
BILLS

SUPPLEMENT No. 20

9th November, 2022

BILLS SUPPLEMENT*to The Uganda Gazette No. 67, Volume CXV, dated 9th November, 2022*

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Bill No. 28*Competition Bill***2022****THE COMPETITION BILL, 2022****MEMORANDUM****1. Policy and principles of Bill**

The policy behind the Bill is to promote and sustain fair competition in markets in Uganda; to prevent practices having an adverse effect on competition in markets in Uganda and for related matters.

The primary goal of the Bill is to control anti-competitive behaviour of firms that has a negative impact on competition in Uganda's market. Furthermore, the Bill seeks to encourage and maintain market competition, safeguard the interests of consumers, and safeguard market freedom in the markets in Uganda.

2. Defects in existing law

At present Uganda has no specific law that controls anti-competitive behaviour of firms in the markets in Uganda. A few sectors like banking and energy have competition provisions in the laws regulating them. Such provisions are restricted to those sectors and are not comprehensive enough for the purposes of competition law. The Bill seeks to provide a comprehensive set of principles to regulate competition in all sectors.

3. Remedies proposed in Bill

The intention of the Bill is to establish a comprehensive legal regime on competition in Uganda.

The Bill mainly focuses on avoiding certain activities in the market that hurt the business or consumers or both the sectors and curb the practices violating the ethical behavior of the market. The Bill also seeks to the sustainability of competition in the market and considers the interests of the consumers and allows the participants of the Ugandan market to trade with freedom. The Bill promotes the competition between enterprises and leaves the market unbound by the manipulation of stronger trading enterprises. Some of the activities the Bill seeks to regulate include anti-competitive agreements, abuse of dominance, mergers, and acquisitions.

Provisions of Bill

The Bill has seven Parts and 29 clauses.

Part I – Preliminary

This Parts deals with preliminary matters such as application and interpretation. According to clause 1(1) the Act applies to anti-competitive practices and agreements, abuse of dominant position and effects of mergers, acquisitions, and joint ventures on competition.

Part II – Administration

Under clause 3, the Act shall be administered by the Ministry responsible for trade.

According to clause 4 the functions of the Ministry include the following; to promote and sustain fair competition in the market; to protect the interests of consumers in the market; to monitor the market for anti-competitive and unfair practices and agreements; to investigate anti-competitive and unfair practices and agreements in the market; to approve mergers, acquisitions and joint ventures which have no adverse effect on competition in the market.

Part III - Prohibition of Anti - Competitive Practices and Agreements

According to clause 8(1) of the Bill, a person shall not enter into any agreement or take any decision or engage in any concerted action or practice, in respect of production, supply, distribution, acquisition or control of goods, or the provision of services, which causes or is likely to cause an adverse effect on competition in the market.

Part IV - Prohibition of Abuse of Dominant Position

According to the Bill, an enterprise shall not abuse its dominant position (clause 10(1)).

For the Bill "dominant position" means a position of economic strength enjoyed by an enterprise individually or collectively which gives it the power to behave independently of its competitors, customers and consumers and in particular to foreclose any other enterprise from competing in the relevant market (clause 10(2)).

Part V - Mergers, Acquisitions and Joint Ventures

Clause 14(1) provides that an enterprise which proposes to enter into any merger, acquisition or joint venture shall give notice of the merger, acquisition or joint venture to the Ministry in the manner and form prescribed by the Minister by regulations.

A merger, acquisition or joint venture entered into in contravention of subsection (1) is void (clause 14(2)).

Part VI - Inquiries and Related Matters

This Part applies to all inquiries made under the Bill except inquiries made under Part V including the procedure for making inquiries and orders in relation to abuse of dominant position and anti-competitive agreements and practices

Part VII - General

This Part provides for general matters including offences in relation to furnishing of information; offences by individuals in enterprises; failure to pay fines; protection from liability; duty not to disclose information; appeals and the power to make Regulations.

MWEBESA FRANCIS (MP)

Minister of Trade, Industry and Cooperatives.

THE COMPETITION BILL, 2022

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Application
2. Interpretation

PART II—ADMINISTRATION

3. Administration of Act
4. Functions of Ministry
5. Reference of competition matters to Ministry in certain cases
6. Technical committee on competition and consumer protection
7. Powers of Ministry

**PART III—PROHIBITION OF ANTI - COMPETITIVE
PRACTICES AND AGREEMENTS**

8. Prohibition of anti-competitive practices and agreements
9. Inquiry into anti-competitive practices and agreements

PART IV—PROHIBITION OF ABUSE OF DOMINANT POSITION

10. Abuse of dominant position
11. No exploitation of consumers by dominant enterprise
12. No exclusion of competitors in market by dominant enterprise
13. Inquiry into abuse of dominant position

PART V—MERGERS, ACQUISITIONS AND JOINT VENTURES

14. Notice of mergers, acquisitions and joint ventures
15. Procedure for inquiring into mergers, acquisitions and joint ventures

Clause

16. Findings and orders of Ministry upon inquiry
17. Failure to give notice
18. False statements or omission to furnish material information

PART VI—INQUIRIES

19. Application of this Part
20. Procedure for making inquiries
21. Orders in relation to abuse of dominant position and anti-competitive agreements and practices

PART VII—GENERAL

22. Offences in relation to furnishing of information
23. Offences by individuals in enterprises
24. Failure to pay fines
25. Protection from liability
26. Duty not to disclose information
27. Appeals
28. Regulations
29. Power to amend Schedule

SCHEDULE—CURRENCY POINT

A BILL for an Act

ENTITLED

THE COMPETITION ACT, 2022

An Act to promote and sustain fair competition in markets in Uganda; to prevent practices having an adverse effect on competition in markets in Uganda and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Application

(1) Subject to subsection (2), this Act applies to anti-competitive practices and agreements, abuse of dominant position and effects of mergers, acquisitions and joint ventures on competition.

(2) This Act does not apply—

(a) to any practice or agreement arising out of and in accordance with any obligation assumed by Uganda under any treaty or international agreement; and

(b) to any person or enterprise performing a sovereign function on behalf of the Government.

(3) The Minister may, by statutory instrument, exempt from the application of this Act, or any part of this Act, for such period as he or she may specify in the statutory instrument—

- (a) any class of enterprises; if the exemption is necessary in the interests of national security or public interest;
- (b) any anti-competitive practice; if the practice is limited to objectives leading to improvement of production or distribution and whose beneficial effects, in the opinion of the Minister, outweigh the negative effects of competition.

2. Interpretation

In this Act, unless the context otherwise requires—

“acquisition” means acquiring or agreeing to acquire, directly or indirectly, shares, voting rights, management control or control over assets in any enterprise;

“agreement” includes any arrangement or understanding or action in a concern, whether formal or not, whether oral or in writing, and whether or not it is intended to be specifically enforceable;

“competitor” means a person who produces, distributes or supplies substantially similar goods or services, at the same stage of production or distribution of services, in relation to another person or entity;

“consumer” means a person who buys goods or services, or who intends to buy goods or services, as the end-user of those goods or services;

“cross-subsidisation” means the internal transfer within an undertaking of profits resulting from one line of business to a less profitable line of business;

“currency point” has the value assigned to it in the Schedule to this Act;

“enterprise” means a firm, partnership, corporation, company, association or other juridical person which engages in commercial activities and includes a branch, subsidiary, affiliate or any other entity which is directly or indirectly controlled by such entity;

“joint venture” means an enterprise subject to joint control by two or more undertakings which are economically independent of each other;

“merger” means an amalgamation or joining of two or more firms into an existing firm or to form a new firm;

“Minister” means the Minister responsible for trade;

“Ministry” means the Ministry responsible for trade;

“service” includes the provision of facilities or intangibles for a price or fee but does not include the rendering of any service free of charge;

“share” means a share in the share capital of a company and includes stock; except where a distinction between stock and shares is expressed or implied.

PART II—ADMINISTRATION

3. Administration of Act

This Act shall be administered by the Ministry responsible for trade.

4. Functions of Ministry

The functions of the Ministry in the administration of this Act are—

- (a) to promote and sustain fair competition in the market;
- (b) to protect the interests of consumers in the market;

- (c) to monitor the market for anti-competitive and unfair practices and agreements;
- (d) to investigate anti-competitive and unfair practices and agreements in the market;
- (e) to approve mergers, acquisitions and joint ventures which have no adverse effect on competition in the market;
- (f) to hear and determine complaints in respect of competition and consumer protection matters;
- (g) to protect consumers and implement the law relating to consumer protection;
- (h) to develop appropriate procedures for consultation and public sensitisation on competition and consumer protection matters;
- (i) to collect data and undertake studies and publish reports relating to competition and consumer protection;
- (j) to liaise with other authorities responsible for competition and consumer protection at the regional and international level; and
- (k) to perform such other duties which are necessary or expedient for the discharge of its functions under this Act.

5. Reference of competition matters to Ministry in certain cases

(1) Where, in the course of any proceeding before any statutory authority or body with the responsibility of regulating the provision of any utility or service, a party alleges that the decision taken or proposed to be taken by the statutory authority or body, is likely to affect competition in the market, the statutory authority or body shall refer the matter to the Ministry.

(2) On receipt of a reference under subsection (1) the Ministry shall, after hearing the parties to the proceedings, give its opinion to

the statutory authority or body, which shall decide the matter after taking into account the opinion of the Ministry.

(3) Where a reference is made to the Ministry under this section, the statutory authority or body concerned shall not make any final order until the Ministry offers its opinion.

6. Technical committee on competition and consumer protection

(1) To assist the Ministry to properly perform the functions specified in subsection (1), there shall be established, in the Ministry, a technical committee on competition and consumer protection.

(2) The technical committee shall provide technical guidance and advise the Ministry on implementation of the policy and the laws relating to competition and consumer protection.

(3) The Minister shall, by statutory instrument, provide for the appointment, composition, functions, meetings and remuneration of the technical committee referred to in subsection (2).

(4) Without prejudice to subsection (4), the technical committee shall comprise persons knowledgeable in competition and consumer matters from Ministries, departments and agencies of Government, the private sector, academia.

7. Powers of Ministry

In the performance of its functions specified in section 4, the Ministry may—

- (a) after consultation with the technical committee—
 - (i) direct an enterprise to cease and desist from any anti-competitive practice;
 - (ii) order the termination or nullification, as the case may require, of any agreement, conduct, activity, practice or decision prohibited by this Act;

- (b) take any reasonable action which may be necessary in furtherance of its functions;
- (c) shall, so far as practicable, cooperate with any body established under the Treaty for the Establishment of the East African Community Treaty, the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) or any other law, to promote and regulate competition.

PART II—PROHIBITION OF ANTI-COMPETITIVE PRACTICES
AND AGREEMENTS

8. Prohibition of anti-competitive practices and agreements

(1) A person shall not enter into any agreement or take any decision or engage in any concerted action or practice, in respect of production, supply, distribution, acquisition or control of goods, or the provision of services, which causes or is likely to cause an adverse effect on competition in the market.

(2) Any agreement, decision, concerted action or practice that contravenes subsection (1) is void.

(3) For the purposes of subsection (1), an agreement, decision, concerted action or practice has an adverse effect on competition or is likely to have an adverse effect on competition where that agreement, decision, concerted action or practice—

- (a) directly or indirectly fixes purchase or selling practices;
- (b) limits or controls production, supply, markets, technical development or investment;
- (c) shares markets or sources of production supply by territory type, size of customer or any other way; or
- (d) directly or indirectly results in bid-rigging or collusive tendering.

(4) An agreement, decision, concerted action or practice between persons at different stages or levels of the production chain in different markets, in respect of production, distribution, sale or price of or trade in goods or provision of services including—

- (a) a tie – in arrangement;
- (b) an exclusive supply agreement;
- (c) an exclusive distribution agreement;
- (d) a refusal to deal; and
- (e) a resale price maintenance,

is an agreement, decision, concerted action or practice agreement in contravention of subsection (1).

(5) For the purposes of subsection (3)(d), ‘bid-rigging’ means an agreement, decision or understanding between enterprises involved in the same manufacturing, trading or service rendering activity which has the effect of eliminating competition for bids or which adversely affects or manipulates the bidding process.

(6) For the purposes of subsection (1), the Ministry shall, in determining whether there is an adverse effect on competition in the market, take into account whether the agreements or concerted practices—

- (a) result in the creation of barriers to new entry,
- (b) result in forcing existing competitors out of the market,
- (c) result in any consumer benefit or pro-competitive impact;
or
- (d) contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits.

(7) Subsection (6) shall not be construed so as to restrict the right of any person to restrain any infringement of intellectual property rights granted in Uganda or to impose such reasonable conditions as may be necessary for the purposes of protecting or exploiting such intellectual property rights.

9. Inquiry into anti-competitive practices and agreements

(1) The Ministry shall inquire into every practice and agreement alleged to contravene section 8(1).

(2) The inquiry referred to in subsection (1) shall be conducted in accordance with Part VI of this Act.

PART IV—PROHIBITION OF ABUSE OF DOMINANT POSITION

10. Abuse of dominant position

(1) Subject to this Act, an enterprise shall not abuse its dominant position.

(2) For the purposes of this section “dominant position” means a position of economic strength enjoyed by an enterprise individually or collectively which gives it the power to behave independently of its competitors, customers and consumers and in particular to foreclose any other enterprise from competing in the relevant market.

(3) For the purposes of determining whether or not an enterprise enjoys a “dominant position”, the Ministry shall take into account the following—

- (a) whether the enterprise has a market share of over thirty-five percent or such other percentage as the Minister may, by statutory instrument, prescribe;
- (b) the size and resources of the enterprise;
- (c) the size and importance of the competitors of the enterprise;

- (d) the economic power of the enterprise, including commercial advantages over a competitor which may be measured by reference to product range, established trademarks, customer loyalty, vertical integration of the enterprise, sales or service network;
- (e) the technical advantages enjoyed by the enterprise, which may be judged with reference to patents, know-how and copyright owned;
- (f) the dependence of consumers on the enterprise;
- (g) the monopoly status or dominance acquired by the enterprise as a result of any Act of Parliament, or by virtue of being an undertaking of the Government, a Government company or a public-sector undertaking;
- (h) entry barriers, if any, which may be judged by reference to regulatory barriers, financial risk, high capital cost of entry in the market, marketing entry barriers, technical entry barriers, economies of scale or high switching costs for customers;
- (i) the countervailing buying power of the enterprise;
- (j) the ability of the enterprise to independently determine price, quality, quantity and time of supply of products;
- (k) the market structure and size of the market of the enterprise;
or
- (l) any other factor which the department considers relevant.

(4) The relevant market may be determined by reference to the relevant product market or the relevant geographic market or both.

- (5) In subsection (3)—

- (a) “relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer including—
- (i) the characteristics of the physical product;
 - (ii) the price of the product or service;
 - (iii) the intended use or end-use of the product or service;
 - (iv) consumer preference;
 - (v) the exclusion of in-house production;
 - (vi) the existence of specialised producers; or
 - (vii) the industry product classifications;
- (b) “relevant geographic market” means a market comprising the area in which the enterprise concerned is involved in the supply and demand of products or services, and in which the conditions of competition are distinctly homogenous and can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas and determined after taking into account—
- (i) the regulatory trade barriers;
 - (ii) the local specification requirements or differing national standards;
 - (iii) the national procurement policies;
 - (iv) the adequate distribution facilities or differing national standards;
 - (v) the transport costs;
 - (vi) the language;

- (vii) the consumer preferences; or
- (viii) the need for secure or regular supplies or rapid after-sales services.

(6) For the purposes of subsection (1), an enterprise abuses a dominant position where that enterprise—

- (a) directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions;
- (b) limits production, markets or technical development to the prejudice of consumers;
- (c) indulges in actions resulting in denial of market access;
- (d) makes the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts;
- (e) uses dominance in one market to move into or protect another market.

11. No exploitation of consumers by dominant enterprise

An enterprise holding a dominant position in the relevant market shall not—

- (a) directly or indirectly impose unfairly high or unfairly low purchasing prices or other similar unfair trading conditions;
- (b) limit production or technical development and innovation to the prejudice of consumers; or
- (c) discriminate between consumers or suppliers on the basis of non-commercial criteria, including nationality or place of residence.

12. No exclusion of competitors by dominant enterprise

(1) An enterprise holding a dominant position in the relevant market shall not engage in any practice that excludes or is intended to exclude competitors from the market.

(2) For the purposes of subsection (1), prohibited practices include—

- (a) predatory pricing;
- (b) price squeezing;
- (c) cross-subsidisation;
- (d) refusal to deal;
- (e) refusal of access to an essential facility;
- (f) tying-arrangements; and
- (g) unjustifiable discrimination among customers or suppliers.

13. Inquiry into abuse of dominant position

(1) The Ministry shall inquire into every allegation or suspicion of abuse of dominant position.

(2) The inquiry referred to in subsection (1) shall be conducted in accordance with Part VI of this Act.

PART V—MERGERS, ACQUISITIONS AND JOINT VENTURES**14. Notice of merger, acquisition and joint venture**

(1) An enterprise which proposes to enter into any merger, acquisition or joint venture shall give notice of the merger, acquisition or joint venture to the Ministry in the manner and form prescribed by the Minister by regulations.

(2) A merger, acquisition or joint venture entered into in contravention of subsection (1) is void.

(3) The notice required under subsection (1) shall, in the case of—

- (a) a proposed merger or amalgamation, be given after the board of directors or similar body of the respective enterprises have accepted the proposal to merge or amalgamate;
- (b) a proposed acquisition of control of another enterprise, be given after the conclusion of negotiations of the agreement of acquisition of control;
- (c) a joint venture, be given after the execution of the joint venture agreement by the enterprises.

(4) The notice required under subsection (1) shall be given by the enterprise acquiring control through the merger, acquisition or joint venture.

(5) The Ministry shall, on receipt of the notice under this section inquire into the merger, acquisition or joint venture with a view to satisfying itself whether the merger, acquisition or joint venture causes or is likely to cause an adverse effect on competition within the market.

(6) After inquiring into a merger, acquisition or joint venture under subsection (4), the Ministry may approve or refuse the merger, acquisition or joint venture.

(7) Where the Ministry fails, neglects or does not communicate the decision regarding the merger, acquisition or joint venture within the period prescribed by the Minister by regulations, the Ministry shall be taken to have approved the merger, acquisition or joint venture.

(8) For the purposes of this section—

- (a) “control” means the right by an enterprise to exercise restraint or direction over another person or enterprise and includes—

- (i) the ability to exercise forty-nine percent or more of the voting rights in the other enterprise;
- (ii) the ability to appoint more than half of the members of the board of directors or similar body in the other enterprise; and
- (iii) the ability to control the affairs of the other enterprise.

(b) “market” means a relevant product market and relevant geographic market determined in accordance with section 7(6).

(9) For the purposes of determining whether a merger, acquisition or joint venture has the effect of or is likely to have an adverse effect on competition in a market, the Ministry may take into account one or more of the following—

- (a) the actual and potential level of competition through imports in the market;
- (b) the extent of barriers to entry to the market;
- (c) the level of mergers, acquisitions or joint ventures in the market;
- (d) the degree of countervailing power in the market;
- (e) the likelihood that the merger, acquisition or joint venture may result in the parties to the merger, acquisition or joint venture being able to significantly and sustainably increase prices or profit margins;
- (f) the extent of effective competition remaining in a market;
- (g) the extent to which substitutes are available in the market or are likely to be available in the market;
- (h) the market share of the parties involved in the merger, acquisition or joint venture;

- (i) the likelihood that the merger, acquisition or joint venture may result in the removal from the market of a vigorous and effective competitor;
- (j) the nature and extent of vertical integration in the market;
- (k) the possibility of a rise in failing businesses;
- (l) the nature and extent of innovation in the market;
- (m) whether the benefits of the merger, acquisition or joint venture outweigh the adverse impact of the merger, acquisition or joint venture, if any.

15. Procedure for inquiring into mergers, acquisitions and joint ventures

(1) The Ministry shall as soon as it receives a complete notice of a merger, acquisition or joint venture under section 10, inquire into the merger, acquisition or joint venture.

(2) The Ministry shall, after receipt of a complete notice of a merger, acquisition or joint venture, direct the parties to the merger, acquisition or joint venture to publish details of the merger, acquisition or joint venture, in the manner prescribed by the Minister by regulations.

(3) The Ministry may invite any person affected or likely to be affected by the merger, acquisition or joint venture to file his or her written comments or objections.

(4) Where the Ministry receives all information from the persons affected or likely to be affected by a merger, acquisition or joint venture, the Ministry shall proceed to consider the request to approve merger, acquisition or joint venture.

16. Findings and orders of Ministry upon inquiry

(1) Where the Ministry is of the opinion that a merger, acquisition or joint venture has no adverse effect on competition in the

market, the Ministry shall approve the proposed merger, acquisition or joint venture.

(2) Where the Ministry is of the opinion that a merger, acquisition or joint venture may have an adverse effect on competition, the Ministry shall propose to the concerned parties, the conditions subject to which the Ministry proposes to approve the merger, acquisition or joint venture.

(3) Where the parties to a merger, acquisition or joint venture agree with the conditions proposed under subsection (2), the parties shall, within the time prescribed by the Minister by regulations, indicate their acceptance of the conditions.

(4) Where parties to a merger, acquisition or joint venture do not agree with the conditions proposed by the Ministry, the parties shall apply to the Ministry for further modification of the conditions, as the parties may consider necessary.

(5) Where the Ministry agrees with the modifications to the conditions proposed by the parties under subsection (4), the Ministry shall approve the merger, acquisition or joint venture subject to those modifications.

(6) Where the Ministry does not accept the modifications suggested by the parties, the Ministry shall give the parties a further period of time within which to indicate their consent to the merger, acquisition or joint venture as proposed to be approved, subject to the modifications specified under subsection (2).

(7) Where the parties fail to indicate their consent at the end of the prescribed time, the merger, acquisition or joint venture shall be taken to have been disapproved by the Ministry.

(8) Where the Ministry is of the opinion that a merger, acquisition or joint venture, has or is likely to have an appreciable

adverse effect on competition, it shall direct that the merger, acquisition or joint venture shall not take effect.

17. Failure to give notice

An enterprise which is required to give notice of a merger, acquisition or joint venture to the Ministry under section 10(1) but fails to do so commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

18. False statements or omission to furnish material information

An enterprise that, or person who, being a party to a merger, acquisition or joint venture—

(a) makes a statement which is false in any material particular, knowing it to be false; or

(b) omits any material particular knowing it to be material, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding ten years or both.

PART VI— INQUIRIES AND RELATED MATTERS

19. Application of this Part

This Part applies to all inquiries made under this Act except inquires made under Part V.

20. Procedure for making inquiries

(1) The Ministry may inquire into any action which is alleged to be in contravention of this Act upon—

(a) receipt of a complaint from any enterprise or person;

(b) a reference being made to the Minister by any enterprise or person; or

- (c) knowledge or information acquired by the Ministry from any source.

(2) Upon receipt of a complaint or reference under section 20, the Ministry shall inquire into the complaint or reference, and if, in the opinion of the Ministry, the complaint or reference discloses a *prima facie* case, the Ministry shall investigate the matter.

(3) The Ministry shall make a report on the findings after the investigation within the time prescribed by the Minister by regulations.

(4) Where the Ministry, after its inquiry into a complaint or reference, finds that there is a contravention of this Act, the Ministry shall make the appropriate order in accordance with this Act and regulations made by the Minister.

21. Orders in relation to abuse of dominant position and anti-competitive agreements and practices

(1) Where, after an inquiry, the Ministry finds that an agreement, decision or concerted practice or an action of a dominant enterprise, to which a complaint or reference relates contravenes this Act, the Ministry may make an order—

- (a) directing the enterprise involved in the agreement, decision or concerted practice or abuse of dominance, to discontinue and not repeat any such agreement, decision or concerted practice or abuse;
- (b) directing the enterprise involved in the agreement, decision or concerted practice, or abuse of dominance, as the case may be, to pay a fine not exceeding ten percent of the average of the turnover for the last three years of each enterprise;
- (c) awarding compensation to any aggrieved party as may be determined in accordance with regulations made under this Act;

- (d) directing that the agreement be modified in respect of the enterprise in such manner as may be specified by the Minister;
 - (e) directing the enterprise concerned to pay costs of the aggrieved party.
- (2) The Ministry may, notwithstanding anything in any other law, direct the division of an enterprise with dominant position, to ensure that the enterprise does not continue to abuse its dominant position.
- (3) Notwithstanding anything in any other law, the order referred to in subsection (2) may provide for all matters as may be necessary to give effect to the division of an enterprise including—
- (a) the transfer or vesting of property, rights, liabilities or obligations;
 - (b) the adjustment of contracts; either by discharge or reduction of any liability or obligation or otherwise;
 - (c) the creation, allotment, surrender or cancellation of any shares, stock or securities;
 - (d) the payment of compensation to any person who suffers loss as a consequence of the division of the dominant enterprise;
 - (e) the formation or winding up of an enterprise or the amendment of the memorandum and articles of association or any other instruments regulating the business of the enterprise; or
 - (f) the continuation, with such changes of the parties to any legal proceedings, as may be necessary.

Part VII—General

22. Offences in relation to furnishing of information

An enterprise that, or person who, in respect of any matter under this Act—

- (a) makes any statement or furnishes any document which he or she knows or has reason to believe to be false in any material particular;
- (b) omits to state any material fact knowing it to be material;
or
- (c) wilfully alters, suppresses or destroys any document which is required to be furnished,

commits an offence and is liable to a fine not exceeding thirty-six currency points or imprisonment not exceeding three years or both.

23. Offences by individuals in enterprises

(1) Where an enterprise contravenes a provision of this Act, every person who, at the time of the contravention, was in charge of, and was responsible to the enterprise for the conduct of the business of the enterprise, as well as the enterprise, commits the contravention and is liable to the penalty prescribed for the contravention.

(2) Notwithstanding subsection (1), where an enterprise contravenes this Act and it is proved that the contravention is done with the consent or connivance of, or is attributable to any wilful neglect on the part of, any director, manager, secretary or other officer of the enterprise, the director, manager, secretary or other officer also contravenes this Act and is liable to be proceeded against and punished accordingly.

24. Failure to pay fines

An enterprise that, or a person who, fails to pay any fine imposed under this Act or regulations, commits an offence and is liable, on conviction, to a fine not exceeding four thousand currency points or imprisonment not exceeding five years or both.

25. Protection from liability

A person acting on the directions of the Ministry is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of duties or functions under this Act.

26. Duty not to disclose information

(1) A person acting on the directions of the Ministry shall not, unless compelled by law, disclose any information, obtained in the course of discharging his or her duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

27. Appeals

An enterprise or person aggrieved by a decision or order made under this Act may appeal to the High Court.

28. Regulations

(1) The Minister may, by statutory instrument, make regulations for giving effect to this Act.

(2) Without prejudice to the general effect of subsection (1), regulations made under this section may provide for any of the following matters—

- (a) the proper implementation and enforcement of this Act;
- (b) the procedure for inquiring into anti-competitive and unfair practices and agreements, mergers, acquisitions and joint ventures;
- (c) the form and manner in which notice may be given or applications made under this Act and the fees payable in respect of them;
- (d) the procedure for receipt, hearing and determination of inquiries under this Act;

- (e) the particulars to be furnished under this Act and the form and manner in which they may be furnished;
- (f) the prescription of time required under this Act;
- (g) the award of interim relief during an inquiry under this Act; or
- (h) the award of compensation for any loss or damage shown to have been suffered, as a result of the contravention of any provision of this Act.

(3) Regulations made under this section may prescribe, in respect of a contravention of any of the regulations, a fine not exceeding one thousand currency points or imprisonment not exceeding ten years or both.

29. Power to amend Schedule

The Minister may, by statutory instrument, in consultation with the Minister responsible for finance and with the approval of the Cabinet, amend the Schedule to this Act.

SCHEDULE

Section 2

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings

