

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

(2) Subsection (1) (a) does not apply where the enterprise attempting to influence the conduct of another enterprise and that other enterprise are interconnected enterprises or, as the case may be, principal and agent.

(3) For the purposes of this section, the publication by a supplier of goods or services other than a retailer of an advertisement that mentions a resale price for the goods or service is an attempt to influence upward the selling price of any enterprise into the hands of which goods or services 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 or services may be sold at a lower price, or is clearly marked as being a suggested retail price.

Conspiracy.

40. (1) No enterprise 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 the provision of services 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 services or in the price of insurance on persons or property;
- (d) otherwise unduly restrain or injure competition.

(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.

41. (1) Subject to subsection (2), it is unlawful for two or more enterprises to enter into an agreement whereby –

- (a) one or more of them agree to undertake not to submit a bid in response to a call or request for bids or tenders; or
- (b) as bidders or tenders 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 enterprises each of which is, in respect of every one of the others, an affiliate.

Misleading
advertising.

42. (1) An enterprise shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or any business interest, by any means –

- (a) make a representation to the public –
 - (i) that is false or misleading or likely to be misleading in a material respect;
 - (ii) in the form of a statement, warranty or guarantee of performance, efficacy or length of life of goods or services that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation;
 - (iii) in a form that purports to be a warranty or guarantee of any goods or services or a promise to replace, maintain or repair 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, guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out;
- (b) falsely represent to the public in the form of a statement, warranty or guarantee that services are of a particular kind, standard, quality or quantity, or are supplied by any particular person or by any person of a particular trade, qualification or skill;

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- (c) 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 this section and section 43, the following types of representation shall be deemed to be made to the public by and only by the enterprise 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.

(3) Where the enterprise referred to in subsection (2) is outside of Guyana, the representation shall be deemed to be made –

- (a) in a case described in subsection (2) (a), (b) or (e), by the enterprise that imported the article; and
- (b) in a case described in subsection (2) (c), by the enterprise that imported the display into Guyana.

(4) Subject to subsection (3) and this section, every enterprise that, for the purpose of promoting, directly or indirectly, the supply or use of any goods or services or any business interest, supplies to a wholesaler, retailer or other distributor of goods or services, 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.

Representation
as to test and
publication of
testimonials.

43. An enterprise shall not, for the purpose of promoting, directly or indirectly, the supply or use of any goods or services or any business interest, 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 enterprise or publish a testimonial with respect to the goods or services, unless it can establish that –

- (a) the representation or testimonial was previously made or published by the

enterprise by which the test was made or the testimonial was given, as the case may be; or

- (b) 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 enterprise which 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.

44. An enterprise 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.

45. (1) For the purposes of this section, "bargain price" means a price -

- (a) that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise;
- (b) 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 or services advertised or like articles are ordinarily sold.

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

(3) Subsection (2) does not apply where the enterprise that is advertising proves that -

- (a) it 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 its control that it could not reasonably have anticipated;
- (b) it 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 its reasonable expectations; or
- (c) after it became unable to supply the article in accordance with the advertisement, it 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 it fulfilled the undertaking; and
- (d) it took all reasonable steps to remove all the advertisements stating that the good or service was available at a bargain price once it became aware that it would not be able to supply that good or service in reasonable quantities at that price.

Sale above
advertised price.

46. (1) An enterprise that advertises goods or services for sale or rent in a market shall not, during the period and in the market to which the advertisement relates, supply goods or services at a price that is higher than that advertised.

(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 enterprise 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.

PART VII

Enforcement, Remedies and Appeals

Application for
enforcement.

47. If the High Court is satisfied on an application by the Commission that any enterprise has contravened any of the provisions of this Act, the High Court may exercise any of the powers referred to in section 48.

Powers of High
Court.

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

- (a) order the enterprise concerned to pay to the State such pecuniary penalty not exceeding one million dollars in the case of an individual and ten million dollars in the case of a person other than an individual; or
- (b) grant an injunction restraining the enterprise from engaging in conduct described in section 47,

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

(2) In exercising its powers under this section, the High 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 person.

(3) The standard of proof in proceedings under this section and section 47 shall be the standard of proof applicable in civil proceedings.

Fixed penalties.

49. (1) The Commission may, with the approval of the Director of Public Prosecutions give to any person who has committed an offence specified in this Act, a notice in the prescribed form offering that person immunity from prosecution for that offence on payment of a fixed penalty to the Commission.

(2) No person to whom a notice has been given under subsection (1) shall be prosecuted for the offence if the fixed penalty is paid in accordance with subsection (1) and by the date specified in that notice.

(3) Where a person is given a notice under this section, proceedings shall not be taken against that person for the offence until the expiration of fifteen days following the date of the notice or such longer period as may be specified in the notice.

(4) Payment of a fixed penalty under this section shall be made by the date specified in the notice, and the Commission shall issue a certificate in that behalf, which shall be conclusive evidence of the facts stated therein.

(5) A notice under subsection (1) shall-

(a) specify the offence alleged;

(b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;

(c) state-

(i) the period during which proceedings will not be taken in accordance with subsection (3);

(ii) the amount of the fixed penalty, the authorised officer to whom and the address at which the fixed penalty shall be paid.

(6) If any proceedings are brought against any person for an offence under this Act, or any regulation or order made thereunder, it shall be a defence if the person proves that the offence with which he is charged has been compounded under this section.

(7) If the Commission withdraws a notice issued under subsection (1). after payment of the fixed penalty, the amount shall be refunded and all liability discharged.

(8) The Commission may appoint authorised officers for the purposes of this section.

Civil liability.

50. (1) Every enterprise which engages in conduct which constitutes –

- (a) a contravention of any of the obligations or prohibitions imposed in Parts III, IV, or VI ;
 - (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 concerned 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.

Appeals.

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

(2) The Judge in Chambers may –

- (a) confirm, modify or reverse the Commission's finding 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 of the whole or any part of the matter that is referred for reconsideration.

(4) In reconsidering the matter, the Commission shall have regard to the Judge's reasons for giving a direction under subsection (2) and the Judge's direction under subsection (3).

Operation of
order pending
determination
of appeal.

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

PART VIII

The Community Competition Commission

References to
Community
Competition
Commission.

53.(1) Where the Commission seeks to determine whether conduct by an enterprise in another Member State prejudices trade or prevents, restricts or distorts competition in Guyana, the Commission shall refer the matter to the Community Competition Commission.

(2) The Minister may request the Community Competition Commission to cause an investigation to be carried out where he has reason to believe that business conduct by an enterprise located in another Member State prejudices trade or prevents, restricts or distorts competition in Guyana.

(3) A reference or request made under subsection (1) or (2) shall be in writing and