

(Published 31st December, 1998)

Act

No. 43 of 1998

I assent

BAKILI MULUZI  
PRESIDENT,  
30th December, 1998

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**An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to establish the Competition and Fair Trading Commission; to regulate and monitor monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to facilitate the expansion of the base of entrepreneurship and to provide for matters incidental thereto or connected therewith**

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Competition and Fair Trading Act, 1998, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Short title  
and com-  
mencement  
Interpretation

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

"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;

"affiliated" means associated with each other, formally or informally, by shareholding or otherwise;

"anti-competitive trade practices" means the trade practices enumerated in sections 32, 33 and 34;

"Chairman" means the Chairman of the Commission appointed under section 5;

"Committee" means a committee of the Commission established under section 14;

"consumer" includes any person—

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

(b) to whom a service is rendered;

"controlling interest", in relation to—

(a) any undertaking means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking;

(b) any asset, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

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

"distribution" includes any act by which goods are sold or services are supplied for consideration;

"distributor" means a person who engages in distribution;

"Executive Director" means the Executive Director of the Commission appointment under section 20;

"immediate family member", in relation to any person, means that person's spouse, child, parent, brother or sister;

"manufacturing" means transforming, on a commercial scale, raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products but does not include mining;

"member" means a member of the Commission;

"merger" means—

(a) the acquisition of a controlling interest in—

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

(ii) an asset which is or may be utilized for or in connexion with the production or distribution of any commodity,

where the person who acquires the controlling interest already has a controlling interest in any undertaking involved in the production or distribution of the same goods or services; or

(b) the acquisition of a controlling interest in any trade whose business consists wholly or substantially in—

(i) supplying goods or services to the person who acquires the controlling interest;

(ii) distributing goods or services produced by the person who acquires the controlling interest;

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

"person" includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether incorporated or not;

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

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

"supply"—

(a) in relation to goods, includes supply or re-supply 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;

"trade association" means a body of persons? whether incorporated or not, which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members and, for the avoidance of doubt, does not include a trade union as defined in the Labour Relations Act; and

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

(2) For the purpose of this Act—

(a) any two companies are to be treated as affiliated enterprises 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; and

(b) a group of affiliated enterprises shall be treated as a single enterprise.

(3) Every reference in this Act to the term "market" is a reference to a market in Malawi 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 Malawi.

3. Nothing in this Act shall apply to—

Non-applica-  
tion of the Act

(a) activities of employees for their own reasonable protection as employees;

(b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;

(c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;

(d) those elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

(e) any act done to give effect to a provision of an agreement referred to in paragraph (d);

(f) activities expressly approved or required under a treaty or agreement to which Malawi is a party;

(g) those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public; and

(h) such business or activity as the Minister may, by notice published in the *Gazette*, specify.

PART II — THE COMPETITION AND FAIR TRADING COMMISSION

Establishment  
of the  
Commission

4. There is hereby established a body to be known as the Competition and Fair Trading Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may by law do or perform.

Composition  
of the  
Commission

5. —(1) The Commission shall consist of—

(a) the following members nominated by the Minister and appointed by the President—

(i) two persons representing business interests;

(ii) a lawyer;

(iii) an economist;

(iv) an accountant; and

(v) two persons representing consumer interests.

(b) the following members *ex officio*—

(i) the Secretary to the Treasury or his representative;

(ii) the Secretary for Commerce and Industry or his representative; and

(iii) the General Manager of the Malawi Bureau of Standards or his representative.

(2) A representative of a member *ex officio* referred to in subsection (1) shall be designated by, or on behalf of, the member *ex officio* by a notice in writing to the Commission to attend the meetings of the Commission, and upon such designation such representative shall not attend to the business of the Commission by representation.

(3) The Chairman shall be elected by the Commission from among its members:

Provided that no member appointed under paragraph (b) of subsection (1) shall be elected as Chairman.

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

(5) The persons to be appointed under subsection (1) shall be chosen for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(6) A member shall not be in the employ of the Commission nor serve on a full time basis.

Tenure of  
office and  
vacancies

6. —(1) A member, other than a member *ex officio*, shall hold for a period of three years and shall be eligible for reappointment for another three-year term but the office of that member shall become vacant—

(a) if he resigns by giving one month notice in writing to the Minister;

(b) upon his death;

(c) if he is absent without valid excuse from three consecutive meetings of the Commission of which he has had notice;

(d) if he becomes an undischarged bankrupt;

(e) if he becomes of unsound mind; and

(f) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) On vacation office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 5 (1) (a) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

**7.** Members of the Commission shall be paid such an allowance as the Minister shall determine.

Allowances  
of members

**8.**—(1) It shall be the function of the Commission to regulate, monitor, control and prevent acts or behaviour which are likely to of the adversely affect competition and fair trading in Malawi.

Functions  
of the  
Commission

(2) Without derogation from the generality of subsection (1), the functions of the Commission shall be—

(a) to carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anti-competitive trade practices or unfair trading practices and the extent of such practices, if any;

(b) to carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;

(c) to take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by an enterprise;

(d) to provide persons engaged in business with information regarding their rights and duties under this Act;

(e) to provide information for the guidance of consumers regarding their rights under this Act;

(f) to undertake studies and make available public reports regarding the operation of this Act;

(g) to cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act;

(h) 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; and

(i) to do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

Commission shall seek information

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

Powers of the Commission

**10.** —(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; and

(e) adjourn any investigation from time to time.

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

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

(4) If the information specified in 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.

Hearings to be held in public

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

Policy directions

**12.** —(1) The Commission may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this part of the Act.

(2) Any direction given by the Minister under subsection (1) shall be in writing and published by the Commission in the *Gazette*.

Proceedings of the Commission

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

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

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

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(a) the Chairman; and

(b) in the absence of the Chairman such member as the Chairman may designate or such member as the members present and forming a quorum may elect from among their number for the purpose of that meeting.

(6) The decision of the Commission on any matter before any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(7) No member appointed under section 5 (1) (a) shall attend to the business of his office by representation.

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

Committees  
of the  
Commission

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

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

**15.** The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

Minutes of  
meetings

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

Disclosure  
of interest

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

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

Protection of  
members

Invited  
persons

**18.** —(1) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Commission or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 16 shall apply, *mutatis mutandis*, to a person or an officer attending a meeting of the Commission pursuant to subsection (1).

### PART III — SECRETARIAT

Secretariat  
of the  
Commission

**19.** The Secretariat of the Commission shall consist of the Executive Director and other employees of the Commission appointed under this Act.

Executive  
Director  
of the  
Commission

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

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

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

Provided that the person presiding at any meeting may for good cause, require the Executive Director or such other office to withdraw from such meeting.

(4) Section 16 shall apply, *mutatis mutandis*, to the Executive Director and of such other officer referred to in this section.

Other  
employees

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

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

Disclosure of  
interest by  
employees,  
etc.

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

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

**23.** Every—

- (a) member of the Commission;
- (b) member of a committee of the Commission;
- (c) employee of the Commission; and
- (d) consultant in the service of the Commission,

Oath of  
secrecy

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

**24.** —(1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, contents of any document, communication or information which relates to, and which has come to his knowledge in the course of his duties under this Act.

Prohibition of  
publication or  
disclosure of  
information by  
unauthorized  
persons

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, liable to a fine of K50,000 and to imprisonment for three years.

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

Protection of  
employees

#### PART IV — FINANCIAL PROVISIONS

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

- (a) be appropriated by Parliament for the purposes of the Commission;
- (b) be obtained as a result of the levy imposed under section 27;
- (c) be paid to the Commission by way of grants or donations;
- (d) be received by the Commission under subsection (2),
- (e) constitute proceeds of sales of the annual reports and progress reports of the Commission; and
- (f) otherwise vest or accrue to the Commission.

Funds of the  
Commission

(2) The Commission may—

- (a) accept money by way of grants or donations from any source in or outside Malawi;
- (b) subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes publications, seminars, documents, consultancy services and other services provided by the Commission.

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

- Levy **27.** The Commission may, from time to time, by order published in the *Gazette*, impose a levy and such levy shall be appropriated for the general operations of the Commission.
- Financial year **28.** The financial year of the Commission shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by Order published in the *Gazette*:
- Provided that the first financial year of the Commission may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months or more than eighteen months.
- Accounts **29.** —(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.
- (2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.
- Annual report **30.** —(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report—
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Commission may consider appropriate or as the Minister may direct.
- (3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.
- Progress reports **31.** The Commission shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the report.

#### PART V — ANTI-COMPETITIVE TRADE PRACTICES, ETC.

- Enumeration of anti-competitive trade practices **32.** —(1) Any category of agreements, decisions and concerted practices which are likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malawi or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited.
- (2) Subject to the provisions of subsection (1), enterprises shall refrain from the following acts or behaviour if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general—
- (a) predatory behaviour towards competitors including the use of cost pricing to damage,

hinder or eliminate competition;

(b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;

(d) making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee;

(e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;

(f) resale price maintenance; or

(g) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.

**33.** —(1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in the practices appearing in subsection (3):

Trade  
agreements

Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

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

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

(a) colluding in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in settling uniform price in order to eliminate competition;

(b) collusive tendering and bid-rigging;

(c) market or customer allocation agreements;

(d) allocation by quota as to sales and production;

(e) collective action to enforce arrangements;

(f) concerted refusals to supply goods or services to potential purchasers; or

(g) collective denials of access to an arrangement or association which is crucial to competition.

**34.** —(1) The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices and are prohibited—

Anti-competi-  
tive trade  
practices by  
associations

(a) unjustifiable exclusion from a trade association of any person carrying on or intending

to carry on in good faith the trade in relation to which the association is formed; or

(b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to—

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

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

(2) Any trade association which contravenes the provisions of subsection (1) commits an offence.

Control of mergers and takeovers

**35.** —(1) Any person who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself or his agent, participates in effecting—

(a) a merger between two or more independent enterprises;

(b) a takeover of one or more such enterprises by another enterprise, or by a person who control another such enterprise,

where such a merger or takeover is likely to result in substantial lessening of competition in any market shall be guilty of an offence.

(2) No merger or takeover made in contravention to subsection (1) shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

Application to the Commission for authorization

**36.** Any person may apply to the Commission for an order authorizing that person to effect a merger or takeover.

Investigation by the Commission

**37.** —(1) The Commission shall investigate any application made under section 36 and for that purpose the Commission shall be entitled to require any participant in the market within which a merger or takeover is proposed to take place to grant to the Commission access to records relating to patterns of ownership and percentages of sales accounted for by participants in the proposed merger or takeover or by other leading enterprises in the relevant sector.

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

Criteria for evaluating application for authorization

**38.** —(1) In evaluating an application under section 36, the Commission shall have due regard to the following criteria—

(a) a merger or takeover shall be regarded as disadvantageous to the extent that it is likely to reduce competition in the domestic market and increases the ability of producers of the goods or services in question to manipulate domestic prices, output and sales;

(b) a merger or takeover shall be regarded as advantageous to Malawi to the extent that it is likely to result in—

- (i) a substantially more efficient unit with lower production or distribution costs;
- (ii) an increase in net exports;
- (iii) an increase in employment;
- (iv) lower prices to consumers;
- (v) an acceleration in the rate of economic development;
- (vi) a more rapid rate of technological advancement by enterprises in Malawi.

(2) The Commission shall not authorize a merger or takeover unless on balance the advantages to Malawi outweigh the disadvantages.

**39.** —(1) The Commission shall, within forty-five days of receipt of an application or the date on which the applicants provide the information sought by the Commission if that date is later, make an order concerning an application for authorization of a merger or takeover.

Order of the Commission on mergers and takeovers

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

(3) The Commission shall cause an order made under subsection (1) to be published in the *Gazette* not later than fourteen days after it is made.

**40.** —(1) The Commission or any person in whose favour or for whose benefit an order has been made may lodge a copy of the order, certified by the Commission or a person authorized by the Commission, with the Registrar of the High Court and the Registrar shall forthwith record the order as a judgement of the High Court.

Enforcement of orders

(2) An order that has been recorded under subsection (1) shall, for the purposes of enforcement, the effect of a civil judgement of the High Court.

**41.** —(1) Any person that has a dominant position of market power shall not use that power for the purpose of—

Misuse of market power

(a) eliminating or damaging a competitor in that or any other market;

(b) preventing the entry of a person into that or any other market: or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

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

Monitoring concentrations of economic power, etc.

Unfair trading

**43.** —(1) A person shall not, in relation to a consumer—

(a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(b) exclude liability for defective goods;

(c) in connexion with the supply of goods or services, make any warranty—

(i) limited to a particular geographic area or sales point;

(ii) falsely representing that products are of a particular style, model or origin;

(iii) falsely representing that the goods are new or of specified age; or

(iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or service;

(e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;

(f) claim payment for unsolicited goods or services;

(g) engage in unconscionable conduct in carrying out trade in goods or services;

(h) engage in pyramid selling of goods and services,

(i) engage in bait selling;

(j) offer gifts or prizes with no intention of supplying them; and

(k) put out an advertisement which is misleading or deceptive.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

Authorization of allowable acts

**44.** —(1) The Commission may authorize any act, agreement or understanding which is not prohibited outright by this Act, that is, one which is not necessarily illegal unless abused if that act, agreement or understanding is consistent with the objectives of this Act and the Commission considers that, on balance, the advantage to Malawi outweigh the disadvantages.

(2) The Commission shall not authorize acts, agreements or understandings of a kind described in sections 33 (3), 41 (1) and 43 (1)

#### PART VI — MISCELLANEOUS PROVISIONS

Investigating officers

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

(2) Investigating officers shall carry out their functions under this Act subject to such

directions as the Commission may give them.

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

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

Powers of entry and inspection

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

(b) require any person upon the premises—

(i) to disclose all information at his disposal; and

(ii) to produce any book, record or document or copy thereof or extract therefrom, that may relate in any way to any anti-competitive trade practice, unfair trade practice, merger, takeover or monopoly situation referred to in paragraph (a); and

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

(3) Any person who, without lawful excuse—

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

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

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

shall be guilty of an offence and, upon conviction, be liable to a fine of K10,000 or to imprisonment for two years.

**47.** —(1) A member of the Commission or of a committee thereof, and every investigating officer and other person appointed or employed under this Act shall not disclose to any person, except in the performance of his functions under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

Secrecy to be observed

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, be liable to a fine of K10,000 or to imprisonment for two years.

**48.** —(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.

Appeal against finding of the Commission

(2) The Judge in Chambers may—

(a) confirm, modify or reverse 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 fit concerning the reconsideration of the matter by the Commission.

(4) In reconsideration of the matter, the Commission shall have regard to the Judge's reasons for giving a direction.

Operation of  
order pending  
determination  
of appeal

**49.** Where an appeal is brought against any finding 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.

Offences

**50.** Any person who—

(a) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder;

(b) omits or refuses—

(i) to furnish any information when required by the Commission to do so; or

(ii) to produce any document when required to do so by a notice sent by the Commission; or

(c) knowingly furnishes any false information to the Commission,  
shall be guilty of an offence.

Penalty for  
offences

**51.** A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K500,000 or of an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five years.

Civil liability

**52.** Any person who suffers injury, loss or harm as a result of any agreement, arrangement, undertaking, act or omission which is prohibited under this Act may recover damages by way of civil proceedings in the High Court from the person responsible for any such agreement, arrangement, undertaking, act or omission.

Regulations

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

(a) anything required to be prescribed under, or for the purposes of, this Act;

(b) any forms required for the purposes of this Act;

(c) fees payable in respect of any service provided by the Commission.

Government to  
be bound

**54.** This Act shall apply to and bind the Government.

Passed in Parliament this twenty-sixth day of November, one thousand, nine hundred and ninety-eight.

R. L. GONDWE  
*Clerk of Parliament*