which the Minister receives that instrument.

Revocation of appointments.

6. The Minister may terminate the appointment of any member other than the Executive Director if such member—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) is convicted and sentenced to a term of imprisonment;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under this Act; or
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Commission.

Gazetting of appointments.

7. The names of all members of the Commission as first constituted and every change of membership shall be published in the *Gazette*.

8. The Minister may, on the application of any member other than the Executive Director, grant leave of absence to the member.

Leave of absence.

9.—(1) The seal of the Commission shall be kept in the custody of the Executive Director or the secretary and shall be affixed to instruments pursuant to a resolution of the Commission, in the presence of the Executive Director or any other member of the Commission, and the secretary thereof.

Seal and execution of documents.

(2) The seal of the Commission shall be authenticated by the signatures of the Executive Director or any other member authorized to act in that behalf, and the secretary.

(3) All documents other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Executive Director or any other member of the Commission authorized to act in that behalf, and the secretary.

10.—(1) The Commission shall meet as often as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Commission may determine.

Procedure and meetings.

(2) The Chairman may at any time call a special meeting of the Commission, and shall call a special meeting to be held within seven days of receipt of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman shall preside at all meetings of the Commission, and if the chairman is absent from a meeting the members present and constituting a quorum shall elect one of their number to preside at the meeting.

(4) The quorum of the Commission shall be three.

(5) The decisions of the Commission shall be by a majority of votes, and in addition to an original vote the chairman or other person presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Commission shall be kept and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

(7) Subject to the provisions of this Schedule the Commission may regulate its own proceedings.

11. A member who is directly or indirectly interested in any matter which is being dealt with by the Commission—

Disclosure of interest.

(a) shall disclose the nature of his interest at a meeting of the Commission; and

(b) shall not take part in any deliberation or decision of the Commission with respect to that matter.

**Protection
of Commission.**

12. No act done or proceeding taken under this Act shall be questioned on the ground—

- (a) of the existence of any vacancy in the membership of, or any defect in the constitution of the Commission; or
- (b) of any omission, defect or irregularity not affecting the merits of the case.

**Protection
of members.**

13.—(1) No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done *bona fide* in the course of carrying out the provisions of this Act.

(2) Where any member is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would be if that member were a servant or agent of the Commission.

**Remunera-
tion of
members.**

14. There shall be paid from the funds of the Commission to the chairman and other members of the Commission such remuneration whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

**Office of
member
other than
Executive
Director,
not public
office.**

15. The office of a member other than the Executive Director shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.