

FAIR TRADING ACT

CHAPTER 81:13

Act
13 of 2006

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Note on Subsidiary Legislation

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CHAPTER 81:13

FAIR TRADING ACT

13 of 2006. **An Act to provide for the establishment of a Fair Trading Commission, to promote and maintain fair competition in the economy, and for related matters.**

Commencement.
[98/2007].

[26TH APRIL 2007]

PART I

PRELIMINARY

Short title.

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

Interpretation
and application.

2. In this Act—

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

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

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

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

“Community Competition Commission” means the Commission established under Article 171 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy;

Ch. 4:01.

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

“document” includes electronic records;

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

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

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

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

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

“person” includes a body corporate;

“Regulated Industries Commission” means the Regulated Industries Commission established under the Regulated Industries Commission Act. Ch. 54:73.

3. (1) This Act shall not apply to—

Non-application
of Act.

- (a) combinations or activities of employees for their own reasonable protection as employees;
- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- (c) the entering into of an agreement in so far as it contains a provision relating to the use, licence or assignment of rights under or existing by virtue of any copyright, patent (other than patent rings) or trade mark;
- (d) any act done to give effect to a provision of any agreement referred to in paragraph (c);
- (e) activities of professional associations designed to develop or enforce professional standards of competition reasonably necessary for the protection of the public;
- (f) activities expressly authorised or required under any treaty or agreement to which Trinidad and Tobago is a party;
- (g) companies which fall within the purview of the Telecommunications Authority Act;

Ch. 47:31.

- Ch. 83:02.
- (h) banks and non-bank financial institutions which fall within the purview of the Securities Industry Act; or
 - (i) such other business or activity declared by the Minister by Order subject to affirmative resolution of Parliament.

Ch. 54:73.

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

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

PART II

THE FAIR TRADING COMMISSION

ESTABLISHMENT, POWERS AND FUNCTIONS OF THE COMMISSION

Commission established and incorporated.

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

Functions of Commission.

5. (1) The functions of the Commission are to—
- (a) carry out subject to section 9, on its own initiative or at the request of any interested person such—
 - (i) investigations in relation to the conduct of business, as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act and the extent of such practices; and

- (ii) other investigations as may be requested by any interested person or as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;
 - (b) advise the Minister on such matters relating to the operation of this Act, as it thinks fit or as may be requested by the Minister;
 - (c) investigate on its own initiative or at the request of any person adversely affected and take such action as it considers necessary with respect to the abuse of a monopoly power by any enterprise; and
 - (d) carry out such other duties as may be prescribed by or pursuant to the Act.
- (2) It shall be the duty of the Commission—
- (a) to make available—
 - (i) to persons engaged in business, general information with respect to their rights and obligations under this Act; and
 - (ii) for the guidance of consumers, general information with respect to their rights and obligations under this Act or affecting the interests of consumers;
 - (b) to undertake studies and publish reports and information regarding matters affecting the interests of consumers; and
 - (c) to co-operate with and assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

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

Investigation of
complaints.

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

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

Schedule.

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

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

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

Powers of the
Commission
with regard to
investigation.

8. (1) For the purpose of conducting any investigation with regard to the discharge of any of its functions under this Act, the Commission shall subject to subsection (2) have the power to—

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

(2) the Commission may, for the purpose of enforcing the attendance of any witness, apply to the Court for issue of a

summons for attendance of the witness, and for the production of any document, book and related matter.

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

(4) The Commission shall unless the circumstances warrant a hearing *in camera*, conduct all hearings in public.

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

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

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

Power of search.

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

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

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

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

Offences
against the
Commission.

10. A person who—

- (a) attends, but leaves any sittings of the Commission without the permission of the Commissioners;
- (b) at any sitting of the Commission, wilfully insults any Commissioner or any officer of the Commission or wilfully interrupts the proceedings of the Commission;
- (c) fails to give evidence; or
- (d) makes a complaint to the Commission that a business enterprise is acting in contravention of this Act and the Commission finds the complaint to be frivolous, vexatious or malicious,

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

Destruction of
records.

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

Obstruction of
investigation.

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

PART III

**MERGERS, ANTI-COMPETITIVE AGREEMENTS OR
PRACTICES AND MONOPOLIES**

MERGERS

Definitions of
merger and
anti-
competitive
merger.

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

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

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

Mergers and qualifying mergers.

- (a) all anti-competitive mergers are prohibited; and
- (b) enterprises shall not enter into a merger unless they obtain permission from the Commission where—
 - (i) their assets exceed fifty million dollars; and
 - (ii) at least one of the enterprises carries on or intends to carry on business in Trinidad and Tobago.

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

(3) Before granting permission for a merger, the Commission shall—

- (a) satisfy itself that the proposed merger would not affect competition or would not be detrimental to the consumer or the economy; and
- (b) consult with the Securities Exchange Commission to ensure that the procedure required under the Securities Industry Act, for mergers has been followed.

Ch. 83:02.

(4) The Minister may by Order vary the asset limit specified in subsection (1)(b)(i).

(5) Where the variation of the asset limit exceeds fifty per cent, the relevant Order shall be subject to affirmative resolution of Parliament.

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

Interlocking directorship.

Order for
divestment.

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

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

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

(4) An enterprise which fails to keep the undertaking given under subsection (3), is liable upon summary conviction to a fine of twenty-five thousand dollars and to a further fine of one thousand dollars for each day the offence continues after conviction.

ANTI-COMPETITIVE AGREEMENTS OR PRACTICES

Definition of
Anti-
competitive
Agreement.

17. (1) An Agreement which—

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

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(e) makes contracts subject to extraneous conditions,

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

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

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

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

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

Horizontal and vertical agreements.

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

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

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

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

Transitional
amnesty.

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

- (a) the enterprise shall notify the Commission within one month thereafter of the details of the anti-competitive agreement or practice;
- (b) the commission may apply to the Court for an order to determine the agreement or practice.

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

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

MONOPOLIES

Monopoly
power.

20. For the purposes of this Act—

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

Abuse of
monopoly
power.

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

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

- (a) restricts the entry of any person into that or any other market;

- (b) prevents or deters any person from engaging in competitive conduct in that or any other market;
 - (c) eliminates or removes any person from that or any other market;
 - (d) directly or indirectly imposes unfair purchase or selling prices;
 - (e) limits production of goods or services to the prejudice of consumers;
 - (f) makes the conclusion of agreements subject to acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements;
 - (g) engages in exclusive dealing;
 - (h) engages in market restriction; or
 - (i) engages in tied selling.
- (3) An enterprise shall not be treated as abusing monopoly power—
- (a) if it is shown that—
 - (i) its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress; and
 - (ii) consumers were allowed a fair share of the resulting benefits; and
 - (b) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark.
- (4) For the purposes of this section—
- “exclusive dealing” means—
- (a) any practice whereby a supplier of goods, as a condition of supplying the goods to a customer requires that customer to—
 - (i) deal only or primarily in goods supplied by or designated by the supplier or his nominee; or

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

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

“tied selling” means—

- (a) any practice whereby a supplier of an article, as a condition of supplying the article (hereinafter referred to as “the article”) to a customer, requires the customer to—
 - (i) acquire any other article from the supplier or his nominee; or
 - (ii) refrain from using or distributing, in conjunction with the tied article, another article that is not of a brand or manufacturer designated by the supplier or the nominee; and
- (b) any practice whereby a supplier of an article induces a customer to meet a condition set out in paragraph (a), by offering to supply the tied article to the customer on more favourable terms or conditions if the customer agrees to meet that condition.

Investigations
re: abuses of
monopoly
power.

Schedule.

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

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

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

(a) where the market relates to the supply of goods or services of any description—

(i) forty per cent (or the percentage prescribed) of all the goods or services of that description which are supplied in Trinidad and Tobago are supplied by or to that enterprise; or

(ii) forty per cent (or the percentage prescribed) of all the goods or services of that description which are supplied in Trinidad and Tobago are supplied by or to a group of interconnected bodies corporate and the enterprise is part of that group;

(b) where the market relates to the export of goods of any description from Trinidad and Tobago—

(i) forty per cent (or the percentage prescribed) of all the goods of that description which are produced in Trinidad and Tobago are produced by that enterprise; or

(ii) forty per cent (or the percentage prescribed) of all the goods of that description which are produced in Trinidad and Tobago are produced by a group of interconnected bodies corporate and the enterprise is part of that group,

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

goods of that description from Trinidad and Tobago to each country taken separately.

Order for cessation of monopoly practice.

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

Timetable for cessation of monopoly power.

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

Application for an Order.

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

PART IV

CONSTITUTION OF THE COMMISSION

Constitution of the Commission.

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

Ch. 54:73.

(2) The number of members appointed under subsection (1), shall be subject to the appointments made under section 5(3) of the Regulated Industries Commission Act.

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

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

(5) The quorum for meetings of the Commission shall be three members.

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

Term of office
of
Commissioners.

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

Termination of
appointment.

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings the office of the Chairman or a member of the Commission into disrepute;
- (d) is guilty of misconduct in relation to his duties; or
- (e) fails to carry out any of the duties or functions conferred or imposed on him under this Act.

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

29. The Chairman and members of the Commission appointed under section 26(3) and (2) respectively, shall make and subscribe to an oath before the President that they will faithfully and to the best of their ability, discharge their duties and perform their functions having regard to the trust and confidence reposed on them.

Oath of office.

30. If a Commissioner is unable to perform his duties by reason of illness or other cause, the President may appoint a

Temporary
appointment.

person to act as a Commissioner in his stead until the termination of the illness or for that occasion.

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

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

Personal liability. **33.** No personal liability shall attach to any Commissioner for—
(a) any act or omission of the Commission; or
(b) anything done or permitted in good faith in the course of the operations of the Commission under this Act.

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

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

- (a) not take part after the disclosure in any deliberation or decision of the Commission with respect to that matter; or
- (b) be disregarded for the purpose of constituting a quorum of the Commission.

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

PART V
STAFF OF THE COMMISSION AND
RELATED MATTERS

Executive Director. **35.** (1) The Commission shall appoint for a term not exceeding five years on such terms and conditions as may be

approved by the Minister, an Executive Director who shall be the Chief Executive Officer of the Commission.

(2) The Executive Director shall, subject to the general directions of the Commission be responsible to the commission for the supervision of the work and staff of the Commission.

(3) The appointment of the Executive Director and the termination of his appointment, whether by death, resignation or otherwise shall be published in the *Gazette* and in two newspapers in daily circulation in Trinidad and Tobago.

36. The Commission shall appoint a Secretary on such terms and conditions as it thinks fit, subject to such maximum limit of remuneration as the Minister may determine. Secretary.

37. The Commission shall appoint such number of authorised officers as may be necessary on such terms and conditions as it thinks fit, subject to such maximum limit of remuneration as the Minister may determine. Appointment of authorised officers.

38. The Commission may appoint on such terms and conditions as it thinks fit and subject to such maximum limit of remuneration as the Minister may determine, such employees as it considers necessary for the due and efficient exercise and performance of its functions under this Act. Appointment of staff.

39. (1) Subject to subsection (2) and to the approval of the Commission, the appropriate Service Commission and the officer, an officer in the Public Service may be transferred on secondment to the service of the Commission or from the service of the Commission to the Public Service. Transfer of public officers of the Government to Commission on secondment.

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

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

Pension rights.

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

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

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

PART VI

FINANCE, REPORT AND AUDIT

Funds of the Commission.

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

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

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

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

43. (1) The Commission shall—

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

Accounts, audit
and annual
report.

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

(3) Within three months of the beginning of the financial year, the Commission shall submit to the Minister, a statement of its projected income and expenditure for the following financial year.

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

- (a) a copy of the audited statement of accounts; and
- (b) an annual report on its operations for the preceding financial year including any recommendations made with respect to the operations of the Act.

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

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

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

(8) The Commission is a Statutory Authority for the purposes of section 66A(1)(a)(ii) of the Constitution.

PART VII

POWERS OF THE COURT

Jurisdiction
of Court.

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

- (a) applications made by the Commission for an Order to—
 - (i) prohibit or restrict the transfer of shares;
 - (ii) prohibit an agreement, practice or decision from being made or carried out;
 - (iii) terminate an agreement or practice;
 - (iv) prohibit the acquisition of the assets of one company by another company except such acquisition as are permitted under mergers referred to in section 14;
 - (v) require a company to divest specified assets or shares; or
 - (vi) disqualify persistent offenders from serving as company directors;
- (b) reviews of any decision made by the Commission at the request of any party;
- (c) applications for deferment under section 45; and

(d) appeals made by the Regulated Industries Commission, or any company falling within the purview of the Regulated Industries Commission.

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

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

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

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

Applications
and Orders for
deferment.

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

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

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

Appeals from
decisions of the
Court.

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

Hearing and
determination
of appeals.

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

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

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

PART VIII

COMMUNITY COMPETITION COMMISSION

Referrals to the
Community
Competition
Commission.

48. (1) Where an inquiry or investigation by the Commission involves anti-competitive conduct in another Member State, which has the effect of lessening competition in Trinidad and Tobago, the Commission shall, under the hand of the Chairman refer the matter to the Community Competition Commission.

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

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

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

Powers of the Community Competition Commission.

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

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

Effect of decisions of Community Competition Commission. Ch. 4:01.

PART IX

MISCELLANEOUS

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

Confidentiality.

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

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

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

Hearing normally to be open to the public.

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

Rules and Regulations.

(a) for the registration and enforcement of a decision of the Community Competition Commission;

(b) for any proceedings in any matter under this Act concerning the Court or the Court of Appeal.

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

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

(3) Regulations made under this section shall be subject to affirmative Resolution of Parliament.

[Section 7(2)].

SCHEDULE

THE FAIR TRADING ACT

NOTICE OF INTENTION TO INITIATE AN INVESTIGATION

From: *The Fair Trading Commission*

To:
(name of the relevant parties)

UNOFFICIAL VERSION

UPDATED TO DECEMBER 31ST 2012

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

.....
(details of the reason for the investigation)
.....
.....

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

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

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