

## SAMOA

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**2016, No. 10****AN ACT to promote competition in trade in Samoa and to protect consumers and for related purposes.***[09<sup>th</sup> February 2016]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Competition and Consumer Act 2016.

(2) This Act commences on a date nominated by the Minister.

**2. Interpretation-**(1) In this Act, unless the context otherwise requires:

“acquisitions rule” means the acquisition rule in section 34;

“agreement” includes a contract, an arrangement, an understanding or a covenant;

“approved form” means a form approved under section 141(2);

“association” includes an unincorporated association;

“authorisation” means an authorisation under section 49;

“business” means an undertaking:

(a) carried on for gain or reward; or

(b) in the course of which -

(i) goods or services are acquired or supplied; or

(ii) an interest in land is acquired or disposed of,

otherwise than free of charge.

“cease and desist notice” means a notice under section 119;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry, and includes the acting Chief Executive Officer;

- “claimant” means a person mentioned in section 115;
- “clearance” means a clearance under section 43;
- “Commission” means the Competition and Consumer Commission established by section 6;
- “competition or consumer law” means each of Parts 3, 4 and 5;
- “competition rule” means any of the the competition rules under sections 30, 33 and 34;
- “conduct rule” means any of the the conduct rules under sections 30 and 33;
- “consumer” means a person who acquires, or who it is proposed will acquire, goods or services as a consumer;
- “consumer guarantee” means a guarantee under Division 3 of Part 4;
- “consumer information standard” means a standard under section 87;
- “consumer protection rule” means any of the rules in Division 1 or 2 of Part 4;
- “cooperation arrangement” means an arrangement referred to in section 26;
- “Court” means the Supreme Court;
- “document”:
- (a) means a document in any form, whether or not signed or otherwise authenticated; and
  - (b) includes -
    - (i) any writing on any material;
    - (ii) any information recorded or stored by means of a device and any material subsequently derived from information so recorded or stored;
    - (iii) a label, marking or other writing that identifies or describes the thing of which it forms part or to which it is attached;
    - (iv) a book, map, plan, graph or drawing;
    - (v) a photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

- “enforceable undertaking” means an undertaking accepted under section 118;
- “exemption order” means an order under section 35(1);
- “goods” means personal property of any kind (whether tangible or intangible), other than money or choses in action, and includes any of the following:
- (a) goods attached to, or incorporated in, any real or personal property, except a whole building or part of a building that is attached to land and not easily removable;
  - (b) ships, aircraft or vehicles;
  - (c) animals or fish;
  - (d) minerals, trees or crops, whether or not on, under or attached to land;
  - (e) electricity or gas;
  - (f) water;
  - (g) computer software.
- “guideline” means a guideline published under section 9;
- “identity card” means a card issued under section 100(2);
- “immunity agreement” means an agreement under section 128;
- “intellectual property right” means a right conferred or recognised by or under the Copyright Act 1998, the Intellectual Property Act 2011 or any other enactment;
- “inquiry” means an inquiry under Division 1 of Part 5 or another inquiry undertaken by the Commission in performing its functions;
- “investigation” means an investigation under Division 1 of Part 6;
- “investigator” means a person appointed as such under section 100;
- “Judge” means a Judge of the District Court or Supreme Court;
- “management banning order” means an order under section 129;
- “member” means a member of the Commission;
- “Minister” means the Minister responsible for Commerce;
- “Ministry” means the Ministry responsible for Commerce;

“occupier”, of a place, means a person, apparently more than 18 years old, apparently in charge of the place;

“Office” means the Office of the Commission established by section 17;

“overseas agency” means a government body in another country that performs functions corresponding to, or similar to, the Commission’s functions;

“pecuniary penalty” means a penalty imposed under section 124;

“price control order” means a regulation made under section 94;

“product recall notice” means a notice under section 90;

“product safety notice” means a notice under section 89;

“product safety standard” means a standard under section 88;

“published standard” means a standard published by an internationally recognised standards-setting body;

“regulated body” means each of the following:

(a) a service provider as defined in the Broadcasting Act 2010;

(b) a service licensee as defined in the Electricity Act 2010;

(c) Samoa Post Ltd, incorporated under the Companies Act 2001;

(d) a service provider as defined in the Telecommunications Act 2005.

“Regulator” means each of the following:

(a) the Regulator under the Broadcasting Act 2010;

(b) the Regulator under the Electricity Act 2010;

(c) the Regulator under the Postal Services Act 2010;

(d) the Regulator under the Telecommunications Act 2005.

“related body corporate” means each of two (2) or more bodies corporate related to each other for the purposes of the Companies Act 2001;

“representative action” means a proceeding by the Commission under section 116;

“services”:

(a) includes rights (including rights in relation to, and interests in, real or personal property), benefits,



privileges or facilities that are, or are to be, provided, granted, or conferred in trade, and those so provided under an agreement for or in relation to any of the following -

(i) the performance of work (including work of a professional nature), whether or not with the supply of goods;

(ii) the provision of facilities for accommodation, amusement, the care of persons or things, entertainment, instruction, parking, or recreation;

(iii) insurance;

(iv) the provision of financial services such as banking, lending money or providing credit;

(v) the supply of gas, water, electricity or telecommunications or the removal of waste, including waste water; but

(b) does not include rights or benefits in the form of the supply of goods or the performance of work under an employment agreement.

“services safety standard” means a standard made under section 91;

“share” means a share in the capital of a company or other body corporate, whether or not it carries the right to vote or other rights, and includes:

(a) stock; and

(b) interests in, and rights in relation to, shares as so defined, being interests or rights -

(i) that directly or indirectly entitle or may entitle the acquirer, or a related body corporate of the acquirer; or

(ii) because of which, directly or indirectly, the acquirer, or a related body corporate of the acquirer, is in a position,

to control the disposition of the shares or any voting rights attached to the shares.

“supply” means:

- (a) for goods, supply (or re-supply) the goods by way of gift, sale, exchange, lease, hire or hire purchase; and
- (b) for services, provide the services.

“trade” means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services;

“warning notice” means a notice under section 117.

(2) For this Act, a person acquires goods or services as a consumer if:

- (a) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) the goods are supplied to the person in trade; and
- (c) the person does not acquire them, or hold himself or herself out as acquiring them, for the purpose of -
  - (i) resupplying them in trade; or
  - (ii) consuming them in the course of a process of production or manufacture; or
  - (iii) for goods, repairing or treating in trade other goods or fixtures on land.

(3) In this Act, a person has a controlling interest in a body corporate if the person has the ability to control, directly or indirectly, the financial or operating policies of the body corporate and in determining whether a person has a controlling interest, the legal form of an interest that the person has is not relevant.

(4) A person does not have a controlling interest in a body corporate merely because the person is:

- (a) a director of the body corporate; or
- (b) a lender to the body corporate.

(5) In this Act, a person is knowingly concerned in a contravention of a competition or consumer law if the person:

- (a) aids, abets, counsels or procures another person to contravene the law; or
- (b) induces or attempts to induce another person, including by threats or promises, to contravene the law; or
- (c) conspires with another person to contravene the law; or

(d) is in any other way, directly or indirectly, knowingly concerned in, or party to, the contravention.

(6) In this Act, a group consisting of a body corporate and its related bodies corporate is not an association of persons.

**3. Objects** - The objects of this Act are:

- (a) to promote competition in markets in Samoa; and
- (b) to establish standards of conduct for those engaged in trade in Samoa; and
- (c) to contribute to a trading environment in which the safety and interests of consumers are protected and consumers and businesses participate confidently.

**4. Act binds State** - This Act binds the State in so far as the State carries on a business, but the State is not liable to be prosecuted for an offence against this Act.

**5. Application of this Act**-(1) Without limiting any other application of this Act, this Act applies to each body corporate established by or under any enactment, or in which the State or the Government has a controlling interest.

(2) This Act extends to the engaging in conduct outside Samoa by any person resident or carrying on business in Samoa.

(3) Subsections (1) and (2) do not limit Part 3.

(4) This Act and another Act do not limit each other where they can have effect concurrently.

(5) If a provision of this Act and a provision of another Act (not regulations under an Act) are inconsistent, then, unless the other Act expressly provides to the contrary, the provision of this Act prevails.

(6) Despite the other provisions of this Act, sections 30 and 33 and Parts 4 and 5 do not apply in relation to a regulated body.

## **PART 2**

### **COMPETITION AND CONSUMER COMMISSION**

*Division 1 - Competition and  
Consumer Commission*

**6. Establishment** - The Competition and Consumer Commission is established.

**7. Functions and powers-**(1) The Commission has the following functions:

- (a) to advise the Minister on competition, consumer protection and prices in Samoa;
- (b) to conduct research into matters affecting competition, consumer protection and prices in Samoa;
- (c) to promote the use of internal controls and risk management measures by persons carrying on business in Samoa to ensure compliance with this Act;
- (d) to promote research into and the development of skills in relation to the legal, economic and policy aspects of competition, consumer protection and prices oversight in Samoa;
- (e) to promote public understanding of the value of competition and consumer protections;
- (f) to carry out any other functions conferred by this Act or any other written law.

(2) The Commission has all the powers necessary and convenient for carrying out its functions.

**8. Commission is independent-**(1) Except as provided by this Act, the Commission is not subject to direction by any person in relation to the performance of its functions.

(2) Subsection (1) does not:

- (a) prevent the Commission from delegating a power or function or engaging a person to provide services to the Commission; and
- (b) apply to a direction given by a court; and
- (c) affect the operation of the Public Finance Management Act 2001.

**9. Guidelines-**(1) The Commission may issue guidelines on competition, consumer protection or pricing, and the administration of competition or consumer laws.

(2) Without limiting subsection (1), guidelines may set out:

(a) the Commission's approach to interpreting and applying competition or consumer laws; and

(b) the Commission's approach to exercising its powers under this Act, including -

(i) powers in relation to clearances and authorisations; and

(ii) powers under Part 6, including as to the conduct of investigations; and

(iii) powers under Part 7, including powers to accept undertakings and enter immunity agreements; and

(iv) the Commission's priorities for the enforcement of competition or consumer laws; and

(c) the Commission's requirements for information to be provided in applications to the Commission, including applications for clearances or authorisations.

#### *Division 2 - Members of the Commission*

**10. Members-**(1) The Commission must have at least three (3) and no more than seven (7) members.

(2) Each Regulator is a member of the Commission.

(3) The other members:

(a) are to be appointed by the Head of State acting on the advice of Cabinet; and

(b) may be appointed on a full time or a part time basis.

(4) A person must not be appointed as a member unless the Minister is satisfied that the person has appropriate skills and expertise in industry, commerce, economics, law, accountancy, public administration or consumer affairs.

(5) The Minister must appoint a member (not a Regulator) to be Chairperson, and another member (not a Regulator) to be Deputy Chairperson, of the Commission.

(6) Anything done by or in relation to a person purporting to act under an appointment as a member is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect.

**11. Term of office, resignation and removal-**(1) A member:

- (a) holds office for up to three (3) years from the date of appointment;
- (b) is eligible to be re-appointed;
- (c) may resign from office by giving a written resignation to the Minister;
- (d) ceases to hold office if the member -
  - (i) is convicted or found guilty of an offence the maximum penalty for which is imprisonment for 12 months or more; or
  - (ii) is convicted or found guilty of an offence against this Act; or
  - (iii) has been adjudged bankrupt and an order of discharge of the bankruptcy has not been made.

(2) The Minister may, with the approval of the Cabinet, by written instrument, remove a member from office on the ground that the member:

- (a) has failed to attend three (3) consecutive meetings of the Commission without good cause; or
- (b) has contravened section 13; or
- (c) cannot properly carry out the duties of the office because of a mental or physical condition;
- (d) has a controlling interest in a body corporate that has
  - (i) been found by the Court to have contravened this Act; or
  - (ii) given an enforceable undertaking; or
- (e) has been disqualified, under the laws of Samoa or another country, from acting as a director or the executive officer of a body corporate.

**12. Remuneration, etc., of members-**(1) A member is entitled to remuneration and allowances determined by the Cabinet on the recommendation of the Minister.

(2) A member holds office on any terms and conditions (not inconsistent with this Act) in relation to matters not covered by this Act determined by the Cabinet on the recommendation of the Minister.

**13. Disclosure of interests-**(1) A member must disclose in writing to each other member all interests that the member has that could conflict with the proper performance of the functions of the office.

(2) The disclosure must be given as soon as practicable after the member becomes aware of the interest.

(3) A member who has an interest on a particular matter that could conflict with the proper performance of the functions of the office must not perform those functions unless:

(a) the member has complied with subsection (1) in relation to the interest; and

(b) each of the other members has consented to the member performing those functions in relation to the matter despite the possible conflict of interest.

(4) For subsections (1) and (3), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.

(5) For this section, if:

(a) a related party of a member has an interest; and

(b) the member had the interest, it could conflict with the proper performance of the functions of his or her office,

the member is taken to have the interest, and this section applies accordingly.

(6) If the Chairperson becomes aware that a member who is performing, or about to perform, a function as member, has an interest that could conflict with the proper performance of the function, the Chairperson may give the member a direction not to perform the function, or to disclose the interest, as required by this section.

(7) A Regulator does not, merely because of holding the office of the Regulator, have an interest that could conflict with the proper performance of a function as a member of the Commission.

(8) If a Regulator considers that his or her performing, or continuing to perform, a function as a member would conflict with the proper performance of the functions of the office of Regulator, the Regulator:

- (a) may decide to withdraw from performing the functions of the office of member so long as the conflict exists; and
- (b) if the Regulator decides to withdraw, must notify the Chairperson in writing.

(9) The Commission must take reasonable steps to ensure that members of the Commission's staff, persons otherwise engaged by the Commission and other persons performing or exercising functions or powers of the Commission make proper and adequate disclosure of their interests.

(10) The Commission must record, and maintain a register of, all disclosures under this section.

(11) In this section, "related party" of a member, means any of the following:

- (a) a spouse, child or parent of the member;
- (b) a company of which the member is a director or executive officer, and a subsidiary of the company;
- (c) a company of which a spouse, child or parent of the member is a director or executive officer;
- (d) a company in which the member, or a spouse, child or parent of the member, has a controlling interest.

**14. Immunity** - No civil, criminal or administrative liability, including damages or penalties, may be imposed on:

- (a) the Government or a Minister; or
- (b) the Commission; or
- (c) a member of the staff of the Commission or an agent of the Commission; or
- (d) a person acting under an authority conferred by the Commission,

for any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions.



*Division 3 - Meetings*

**15. Meetings-**(1) The Commission must hold any meetings, convened by the Chairperson, as are necessary to carry out its functions.

(2) The Chairperson must convene a meeting on request by at least two (2) members.

(3) A member who participates in a meeting by telephone, video conferencing or other electronic means is taken to be present at the meeting if the member can hear the other members and can be heard by the other members.

(4) At a meeting of the Commission:

(a) the Chairperson is to preside, subject to paragraphs (b) and (c);

(b) the Deputy Chairperson is to preside if the Chairperson is not present at a meeting;

(c) a member elected by the members present at the meeting is to preside at the meeting if the Chairperson and the Deputy Chairperson are not present at that meeting;

(d) the quorum is a majority of the members;

(e) a question arising at a meeting is to be determined by a majority of the votes of the members present and voting; and

(f) the presiding member has a deliberative vote and a casting vote.

(5) The Commission:

(a) must keep written minutes of all its meetings, and of all meetings of any committee of the Commission; and

(b) subject to this Act, may regulate its proceedings at meetings as it considers appropriate.

**16. Decisions without meetings-**(1) If:

(a) the members have resolved that resolutions may be passed in accordance with this section; and

(b) either -

(i) all members were informed in writing of the terms of a proposed resolution; or

(ii) reasonable efforts were made to inform all members in writing of the terms of a proposed resolution; and

(c) without meeting, a majority of the members indicate agreement with the proposed resolution and communicate that to the Chief Executive Officer by letter, fax or other electronic transmission, the resolution is taken to have been passed at a meeting of members on the date on which the last member indicated his or her agreement.

(2) Subsection (1)(b) and (c) does not count a member who would have been prevented by section 13 from deliberating on the resolution if the resolution had been put to a meeting.

(3) Section (1) does not apply to a proposed resolution if any of the members requests, by notice in writing addressed to the Chief Executive Officer, that the resolution be referred to a meeting of the members.

*Division 4 - Administrative and  
financial arrangements*

**17. Office of the Commission-**(1) An Office of the Commission is established consisting of:

- (a) the members of the Commission;
- (b) staff of the Commission;
- (c) other persons seconded under this section.

(2) The Commission is responsible for the management of the Office.

(3) Except as provided in this Act, the Commission and the Office are to function in accordance with the laws governing the public service and the finances of the Government of Samoa, and in particular:

- (a) the staff of the Office are to be appointed or employed under the Public Service Act 2004; and
- (b) the Public Service Commission is to appoint staff only on the recommendation of the Commission; and
- (c) the budget of the Office is to be determined in accordance with the national budgetary process of the Government.

(4) The Minister may, on the advice of the Commission and the Chief Executive Officer, make arrangements in writing for the Office to share or use resources (including human resources) and facilities of the Ministry, another Ministry or a Government agency.

(5) The Commission may appoint consultants as appropriate for the efficient performance of its functions.

**18. Civil liability** - A civil claim by or against the Commission is to be made under the Government Proceedings Act 1974.

**19. Secrecy**-(1) In this section:

“officer” means a person:

- (a) who is or has at any time been a member, or a member of the staff of the Commission; or
- (b) to whom powers or functions are or have at any time been delegated by the Commission; or
- (c) who is or has at any time been engaged to provide services to the Commission; or
- (d) who is or has at any time been an investigator.

“protected information” means information about a person’s affairs obtained by an officer because the officer was an officer.

(2) An officer commits an offence who, directly or indirectly:

- (a) makes a record of protected information; or
- (b) discloses protected information to another person,

and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(3) It is a defence to an offence against subsection (2):

- (a) that the act concerned was done in the proper performance of the person’s duties or functions as an officer; or
- (b) for disclosure of protected information about a person, that the disclosure was made with the written consent of the person.

(4) An officer cannot be compelled to disclose protected information or a document so far as it contains protected information.

**20. Delegation by Commission-**(1) Subject to subsection (2), the Commission may, by resolution, delegate any of its powers or functions to any of the following:

- (a) a member (other than a Regulator);
- (b) a staff member of the Commission;
- (c) a person holding or acting in a specified position in the Office or the Ministry.

(2) The Commission must not delegate any of the following powers:

- (a) the power of delegation under this section; or
- (b) the power to give or revoke a clearance; or
- (c) the power to give, revoke or vary an authorisation.

(3) A delegation:

- (a) may be subject to conditions specified in the resolution; and
- (b) may be varied or revoked at will; and
- (c) does not prevent the Commission from carrying out the delegated power or performing the delegated function.

(4) A delegated power or function:

- (a) is to be carried out pursuant to the resolution for it; and
- (b) when carried out by the delegate, is taken for all purposes to have been exercised or performed by the Commission.

(5) If a delegate purports to act under a delegation, it is to be presumed, unless the contrary is established, that the delegate had the delegation and acted under it.

**21. Annual reports** - The Commission must provide annual reports to the Minister, including a statement of:

- (a) the steps that have been taken in the implementation of competition and consumer laws during the period to which the report relates; and
- (b) the outcomes that have been achieved as a result of those steps.

*Division 5 - Relationships with  
Regulators and overseas agencies*

**22. Relationship with Regulators-**(1) The Commission must cooperate and collaborate with the Regulators, and assist them, in carrying out their functions.

(2) Each Regulator must cooperate and collaborate with the Commission, and assist it, in carrying out its functions.

**23. Memorandum of understanding-**(1) As soon as reasonably practicable after the commencement of this Act, the Commission and each Regulator must develop and enter into a memorandum of understanding (“MOU”), not inconsistent with this Act, to facilitate compliance with section 22.

(2) Subject to this section, an MOU may provide for any of the following:

- (a) meetings between the Commission and the Regulator, and between their staff;
- (b) communications protocols between the Commission and the Regulator;
- (c) the provision of information and assistance between the Commission and the Regulator;
- (d) joint development and issue of guidelines and other information to the public.

(3) The Commission and a Regulator may amend the MOU to which they are parties at any time.

(4) The Commission must publish each MOU (including through the internet), and make a copy available to any person who asks for it.

(5) Each Regulator must publish each MOU (including through the internet), and make a copy available to any person who asks for it.

**24. Commission may exchange information with overseas agencies-**(1) The Commission may provide to an overseas agency any information, or a copy of any document, that the Commission holds, but only if the Commission:

- (a) considers that to do so will assist the overseas agency in the performance of the overseas agency’s

functions that correspond to the Commission's functions; and

- (b) is satisfied that appropriate protections are or will be in place to maintain the confidentiality of anything provided.

(2) When carrying out its functions, the Commission may use any information, or a copy of any document, provided to it by an overseas agency.

**25. Commission may assist overseas agencies by conducting investigations-**

(1) If the Commission receives a request from an overseas agency to investigate a matter related to the functions of the overseas agency and provide the overseas agency with information or documents resulting from the investigation (a "request"), the Commission may comply with the request, but only if satisfied that:

- (a) compliance will not substantially affect the performance of its other functions; and
- (b) appropriate protections are or will be in place to maintain the confidentiality of anything provided; and
- (c) it is appropriate to do so.

(2) The matters to be considered in deciding, for subsection (1), whether it is appropriate include the following:

- (a) the terms of any relevant cooperation arrangement;
- (b) whether the Commission is likely to be able to comply with the request;
- (c) the cost to the Commission of complying with the request;
- (d) whether another source could more conveniently satisfy the request;
- (e) the extent to which the functions of the overseas agency correspond with the functions of the Commission;
- (f) whether the overseas agency would be likely to comply with a similar request made by the Commission;
- (g) whether it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 2007.

(3) The Commission may, in complying with a request, impose conditions relating to any of the following:

- (a) maintaining the confidentiality of information and documents provided to the overseas agency;
- (b) the storage or use of, or access to, that information and those documents;
- (c) copying, returning or disposing of any of that information and those documents;
- (d) the costs incurred by the Commission in complying with the request.

(4) The Commission may exercise powers under Part 6 in complying with the request.

(5) If the Commission exercises a power under Part 6 in complying with a request, it must specify, in any notice given for the purpose of exercising the power, that it is exercising the power to comply with the request.

(6) If:

- (a) a person makes a statement to the Commission or an investigator in the course of an investigation (whether or not the investigation was conducted under a request); and
- (b) the statement might tend to incriminate the person or render the person liable to a pecuniary penalty under the law of another country,

the Commission must not provide a copy of the statement to an overseas agency for that other country unless the overseas agency gives the Commission a written undertaking:

- (c) that it will not use the statement in a prosecution of the person, or a proceeding for a pecuniary penalty or like proceedings; and
- (d) that, to the extent that it is within the ability of the overseas agency to do so, it will ensure that those statements are not so used by any other agency of the foreign country.

**26. Cooperation arrangements-**(1) The Minister may, on behalf of the Government, enter into an arrangement (a “cooperation arrangement”) in respect of an overseas agency with:

- (a) the government of the country in
  - (b) if an overseas agency is established by an international body, the governing body of that international body.
- (2) The Commission may, with the written approval of the Minister, enter into an arrangement (also a “cooperation arrangement”) with an overseas agency.
- (3) Without limiting what a cooperation arrangement may contain, a cooperation arrangement:
- (a) must -
    - (i) identify the overseas agency that it relates to; and
    - (ii) identify the enactment in connection with which the overseas agency may seek information or documents from the Commission; and
    - (iii) set out how information or documents provided to the overseas agency under the arrangement may be used by the overseas agency, and how they are to be kept secure; and
  - (b) may provide for the reimbursement of the Commission for costs incurred in complying with requests to which the cooperation arrangement applies.
- (4) Before entering into a cooperation arrangement, or giving approval to the Commission to enter into a cooperation arrangement, the Minister must consider:
- (a) the legal framework relating to the use of compulsorily acquired information in the overseas country; and
  - (b) the potential consequences for consumers and businesses in Samoa of providing information or documents to the overseas agency; and
  - (c) any privacy issues arising from the proposed arrangement.
- (5) The Minister must not enter into a cooperation arrangement, or give approval to the Commission to enter into a cooperation arrangement, unless satisfied that entering into the arrangement is consistent with Samoa’s international obligations.



(6) If a cooperation arrangement is entered into or amended, then, as soon as practicable, notice of the fact must be published in the *Savali* and a copy of the arrangement placed on the Commission's website.

**27. Information provided by consent** - Despite any other provisions of this Division and a cooperation arrangement, the Commission may provide any information to an overseas agency with the consent of the person to whom the information relates.

*Division 6 - Administrative action*

**28. Ministers to consider effects on competition**-(1) A Minister must have regard to the effects on competition in markets in Samoa of any government decision in which that Minister participates.

(2) Failure to comply with subsection (1) does not make a decision invalid.

**29. Provision of report**-(1) The Commission:

- (a) must, upon request by the Minister, provide a report to the Minister about the effects on competition in markets in Samoa of any proposal being considered by the Minister or the Government; and
- (b) must provide the report as soon as reasonably practicable, unless the Commission considers that it is unable to do so; and
- (c) if it is unable to do so, must notify the Minister of the reasons why it is unable to do so.

(2) The Commission may, on its own initiative, provide a report to the Minister about the effects on competition in markets in Samoa of any proposal being considered by the Minister or the Government.

**PART 3  
COMPETITION RULES**

*Division 1 - The rules*

**30. Anti-competitive agreements, concerted practices and decisions of associations-**(1) A person must not:

- (a) make or give effect to an agreement; or
- (b) engage in a concerted practice; or
- (c) as a member of an association of persons, make or give effect to a decision of the association,

if the agreement, concerted practice or decision has, or would be likely to have, the effect of substantially lessening competition in a market in Samoa.

(2) For subsection (1), if an agreement, concerted practice or decision has, or would be likely to have, the effect of substantially lessening competition in a market in Samoa, it does not matter that it has other effects.

(3) Subsection (1):

- (a) applies even if -
  - (i) the agreement or decision was made or partly made outside Samoa; or
  - (ii) the concerted practice was engaged in wholly or partly outside Samoa; and
- (b) does not apply -
  - (i) to an agreement so far as it relates to the acquisition of shares or assets; or
  - (ii) if the object of the agreement, concerted practice or decision is to coordinate the business conduct of a related body corporate of one of them; and
- (c) is not limited by other provisions of this Division by implication (but they may limit it expressly).

(3) Division 2 sets out other exemptions from this section.

**31. Bid-rigging-**(1) For section 30(1), unless the contrary is established, an agreement or concerted practice, or a decision of an association, is taken to have the effect, or to be likely to have the effect, of substantially lessening competition in a market in Samoa if:

- (a) the agreement, concerted practice or decision involves persons (in this section, “participants”) any two (2) or more of whom who are in competition with each other; and

- (b) under the agreement, concerted practice or decision, a participant submits or agrees to submit, in response to a request for bids (however described) in Samoa, a bid the terms of which are specified in, or determined under, the agreement, concerted practice or decision; and
- (c) the agreement, concerted practice or decision is not made known in writing to the person requesting the bids when the bid is submitted.

(2) For section 30(1), unless the contrary is established, an agreement or concerted practice, or a decision of an association, is taken to have the effect, or to be likely to have the effect, of substantially lessening competition in a market in Samoa if:

- (a) the agreement, concerted practice or decision involves persons any two (2) or more of whom who are in competition with each other; and
- (b) under the agreement, concerted practice or decision, a participant -
  - (i) does not submit, or agrees not to submit, a bid; or
  - (ii) withdraws, or agrees to withdraw, a bid that has been submitted,

in response to a request for bids (however described) in Samoa; and

- (c) the agreement, concerted practice or decision is not made known in writing to the person requesting the bids when the bid is submitted.

(3) For this section, participants are in competition with each other if they, or related bodies corporate of one (1) or more of them, compete with each other in relation to the supply or acquisition of the goods or services concerned, or would so compete but for the conduct concerned.

### **32. Price fixing, market sharing and collective boycotts-(1)**

For section 30(1), unless the contrary is established, the following agreements, concerted practices and decisions of associations are taken to have the effect, or to be likely to have the effect, of substantially lessening competition in a market in Samoa:

- (a) price fixing agreements, concerted practices and decisions;
- (b) market sharing agreements, concerted practices and decisions;
- (c) collective boycott agreements, concerted practices and decisions.

(2) A price fixing agreement, concerted practice or decision is one that:

- (a) involves persons (in this section, “participants”) any two (2) or more of whom who are in competition with each other; and
- (b) has the effect, or is likely to have the effect, directly or indirectly, of fixing, maintaining or controlling the price of goods or services in Samoa (including because they affect, or may affect, terms or conditions of trade).

(3) A market sharing agreement, concerted practice or decision is one that:

- (a) involves participants any two (2) or more of whom who are in competition with each other; and
- (b) has the effect, or is likely to have the effect, directly or indirectly, of sharing or dividing up a market in Samoa in a way that prevents or restricts any one (1) or more of the parties to the agreement, concerted practice or decision from competing with any one (1) or more of the other parties to the agreement, concerted practice or decision in the supply or acquisition of any goods or services.

(4) A collective boycott agreement, concerted practice or decision of an association is one that:

- (a) involves participants any two (2) or more of whom who are in competition with each other; and
- (b) has the effect, or is likely to have the effect, directly or indirectly, of excluding a competitor, customer, supplier or other person from a market in Samoa.

(5) For this section, participants are in competition with each other if they, or related bodies corporate of one (1) or more of them, compete with each other for the supply or acquisition of the

goods or services concerned, or would so compete but for the conduct concerned.

(6) Subsection (1) does not apply if the object of agreement, concerted practice or decision is to coordinate the business conduct of a related body corporate of one of them.

**33. Abuse of market power-**(1) A person who has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has the effect, or would be likely to have the effect, of substantially lessening competition in a market in Samoa.

(2) For this section, if a person and a related body corporate of the person together have a substantial degree of market power in a market, each is taken to have a substantial degree of market power in the market.

(3) For subsection (1), if conduct has the effect or would be likely to have the effect of substantially lessening competition in a market in Samoa, it does not matter that it has other effects.

(4) Subsection (1):

(a) applies even if the person engaged in the conduct wholly or partly outside Samoa; and

(b) does not apply to an agreement so far as it relates to the acquisition of shares or assets.

(5) For this section, a person does not abuse a substantial degree of market power merely by enforcing an intellectual property right.

(6) Division 2 sets out other exemptions from this section.

**34. Acquisitions that substantially lessen competition-**(1) A person must not, directly or indirectly:

(a) acquire shares in a body corporate; or

(b) acquire any assets of a person,

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market in Samoa.

(2) For this section, if a person and a related body corporate of the person each acquire shares in or assets of an entity, the acquisitions must be treated as a single acquisition, by each of the person and the related body corporate.

(3) For subsection (1), if an acquisition has the effect or would be likely to have the effect of substantially lessening competition in a market in Samoa, it does not matter that it has other effects.

(4) Without limiting the matters that may be taken into account in determining whether an acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market in Samoa, the following may be taken into account:

- (a) the extent of competition in the market from competitors outside Samoa;
- (b) whether the body corporate whose assets or shares are to be acquired is or is likely to be insolvent;
- (c) the extent to which substitutes for the good or services are available or are likely to be available in the market;
- (d) the height of any barriers to entry into the market;
- (e) the likelihood that the acquisition would result in the person or a related body corporate of the person being able to increase prices or profit margins significantly and sustainably;
- (f) whether the acquisition would result in the removal of an effective and vigorous competitor;
- (g) the degree of countervailing power in the market;
- (h) the nature and extent of change and innovation in the market.

(5) Subsection (1) extends to any of the following:

- (a) an acquisition of shares or assets that are outside Samoa;
- (b) an acquisition of shares or assets that takes place outside Samoa;
- (c) an acquisition of shares or assets by or from a person who is outside Samoa.

(6) Division 2 sets out exemptions from this section.

#### *Division 2 - Exemptions*

**35. Exemptions to avoid conflicts with international obligations-**(1) The Minister may, with the approval of the Cabinet, by order:

(a) exempt a specified agreement, concerted practice or decision from section 30(1); or  
(b) exempt specified conduct from section 33(1); or  
(c) exempt a specified acquisition from section 34(1),  
if satisfied that it is necessary to do so to avoid a conflict between this Act and an international obligation of Samoa.

(2) The order:

- (a) must specify the international obligation concerned; and
- (b) may be subject to conditions or limitations specified in the order; and
- (c) commences on -
  - (i) the date it is published in the *Savali*; or
  - (ii) another past date specified in the order.

(3) The power under subsection (1) includes, the power:

- (a) to amend, suspend or revoke the order; or
- (b) to re-make an order that has ceased to have effect or been revoked; or
- (c) to amend, suspend or revoke a condition or limitation of the order;
- (d) to impose a new condition or limitation in an order.

(4) If the international obligation ceases to apply in relation to Samoa, the exemption order ceases to have effect.

**36. Employment exemptions-**(1) Entering into or giving effect to an agreement, or engaging in a concerted practice, does not contravene section 30(1) if:

- (a) the parties to the agreement or concerted practice are employees; and
- (b) the agreement or concerted practice relates to the remuneration or other terms and conditions of employment of those parties or some of them.

(2) Making or giving effect to a decision of an association of persons does not contravene section 30(1) if:

- (a) the association is an employees' organisation or trade union within the meaning of the Labour and Employment Relations Act 2013; and

(b) the decision relates to the remuneration or other terms and conditions of employment of members of the association or some of them.

(3) Entering into or giving effect to an employment agreement or an agreement for the provision of services does not contravene section 30(1) or 33(1), merely because the agreement includes provisions under which an individual who is a party to the agreement undertakes not to engage in specified work, whether or not as an employee, during or after the term of the agreement.

**37. Partnerships exemptions** - Entering into or giving effect to a partnership agreement does not contravene section 30(1) or 33(1) merely because the partnership agreement includes provision in relation to the terms of the partnership, the conduct of the partnership business or in relation to competition between the partnership and a party to the agreement while the party is, or after the party ceases to be, a partner.

**38. Vertical agreement exemptions** - Entering into or giving effect to an agreement for the supply of goods or services does not contravene section 30(1) if:

- (a) the parties to the agreement are competitors or likely competitors in relation to supplies of that kind; and
- (b) the agreement relates to the conditions under which the parties may purchase, sell or resell certain goods or services in relation to which the parties are competitors or likely competitors; and
- (c) in the circumstances, the agreement does not have the dominant purpose of lessening competition between any two (2) or more of the parties to the agreement.

**39. Exemption for standards, etc.** - Entering into or giving effect to an agreement does not contravene section 30(1) or 33(1) merely because the agreement includes provisions under which a party to the agreement must comply with or apply:

- (a) a consumer information standard; or
- (b) a product safety standard; or
- (c) a service safety standard; or



- (d) another published standard as to design, quality, workmanship or performance.

**40. Exemption for protection of goodwill, etc.** - Entering into or giving effect to an agreement for or related to the sale of a business, assets used in a business or shares in a body corporate carrying on a business does not contravene section 30(1), 33(1) or 34(1), merely because the agreement includes provisions for the protection of the purchaser in respect of the goodwill of the business.

**41. Exemption for collaborative activity**-(1) Entering into or giving effect to an agreement, engaging in a concerted practice or making or giving effect to a decision of an association does not contravene section 30(1) if, at the time:

- (a) the person and one (1) or more parties to the agreement, one (1) or more of the persons engaging in the concerted practice or one (1) or more members of the association are involved in a collaborative activity; and
- (b) the agreement, concerted practice or decision is reasonably necessary for the purpose of the collaborative activity.

(2) In this section, “collaborative activity” means an enterprise, venture or other activity, in trade, that:

- (a) is carried on in co-operation by two (2) or more persons; and
- (b) is not carried on for the dominant purpose of lessening competition between any two (2) or more of the parties.

**42. Exemption for proposed authorisations and clearances** - Entering into or giving effect to an agreement, engaging in a concerted practice or making or giving effect to a decision of an association does not contravene section 30(1), 33(1) or 34(1) if:

- (a) the agreement, concerted practice or decision provides that the provisions because of which it would have that effect do not come into force unless an

authorisation for the agreement, concerted practice or decision has been given; and

- (b) an application is made for the authorisation no later than 15 working days after the agreement or decision is made, or the concerted practice is first engaged in.

### *Division 3 - Clearances*

**43. Clearances of conduct and acquisitions-**(1) The Commission may, on application, give a clearance for any of the following:

- (a) for section 30(1), for specified agreement, concerted practice or decision of an association;
- (b) for section 33(1), for specified conduct;
- (c) for section 34(1), for specified acquisition.

(2) The Commission must not give a clearance unless satisfied that:

- (a) the application involves a question of wide importance or public interest in relation to the operation of this Act that has not been resolved; and
- (b) the agreement, concerted practice, decision, conduct or acquisition to which the application relates does not or would not contravene a competition rule.

(3) A clearance may be subject to conditions and limitations specified in the clearance.

(4) To the extent that a clearance applies to it, Division 1 does not apply to:

- (a) an agreement, concerted practice or decision of an association;
- (b) conduct that might lessen competition; or
- (c) an acquisition of shares in a body corporate or assets of a person.

**44. Applications-**(1) An application for a clearance must:

- (a) be in the approved form and accompanied by any prescribed fee; and
- (b) contain all the information required by the form and by relevant guidelines.

(2) An applicant may, at any time, withdraw the application.

**45. Dealing with applications** - The Commission:

- (a) may require an applicant for a clearance to provide further documents or information related to the application; and
- (b) does not have to consider the application further until the requirement in paragraph (a) is met; and
- (c) may consult any person who, in the opinion of the Commission, is able to assist it in considering an application; and
- (d) must consult the appropriate Regulator if the application concerns a regulated body; and
- (e) must -
  - (i) take reasonable steps to bring an application to the attention of those whom the Commission considers are likely to be affected by a decision on the application; and
  - (ii) have regard to any submissions made; and
- (f) may refuse to deal with an application if it appears to the Commission that -
  - (i) the applicant will not engage in the conduct to which the application relates; or
  - (ii) the application does not involve a question of wide importance or public interest in relation to the operation of this Act that has not been resolved; and
- (g) must notify the applicant of the decision, including the reasons for the decision and a statement of the material facts on which those reasons were based.

**46. Time limits**-(1) If the Commission has not notified an applicant for a clearance of its decision on the application within the decision period, it is taken to have refused to give the clearance.

(2) The decision period is:

- (a) one (1) month after the application was made; or

(b) a longer period, if the Commission and the applicant agree to it.

(3) The decision period is to be calculated excluding any period between the time when a requirement under section 45(a) was made and the time when it was met.

**47. Revocation** - The Commission:

(a) may revoke a clearance, by giving notice to the person to whom the clearance was given; and

(b) must not revoke a clearance unless -

(i) satisfied that information provided with or in connection with the application for the clearance was incomplete, false or misleading in a material particular; and

(ii) the person to whom the clearance was given and any other person who, in the opinion of the Commission, is likely to have an interest in the matter have been given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to any such submissions.

**48. Expiry of clearances** - A clearance remains in force until the earlier of:

(a) the time when it is revoked; and

(b) the date, if any, specified in the clearance as the day it expires.

*Division 4 - Authorisations*

**49. Authorisations**-(1) The Commission may, on application, give an authorisation:

(a) for section 30(1), for a specified agreement, concerted practice or decision; or

(b) for section 33(1), for specified conduct; or

(c) for section 34(1), for a specified acquisition.

(2) The Commission must not give an authorisation unless satisfied that the agreement, concerted practice, decision, conduct or acquisition will result, or will be likely to result, in a benefit to

the public which would outweigh the adverse effects from the lessening in competition that would result, or would be likely to result.

(3) An authorisation may be subject to conditions and limitations specified in the authorisation.

(4) To the extent that an authorisation applies to it, Division 1 does not apply to:

- (a) an agreement, concerted practice or decision of an association;
- (b) conduct that might lessen competition; or
- (c) an acquisition of shares in a body corporate or assets of a person.

- 50. Applications-**(1) An application for an authorisation must:
- (a) be in the approved form and accompanied by any prescribed fee; and
  - (b) contain all the information required by the form and by relevant guidelines.
- (2) An applicant may, at any time, withdraw the application.

**51. Dealing with applications** - The Commission:

- (a) may require an applicant for an authorisation to provide further documents or information related to the application; and
- (b) does not have to consider the application further until the requirement in paragraph (a) is met; and
- (c) may consult any person who, in the opinion of the Commission, is able to assist it in considering an application; and
- (d) must consult the appropriate Regulator if the application concerns a regulated body; and
- (e) must -
  - (i) take reasonable steps to bring an application to the attention of those whom the Commission considers are likely to be affected by a decision on the application; and
  - (ii) have regard to any submissions made;and

- (f) may refuse to deal with an application if it appears to the Commission that the applicant will not proceed with the agreement, concerted practice, decision, conduct or acquisition to which the application relates; and
- (g) must notify the applicant of the decision, including the reasons for the decision and a statement of the material facts on which those reasons were based.

**52. Time limits-**(1) If the Commission has not notified an applicant for an authorisation of its decision on the application within the decision period, it is taken to have refused to give the authorisation.

(2) The decision period is:

- (a) one (1) month after the application was made; or
- (b) a longer period, if the Commission and the applicant agree to it.

(3) The decision period is to be calculated excluding the period (if any) between the time when a requirement under section 51(a) was made and the time when it was met.

**53. Amendment and revocation-**(1) The Commission:

- (a) may by notice to the person to whom the authorisation was given, amend or revoke an authorisation if satisfied that -
  - (i) information provided in respect of the application for the authorisation was incomplete, false or misleading in a material particular; or
  - (ii) there has been a material change of circumstances since the authorisation was given; or
  - (iii) a condition of the authorisation has not been complied with; and
- (b) may, by notice to the person to whom the authorisation was given, amend or revoke an authorisation if the Commission considers it expedient to do so; and
- (c) must, by notice to the person to whom the authorisation was given, revoke an authorisation if

all persons to whose conduct the authorisation relates so request in writing.

(2) The Commission must not amend or revoke an authorisation unless:

- (a) the person to whom the authorisation was granted, and any other person who in the opinion of the Commission is likely to have an interest in the matter, is given a reasonable opportunity to make any submissions to the Commission; and
- (b) the Commission has had regard to the submissions made.

**54. Expiry of authorisations** - An authorisation remains in force until the earlier of:

- (a) the time when it is revoked; and
- (b) the date, if any, specified in the authorisation as the day it expires.

## **PART 4 CONSUMER PROTECTION**

### *Division 1 - Misleading or deceptive conduct*

**55. Misleading or deceptive conduct generally**-(1) A person must not, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Sections 56 to 91 do not limit subsection (1).

**56. Misleading or deceptive conduct in relation to employment**-(1) A person must not engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, as to any matter relating to employment that is, is to be or may be offered by that or some other person.

(2) Subsection (1) extends to matters relating to the availability, nature, terms and conditions of the employment.

**57. Limited application of sections 55 and 56 to news media-**(1) The publication of information or matter in a newspaper by the publisher of that newspaper does not contravene section 55 or 56.

(2) Subsection (1) does not apply to:

(a) the publication of an advertisement; or

(b) the publication of information or matter relating to -

(i) the supply, possible supply or promotion of the supply or use of goods or services; or

(ii) the sale or grant, possible sale or grant or promotion of the sale or grant of an interest in land,

by -

(iii) the publisher or, if the publisher is a body corporate, a related body corporate of the publisher; or

(iv) a party to an agreement with the publisher or a related body corporate of the publisher relating to the nature or content of the information or matter.

(3) The broadcasting of information or matter by a service provider does not contravene section 55 or 56.

(4) Subsection (3) does not apply to:

(a) the broadcasting of an advertisement; or

(b) the broadcasting of information or matter relating to -

(i) the supply, possible supply or promotion of the supply or use of goods or services; or

(ii) the sale or grant, possible sale or grant or promotion of the sale or grant of an interest in land,

by -

(iii) the service provider or, if the service provider is a body corporate, a related body corporate of the service provider; or

(iv) a party to an agreement with the service provider or a related body corporate of the service provider relating to the nature or content of the information or matter.



(5) In this section:

“newspaper” has the same meaning as in section 2 of the Newspapers and Printers Act 1993;

“publisher”, for a newspaper, means its owner;

“service provider” has the same meaning as in section 2 of the Broadcasting Act 2010.

### *Division 2 - Unfair practices*

**58. Offering gifts and prizes** - A person must not offer gifts, prizes or other free items:

(a) in connection with the supply or possible supply in trade of goods or services or with the promotion by any means of the supply or use of goods or services; or

(b) in connection with the sale or grant or the possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,

if either of the following apply:

(c) the person does not intend to provide them, or to provide them as offered; or

(d) the person does not have reasonable grounds to believe that he or she will be able to provide them, or to provide them as offered.

**59. Bait advertising**-(1) A person must not, in trade, advertise for supply, at a specified price, goods or services that the person does not intend to offer for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person must not, in trade, advertise for supply, at a specified price, goods or services if the person does not have reasonable grounds for believing that they can be supplied by that person at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) A person who has advertised goods or services for supply at a specified price must offer the goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(4) In proceedings against a person for a failure to offer goods or services to a person (“customer”) under subsection (3), it is a defence if it is established that:

(a) the person offered to supply to the customer immediately, or to procure another person to supply to the customer within a reasonable time -

(i) goods or services of the kind advertised, in a reasonable quantity and at the advertised price; or

(ii) equivalent goods or services in a reasonable quantity and at the advertised price, and, if the offer was accepted by the customer, that the person so supplied, or procured another person so to supply, the goods or services offered; or

(b) both -

(i) the advertisement mentioned in subsection (3) stated the quantity of the goods available for sale at the specified price; and

(ii) the person was offering for sale, at the relevant time, at that price, at least that quantity of the goods.

**60. Referral selling-**(1) A person must not, in trade, induce another person (“customer”) to acquire goods or services by representing that the customer will, after the agreement for the acquisition is made, receive a rebate, commission or other benefit in return for giving the person the names of prospective customers, or otherwise assisting the person to supply goods or services to other persons, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after the agreement is made.

(2) Subsection (1) does not apply if the acquisition of goods is for resupply.

**61. Forged, etc., trade marks-**(1) A person must not, in trade:

- (a) forge a trade mark; or
- (b) falsely apply to goods a trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive; or
- (c) falsely use, in relation to the provision of services, a trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive.

(2) In this section, a person is taken to forge a trade mark if the person:

- (a) without the consent of the proprietor of the trade mark, makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or
- (b) falsifies a genuine trade mark, whether by alteration, effacement or otherwise.

(3) In this section, “sign” or “trade mark” has the same respective meaning in the Intellectual Property Act 2011.

**62. Demanding or accepting payment without intending to supply as ordered** - A person must not, in trade, demand or accept payment or other consideration for goods or services if, at the time of the demand or acceptance, the person:

- (a) does not intend to supply the goods or services; or
  - (b) intends to supply materially different goods or services;
- or
- (c) does not have reasonable grounds to believe that he or she will be able to supply the goods or services within a specified period or, if no period is specified, within a reasonable period.

**63. Misleading representations about certain businesses-**(1)

A person must not, in trade, make a representation that is false or misleading concerning the profitability or risk, or any other material aspect, of a business activity that the person represents as one that can be, or can be to a substantial extent, carried on at or from a person’s place of residence.

(2) A person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring:

- (a) the performance by the persons concerned of work; or
- (b) the investment of money by the persons concerned and the performance by them of work associated with the investment,

must not make a representation that is false or misleading in a material particular with respect to the profitability or risk or any other material aspect of the business activity.

**64. Harassment and coercion** - A person must not use physical force, harassment or coercion in connection with the supply or possible supply of goods or services in trade or payment for goods or services.

**65. Pyramid selling and similar schemes**-(1) A person must not promote or operate a scheme for the supply of goods or services for reward if:

- (a) to many participants in the scheme, the scheme constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and
- (b) the scheme is or is likely to be unfair to many of the participants in the scheme in that -
  - (i) the financial rewards for many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
  - (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants.

(2) A person must not promote or operate a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services) that is likely to be unfair to many of the participants in the scheme, in that:

- (a) the financial rewards for many of the participants are dependent on the recruitment of additional participants; and
- (b) the number of additional participants that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants.

*Division 3 - Consumer guarantees*

**66. When goods and services supplied** - For this Division:

- (a) goods are taken to be supplied at the time when the consumer acquires the right to possession of the goods; and
- (b) services are taken to be supplied at the time when they are provided.

**67. Division does not limit other laws** - This Division applies in addition to any other law.

**68. Application** - This Division:

- (a) applies despite any provision to the contrary in any agreement; and
- (b) does not apply to goods supplied by auction; and
- (c) does not give a person a remedy against a charitable organisation in respect of the supply by the organisation of goods or services for the principal purpose of benefiting the person to whom the supply is made.

**69. Title to goods**-(1) If goods are supplied, in trade, to a person who acquires them as a consumer, there is:

- (a) a guarantee that the supplier has a right to transfer the title to the goods to the consumer; and
- (b) a guarantee that the goods are free from any security interest other than one -
  - (i) disclosed to the consumer before the consumer agreed to the supply; or

- (ii) created by, or with the express consent of, the consumer; and
  - (c) a guarantee that the consumer has the right to undisturbed possession of the goods.
- (2) Subsection (1)(a) and (b) does not apply to a supply of goods by lease or hire.
- (3) If the supply is by way of lease or hire, subsection (1)(c) applies but only for the term of the lease or hiring.
- (4) Subsection (1)(c) does not apply so far as the right to undisturbed possession is expressly varied:
- (a) if the supply is by a hire purchase agreement, by a provision of the agreement; or
  - (b) by a security, or a term of the agreement for supply, in respect of which the consumer has received -
    - (i) oral advice, acknowledged in writing by the consumer, as to the way in which the consumer's right to undisturbed possession of the goods could be affected, sufficient to enable a reasonable consumer to understand the general nature and effect of the variation; and
    - (ii) a written copy of the agreement for supply or security, or a written copy of the part of the agreement that provides for the variation.

**70. Goods to be of acceptable quality-**(1) If goods are supplied, in trade, to a person who acquires them as a consumer, there is a guarantee that the goods are of acceptable quality.

- (2) For this section, goods are of acceptable quality if they are:
- (a) as fit for all the purposes for which goods of the type in question are commonly supplied; and
  - (b) as acceptable in appearance and finish; and
  - (c) as free from minor defects; and
  - (d) as safe; and
  - (e) as durable,
- as a reasonable consumer, fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to:
- (f) the nature of the goods; and
  - (g) the price, where relevant; and

- (h) any statement made about the goods on any packaging or label on the goods; and
- (i) any representation made about the goods by the supplier or the manufacturer; and
- (j) all other relevant circumstances of the supply of the goods.

(3) If any defects in goods have been specifically drawn to the consumer's attention before he or she agreed to the supply then, even though a reasonable consumer may not have regarded those goods as acceptable with those defects, the goods do not fail to comply with the guarantee as to acceptable quality merely because of those defects.

(4) For subsection (3), for goods displayed for sale or hire, defects disclosed on a written notice displayed with the goods are taken to have been specifically drawn to the consumer's attention.

(5) If the consumer examined the goods before he or she agreed to the supply, the goods do not fail to comply with the guarantee as to acceptable quality merely because of a defect that the consumer ought to have discovered in the course of that examination even though a reasonable consumer may not have regarded those goods as acceptable with that defect.

(6) In determining whether goods comply with the guarantee of acceptable quality, the consumer may ignore the effect of any use of the goods, or extent of use of the goods, that is inconsistent with the way in which or the extent to which a reasonable consumer would expect to use the goods.

(7) In this section, "defect", for goods, means a failure of the goods to comply with the guarantee as to acceptable quality.

**71. Goods to be fit for particular purpose-**(1) If goods are supplied, in trade, to a person who acquires them as a consumer, there is:

- (a) a guarantee that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and

- (b) a guarantee that the goods are reasonably fit for any particular purpose for which the supplier represents that they will be fit.
- (2) Those guarantees do not apply if:
  - (a) the consumer did not rely on the supplier's skill or judgment; or
  - (b) it would have been unreasonable for the consumer to have relied on the supplier's skill or judgment.
- (3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.

**72. Goods to comply with description-**(1) If goods are supplied by description, in trade, to a person who acquires them as a consumer, there is a guarantee that the goods correspond with the description.

(2) A supply of goods is not prevented from being a supply by description by reason only that, being exposed for sale or hire, they are selected by a consumer.

**73. Goods to comply with sample** - If goods are supplied, in trade, to a person who acquires them as a consumer by reference to a sample or demonstration model:

- (a) there is a guarantee that the goods correspond with the sample or demonstration model in quality; and
- (b) there is a guarantee that the consumer will have a reasonable opportunity to compare the goods with the sample or demonstration model.

**74. Consumer's remedies for goods that do not comply with guarantee-**(1) If goods supplied in trade to a person who acquires them as a consumer do not comply with a consumer guarantee (in this section and section 75, a "failure"), the consumer may, by notice to the supplier, require the supplier to remedy the failure.

(2) The notice may be oral or in writing.

(3) The notice must be given as soon as reasonably practicable, and in any event not more than four (4) weeks, after the consumer became aware of the failure or ought reasonably have become aware of the failure.



(4) A supplier may comply with a requirement to remedy a failure by (at the supplier's election):

- (a) repairing the goods; or
- (b) if the failure relates to title, curing the defect in title; or
- (c) replacing the goods with goods of identical type; or
- (d) providing a refund to the consumer of any money paid, and the value of any other consideration provided, by the consumer in respect of the goods.

(5) This section does not limit any other right that the consumer may have at general law (including a right to damages).

(6) If a consumer receives goods under subsection (4)(c), the replacement goods are, for the purposes of this Act, taken to be supplied by the supplier and the consumer guarantees, and the obligations under this Act, for a supply of goods to a person who acquires them as a consumer, apply.

(7) A consumer does not have a right to require a remedy under this section if:

- (a) the goods have been disposed of by the consumer or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier; or
- (b) the non-compliance of the goods with the relevant consumer guarantee occurred after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
- (c) the goods have been attached to or incorporated in real or personal property and cannot be detached or isolated without damaging them or the property.

**75. Rejection of goods-**(1) If the supplier has not complied with a requirement under section 74 within a period that is reasonable (having regard to the nature of the goods and the nature of the failure), the consumer may, by notice to the supplier, reject the goods.

(2) The notice:

- (a) may be oral or in writing; and

- (b) may require the supplier to refund to the consumer any money paid and the value of any other consideration provided by the consumer for the goods; and
  - (c) must include a statement of the grounds for rejection; and
  - (d) must be given as soon as reasonably practicable, and in any event not more than four (4) weeks, after the period mentioned in subsection (1) has ended.
- (3) If a consumer exercises a right to reject goods, the consumer must return the goods to the supplier unless:
- (a) the goods have already been returned to, or retrieved by, the supplier; or
  - (b) because of the nature of the failure of the goods to comply with the relevant guarantee, the goods cannot be returned, moved or transported without significant cost to the consumer, in which case the supplier may collect the goods at its expense.
- (4) If ownership in the goods has passed to the consumer before the consumer exercises the right to reject the goods, the ownership in the goods re-vests in the supplier when the supplier receives the notice of rejection.
- (5) A consumer does not have a right to reject goods under this Act if:
- (a) the goods have been disposed of by the consumer or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier; or
  - (b) the non-compliance of the goods with the relevant consumer guarantee occurred after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
  - (c) the goods have been attached to or incorporated in real or personal property and cannot be detached or isolated without damaging them or the property.
- (6) If a consumer exercises a right to reject goods, the supplier must provide a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

(7) The obligation to refund cannot be satisfied by permitting the consumer to acquire goods from the supplier.

**76. Services to be supplied with care and skill** - If services are supplied, in trade, to a person who acquires them as a consumer, there is a guarantee that the services will be provided with reasonable care and skill.

**77. Services to be fit for particular purpose**-(1) If services are supplied, in trade, to a person who acquires them as a consumer, there is a guarantee that the services, and any product resulting from the services, will be:

- (a) reasonably fit for any particular purpose; and
- (b) of such a nature and quality that they can reasonably be expected to achieve a particular result,

that the consumer makes known to the supplier, before or at the time of making the agreement for the supply of the services, as the purpose for which the services are to be provided or the result that the consumer desires to achieve.

(2) Subsection (1) does not apply if:

- (a) the consumer did not rely on the supplier's skill or judgment; or
- (b) it would be unreasonable for the consumer to have relied on the supplier's skill or judgment.

**78. Services to be completed in reasonable time** - If:

- (a) services are supplied, in trade, to a person who acquires them as a consumer; and
- (b) the agreement for the supply of the services does not specify the time for the services to be completed, or does not specify how that time is to be determined,

there is a guarantee that the services will be completed within a reasonable time.

**79. Consumer's remedies for services that do not comply with consumer guarantee**-(1) If services supplied in trade to a person who acquires them as a consumer do not comply with a consumer guarantee (in this section and section 80, a "failure"),

the consumer may, by notice to the supplier, require the supplier to remedy the failure.

(2) The notice:

- (a) may be oral or in writing; and
- (b) must be given as soon as reasonably practicable, and in any event not more than four (4) weeks, after the consumer became aware of the failure or ought reasonably have become aware of the failure.

(3) A supplier may comply with the requirement by (at the supplier's election):

- (a) the supply of the services again; or
- (b) a refund to the consumer of any money paid, and the value of any other consideration provided, by the consumer in respect of the services.

**80. Cancelling agreement for services-**(1) If the supplier has not complied with a requirement under section 79 within a period that is reasonable (having regard to the nature of the services and the nature of the failure), the consumer may, by notice to the supplier, cancel the agreement for supply of the services.

(2) The notice:

- (a) may be oral or in writing; and
- (b) may require the supplier, orally or in writing, to refund to the consumer any money paid, and the value of any other consideration provided, by the consumer for the services; and
- (c) must be given as soon as reasonably practicable, and in any event not more than four (4) weeks, after the period mentioned in subsection (1) has ended.

(3) If a supplier supplies services again under subsection (1), the new services are, for the purposes of this Act, taken to be supplied by the supplier and the consumer guarantees, and the obligations under this Act, in respect of a supply of services to a person who acquires them as a consumer apply.

(4) Cancellation of an agreement for the supply of services:

- (a) may be made known by words, or by conduct indicating an intention to cancel, or both, and it is not necessary to use any particular form of words

so long as the intention to cancel is made known;  
and

(b) cannot take effect -

(i) before the time at which the cancellation is made known to the supplier; or

(ii) if it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates, by means that are reasonable in the circumstances, the consumer's intention to cancel the agreement.

(5) This section does not limit any other right that the consumer may have at general law (including a right to damages).

**81. Effects of cancellation-**(1) If a consumer cancels, under this Act, an agreement for the supply of services:

(a) the consumer is entitled to recover from the supplier the amount of money paid, and the value of any other consideration provided, by the consumer for the services; and

(b) subject to paragraph (a), so far as the agreement has been performed at the time of the cancellation, neither party to the agreement is to be divested, because of the cancellation, of any property transferred or money paid under the agreement; and

(c) so far as the agreement is unperformed at the time of the cancellation, neither party to the agreement is obliged or entitled to perform it.

(2) Subsection (1) does not affect:

(a) a right of a party to the agreement to recover damages for misrepresentation or repudiation or breach of the agreement; or

(b) a right of the consumer to recover damages for non-compliance with a consumer guarantee; or

(c) a right of the consumer under this Act to reject goods.

**82. Ancillary power of the Court to grant relief-**(1) If a consumer cancels, under this Act, an agreement for the supply of services, the Court may make any of the orders under subsection

(2), in any proceedings by, or on application made for the purpose by:

- (a) the consumer; or
- (b) the supplier; or
- (c) a person claiming through or under the consumer or the supplier; or
- (d) another person if it is material for the other person to know whether relief under this section will be granted.

(2) For subsection (1), the orders are:

- (a) an order that some or all of the property that was the subject of the agreement, or the consideration, be returned or repaid;
- (b) an order vesting that property in a specified person;
- (c) an order awarding damages in respect of a breach of the agreement;
- (d) an order directing a party to the proceedings to do or not do a specified thing in relation to another party to the proceedings;
- (e) any other order that the Court considers appropriate.

(3) An order under this section may be subject to conditions specified in the order.

(4) The matters to be considered in determining whether to make an order under this section include:

- (a) the benefit obtained or intended to be obtained from the agreement by a party to the agreement; and
- (b) the costs incurred by a party in connection with the agreement, including in connection with preparing to give effect to the agreement.

(5) No order may be made under this section contrary to Article 14 of the Constitution.

**83. Agreements for work and materials-**(1) The consumer guarantees for goods apply whether or not the goods are supplied in connection with a service.

(2) The consumer guarantees for services apply whether or not the services are supplied with or in conjunction or in relation to goods.

(3) If a service to be supplied under an agreement is merely incidental to the supply of goods, the consumer cannot cancel the agreement under this Act if the consumer has or had the right to reject the goods under this Part.

*Division 4 - Obligations of traders*

**84. Traders to display prices-**(1) A trader commits an offence if:

- (a) the trader displays goods for sale; and
- (b) the price of the goods is not displayed pursuant to this section,

and is liable on conviction to:

- (c) for an individual, a fine not exceeding 20 penalty units; and
- (d) for a body corporate, a fine not exceeding 30 penalty units.

(2) The price is to be exhibited by:

- (a) affixing or noting the price on the goods; or
- (b) displaying the price on the shelf or stand on which the goods are displayed for sale.

(3) The price displayed:

- (a) is to include all amounts payable by a buyer in respect of the sale of the goods; and
- (b) is to be the maximum amount to be charged to any purchaser indicating a willingness to purchase the goods and tendering the amount displayed.

**85. Traders to issue receipt-**(1) A trader commits an offence who:

- (a) sells goods; and
- (b) does not, on demand, issue to the buyer a receipt setting out -
  - (i) the date of sale; and
  - (ii) the quantity of goods sold; and
  - (iii) the amount paid; and
  - (iv) the name of the trader.

(2) A trader convicted of an offence under subsection (1) is liable to:

- (a) for an individual, a fine not exceeding 20 penalty units;  
and
- (b) for a body corporate, a fine not exceeding 30 penalty units.

**86. Traders to have notice boards-**(1) A trader must display on a notice board in a conspicuous place in his or her place of business a copy of each of the following that is in force in relation to the trader:

- (a) an order under section 82;
  - (b) a price control order that relates to the trader;
  - (c) a warning notice issued to the trader;
  - (d) an enforceable undertaking entered into by the trader;
  - (e) a cease and desist notice issued to the trader;
  - (f) an injunction under section 120 binding the trader;
  - (g) a pecuniary penalty order issued against the trader.
- (2) A trader who contravenes subsection (1) commits an offence.
- (3) A person commits an offence who:
- (a) removes from a notice board under this section a document that this Act requires to be displayed on the notice board; or
  - (b) otherwise interferes with document on a board under this section.
- (4) A person convicted of an offence under subsection (2) or (3) is liable to:
- (a) for an individual, a fine not exceeding 20 penalty units;  
and
  - (b) for a body corporate, a fine not exceeding 30 penalty units.

*Division 5 - Information and safety standards*

**87. Consumer information standards-**(1) Subject to this section, the Minister may, with the approval of the Cabinet, make orders (“consumer information standards”) prescribing, for specified goods or services, standards in relation to:

- (a) the provision of information about the kind, grade, quantity, origin, performance, care, construction,



design, composition, contents, use, price, finish, packaging, promotion or supply of the goods or services; and

(b) how that information is to be provided in relation to the supply or possible supply of the goods or services.

(2) A consumer information standard may adopt some or all of a published standard, and may do so with specified modifications.

(3) Before making a consumer information standard, the Minister must consult as widely as practicable, but a failure to do so does not affect the validity of the standard.

(4) A consumer information standard comes into force on publication in the *Savali*.

(5) A consumer information standard does not apply to goods to which an order under section 7A of the Food and Drugs Act 1967 applies (whether the order is made before or after the commencement of this Part).

(6) If:

(a) a consumer information standard for any particular goods or services is in force; and

(b) a person who supplies, in trade, in Samoa, those goods or services; and

(c) the supply is contrary to the requirements of the standard,

the person commits an offence and is liable on conviction to:

(d) for an individual, a fine not exceeding 200 penalty units, or imprisonment for a term not exceeding two (2) years, or both; and

(e) for a body corporate, a fine not exceeding 1,000 penalty units.

(7) It is a defence to an offence against subsection (6) that:

(a) the defendant made all reasonable inquiries to determine whether or not the supply was contrary to the requirements of the consumer information standard; and

(b) having regard to the outcome of those inquiries, the defendant reasonably believed that the supply was not contrary to the requirements of the standard.

**88. Product safety standards for goods-**(1) Subject to this section, the Minister may, with the approval of the Cabinet, make orders (“product safety standards”) prescribing, for specified goods, standards in relation to preventing or reducing the risk of injury to persons.

(2) A product safety standard may provide for any of the following:

- (a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
- (b) testing the goods during or after manufacture or processing;
- (c) markings, warnings, or instructions to accompany the goods.

(3) A product safety standard may adopt some or all of a published standard, and may do so with specified modifications.

(4) Before making a product safety standard, the Minister must consult as widely as practicable, but a failure to do so does not affect the validity of the standard.

(5) A product safety standard does not apply to goods to which an order under section 7A of the Food and Drugs Act 1967 applies (whether the order is made before or after the commencement of this Part).

(6) A product safety standard comes into force on publication in the *Savali*.

(7) If:

- (a) a product safety standard for any particular goods is in force; and
- (b) a person supplies, in trade, in Samoa, those goods; and
- (c) the supply is contrary to the requirements of the standard,

the person commits an offence and is liable on conviction to:

- (d) for an individual, a fine not exceeding 200 penalty units, or imprisonment for a term not exceeding 2 years, or both; and
- (e) for a body corporate, a fine not exceeding 1,000 penalty units.

- (8) It is a defence to an offence against subsection (7) that:
- (a) the defendant made all reasonable inquiries to determine whether or not the supply was contrary to the requirements of the product safety standard; and
  - (b) having regard to the outcome of those inquiries, the defendant reasonably believed that supply was not contrary to the requirements of the standard.

**89. Product safety notices-**(1) If it appears to the Minister that:

- (a) goods or services of a particular kind will or may cause injury to persons; or
- (b) a reasonably foreseeable use (including a misuse) of goods or services of a particular kind will or may cause injury to persons,

the Minister may, by notice in the *Savali*, declare the goods or services to be unsafe (a “product safety notice”).

(2) Unless sooner revoked, a product safety notice remains in force for 18 months, but the Minister may re-make the notice under this section.

(3) A product safety notice for particular goods may not be made (and, if made, is of no effect) if a product safety standard is in force for the goods.

(4) If product safety notice for particular goods or services is in force, a person who supplies, in trade, in Samoa, those goods or services commits an offence and is liable on conviction to:

- (a) for an individual, a fine not exceeding 200 penalty units, or imprisonment for a term not exceeding two (2) years, or both; and
- (b) for a body corporate, a fine not exceeding 1,000 penalty units.

**90. Compulsory product recalls-**(1) If the Minister is satisfied that:

- (a) a person has, in trade, supplied goods that -
  - (i) do not comply with an applicable product safety standard; or

- (ii) are the subject of a product safety notice;
  - or
  - (iii) are goods of a kind that will or may cause injury to a person; and
  - (b) the person has not recalled the goods or taken appropriate action to recall the goods,
- the Minister may, by notice to the person (a “product recall notice”), require the person to do any or all of the following, as specified in the notice, within a period specified in the notice:
- (c) recall the goods, and repair or replace the goods, or refund to any person to whom the goods were supplied, the price paid for the goods or a lesser amount as may be reasonable having regard to the use that person has had of the goods;
  - (d) disclose to the public information relating to -
    - (i) the characteristics of the goods that render them unsafe; or
    - (ii) the circumstances in which use of the goods is unsafe; or
    - (iii) any other matters relating to the goods or the use of the goods as may be specified.
- (2) A person who fails to comply with a requirement of a product recall notice given to the person commits an offence and is liable on conviction to:
- (a) for an individual, a fine not exceeding 200 penalty units or imprisonment for a term not exceeding two (2) years, or both; and
  - (b) for a body corporate, a fine not exceeding 1000 penalty units.

**91. Services safety standards-**(1) Subject to this section, the Minister may, with the approval of the Cabinet, make orders (“services safety standards”) prescribing, for specified services, standards in relation to preventing or reducing the risk of injury to persons.

- (2) A services safety standard:
- (a) may adopt some or all of a published standard, with specified modifications; and
  - (b) comes into force on publication in the *Savali*.

(3) Before making a services safety standard, the Minister must consult as widely as practicable, but a failure to do so does not affect the validity of the standard.

(4) If:

(a) a services safety standard for particular services is in force; and

(b) a person supplies, in trade, in Samoa, those services; and

(c) the supply is contrary to the services safety standard, the person commits an offence and is liable on conviction to:

(d) for an individual, a fine not exceeding 200 penalty units, or imprisonment for a term not exceeding two (2) years, or both; and

(e) for a body corporate, a fine not exceeding 1,000 penalty units.

(5) It is a defence to an offence against subsection (4) that:

(a) the defendant made all reasonable inquiries to determine whether or not the supply was contrary to the requirements of the services safety standard; and

(b) having regard to the outcome of those inquiries, the defendant reasonably believed that supply was not contrary to the requirements of the services safety standard.

(6) In this section, “services” means the performance of work by way of:

(a) maintaining, repairing, cleaning, treating, processing, installing, assembling or altering goods; or

(b) constructing, maintaining, repairing, cleaning, treating or altering a building or other fixture on land; or

(c) developing land; or

(d) transporting goods.

## **PART 5 PRICE CONTROL**

### *Division 1 - Price inquiries*

**92. Minister may require price inquiry report-**(1) The Minister may refer to the Commission for inquiry and report the prices of specified goods supplied in Samoa.

(2) The reference may be made at the Commission's suggestion or on the Minister's own initiative.

(3) The Minister may:

- (a) alter the terms of a reference; or
- (b) give the Commission directions about the order in which it is to deal with references.

(4) In conducting an inquiry, the Commission must consult as widely as practicable.

**93. Commission to report to Minister-**(1) A report under this Division must:

- (a) identify the goods, and the relevant markets; and
- (b) analyse the degree of competition in those markets; and
- (c) assess the likely future state of the competition; and
- (d) assess the impact on consumers or customers of prices and pricing behaviour in those markets; and
- (e) make recommendations as to measures, if any, that would or might improve competition in the relevant markets; and
- (f) make recommendations whether any further price inquiries should be carried out in the future and, if so, when; and
- (g) make recommendations whether a price control order should be made and, if so, the terms of the order.

(2) The Commission must make each report under this Division available for inspection by any person:

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

*Division 2 - Price controls*

**94. Price control orders-**(1) Subject to this section, the Head of State, acting on the advice of the Cabinet, may make regulations (“price control orders”) specifying:

- (a) the maximum price that a supplier may charge for the supply of specified goods; or
- (b) how the maximum price that a supplier may charge for the supply of specified goods is to be calculated.

(2) The Head of State is not to make a price control order in respect of specified goods unless a report of the Commission under Division 1:

(a) states that -

(i) there is no effective competition in the market for the goods; and

(ii) there is no reasonable prospect that there will be effective competition in that market within the next two (2) years; and

(b) recommends that the order be made.

(3) A price control order:

(a) may apply to the supply of goods in a particular area, or in any area; and

(b) comes into force on publication in the *Savali*.

(4) Unless sooner repealed, a price control order ceases to have effect after two (2) years from the date it comes into force.

(5) Subsection (4) does not prevent the Head of State from re-making a price control order, but the order is not to be re-made so that it has effect for more than four (4) years unless a report of the Commission under Division 1 has recommended that the order be so re-made.

(6) A person who:

(a) supplies or offers to supply, in trade, to another person as a consumer, goods which are subject to a price control order; and

(b) charges a price for the goods that exceeds the price specified in or calculated pursuant to the price control order,

commits an offence and is liable on conviction to:

(c) for an individual, a fine not exceeding 50 penalty units; and

- (d) for a body corporate, a fine not exceeding 100 penalty units.

**95. Price control orders to be displayed-**(1) A person commits an offence if:

- (a) the person, in trade, supplies or offers to supply goods from premises to which customers have access for the purpose of acquiring the goods; and
- (b) the supply of the goods is subject to a price control order; and
- (c) a copy of the order is not displayed prominently on the notice board required by section 86.

(2) A person commits an offence if:

- (a) the person, in trade, supplies or offers to supply goods over the internet; and
- (b) the supply of the goods is subject to a price control order; and
- (c) the internet site the person uses to offer the goods does not draw attention to the existence of the price control order, and either state its terms or provide a working link to a copy of the order.

(3) A person convicted of an offence under subsection (1) or (2) is liable to:

- (a) for an individual, a fine not exceeding 50 penalty units; and
- (b) for a body corporate, a fine not exceeding 100 penalty units.

**96. Traders to maintain records-**(1) A person commits an offence if:

- (a) the person, in trade, sells or offers for sale goods; and
- (b) the goods are subject to a price control order; and
- (c) the person does not make a record identifying the goods and the price charged.

(2) A person commits an offence if the person does not retain a record made under subsection (1) for at least seven (7) years after the transaction to which it relates.

(3) A person convicted of an offence under subsection (1) or (2) and is liable on conviction to:



- (a) for an individual, a fine not exceeding 10 penalty units;  
and
- (b) for a body corporate, a fine not exceeding 20 penalty units.

**PART 6**  
**COMPLAINTS, INVESTIGATIONS**  
**AND RELATED POWERS**

*Division 1 - Complaints and investigations*

**97. Complaints-**(1) A person may make a complaint with the Commission that a person has contravened, is contravening or is about to contravene a provision of this Act.

(2) A complaint must:

- (a) be in the approved form; and
- (b) contain all the information required by the approved form and by relevant guidelines.

(3) The Commission must, if asked, assist a person to make a complaint.

**98. Power to carry out investigations-**(1) The Commission may, on its own initiative, carry out an investigation into any conduct that constitutes or may constitute a contravention of this Act.

(2) If the Minister refers specified conduct or alleged conduct to the Commission under this section, the Commission must:

- (a) carry out an investigation to determine whether the specified conduct or alleged conduct occurred and, if it did, whether it constitutes or may constitute a contravention of this Act; and
- (b) provide a report on the investigation to the Minister.

(3) If a complaint is made under section 97, the Commission must carry out an investigation into the conduct to determine whether it constitutes or may constitute a contravention of this Act.

(4) The Commission does not have to carry out an investigation of a complaint under section 97 if it does not

consider it reasonable to do so and may, in particular, refuse to investigate a complaint if it is satisfied that:

- (a) the complaint is trivial, frivolous or vexatious; or
- (b) the complaint is misconceived or lacking in substance.

**99. Time limit for investigating acquisitions** - The Commission must not commence an investigation of an acquisition more than six (6) months after the day on which the Commission first became aware, or ought to have become aware, that the acquisition has taken place.

**100. Appointment of investigators**-(1) The Commission:

- (a) may in writing, appoint a person to be an investigator; and
- (b) must, in the approved form, issue an identity card to the investigator.

(2) An investigator must carry his or her identity card at all times when exercising a power or performing a function under this Act.

(3) If an investigator does not, as soon as practicable after ceasing to be an investigator, return his or her identity card to the Commission, the investigator, commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

(4) It is a defence to an offence against subsection (3) that the identity card is lost or destroyed.

(5) A person who interferes with or impedes an investigator exercising a power or performing a function under this Act commits an offence and is liable on conviction to:

- (a) for an individual, a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both; and
- (b) for a body corporate, a fine not exceeding 250 penalty units.

**101. Investigations - powers to require production of documents and things**-(1) An investigator may, by notice in writing, require a person to produce any document or thing relevant to an investigation at a time and place specified in the notice.

(2) The notice must indicate the subject matter and purpose of the investigation, and draw attention to the penalties under this Act for:

- (a) failing to comply with the requirement; and
- (b) providing false or misleading documents; and
- (c) destroying or falsifying documents.

(3) If a person produces a document or thing as required under subsection (1), an investigator may do either of the following:

- (a) make copies of it or take extracts or samples from it;
- (b) require the person to give an explanation of or further particulars about the document or thing.

(4) A person who fails or refuses to comply with a requirement under subsection (1) or (3)(b) commits an offence and is liable on conviction to:

- (a) for an individual, a fine not exceeding 50 penalty units, or imprisonment for a term not exceeding six (6) months, or both; and
- (b) for a body corporate, a fine not exceeding 250 penalty units.

(5) It is a defence to an offence under subsection (4) that the defendant had a reasonable excuse for failing or refusing to comply.

(6) If a requirement under subsection (3)(b) is made in writing, it may require the explanation and particulars to be provided in writing.

(7) A person who is required under subsection (3) to give an explanation of or further particulars about a document or thing commits an offence if the person:

- (a) gives an explanation that is, or particulars that are, inaccurate or incomplete; and
- (b) knew that the explanation or further particulars were inaccurate or incomplete, or was reckless whether they were accurate or complete,

and is liable on conviction to:

- (c) for an individual, a fine not exceeding 50 penalty units, or imprisonment for a term not exceeding six (6) months, or both; and
- (d) for a body corporate, a fine not exceeding 250 penalty units.

**102. Investigations - powers to question persons-**(1) An investigator may, by notice in writing, require a person to:

- (a) attend before an investigator, at a time and place specified in the notice, to answer questions relevant to the investigation; or
- (b) provide written responses to questions set out in the notice that are relevant to the investigation.

(2) The notice must indicate the subject matter and purpose of the investigation, and draw attention to the penalties under this Act for failing to comply with the requirement.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(4) It is a defence to an offence against subsection (3) that the defendant had a reasonable excuse for failing or refusing to comply.

(5) A person who attends as required by a notice under subsection (1) and answers a question put to the person by an investigator, or who provides a written response to a question set out in a notice under subsection (1), commits an offence if—

- (a) the answer given by the person is inaccurate or incomplete; and
- (b) the person knew that the answer was inaccurate or incomplete, or was reckless whether it was accurate or complete,

and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

**103. Investigations - power to administer oaths-**(1) An investigator may:

- (a) require a person to verify on oath or affirmation the accuracy and completeness of the answers the person gives to a question put by an investigator under section 102; and
- (b) administer the oath or affirmation for the purpose of paragraph (a).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(3) It is a defence to an offence against subsection (2) that the defendant had a reasonable excuse for failing or refusing to comply.

**104. Confidentiality orders-**(1) The Commission may, on its own initiative or on application by a person, make a confidentiality order relating to any specified information (including information in a document), provided to or obtained by the Commission or an investigator in connection with:

- (a) an application for a clearance or an authorisation; or
- (b) an investigation; or
- (c) the performance of a function of the Commission.

(2) A confidentiality order is an order that prohibits disclosure of information specified in the order except as specified in the order.

(3) A confidentiality order may be expressed to have effect for such period as is specified in the order.

(4) The Commission may, on its own initiative or on application by a person bound by a confidentiality order, vary or revoke the order.

(5) If an order under this section is in effect, a person who discloses information contrary to the order commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(6) It is a defence to an offence against subsection (5) that the defendant did not know, and could not reasonably have known, that the disclosure was contrary to the order.

**105. False or misleading statements-**(1) If:

- (a) a person makes a statement (whether orally, in a document or in any other way) to an investigator in relation to the exercise by the investigator of his or her powers under this Act; and

(b) the statement is false or misleading in a material particular,

the person commits an offence and is liable on conviction to:

- (c) for an individual, a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both; and
- (d) for a body corporate, a fine not exceeding 500 penalty units.

(2) It is a defence to an offence against subsection (1) that the defendant did not know, and could not reasonably be expected to have known, that the statement was false or misleading.

(3) If:

- (a) a person makes a statement (whether orally, in a document or in any other way) to an investigator in relation to the exercise by the investigator of his or her powers under this Act; and
- (b) the statement is false or misleading in a material particular; and
- (c) the person knows or believes that the statement is false or misleading in a material particular,

the person is liable on conviction to:

- (d) for an individual, a fine not exceeding 200 units or to imprisonment for a term not exceeding two (2) years, or both; and
- (e) for a body corporate, a fine not exceeding 1,000 penalty units.

(4) For subsections (1) and (3), without limiting when a statement may be false or misleading, a statement may be false or misleading because it does not include some relevant matter.

**106. Self-incrimination-**(1) A person is not excused from producing a document or thing as required by section 101, or from answering a question as required by section 102, on the ground that the contents of the document, or the thing or the answer, may tend to incriminate the person or render the person liable to a pecuniary penalty.

(2) If:

- (a) a person is required to produce a document or thing, or answer a question, under section 101 or 102; and

- (b) when so required, the person objected on the ground that the document, or the thing, or the answer, may tend to incriminate the person or render the person liable to a pecuniary penalty,

the contents of the document, the thing or the answer is not admissible in evidence in a prosecution of the person for an offence against a competition or consumer law, or in proceedings against the person for a pecuniary penalty.

(3) Subsection (2) does not apply to a prosecution of the person for false or misleading answers (including in respect of an offence against section 101, 102 or 105).

**107. Warnings-**(1) This section applies if an investigator suspects, or ought reasonably to suspect, that a person (a “relevant person”) is engaging or has engaged in conduct that is an offence against this Act, or that would make the relevant person liable to a pecuniary penalty under this Act.

(2) The investigator must not exercise a power to question the relevant person about the conduct unless the investigator, or another investigator, has warned the relevant person that the relevant person does not have to answer a question, or do anything else in response to a question, about the conduct, but that anything that the relevant person does say or do may be used in evidence.

(3) In:

- (a) a prosecution of the relevant person for an offence against this Act; or
- (b) a proceeding against the relevant person for a pecuniary penalty under this Act,

evidence of what the person said or did when questioned in circumstances set out in subsection (1) is not admissible unless it is established that, before the question was asked, the warning required by subsection (2) was given.

(4) This section does not limit the grounds on which the evidence may be inadmissible.

*Division 2 - Search and warrants*

**108. Searches-**(1) For the purpose of conducting an investigation, an investigator may enter a place and search it for documents and things relevant to the investigation.

(2) An investigator may do so only:

- (a) with the consent of the occupier of the place; or
- (b) if authorised by a warrant issued by a Judge; or
- (c) if the investigator or some other investigator believes on reasonable grounds that it is necessary to enter the place urgently to prevent the loss or destruction of a document or other thing that may afford evidence of a contravention of a competition or consumer law.

(3) If an investigator has the power to enter and search a place under this Act, the investigator or another investigator:

- (a) may use reasonable force to enter the place and conduct the search; and
- (b) is entitled to full and free access to the place to conduct the search; and
- (c) may do whatever is reasonably necessary to conduct a search; and
- (d) may examine any document or thing found during the search.

**109. Obstructing search** - A person who obstructs or interferes with the search conducted by another person exercising a power of search under a warrant commits an offence, and is liable on conviction to:

- (a) for an individual, a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both; and
- (b) for a body corporate, a fine not exceeding 500 penalty units.

**110. Use of computers, etc., in searches-**(1) If:

- (a) an investigator has power to search for, or to examine, things at a place; and
- (b) that or some other investigator believes on reasonable grounds that it is necessary to bring a tool or



device, including a computer, to the place and use it for the search and examination, that or some other investigator may bring the tool or device to the place and use it for the search or examination.

(2) If an investigator has power to search for, or to examine, a document at a place, that or some other investigator may operate a computer that is already at the place if that or some other investigator believes on reasonable grounds that:

- (a) it is necessary for an investigator to operate the computer to achieve any of the following purposes -
  - (i) to search for the document;
  - (ii) to examine the document;
  - (iii) to put a document into readable form;
  - (iv) to copy a document to some other document to examine it or put it into readable form; and
- (b) the computer is suitable for the search or the examination; and
- (c) the search or the examination can be carried out without damage to the computer or to the document.

(3) The investigator does not have to ask permission before using the computer.

(4) If an investigator:

- (a) has power to search for, or to examine, a document at a place; and
- (b) is using a computer for the purpose of the search or examination,

then, for that purpose, the computer may be used to get access to any document that the computer can lawfully get access to, including a document held at another place.

**111. Powers to copy and take possession of documents and things-**(1) If an investigator finds a document or thing in the course of a search under this Act, an investigator may do any one or more of the following:

- (a) require the person to give an explanation of or further particulars about the document or thing;

(b) make copies of it or take extracts from it;

(c) take possession of and remove it to examine it.

(2) A person who refuses or fails to comply with a requirement under subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(3) It is a defence to an offence against subsection (2) that the defendant had a reasonable excuse for failing or refusing to comply.

(4) A person who is required under subsection (1)(a) to give an explanation of or further particulars about a document or thing commits an offence if the person:

(a) gives an explanation that is, or further particulars that are, inaccurate or incomplete; and

(b) knows that the explanation or the further particulars are inaccurate or incomplete, or is reckless whether the explanation is or the particulars are accurate or complete,

and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(5) If:

(a) an investigator is about to remove, or has removed, a document from a place under this Act; and

(b) the owner, or the person otherwise entitled to possession of the document, asks an investigator to provide a copy of the document,

the Commission is to give the person who asked, as soon as practicable, a copy of the document certified by an officer of the Commission to be a true copy.

(6) A copy certified under subsection (5) is taken for all purposes to be the document of which it is a copy and is admissible in all proceedings as if it were that document.

**112. Issue of warrants-**(1) A Judge may, on application, issue a warrant for the purpose of this Act.

(2) The application:

(a) is to be made by an investigator; and

- (b) is to be made pursuant to the rules of the court for which the Judge is presiding; and
  - (c) is to be accompanied by oral or written information (given on oath or affirmation) in support of the application.
- (3) The Judge may require further information.
- (4) If it is impracticable to apply for the warrant in person, the application may be made by fax, telephone or other appropriate means. In such a case:
- (a) the Judge is not to issue the warrant unless satisfied that it is impracticable for the applicant to apply in person for the warrant; and
  - (b) if the Judge issues the warrant -
    - (i) the Judge is to prepare and sign the warrant and tell the applicant its terms; and
    - (ii) the applicant is to prepare an instrument in the same terms as the warrant and write on it the Judge's name and the time at which and the day on which the warrant was signed; and
    - (iii) the applicant is to give to the Judge who signed the warrant, not later than 24 hours after it was signed, the application, any written information mentioned in subsection (2)(c) and the instrument mentioned in sub-paragraph(ii).
- (5) Without limiting the matters that are relevant to determining whether it is impracticable to apply for the warrant in person, the following are relevant:
- (a) the period for doing what the warrant authorised;
  - (b) the time that would be taken if an application were to be made in person.
- (6) While the warrant remains in force, the instrument referred to in subsection (4)(b)(ii) may be used instead of the warrant.
- (7) In any proceeding, a court is not to find that anything was done under a warrant issued as mentioned in subsection (4) unless the warrant, signed as mentioned in subsection (4)(b)(i), is admitted in evidence in the proceeding.
- (8) A warrant under this Act to enter or search a place authorises the investigator named in the warrant, and any other

investigator, to execute the warrant with any assistance as is necessary.

**113. Period of warrants-**(1) A warrant is to specify the day, not more than seven (7) days after its issue, on which it ceases to be in force.

(2) Another warrant may be issued before or after a warrant has ceased to be in force.

**114. Execution of warrants-**(1) A warrant to enter or search a place may be executed at any time of the day or night unless it specifies otherwise.

(2) A warrant to enter or search a place is not to be taken as having been discharged merely because an investigator, including the officer responsible for executing the warrant, leaves the place where it is being executed:

- (a) for not more than 1 hour between 8 am and 6pm; or
- (b) between 6 pm and 8 am; or
- (c) with the written consent of the occupier of the place.

(3) The execution of a warrant may be completed if:

- (a) a court orders the execution of the warrant to be stopped; and
- (b) the order is later reversed or revoked on appeal; and
- (c) the warrant is still in force.

## **PART 7 ENFORCEMENT AND REMEDIES**

### *Division 1 - Compensation*

**115. Compensation for contraventions of competition or consumer laws-**(1) A person (a “claimant”) who suffers loss or damage as a consequence of a contravention of a competition or consumer law by any other person may recover the amount of the loss or damage by action in a court against any of:

- (a) the other person; and
- (b) a person who was knowingly involved in the contravention.

(2) The action must be commenced within three (3) years after the day on which the cause of action that relates to the contravention accrued.

(3) The Court may, on application, extend the period of three (3) years, and may do so after it has ended.

**116. Commission may claim compensation in representative proceedings-**(1) The Commission may commence, in the Court, and conduct an action (called “representative action”) under section 115 on behalf of one (1) or more claimants if in its opinion it is proper to do so.

(2) The Court may make any appropriate order for the conduct of the representative action, including orders:

- (a) for advertising the institution of the representative action; and
- (b) for the identification of claimants; and
- (c) for notifying claimants of their right to be excluded from the representative action.

(3) If it appears to the Court that a claimant does not wish to pursue the claim through the representative action, the Court must by order exclude the claimant from the representative action.

(4) If:

- (a) the Commission commences a representative action in respect of loss or damage suffered by a claimant; and
- (b) the claimant, either before or after the representative action is commenced but before it is determined, commences an action under section 115 for compensation in respect of loss or damage arising from the contravention (whether or not against the same parties as the representative action),

the claimant is excluded from the representative action, and the Court may make any appropriate order for the conduct of the relevant actions.

(5) The Commission:

- (a) has the conduct of a representative action to the exclusion of the claimants concerned; and
- (b) may withdraw, abandon or compromise the representative action, but a withdrawal or

compromise of the representative action is subject to the approval of the Court.

(6) Without limiting the Court's powers, the Court may make orders for the publication of any judgment or order in the representative action.

(7) A judgment in a representative action binds all claimants other than those excluded under this section.

(8) A special purpose account must be established, in accordance with the Public Finance Management Act 2001 in respect of each representative action. For that Act:

(a) amounts recovered by the Commission in the representative action, and interest earned on those amounts, is special purpose account money; and

(b) the authorised purposes of the account are -

(i) to reimburse the Commission for its expenditure incurred in connection with the representative action (including in respect of making payments out of the account); and

(ii) so far as the account is in credit after the sub-paragraph (i) is applied, to pay claimants in the representative action amounts worked out as -

*(amount of claimant's loss ÷ total of all claimants' losses) x amount of the credit.*

(9) A person who was knowingly concerned in the contravention concerned is not entitled to a payment under subsection (8).

### *Division 2 - Enforcement*

**117. Warning notices-**(1) The Commission may issue a notice (a "warning notice") to a person if the Commission has reasonable cause to believe that:

(a) the person has engaged, is engaging or proposes to engage in conduct; and

(b) the conduct contravenes or would contravene a competition or consumer law.

(2) A warning notice must:

(a) describe the conduct; and

- (b) state the material facts that the Commission relies on; and
- (c) require the person to cease engaging in the conduct within a specified period (which must be reasonable) (the “warning period”) and not to engage in the conduct again; and
- (d) state that, if the person does not comply with the requirement, the Commission may commence proceedings against the person in respect of the conduct.

(3) The Commission may extend a warning period, and may do so after the period has ended.

(4) The Commission must not bring proceedings against the person for the conduct before the end of the warning period unless the Commission has reasonable grounds to believe that it is necessary to do so in the interest of safety of members of the public.

**118. Enforceable undertakings-**(1) The Commission may accept a written undertaking from a person in connection with any conduct, engaged in by the person, in respect of which the Commission has a function under a competition or consumer law.

(2) The person may with the Commission’s consent, withdraw or vary the undertaking at any time.

(3) The Commission:

- (a) must publish the undertaking through the internet or a similar electronic network and make a copy of it available to a person who asks for it; and
- (b) may delete from the published version, and any copies provided, information that the person who gave the undertaking has asked not to be released, if the Commission is satisfied that the information -
  - (i) is confidential information that has a commercial value that would be diminished if it were to be released generally; or
  - (ii) should not be disclosed because it would be against the public interest to do so; or
  - (iii) consists of personal details of an individual (except an individual giving the

undertaking or an individual who engaged in the conduct to which the undertaking relates).

(4) If information is deleted under subsection (3) from a version or copy, the version or copy must include a note stating that information has been deleted.

(5) If the Commission considers that the person has contravened the undertaking, the Commission may apply to the Court for an order under subsection (6).

(6) If the Court is satisfied, on application by the Commission, that the person has contravened the undertaking, the Court may make any one (1) or more of the following orders:

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to pay to the State an amount not exceeding the amount that the Court determines to be the amount of the financial benefit that the person has obtained directly or indirectly -
  - (i) from the conduct; and
  - (ii) from the contravention;
- (c) an order that the person compensate, as specified in the order, any person who has suffered loss or damage as a result of the conduct or the contravention;
- (d) an order directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes -
  - (i) to remedy the effects of the conduct or the contravention;
  - (ii) to ensure that the person does not contravene the undertaking again;
- (e) any other incidental order.

**119. Cease and desist notices-**(1) The Commission may, if satisfied that a person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute a contravention of a competition or consumer law, by notice in writing (a “cease and desist notice”), require the person to cease engaging in the conduct.



(2) The Commission must not give a cease and desist notice unless it has given the person a reasonable opportunity to make submissions to it on the matter.

(3) Contravention of a requirement in a cease and desist notice is not an offence, but may be a ground for an injunction under section 120.

**120. Injunctions-**(1) If the Court is satisfied that a person has engaged, is engaging or is proposing to engage in conduct that contravenes or would be likely to contravene a competition or consumer law, the Court may, on application by the Commission or any other person, grant an injunction, in any terms the Court considers appropriate.

(2) The power to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(3) If an application is made under subsection (1), the Court may, if it considers it is desirable to do so, grant an interim injunction pending the determination of the application.

(4) If the application is made by the Commission or an investigator, the Court must not require the applicant to give any undertaking as to damages as a condition of granting the interim injunction.

**121. Injunctions for contraventions of acquisitions rule-**(1) Without limiting the Court's power under section 120, an injunction under that section for conduct that contravenes or would be likely to contravene the acquisitions rule may impose requirements to ensure, or to assist in ensuring, that the acquisition will not have the effect of substantially lessening competition in a market in Samoa.

(2) Examples of the kinds of requirements include:

- (a) requirements (including limitations, conditions and restrictions) as to the way any relevant business is conducted in Samoa;
- (b) requirements for restructuring any relevant business in Samoa, including the following -
  - (i) requirements in relation to the transfer or disposal of relevant assets or shares;
  - (ii) requirements for the creation, allocation, surrender or cancellation of shares;
  - (iii) requirements as to the exercise of rights or powers by any person in respect of any relevant assets or shares;
  - (iv) requirements as to the creation, vesting, transfer or extinguishment of property rights, liabilities or obligations in respect of any relevant assets or shares;
  - (v) requirements as to the amendment of the rules of incorporation of a company;
  - (vi) requirements as to the adjustment of relevant agreements (whether by discharge or reduction of any liability or obligation or otherwise).

(3) A reference in subsection (2)(b)(i) to relevant assets or shares is not limited to the assets or shares that are the subject of the acquisition.

**122. Injunctions for contraventions of standards-(1)** Without limiting the Court's power under section 120, an injunction under that section in respect of conduct that contravenes or would be likely to contravene a consumer protection rule, a consumer information standard, a product safety standard or a services safety standard may:

- (a) impose requirements -
  - (i) for the provision of corrective information or other information to the public, or to classes of persons, about relevant goods or services; or

- (ii) for the provision of corrective information to the public, or to classes of persons, about relevant goods or services; or
  - (iii) for the refunding of money paid by purchasers of relevant goods or services; or
  - (iv) for the return of property; or
  - (v) for the repair or replacement of goods, the re-provision of services or the provision of corrective services; or
- (b) declare any relevant agreement in relation to relevant goods or services to be void, voidable at the election of the person who has been supplied relevant goods or services or to have terminated at a specified time; or
- (c) declare that the agreement is varied as specified by the Court.

(2) No injunction may be made under this section contrary to Article 14 of the Constitution.

**123. Injunctions for contraventions of price control orders -** Without limiting the Court's power under section 120, an injunction under that section for conduct that contravenes or would be likely to contravene a price control order may impose requirements:

- (a) for the provision of information in relation to the contravention to the public, or to classes of persons; or
- (b) for the refunding of money paid by purchasers of relevant goods or services.

**124. Pecuniary penalties-**(1) If a person contravenes a competition or consumer law, or is knowingly concerned in the contravention of a competition or consumer law, the Court may, on application by the Commission, impose a pecuniary penalty on the person.

(2) The application must be made:

- (a) for a contravention of -
  - (i) a conduct rule;
  - (ii) a consumer protection rule;

- (iii) a consumer information standard;
- (iv) a product safety standard;
- (v) a product safety notice;
- (vi) a product recall notice;
- (vii) a services safety standard; or
- (viii) a price control order,

within five (5) years after the day on which the contravention ceased or the Commission became aware of the contravention, whichever is later;

- (b) for a contravention of the acquisitions rule, within six (6) months after the day on which the acquisition was completed or the Commission became aware of the acquisition, whichever is later; and
- (c) in any other case, within seven (7) years after the contravention occurred.

(3) In proceedings for a pecuniary penalty:

- (a) the standard of proof is the standard of proof applying in civil proceedings; and
- (b) the rules of court and rules of evidence and procedure for civil proceedings apply.

(4) If a pecuniary penalty is imposed on a person in respect of a contravention:

- (a) the person is not liable to be prosecuted for an offence under a competition or consumer law in respect of the same conduct; and
- (b) a surcharge or other pecuniary penalty (however described) is not to be imposed on the person under a competition or consumer law in respect of the same conduct.

**125. Amounts of pecuniary penalties-**(1) In determining the amount of the pecuniary penalty to be imposed on a person, the matters that the Court is to take into account include the extent of any financial or commercial gain to the person, or a related body corporate of the person, resulting from the contravention.

(2) The maximum amounts of pecuniary penalties are set out below:

- (a) if the pecuniary penalty is imposed for a contravention of any of the following -

- (i) a conduct rule;
- (ii) the acquisitions rule;
- (iii) a consumer protection rule;
- (iv) a consumer information standard;
- (v) a product safety standard;
- (vi) a product safety notice;
- (vii) a product recall notice;
- (viii) a services safety standard;
- (ix) a price control order,

the maximum amount of the penalty is:

(x) if the penalty is imposed on an individual, an amount equal to 200 penalty units; and

(xi) if the penalty is imposed on a body corporate, the higher of an amount equal to 500 penalty units and 15% of the turnover of the body corporate and of its related bodies corporate, as determined under subsection (3); and

(b) if the pecuniary penalty is imposed for a contravention of a provision (not one mentioned in paragraph (a)), and this Act provides for a criminal penalty for the contravention, the maximum amount of the pecuniary penalty is 50% of the maximum criminal penalty; and

(c) if the pecuniary penalty is imposed for any other contravention, the maximum amount of a pecuniary penalty is equal to 200 penalty units.

(3) For subsection (2)(a), the turnover of a body corporate and its related bodies corporate is the gross revenue receivable by those bodies corporate that is attributable to business activities in Samoa in the financial year immediately before the date of the contravention.

**126. Orders to pay costs-**(1) If the Court grants an injunction against, or imposes a pecuniary penalty on, a person under this Division, it may order the person to pay an amount, determined by the Court, for costs incurred by the Commission in connection

with investigations into, and the conduct of the proceedings in relation to, the relevant contravention.

(2) In this section, “costs” includes fees, charges, disbursements, expenses or remuneration.

**127. No indemnity for pecuniary penalties, etc.**-(1) A person commits an offence if the person indemnifies or agrees to indemnify, wholly or partly, another person for any liability of the other person:

- (a) to pay a pecuniary penalty; or
- (b) to pay a pecuniary penalty, to pay costs or expenses incurred in defending or settling any proceeding relating to such a liability,

and is liable on conviction to a fine (whichever is the higher):

- (c) not exceeding 500 penalty units; or
- (d) not exceeding twice the maximum amount that would have been payable under the indemnity.

(2) An indemnity given in contravention of subsection (1) is void.

**128. Immunity agreements**-(1) The Commission may, in exchange for a person’s cooperation in an investigation or in proceedings under a competition or consumer law, agree with the person that:

- (a) proceedings against the person for an offence against or in relation to a competition or consumer law; or

(b) proceedings against the person for a pecuniary penalty, on the basis of specified conduct will not be brought or continued.

(2) The Commission is not to enter into an immunity agreement with a person if the person has, within the previous 7 years, entered into an immunity agreement, or an agreement to similar effect, in respect of a contravention of a competition or consumer law.

(3) An immunity agreement with a person may be expressed also to apply to any of the following:

- (a) specified employees of the person;
- (b) specified agents of the person;
- (c) if the person is a body corporate - specified officers of the body corporate;

(d) specified partners of the person.

(4) An immunity agreement is to be on terms that the Commission considers appropriate.

(5) If an immunity agreement for a specified conduct applies to a person:

(a) proceedings against the person for an offence against or in relation to a competition or consumer law; or

(b) proceedings against the person for a pecuniary penalty, for the conduct must not be brought or continued.

(6) The Commission may terminate an immunity agreement with a person if:

(a) the person agrees; or

(b) the Commission has reasonable grounds to believe that the information on which it based its decision to enter into the agreement was incomplete, false or misleading in a material particular; or

(c) the person is convicted or found guilty of an offence in relation to an investigation, or an offence against section 137 or 138; or

(d) the person has failed to comply with the agreement.

(7) The Commission may not terminate an immunity agreement unless the Commission has:

(a) notified the person of its intention to do so, and the reasons for termination; and

(b) given the person a reasonable period (at least 30 days) to make representations about the matter; and

(c) taken into account any representations made by or for the person.

**129. Management banning orders-**(1) If the Court is satisfied that an individual has engaged in conduct that constitutes a contravention of any of the following:

(a) a conduct rule;

(b) the acquisitions rule;

(c) a consumer protection rule;

(d) a consumer information standard, a product safety standard or a services safety standard;

(e) a product safety notice or a product recall notice;

(f) a price control order,  
 on two (2) or more separate occasions within the previous five (5) years, the Court may, on application by the Commission, make a management banning order against the individual.

(2) If the Court is satisfied that:

(a) an order has been made against an individual under law of a foreign country that corresponds to a competition or consumer law; and

(b) the order prevents the individual from being involved in the management of a body corporate or an unincorporated body,

the Court may, on application by the Commission, make a management banning order against the individual.

(3) The Court may make a management banning order against an individual only if satisfied that it is necessary to do so having regard to the risk of contraventions of a provision mentioned in subsection (1) by the individual or by a body corporate or unincorporated body.

(4) A management banning order must prohibit the individual from being a director of a body, or otherwise being involved in the management of a body, that carries on a business in Samoa, without the leave of the Court.

(5) A management banning order has effect for the period specified in the order, which cannot be longer than five (5) years.

(6) An individual who contravenes a management banning order in force against him or her commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment not exceeding 12 months, or both.

### *Division 3 - Matters relating to offences*

**130. States of mind, etc., of bodies corporate-**(1) In proceedings under this Act, if it is established that a director, employee or agent of a body corporate:

(a) engaged in particular conduct within the scope of his or her actual or apparent authority; and

(b) had a particular state of mind for the conduct,

it is presumed that the body corporate engaged in the conduct and had the state of mind for the conduct unless the body corporate



establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(2) In proceedings under this Act, if it is established that an employee or agent of an individual:

(a) engaged in particular conduct within the scope of his or her actual or apparent authority; and

(b) had a particular state of mind for the conduct,

it is presumed that the individual engaged in the conduct and had the state of mind for the conduct unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(4) A reference in this section to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the knowledge, intention, opinion, belief or purpose.

(5) A reference in this section to having a state of mind for conduct includes having a state of mind in connection with that conduct.

(6) A reference in this Act to a decision of an association includes a decision made on behalf of the association by an agent or representative acting within the scope of his or her authority.

**131. Persons knowingly concerned in contravention** - If a person contravenes a provision of a competition or consumer law, each person who is knowingly concerned in the contravention also commits the offence.

**132. Commission, etc., may prosecute**-(1) Proceedings in relation to a contravention against or arising under a competition or consumer law may be commenced and continued by the Commission or a person authorised in writing by the Commission to do so.

(2) Subsection (1) does not limit the operation of any other law or the power of the Attorney General under Article 41 of the Constitution relating to institution and conduct of proceedings in relation to an offence.

## **PART 8 MISCELLANEOUS**

**133. Judicial review of authorisation decisions** - A decision of the Commission to refuse to give an authorisation, or to impose conditions on an authorisation, is subject to judicial review by the Supreme Court.

**134. Legal professional privilege**-(1) This Act does not affect the operation of the law relating to legal professional privilege.

(2) Subsection (1) does not affect any requirement under this Act to disclose the name and address of a client of a person.

**135. Commission may participate in proceedings** - The Commission may, with leave of the Court, or at the invitation of the Court, be joined as a party to or otherwise participate in proceedings involving any alleged contravention of a competition or consumer law.

**136. Court may give advisory opinions**-(1) The Court may, on the application of the Commission, make an order as to the interpretation, operation or effect of a provision of this Act.

(2) If it appears to the Court that a person has or may have an interest of any kind that may be affected by a proposed order, the Court must make any orders as it considers appropriate for the person to be notified of the application and to be joined in the proceeding.

(3) The Commission must give effect to any final order under this section.

**137. Incorrectly keeping records, etc.**-(1) A person required under this Act to keep a record commits an offence if:

(a) the person does not keep the record; or

(b) the person keeps a record that is not accurate and complete, and is liable on conviction to:

(c) for an individual, a fine not exceeding 20 penalty units; and

(d) for a body corporate, a fine not exceeding 50 penalty units.

(2) It is a defence to an offence against subsection (1) that the defendant:

(a) did not know that the record was not accurate or complete; and

(b) took reasonable precautions and exercised all due diligence to ensure that the record was accurate and complete.

(3) A person required by or under this Act to keep a record commits an offence if:

(a) the person keeps the record; and

(b) the record is inaccurate or incomplete; and

(c) the person knows, or is reckless whether, the record is, accurate or complete; and

(d) the person intended thereby.

(i) to deceive or mislead; or

(ii) to hinder or obstruct the Commission or an investigator in performing duties under this Act, or otherwise to hinder or obstruct the investigation of a contravention of a competition or consumer law,

and is liable on conviction to:

(e) for an individual, a fine not exceeding 200 penalty units or imprisonment for a term not exceeding two (2) years, or both; and

(f) for a body corporate, a fine not exceeding 1,000 penalty units.

**138. Destroying, falsifying, etc., documents** - A person required under this Act to produce a document or thing who intentionally or recklessly destroys, disposes of or falsifies the document or thing commits an offence and is liable on conviction to:

- (a) for an individual, a fine not exceeding 200 penalty units or imprisonment for a term not exceeding two (2) years, or both; and
- (b) for a body corporate, a fine not exceeding 1,000 penalty units.

**139. Evidence** - In a proceeding under this Act, except a prosecution of an offence or an application for a pecuniary penalty, despite any rule of evidence, any evidence relevant to a question at issue in the proceeding is admissible unless the court determines that the probative value of the evidence is outweighed by the prejudicial effect.

**140. Registers**-(1) The Commission must establish and maintain registers of the following:

- (a) applications for clearances, clearance decisions and variations and revocations of clearances;
- (b) applications for authorisations, authorisation decisions, and variations and revocations of authorisations;
- (c) consumer information standards;
- (d) price control orders;
- (e) product recall notices;
- (f) product safety notices;
- (g) product safety standards;
- (h) services safety standards;
- (i) warning notices;
- (j) cease and desist notices;
- (k) enforceable undertakings;
- (l) immunity agreements;
- (m) management banning orders.

(2) The Commission may omit confidential information from an entry made in a register.

(3) If confidential information is omitted from an entry in a register, that fact must be disclosed on the register.

(4) The Commission must make the registers available for inspection by any person:

- (a) at the offices of the Commission during ordinary business hours;

- (b) through the internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

**141. Regulations and forms-**(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make the following regulations:

- (a) with the approval of the National Revenue Board, to prescribe fees for the purposes of this Act, including the circumstances in which the fees may be waived or remitted;
- (b) to prescribe matters required to be prescribed under this Act.

(2) The Commission may approve forms for the purposes of this Act.

**142. Repeals and amendments** - The Schedule lists the Acts that are repealed or consequentially amended by this Act.

**143. Transitional and saving provisions-**(1) Any act, appointment, authority or approval made or issued under the the Fair Trading Act 1998 and the Consumer Information Act 1989 (“repealed Acts”) continues as if they had been made or issued under this Act until it expires or is amended, replaced or cancelled under this Act.

(2) Despite the repeal of the Fair Trading Act 1998:

- (a) the following continue as if they were made under this Act until they are amended, replaced or repealed by regulations under this Act -
  - (i) the Fair Trading (Approved Eggs Standards) Regulations 2010;
  - (ii) the Fair Trading (Approved Toy Standards) Regulations 2013; and
- (b) the General Price Order made under that Act that is in effect immediately before the repeal, continues and is taken to be a price control order made under this Act; and

(c) for section 94(5) of this Act, the four (4) years is taken to have commenced at the commencement of that section.

(3) Regulations may be made under section 141 within two (2) years from the commencement of this Act to deal with any other transitional or saving matters.

## **SCHEDULE**

(section 142)

### **REPEALS AND CONSEQUENTIAL AMENDMENTS**

#### **PART 1 - Repeals**

**1. Consumer Information Act** - The Consumer Information Act 1989 is repealed.

**2. Fair Trading Act**-(1) The Fair Trading Act 1998 is repealed.

#### **PART 2 - Consequential amendments**

**1. Broadcasting Act** - For the Broadcasting Act 2010:

(a) in section 27(1), after paragraph (b) insert:

“(ba) without limiting paragraph (b), the licensee contravenes the Competition and Consumer Act 2016 or fails to pay a pecuniary penalty imposed on the licence under that Act;” and

(b) in section 31, for subsection (2) substitute:

“(2) If a provision of this Act and a provision of the Competition and Consumer Act 2016 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.”.

**2. Customs Act** - In the Customs Act 2014, for section 91(1), after paragraph (b) insert:

“(ba) goods that do not comply with a product safety standard under the Competition and Consumer Act 2016 applicable to goods of the relevant kind; or”.

**3. Export of Meat Act** - Section 23 of the Export of Meat Act 1997 is repealed.

**4. Electricity Act** - In the Electricity Act 2010, after section 49 insert:

**“49A. Relationship with Competition and Consumer Act**

- If a provision of this Act and a provision of the Competition and Consumer Act 2016 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.”.

**5. Foreign Investment Act** - In section 6A(4) of the Foreign Investment Act 2000, after paragraph (j) insert:

“(ja) the Chairperson of the Competition and Consumer Commission;”.

**6. Foreign Investment Regulations** - Without limiting the power under the Foreign Investment Act 2000 to make or amend regulations under that Act, in the Foreign Investment Regulations 2011, for regulation 4:

(a) after subregulation (6), insert:

“(6A) In reviewing a written submission, the CEO must, if satisfied as mentioned in subregulation (6), refer the submission, which must prepare and submit to the CEO a report on the implications of the written submission for competition in markets in Samoa and any other matter relevant to its functions.”; and

- (b) in subregulation (8), after “the review of the written submission”, insert “, together with the report of the Commission on the written submission,”.

**7. Petroleum Act** - In section 4A(4) of the Petroleum Act 1984, for paragraph (b) substitute:

- “(b) incorporated into the prices of any petroleum products that are controlled by any price control order issued under the Competition and Consumer Act 2016;”.

**8. Postal Services Act** - For the Postal Services Act 2010:

(a) for section 4 -

- (i) renumber the current provision as subsection (1); and
- (ii) after current provision, insert:

“(2) If a provision of this Act and a provision of the Competition and Consumer Act 2016 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.”; and

(b) in section 13, for subsection (2) substitute:

“(2) Before making or varying a pricing policy under subsection (1), the Minister must:

(a) consult SamoaPost; and

(b) seek a report and recommendations from the Competition and Consumer Commission established under the Competition and Consumer Act 2016,

and take into account any submissions made by or for SamoaPost and the recommendations in the report.”.

**9. Sale of Goods Act** - After section 57 of the Sale of Goods Act 1977 insert:



**“57A. Competition and Consumer Act 2016** - Sections 14 to 16 and 52 of this Act do not apply to a contract of sale to which Division 3 of Part 4 of the Competition and Consumer Act 2016 applies.”.

**10. Telecommunications Act** - For the Telecommunications Act 2005:

(a) in section 18(1), after paragraph (b) insert:

“(ba) without limiting paragraph (b), the licensee contravenes the Competition and Consumer Act 2016 or fails to pay a pecuniary penalty imposed on it under that Act;”; and

(b) in section 25, for subsection (2) substitute:

“(2) If a provision of this Act and a provision of the Competition and Consumer Act 2016 are inconsistent, the provision of this Act prevails to the extent of the inconsistency.”.

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**The Competition and Consumer Act 2016 is administered  
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