

LAWS OF BRUNEI

CHAPTER 253 COMPETITION

S 1/2015
Amended by
S 17/2021

REVISED EDITION 2022

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REVISED EDITION 2022

CHAPTER 253

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COMPETITION ACT

An Act to promote and protect competition in markets in Brunei Darussalam, to promote economic efficiency, economic development and consumer welfare; and to provide for the functions and powers of the Competition Commission of Brunei Darussalam and to provide for matters connected therewith

Commencement: 1st August 2017

[S 69/2017]

1st January 2020

[S 22/2019]

PART 1

PRELIMINARY

Citation

1. (1) This Act may be cited as the Competition Act.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint different dates for the commencement of the different Parts or provisions of this Act or for the different purposes of the same provisions.

Interpretation

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

“agreement” includes any agreement, arrangement, understanding, undertaking or promise, whether expressed or implied, written or oral;

“anticipated merger” means an arrangement that is in progress or contemplation and that, if carried into effect, will result in the occurrence of a merger referred to in section 23(2);

“authorised officer” means an authorised officer appointed under section 7;

“block exemption” has the meaning assigned to it in section 15(5);

“block exemption order” has the meaning assigned to it in section 15(3);

“Chairman” means the Chairman of the Commission and includes any temporary Chairman of the Commission;

“Commission” means the Competition Commission of Brunei Darussalam;

“concerted practice” means any form of coordination between undertakings which knowingly substitutes practical co-operation between them for the risks of competition, and includes any practice which involves direct or indirect contact or communication between undertakings, the object or effect of which is either —

(a) to influence the conduct of one or more undertakings in a market; or

(b) to disclose the course of conduct which an undertaking has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“consumer” means any direct or indirect user of goods or services supplied by an undertaking in the course of business, and includes another undertaking that uses the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer;

“Director” means the Director of the Commission appointed under section 6 and includes any person acting in that capacity;

“document” has the same meaning as in section 2 of the Evidence Act (Chapter 108) and includes information recorded in any form;

“dominant position” means a situation in which one or more undertakings possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors within Brunei Darussalam or elsewhere;

“goods” means property of every kind, whether tangible or intangible and includes —

(a) all kinds of movable property;

- (b) buildings and other structures;
- (c) vessels and vehicles;
- (d) utilities;
- (e) minerals, trees and crops, whether on, under or attached to land or not;
- (f) animals, including fish; and
- (g) chose in action;

“individual exemption” has the same meaning assigned to it under section 13(3);

“information” includes estimates and forecasts;

“member” means a member of the Commission;

“Minister” means the Minister charged with the responsibility for general competition matters;

“party involved in a merger” means a person or an undertaking specified in section 23(2) and includes the merged entity;

“party to an anticipated merger” means a person or an undertaking which would be a person or an undertaking specified in section 23(2) if the anticipated merger were carried into effect;

“person” includes any undertaking;

“premises” does not include domestic premises unless —

(a) they are used in connection with the affairs of an undertaking; or

(b) documents relating to the affairs of an undertaking are kept there,

but includes any vehicle;

“price” includes any form of consideration given in return for any goods or services of any kind, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such goods or services;

“public interest consideration” means national or public security, defence and such other considerations as the Minister may, by order published in the *Gazette*, prescribe;

“section 11 prohibition” means the prohibition referred to in section 11(1);

“section 21 prohibition” means the prohibition referred to in section 21(1);

“section 23 prohibition” means the prohibition referred to in section 23(1);

“service” means a service of any description whether industrial, trade, professional or otherwise;

“supply” includes —

(a) in relation to goods, the supply and re-supply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and

(b) in relation to services, the provision by way of sale, grant or conferment of the services;

“Tribunal” means the Competition Appeal Tribunal established by section 60;

“undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

(2) The fact that to a limited extent the section 11 prohibition does not apply to an agreement, because of an exclusion provided by or under this Act, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Act, the power to require information, in relation to information recorded otherwise than in a legible form, includes the power to require a copy of it in a legible form.

(4) Any power conferred on any person by this Act to require information includes the power to require any document which he believes may contain that information.

PART 2

CONSTITUTION, FUNCTIONS AND POWERS OF COMMISSION

Constitution of Commission

3. (1) There shall be a Competition Commission of Brunei Darussalam.

(2) The Commission shall consist of a Chairman and such other members, not being less than 6 or more than 12, appointed by His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(3) Schedule 1 shall have effect with respect to the Commission, its members and proceedings.

Functions of Commission

4. (1) The Commission shall have the following functions —

(a) to enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Brunei Darussalam;

(b) to promote and sustain competition in markets in Brunei Darussalam;

(c) to promote a strong competitive culture and environment throughout the economy;

(d) to act as an advocate for competition matters;

(e) to educate and promote public understanding of the value of competition and how this Act promotes competition;

(f) to advise the Government or other public authority on national needs and policies in respect of matters concerning competition in Brunei Darussalam;

(g) to promote research into and the development of skills in relation to the legal, economic and policy aspects;

(h) to act internationally as the national body representative of Brunei Darussalam in respect of competition matters; and

(i) to carry on such activities and do such things as are necessary or advantageous and proper for the administration of the Commission.

(2) In performing the functions and discharging the duties imposed on it by subsection (1), the Commission shall have regard to —

(a) the differences in the nature of various markets in Brunei Darussalam;

(b) the economic, industrial and commercial needs of Brunei Darussalam; and

(c) maintaining the efficient functioning of the markets in Brunei Darussalam.

(3) The Commission may undertake such other functions and duties as the Minister may assign to the Commission and in so doing, the Commission is deemed to be fulfilling the purposes of this Act, and the provisions of this Act shall apply to the Commission in respect of such functions and duties.

(4) Nothing in this section shall be construed as imposing on the Commission, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Commission

5. (1) Subject to the provisions of this Act, the Commission may carry on such activities as appear to the Commission to be advantageous, necessary or convenient for it to carry on for or in connection with the performance of its functions and the discharge of its duties under this Act or any other written law and, in particular, the Commission may exercise any of the powers specified in Schedule 2.

(2) This section shall not be construed as limiting any power of the Commission conferred by or under any other written law.

(3) The Commission shall furnish the Minister information with respect to its activities in such manner and at such times as the Minister may require.

Appointment of Director

6. (1) His Majesty the Sultan and Yang Di-Pertuan shall, by notification published in the *Gazette*, appoint a Director who shall be responsible for the overall administration and management of the functions, activities and day-to-day affairs of the Commission for the purposes of carrying out the provisions of this Act.

(2) The Director shall perform such other duties as the Minister may direct.

Appointment of authorised officers

7. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint such number of authorised officers to carry into effect any specific provisions of this Act or any regulations made thereunder.

(2) For purposes of an investigation under this Act, the Minister may appoint any other person to be an authorised officer.

Direction by Minister

8. The Minister may, in writing, give to the Commission directions of a general character, consistent with the provisions of this Act, relating to the performance of the functions and powers of the Commission and the Commission shall give effect to such directions.

Appointment of committees and delegation of powers

9. (1) The Commission may, in its discretion, appoint from among its own members or persons who are not members such number of committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Commission, would be better regulated and managed by means of such committees.

(2) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee all or any of the powers, functions and duties vested in the Commission by this Act or any other written law, except the power of delegation conferred by this subsection.

(3) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to the Chairman, the Director, any employee of the Commission or any person all or any of the powers, functions and duties

vested in the Commission by this Act or any other written law, except the power of delegation conferred by this subsection; and any power, function or duty so delegated may be exercised, performed or discharged by the Chairman, the Director, employee or person in the name and on behalf of the Commission.

(4) The Commission may continue to exercise a power conferred upon it, perform a function or discharge a duty under this Act or any other written law, notwithstanding the delegation of the power, function or duty under this section.

PART 3

COMPETITION

Chapter 1

General

Application of Part

10. (1) Notwithstanding that —

(a) an agreement referred to in section 11 has been entered into outside Brunei Darussalam;

(b) any party to such agreement is outside Brunei Darussalam;

(c) any undertaking abusing the dominant position referred to in section 21 is outside Brunei Darussalam;

(d) an anticipated merger will be carried into effect outside Brunei Darussalam;

(e) a merger referred to in section 23 has taken place outside Brunei Darussalam;

(f) any party to an anticipated merger or any party involved in a merger is outside Brunei Darussalam; or

(g) any other matter, practice or action arising out of such agreement, such dominant position, an anticipated merger or a merger is outside Brunei Darussalam,

this Part shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if —

- (i) such agreement infringes or has infringed the section 11 prohibition;
- (ii) such abuse infringes or has infringed the section 21 prohibition;
- (iii) such anticipated merger, if carried into effect, will infringe the section 23 prohibition; or
- (iv) such merger infringes or has infringed the section 23 prohibition,

as the case may be.

(2) In so far as this Part applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority —

(a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and

(b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purpose of co-ordinating the exercise of powers by the Commission under this Part and the exercise of powers by any other regulatory authority referred to in subsection (2), and may, in particular, make regulations to provide for the procedure to be followed —

(a) in determining in a particular case or category of cases whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and

(b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.

(4) Nothing in this Part shall apply to any activity carried on by, any agreement entered into or any conduct on the part of —

(a) the Government;

(b) any statutory body; or

(c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.

(5) Notwithstanding subsection (4), this Part applies to —

(a) such statutory body or person acting on behalf of such statutory body; or

(b) such activity carried on, agreement entered into or conduct engaged in, by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct,

as the Minister may, by order published in the *Gazette*, prescribe.

(6) In this section, “statutory body” means a body corporate established by or under any written law.

Chapter 2

Agreements etc. preventing, restricting or distorting competition

Agreements etc. preventing, restricting or distorting competition

11. (1) Subject to section 12, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Brunei Darussalam are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) For the purposes of subsection (1), agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Brunei Darussalam if they —

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(f) perform an act of bid rigging.

(3) Any provision of any agreement or any decision which is prohibited by subsection (1) shall be void on or after the commencement date of this section to the extent that it infringes that subsection.

(4) Unless the context otherwise requires, a provision of this Act which is expressed to apply to, or in relation to, an agreement shall be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

(5) Subsection (1) applies to agreements, decisions and concerted practices implemented before, on or after the commencement date of this section.

Excluded agreements

12. The section 11 prohibition does not apply to such matter as may be specified in Schedule 3.

Individual exemption

13. (1) An undertaking may apply to the Minister, through the Commission, for an exemption with respect to a particular agreement from the section 11 prohibition.

(2) The Minister may, with the recommendation of the Commission, by order grant the exemption if, in the opinion of the Minister, the agreement is one to which this section applies.

(3) An exemption granted under this section is referred to as an individual exemption.

(4) The individual exemption granted by the Minister may be —

(a) subject to any fees, condition or obligation as the Commission considers it appropriate to impose; and

(b) for a limited duration as specified in the order.

(5) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

(6) This section applies to any agreement which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not —

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Revocation or variation of individual exemption

14. (1) If the Minister is satisfied that —

(a) there has been a material change of circumstance since the grant of an individual exemption; or

(b) an obligation has been breached,

the Minister may, by order published in the *Gazette* —

(i) revoke the individual exemption;

(ii) vary or remove any condition or obligation; or

(iii) impose additional condition or obligation.

(2) If the Minister is satisfied that —

(a) the information on which the Minister based his decision to grant an individual exemption is false or misleading in a material particular; or

(b) any condition has been breached,

the Minister may, by order published in the *Gazette*, revoke the individual exemption.

(3) Any action taken by the Minister under subsection (1) shall have effect from the date the order is made.

(4) An individual exemption which is revoked —

(a) by virtue of subsection (2)(a) shall be void from the date the individual exemption was granted; or

(b) by virtue of subsection (2)(b) shall have effect from the date the condition is breached.

Block exemption

15. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements referred to in section 20, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

(2) The Minister may make an order giving effect to such a recommendation —

(a) in the form in which the recommendation is made; or

(b) subject to such modifications as he considers appropriate.

(3) An order made under this section is referred to in this Part as a block exemption order.

(4) An agreement which falls within a category specified in a block exemption order shall be exempt from the section 11 prohibition.

(5) An exemption under this section is referred to in this Part as a block exemption.

Block exemption order

16. (1) A block exemption order may impose conditions or obligations subject to which a block exemption shall have effect.

(2) A block exemption order may provide —

(a) that breach of a condition imposed by the order shall have the effect of revoking the block exemption in respect of an agreement as from such date as the Commission may specify;

(b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, revoke the block exemption in respect of the agreement as from such date as the Commission may specify; and

(c) that if the Commission considers that a particular agreement is not one to which section 20 applies, it may revoke the block exemption in respect of that agreement as from such date as the Commission may specify.

(3) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

(4) A block exemption order may provide that the order shall cease to have effect at the end of a specified period.

(5) In this section, “specified” means specified in a block exemption order.

Opposition to block exemption

17. (1) A block exemption order may provide that a party to an agreement which does not qualify for the block exemption created by the order, but satisfies specified criteria, may notify the Commission of the agreement for the purposes of subsection (2).

(2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) shall be treated, as from

the end of the notice period, as falling within a category specified in a block exemption order unless the Commission —

(a) is opposed to it being so treated; and

(b) gives notice in writing to the party concerned of its opposition before the end of that period.

(3) If an agreement to which the section 11 prohibition applies has been notified to the Commission under this section, no penalty shall be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period —

(a) beginning with the date on which the notification was given; and

(b) ending with such date as may be specified in a notice in writing given to the applicant by the Commission when the application has been determined.

(4) The date specified in a notice under subsection (3)(b) shall not be earlier than the date on which the notice is given.

(5) In this section —

“notice period” means such period as may be specified with a view to giving the Commission sufficient time to consider whether to oppose under subsection (2);

“specified” means specified in a block exemption order.

Procedure for block exemption

18. (1) Before making a recommendation under section 15(1), the Commission shall —

(a) publish details of its proposed recommendation in such a way as the Commission thinks most suitable for bringing it to the attention of those likely to be affected; and

(b) consider any representations made to the Commission regarding its proposed recommendation.

(2) If the Minister proposes to give effect to such a recommendation subject to modifications, he shall inform the Commission of the proposed modifications and take into account any comments made by the Commission.

Variation and revocation of block exemption order

19. (1) If, in the opinion of the Commission, it is appropriate to vary or revoke a block exemption order, the Commission may make a recommendation to that effect to the Minister.

(2) Section 18 applies to any proposed recommendation under subsection (1).

(3) Where there has been no recommendation under subsection (1), the Minister shall, before exercising his power to vary or revoke a block exemption order —

(a) inform the Commission of the proposed variation or revocation; and

(b) take into account any comments made by the Commission.

Criteria for block exemption

20. Section 15 applies to any agreement which contributes to —

(a) improving production or distribution; or

(b) promoting technical or economic progress,

but which does not —

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

*Chapter 3**Abuse of dominant position***Abuse of dominant position**

21. (1) Subject to section 22, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Brunei Darussalam is prohibited.

(2) For the purposes of subsection (1), conduct may, in particular, constitute such an abuse if it consists in —

(a) predatory behaviour towards competitors;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Excluded cases

22. The section 21 prohibition does not apply to such matter as may be specified in Schedule 3.

*Chapter 4**Mergers***Mergers**

23. (1) Subject to section 24, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Brunei Darussalam for goods or services are prohibited.

(2) For the purposes of this Part, a merger occurs if —

(a) two or more undertakings, previously independent of one another, merge;

(b) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

(c) the result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

(3) For the purposes of this Part, control, in relation to an undertaking, shall be regarded as existing if, by reason of rights, contracts or any other means, or any combination of rights, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by —

(a) ownership of, or the right to use all or part of, the assets of an undertaking; or

(b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(4) For the purposes of this Part, control is acquired by any person or other undertaking if he or it —

(a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to in subsection (3); or

(b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(5) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger falling within subsection (2)(b).

(6) In determining whether influence of the kind referred to in subsection (3) is capable of being exercised, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(7) For the purposes of this Part, a merger is not deemed to occur if —

(a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;

(b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;

(c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or

(d) control is acquired by an undertaking referred to in subsection (8) in the circumstances specified in subsection (9).

(8) The undertaking referred to in subsection (7)(d) is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(9) The circumstances referred to in subsection (7)(d) are that —

(a) the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and

(b) any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists —

(i) is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and

(ii) is not for the purpose of determining the manner in which any activity of the other undertaking, being an activity that could affect competition in markets for goods or services in Brunei Darussalam is carried on.

(10) In subsection (9), “specified period” means —

(a) the period of 12 months from the date on which control of the other undertaking was acquired; or

(b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in paragraph (a), within such longer period as the Commission determines and specifies with respect to that case.

Excluded mergers

24. The section 23 prohibition does not apply to any merger specified in Schedule 4.

Requests for Commission to consider anticipated mergers and mergers

25. (1) Section 26 provides for an anticipated merger to be considered by the Commission on the application of a party to that anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 23 prohibition.

(2) Section 27 provides for a merger to be considered by the Commission on the application of a party involved in that merger who thinks the merger may infringe the section 23 prohibition.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations provide —

(a) that only such anticipated mergers as are prescribed may be notified to the Commission under section 26; and

(b) for the procedure to be followed —

(i) by any party making an application under section 26 or 27; and

(ii) by the Commission, in considering such an application.

Notification of anticipated merger

26. (1) A party to an anticipated merger of the relevant type which applies for the anticipated merger to be considered under this section shall —

- (a) notify the Commission of the anticipated merger; and
- (b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 31 and 32, on an application under this section, the Commission may make a decision as to —

(a) whether the section 23 prohibition will be infringed by the anticipated merger, if carried into effect; and

(b) if it will not be infringed, whether it is —

- (i) because of the effect of an exclusion which will apply if the anticipated merger is carried into effect;
- (ii) because the anticipated merger, if carried into effect, is exempted from the application of the prohibition under subsection (3); or
- (iii) because a commitment has been accepted pursuant to section 31.

(3) Where the Commission proposes to make a decision that the section 23 prohibition will be infringed by an anticipated merger, if carried into effect, the Commission shall give written notice to the party who applied for a decision on the anticipated merger and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) is final.

(5) Where the Minister exempts an anticipated merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of an anticipated merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(7) Subject to subsection (8), where the Commission makes a decision that an anticipated merger, if carried into effect, will not infringe the

section 23 prohibition, the Commission may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

(8) Before the expiry of the period referred to in subsection (7), if any, an application may be made by all parties to the anticipated merger who applied to the Commission for a decision on the anticipated merger under this section for that period to be extended.

(9) Where an application for an anticipated merger to be considered has been made to the Commission in accordance with subsection (1) and the anticipated merger is carried into effect before the Commission makes a decision under subsection (2) in respect thereof, the application relating to the anticipated merger —

(a) may be treated by the Commission as if it were an application for the resulting merger to be considered made in accordance with section 27; and

(b) the Commission may make a decision under section 27 in respect of the resulting merger.

(10) For the purpose of subsection (9), the Commission may make a decision under section 27(2)(b)(ii) (read with section 27(5)) in respect of the merger referred to in subsection (9), notwithstanding the exemption was granted by the Minister under subsection (3) in respect of the anticipated merger.

(11) Notwithstanding subsection (9), the Commission may refuse to make any decision in respect of a merger referred to therein and require any party involved in the merger to apply to the Commission for the merger to be considered under section 27(1).

(12) In this section, “an anticipated merger of the relevant type” means an anticipated merger of the type prescribed by regulations made under section 25(3)(a).

Notification of merger

27. (1) A party involved in a merger which applies for the merger to be considered under this section shall —

(a) notify the Commission of the merger; and

(b) apply to it for a decision.

(2) Subject to subsections (3) and (5) and sections 31 and 32, on an application under this section, the Commission may make a decision as to —

(a) whether the section 23 prohibition has been infringed; and

(b) if it has not been infringed, whether that is —

(i) because of the effect of an exclusion;

(ii) because the merger is exempted from the prohibition under subsection (3); or

(iii) because a commitment has been accepted pursuant to section 31.

(3) Where the Commission proposes to make a decision that the section 23 prohibition has been infringed, the Commission shall give written notice to —

(a) the party who applied for a decision on the merger; or

(b) in a case where section 26(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

and the party or merged entity so notified by the Commission may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister made under subsection (3) is final.

(5) Where the Minister exempts a merger under subsection (3), the Commission may make a decision under subsection (2)(b)(ii).

(6) The Minister may revoke the exemption of a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

(7) A reference in any provision of this Act to an application or a notification under section 27 shall include a reference to an application or a

notification under section 26 that the Commission treats as an application or a notification under section 27 pursuant to section 26(9).

Interim measures in relation to notifications of anticipated mergers and mergers

28. (1) If, in respect of an application under section 26 or 27, the Commission has reasonable grounds for suspecting that —

(a) the section 23 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 23 prohibition has been infringed by a merger,

but has not completed its consideration of the matter, and the Commission considers that it is necessary for it to act under this section —

(i) for the purpose of preventing any action that may prejudice —

(A) the consideration of the anticipated merger or merger; or

(B) the giving of any direction under section 42; or

(ii) as a matter of urgency for the purpose —

(A) of preventing serious, irreparable damage to a particular person or category of persons; or

(B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(2) Before giving a direction under this section, the Commission shall —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(3) A notice under subsection (2) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(4) A direction given under this section shall have effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 42.

(5) Sections 42(2)(c)(i) and (d)(i) and 46 shall also apply to directions given under this section.

Effect of decision that anticipated merger, if carried into effect, will not infringe section 23 prohibition

29. (1) This section applies to an anticipated merger in respect of which the Commission has determined an application under section 26 by making a decision that the anticipated merger, if carried into effect, will not infringe the section 23 prohibition.

(2) The Commission shall take no further action in relation to the section 23 prohibition with respect to the anticipated merger (including where the anticipated merger is carried into effect, or if the Commission's decision is valid for a specified period, where the anticipated merger is carried into effect within that period) unless —

(a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the anticipated merger, if carried into effect, will not infringe the section 23 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 23 prohibition by the anticipated merger to which this section applies, if carried into effect or, where the Commission's

decision is valid for a specified period, if carried into effect within that period.

(5) The Commission may remove the immunity given by subsection (4) if —

(a) it takes action under this Part with respect to one of the circumstances referred to in subsection (2);

(b) it considers that it is likely that the anticipated merger, if carried into effect, or the resulting merger will infringe the section 23 prohibition; and

(c) it gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(6) If the Commission has reasonable grounds for suspecting that —

(a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party to the anticipated merger, was incomplete, false or misleading in a material particular; or

(b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

(7) Where —

(a) the Commission has made a decision that an anticipated merger, if carried into effect, will not infringe the section 23 prohibition; and

(b) the merger resulting from a purported carrying into effect of the anticipated merger is materially different from the anticipated merger,

nothing in this section shall prevent the Commission from taking any action in relation to the section 23 prohibition in respect of the merger.

Effect of decision that merger has not infringed section 23 prohibition

30. (1) This section applies to a merger if the Commission has determined an application under section 27 by making a decision that the merger has not infringed the section 23 prohibition.

(2) The Commission shall take no further action in relation to the section 23 prohibition with respect to the merger unless —

(a) it has reasonable grounds for suspecting that any information on which it based its decision (which may include information on the basis of which it accepted a commitment) was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) Action that may be taken in respect of the circumstances referred to in subsection (2) may include the revocation of the decision that the merger has not infringed the section 23 prohibition.

(4) No penalty may be imposed under this Part in respect of any infringement of the section 23 prohibition by a merger to which this section applies.

(5) The Commission may remove the immunity given by subsection (4) if —

(a) it takes action under this Part with respect to the merger in one of the circumstances mentioned in subsection (2);

(b) it considers that it is likely that the merger will infringe the section 23 prohibition; and

(c) it gives notice in writing to —

- (i) the party on whose application the decision was made; or
- (ii) in a case where section 26(9) applies, the party who applied for a decision on the anticipated merger (which was carried into effect) or, where that party no longer exists, the merged entity,

that it is removing the immunity as from the date specified in its notice.

(6) If the Commission has reasonable grounds for suspecting that —

(a) any information on which it based its decision (which may include information on the basis of which it accepted a commitment), and which was provided to it by a party involved in the merger, was incomplete, false or misleading in a material particular; or

(b) a party who provided a commitment has failed to adhere to one or more of the terms of the commitment,

the date specified in a notice under subsection (5)(c) may be earlier than the date on which the notice is given.

Chapter 5

Commitments

Commitments

31. (1) The Commission may, at any time before making a decision pursuant to an application under section 26 or 27 or an investigation under section 35(1)(c) or (d) as to whether —

(a) the section 23 prohibition will be infringed by an anticipated merger, if carried into effect; or

(b) the section 23 prohibition has been infringed by a merger,

accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which —

(i) may be expected to result from the anticipated merger, if carried into effect; or

(ii) has resulted or may be expected to result from the merger.

(2) A commitment shall come into force on the date specified by the Commission when it is accepted.

(3) The Commission may, at any time when a commitment is in force, accept —

- (a) a variation of the commitment; or
- (b) another commitment in substitution,

for the purpose referred to in subsection (1).

(4) A commitment may be released by the Commission where it has reasonable grounds for believing that the commitment is no longer necessary or appropriate for the purpose referred to in subsection (1).

(5) Before accepting, varying, substituting or releasing a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.

Effect of commitments

32. (1) Where the Commission has accepted a commitment under section 31, and subject to subsection (2), the Commission shall make a decision that —

(a) the section 23 prohibition will not be infringed by an anticipated merger, if carried into effect; or

(b) the section 23 prohibition has not been infringed by a merger,

as the case may be.

(2) Nothing in subsection (1) shall prevent the Commission from revoking the decision already made, commencing or continuing any investigation, or making a decision or giving a direction, where —

(a) it has reasonable grounds for suspecting that any information on the basis of which it accepted a commitment was incomplete, false or misleading in a material particular; or

(b) it has reasonable grounds for suspecting that a party who provided a commitment has failed to adhere to one or more of the terms of the commitment.

(3) If the Commission revokes a decision referred to in subsection (1), the commitment shall be treated, unless otherwise stated, as released from the date of that revocation.

(4) The Commission may review the effectiveness of commitments it has accepted under section 31 in such circumstances as it considers appropriate.

Chapter 6

Investigation and enforcement

Guidelines on enforcement of Part

33. (1) The Commission may, from time to time and with a view to enabling any person to order his affairs in compliance with the provisions of this Part, cause to be published in the *Gazette* guidelines indicating the manner in which the Commission will interpret, and give effect to, the provisions of this Part.

(2) For the purpose of preparing any guidelines under subsection (1), the Commission may consult with such persons as it thinks appropriate.

(3) Where the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission shall, in preparing those guidelines, consult with that regulatory authority.

(4) Guidelines published under this section shall not be binding on the Commission.

Power to require documents or information

34. (1) Where the Commission —

(a) has reasonable grounds for suspecting that any feature, or combination of features, of a market in Brunei Darussalam for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Brunei Darussalam; or

(b) in considering an application for decision filed pursuant to section 26 or 27, has reasonable grounds for suspecting that —

- (i) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or
- (ii) the section 23 prohibition has been infringed by any merger,

the Commission may, by notice in writing to any person, require the person to produce to the Commission a specified document, or to provide the Commission with specified information, which the Commission considers relates to any matter relevant to such purposes.

(2) A notice under subsection (1) shall indicate —

(a) the purpose for which the specified document or specified information is required by the Commission; and

(b) the nature of the offences created by Part 4.

(3) The Commission may specify in the notice —

(a) the time and place at which any document is to be produced or any information is to be provided; and

(b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

(a) if the document is produced —

(i) to take copies of it or extracts from it; and

(ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or

(b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) For the purposes of subsection (1)(a), any reference to a feature of a market in Brunei Darussalam for goods or services shall be construed as a reference to —

(a) the structure of the market concerned or any aspect of that structure;

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(6) In this section —

“conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct;

“specified” means —

(a) specified or described in the notice; or

(b) falling within a category which is specified or described in the notice.

Power to investigate

35. (1) The Commission may conduct an investigation if there are reasonable grounds for suspecting that —

(a) the section 11 prohibition has been infringed by any agreement;

(b) the section 21 prohibition has been infringed by any conduct;

(c) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) the section 23 prohibition has been infringed by any merger.

(2) For the purpose of subsection (1), the Commission may appoint an authorised officer to conduct the investigation.

(3) Any authorised officer shall have all the powers of investigation and enforcement under this Act.

(4) For the avoidance of doubt, it is declared that for the purposes of this Act, the authorised officer investigating any commission of an offence

under this Act shall have all or any of the powers of a police officer in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code (Chapter 7).

Power when conducting investigation

36. (1) For the purposes of an investigation under section 35, the Commission or an authorised officer may, by notice in writing to any person, require that person to produce to the Commission or the authorised officer a specified document, or to provide the Commission or the authorised officer with specified information, which the Commission or the authorised officer considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) shall indicate —

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offences created by Part 4.

(3) The Commission or the authorised officer may also specify in the notice —

- (a) the time and place at which any document is to be produced or any information is to be provided; and
- (b) the manner and form in which it is to be produced or provided.

(4) The power under this section to require a person to produce a document includes the power —

- (a) if the document is produced —
 - (i) to take copies of it or extracts from it; and
 - (ii) to require such person, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document; or
- (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.

(5) In subsection (1), “specified” means —

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

Power to enter premises without warrant

37. (1) In connection with an investigation under section 35, any authorised officer and such other person as the Commission has authorised to accompany the authorised officer (authorised person) may enter any premises.

(2) No authorised officer and no authorised person or person required by the authorised officer respectively, shall enter any premises in the exercise of the powers under this section unless the authorised officer has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days’ notice of the intended entry;
 - (b) indicates the subject matter and purpose of the investigation;
- and
- (c) indicates the nature of the offences created by Part 4.
- (3) Subsection (2) does not apply —

(a) if the authorised officer has reasonable grounds for suspecting that the premises are, or have been, occupied by an undertaking which is being investigated in relation to —

- (i) an agreement referred to in section 11;
- (ii) conduct referred to in section 21; or
- (iii) an anticipated merger, or a merger referred to in section 23; or

(b) if the authorised officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised —

(a) in the case of an any authorised person, upon production of —

- (i) evidence of the authorisation of every authorised person accompanying him; and
- (ii) a document containing the information referred to in subsection (2)(b) and (c); and

(b) in the case of an authorised officer and any person required by him, upon production of —

- (i) evidence of his appointment; and
- (ii) a document containing the information referred to in subsection (2)(b) and (c).

(5) An authorised person, an authorised officer or a person required by the authorised officer entering any premises under this section may —

(a) take with him such equipment as appears to him to be necessary;

(b) require any person on the premises —

- (i) to produce any document which he considers relates to any matter relevant to the investigation; and
- (ii) if the document is produced, to provide an explanation of it;

(c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;

(d) take copies of, or extracts from, any document which is produced;

(e) require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —

- (i) in which it can be taken away; and
- (ii) in which it is visible and legible; and

(f) take any step which appears to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.

Power to enter premises under warrant

38. (1) Any authorised officer may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that —

(a) there are reasonable grounds for suspecting that there are on any premises documents —

- (i) the production of which has been required under section 36 or 37; and
- (ii) which have not been produced as required;

(b) there are reasonable grounds for suspecting that —

- (i) there are on any premises documents which the Commission or the authorised officer has power under section 36 to require to be produced; and
- (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or

(c) an authorised person, an authorised officer or a person required by the authorised officer has attempted to enter the premises in the exercise of his powers under section 37 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

(2) A warrant under this section shall authorise a named officer, and such other persons as the authorised officer may require, to do all or any of the following —

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;

(c) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (the relevant kind);

(d) to take possession of any document appearing to be of the relevant kind if —

- (i) such action appears to be necessary for preserving the document or preventing interference with it; or
- (ii) it is not reasonably practicable to take copies of the document on the premises;

(e) to take any other step which appears to be necessary for the purpose mentioned in paragraph (d)(i);

(f) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(g) to require any information which is stored in any electronic form and is accessible from the premises and which he considers relates to any matter relevant to the investigation, to be produced in a form —

- (i) in which it can be taken away; and
- (ii) in which it is visible and legible; and

(h) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation.

(3) If, in the case of a warrant under subsection (1)(b), the court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsection (2) to be taken in relation to any such document.

(4) Where possession of any document is taken under subsection (2)(d) or (3), the named officer may, at the request of the person from whom possession of the document was taken, provide such person with a copy of the document.

(5) A named officer may allow any equipment or article which has a bearing on an investigation and which may be removed from any premises for examination under subsection (2)(h) to be retained on those premises subject to such conditions as the named officer may require.

(6) Any person who fails to comply with any condition imposed under subsection (5) is guilty of an offence.

(7) A warrant issued under this section shall indicate —

(a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by Part 4,

and shall continue in force until the end of the period of one month beginning from the day on which it is issued.

(8) The powers conferred by this section shall not be exercised except upon production of a warrant issued under this section.

(9) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(10) If there is no one at the premises when the named officer proposes to execute such a warrant, he shall, before executing it —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(11) If the named officer is unable to inform the occupier of the intended entry, he shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(12) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(13) Any document of which possession is taken under subsection (2)(d) may be retained for a period of 3 months.

(14) In this section —

“named officer” means the authorised officer named in the warrant;

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

Self-incrimination and savings for professional legal advisers

39. (1) A person is not excused from disclosing any information or document to the Commission or, as the case may be, to an authorised officer, authorised person or a person required by the authorised officer, under a requirement made of him under any provision of this Act on the ground that the disclosure of the information or document might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Act to the Commission or, as the case may be, to an authorised officer, authorised person or a person required by the authorised officer, that the statement might tend to incriminate him, that statement —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under Part 4; but

(b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings, including proceedings under this Act.

(3) Nothing in this Part shall —

(a) compel a professional legal adviser to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or

(b) authorise the taking of any such document or other material which is in his possession.

(4) A professional legal adviser who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

Interim measures

40. (1) If the Commission —

(a) has reasonable grounds for suspecting that the section 11 prohibition or the section 21 prohibition has been infringed but has not completed its investigations into the matter; and

(b) considers that it is necessary for it to act under this section as a matter of urgency for the purpose —

- (i) of preventing serious, irreparable damage to a particular person or category of persons; or
- (ii) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(2) If the Commission has reasonable grounds for suspecting that the section 23 prohibition —

(a) will be infringed by an anticipated merger, if carried into effect; or

(b) has been infringed by a merger,

but has not completed its investigations into the matter, and considers that it is necessary for it to act under this section —

- (i) for the purpose of preventing any action that may prejudice —
 - (A) the investigations; or

- (B) the giving of any direction under section 42; or
- (ii) as a matter of urgency for the purpose —
 - (A) of preventing serious, irreparable damage to a particular person or category of persons; or
 - (B) of protecting the public interest,

the Commission may give such directions as it considers appropriate for that purpose.

(3) Before giving a direction under this section, the Commission shall —

(a) give written notice to the person to whom it proposes to give the direction; and

(b) give that person an opportunity to make representations.

(4) A notice under subsection (3) shall indicate the nature of the direction which the Commission is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section shall have effect while subsection (1) or (2), as the case may be, applies, but may be replaced if the circumstances permit by a direction under section 42.

(6) In the case of a suspected infringement of the section 11 prohibition, sections 42(2)(a) and 46 also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 21 prohibition, sections 42(2)(b) and 46 also apply to directions given under this section.

(8) In the case of a suspected infringement of the section 23 prohibition by an anticipated merger, if carried into effect, or a merger, sections 42(2)(c)(i) and (d)(i) and 46 also apply to directions given under this section.

Decision of Commission upon completion of investigation

41. (1) Where after considering the statements made, or documents or articles produced, and after considering the report of the authorised officer, the Commission proposes to make a decision that the section 11 prohibition has been infringed by any agreement, the section 21 prohibition has been infringed by any conduct, the section 23 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 23 prohibition has been infringed by any merger, the Commission shall —

(a) give written notice to the person likely to be affected by such decision; and

(b) give such person an opportunity to make representations to the Commission.

(2) Subject to subsections (3) and (5), upon considering any representation made to the Commission under subsection (1)(b), the Commission may, as it thinks fit, make a decision that —

(a) the section 11 prohibition has been infringed by any agreement;

(b) the section 21 prohibition has been infringed by any conduct;

(c) the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) the section 23 prohibition has been infringed by any merger.

(3) Where —

(a) in relation to an anticipated merger, the Commission proposes to make a decision that the section 23 prohibition will be infringed by the anticipated merger, if carried into effect; or

(b) in relation to a merger, the Commission proposes to make a decision that the section 23 prohibition has been infringed by the merger,

and the Commission has given written notice under subsection (1)(a) to the parties to the anticipated merger or the parties involved in the merger, as the case may be, any such party may, within 14 days of the date of the notice,

apply to the Minister for the anticipated merger, if carried into effect, or the merger to be exempted from the section 23 prohibition on the ground of any public interest consideration.

(4) The decision of the Minister under subsection (3) is final.

(5) Where the Minister exempts an anticipated merger or a merger under subsection (3), the Commission may make a decision that —

(a) the section 23 prohibition will not be infringed by the anticipated merger, if carried into effect; or

(b) the section 23 prohibition has not been infringed by the merger.

(6) The Minister may revoke the exemption of an anticipated merger or a merger granted under subsection (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

Enforcement of decision of Commission

42. (1) Where the Commission has made a decision that —

(a) any agreement has infringed the section 11 prohibition;

(b) any conduct has infringed the section 21 prohibition;

(c) any anticipated merger, if carried into effect, will infringe the section 23 prohibition; or

(d) any merger has infringed the section 23 prohibition,

the Commission may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end and, where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

(2) A direction referred to in subsection (1) may, in particular, include provisions —

(a) where the decision is that any agreement has infringed the section 11 prohibition, requiring parties to the agreement to modify or terminate the agreement;

(b) where the decision is that any conduct has infringed the section 21 prohibition, requiring the person concerned to modify or cease the conduct;

(c) where the decision is that any anticipated merger, if carried into effect, will infringe the section 23 prohibition —

- (i) prohibiting the anticipated merger from being carried into effect;
- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10 of Schedule 3; and
- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10 of Schedule 3;

(d) where the decision is that any merger has infringed the section 23 prohibition —

- (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct;
- (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, notwithstanding that the agreement is excluded under paragraph 10 of Schedule 3; and

- (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, notwithstanding that the conduct is excluded under paragraph 10 of Schedule 3;

(e) where the decision is that any agreement has infringed the section 11 prohibition, any conduct has infringed the section 21 prohibition or any merger has infringed the section 23 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine; and

(f) in any case, requiring any party to an agreement that has infringed the section 11 prohibition, any person whose conduct has infringed the section 21 prohibition, any party to an anticipated merger which, if carried into effect, will infringe the section 23 prohibition or any party involved in a merger that has infringed the section 23 prohibition —

- (i) to enter such legally enforceable agreements as may be specified by the Commission and designed to prevent or lessen the anti-competitive effects which have arisen;
- (ii) to dispose of such operations, assets or shares of such undertaking in such manner as may be specified by the Commission; and
- (iii) to provide a performance bond, guarantee or other form of security on such terms and conditions as the Commission may determine.

(3) For the purpose of subsection (2)(e), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.

(4) No financial penalty fixed by the Commission under this section may exceed 10 *per cent* or such other percentage of such turnover of the business of the undertaking in Brunei Darussalam for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the *Gazette*, prescribe.

(5) The Commission shall, in any direction requiring the payment of a financial penalty, specify the date before which the financial penalty is to be

paid, being a date not earlier than the end of the period within which an appeal against the direction may be brought under section 59.

(6) The Minister may, by order published in the *Gazette*, prescribe the interest payable on the outstanding amount of any financial penalty imposed under subsection (2)(e) and for payment by instalment (as may be directed by the Commission in its discretion) of any financial penalty imposed under subsection (2)(e).

Notification

43. The Commission shall, within 14 days of its making any decision or direction under this Part, notify any person affected by such decision or direction.

Leniency regime

44. (1) There shall be a leniency regime, with a reduction of up to a maximum of 100 *per cent* of any penalties which would otherwise have been imposed, which may be available in the cases of any undertakings which has —

(a) admitted its involvement in an infringement of any section 11 prohibition; and

(b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other undertakings.

(2) A leniency regime may permit different percentages of reductions to be available to an undertaking depending on —

(a) whether the undertaking was the first person to bring the suspected infringement to the attention of the Commission;

(b) the stage in the investigation at which —

(i) an involvement in the infringement was admitted; or

(ii) any information or other co-operation was provided; or

(c) any other circumstances which the Commission considers appropriate to have regard to.

Power to accept undertaking

45. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an undertaking any undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the undertaking.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the undertaking providing that undertaking pursuant to section 42.

Enforcement of direction, undertaking and commitment in High Court

46. (1) Where the Commission determines that an undertaking has failed, without reasonable excuse, to comply with a direction made, or an undertaking or commitment accepted by the Commission under this Part, the Commission may, subject to subsection (2), apply to the High Court for an order requiring the undertaking to make good the default within a time specified in the order.

(2) The Commission shall consider any representations the undertaking wishes to make before making an application under subsection (1).

(3) The High Court may provide in the order that all the costs of, or incidental to, the application shall be borne by the undertaking in default.

(4) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(5) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those

provisions had been set out in a decision given to the undertaking providing that undertaking pursuant to section 42.

Commission may retain document

47. (1) The Commission may take and retain for such duration as it deems necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the Commission is satisfied that the retaining of the document is no longer necessary, the Commission may, as soon as practicable, return the document to the person who provided the document.

Access to computerised data

48. (1) Any authorised officer conducting a search under this Act shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purpose of this section, the authorised officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable the comprehension of the computerised data.

Warrant admissible notwithstanding defect

49. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any record, book, account, document, computerised data or other thing seized under such warrant shall be admissible in evidence in any proceedings under this Act.

List of record, book, account etc. seized

50. (1) Except as provided in subsection (2), where any record, book, account, document, computerised data or other thing is seized pursuant to this Act, the authorised officer making the seizure —

(a) shall prepare —

- (i) a list of the record, book, account, document, computerised data or other thing seized and shall sign the list; and
- (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall, as soon as practicable, serve a copy of the list of the record, book, account, document, computerised data or other thing seized and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served pursuant to subsection (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the authorised officer shall post a copy of the list of the record, book, account, document, computerised data or other thing seized conspicuously on the premises.

Release of record, book, account etc. seized

51. (1) If any record, book, account, document, computerised data or other thing has been seized under this Act, the authorised officer who effected the seizure may release the record, book, account, document, computerised data or other thing to the person he determines to be lawfully entitled to it, if the record, book, account, document, computerised data or other thing is not otherwise required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law.

(2) In the event referred to in subsection (1) neither the authorised officer effecting the seizure, nor the Government, the Commission or any person acting on behalf of the Government or the Commission shall be liable to any proceedings by any person if the seizure and the release of the record, book, account, document, computerised data or other thing had been effected in good faith.

No cost or damages arising from seizure to be recoverable

52. No person shall, in any proceedings before any court in respect of any record, book, account, document, computerised data or other thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

PART 4

OFFENCES

Access to records etc.

53. (1) A person shall, if at any time directed by the authorised officer, allow the authorised officer access to his records, books, accounts, documents, computerised data, or other things for the purposes of carrying out any of the function of the authorised officer or powers under this Act.

(2) Any person who fails to comply with the direction under subsection (1) is guilty of an offence.

Giving false or misleading information, evidence or document

54. A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, is guilty of an offence.

Destruction, concealment, mutilation or alteration of records etc.

55. A person who —

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Brunei Darussalam,

any record, book, account, document, computerised data or other thing kept or maintained with intent to defraud the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Commission under this Act is guilty of an offence.

Obstruction of authorised officer

56. Any person who —

(a) refuses any authorised officer access to any premises which the authorised officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act; or

(b) assaults, obstructs, hinders or delays any authorised officer in effecting any entry which the authorised officer is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act,

is guilty of an offence.

Tipping off

57. (1) Any person who —

(a) knows or has reasonable grounds to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reasonable grounds to suspect that a disclosure has been made to an authorised officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter —

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that —

(a) he did not know or suspect that the disclosure made under subsection (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

Threat and reprisal is prohibited

58. (1) No person shall —

(a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or

(b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of subsection (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the revocation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows —

(a) making a complaint to the Commission of any alleged infringement or offence under this Act; and

(b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section is guilty of an offence.

PART 5

COMPETITION APPEAL TRIBUNAL

Appealable decisions

59. (1) Any party to an agreement in respect of which the Commission has made a decision, any person in respect of whose conduct the Commission has made a decision or any party involved in a merger in respect of which the Commission has made a decision, may appeal within the prescribed period to the Tribunal against, or with respect to, that decision.

(2) Any person, other than a person referred to in subsection (1), to whom the Commission has given a direction under section 28, 40 or 42 may appeal within the prescribed period to the Tribunal against, or with respect to, that direction.

(3) Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the making of an appeal under this section shall not suspend the effect of the decision to which the appeal relates.

(4) In subsection (1), “decision” means a decision of the Commission as to —

(a) whether the section 11 prohibition has been infringed by any agreement;

(b) whether the section 21 prohibition has been infringed by any conduct;

(c) whether the section 23 prohibition will be infringed by any anticipated merger, if carried into effect; or

(d) whether the section 23 prohibition has been infringed by any merger,

and includes a direction given under section 28, 40 or 42 (including the imposition of any financial penalty under section 42 or as to the amount of any such financial penalty) and such other decision as the Minister may by regulations prescribe.

Competition Appeal Tribunal

60. (1) For the purpose of hearing any appeal referred to in section 59(1), there shall be a Competition Appeal Tribunal consisting of not more than thirty members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(2) Members of the Tribunal shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

(3) The Minister may at any time remove any member of the Tribunal from office without assigning any reason.

(4) A member of the Tribunal may resign his office by notice in writing to the Minister.

(5) The Minister shall appoint to be Chairman of the Tribunal a person who is qualified to be a Judge of the Supreme Court.

(6) The Chairman of the Tribunal shall, when present, preside at every meeting of the Tribunal, and in his absence such member of the Tribunal as may be chosen by the members present shall preside.

(7) The Minister may appoint a secretary to the Tribunal and such other officers and employees of the Tribunal as may be necessary.

(8) All the powers, functions and duties of the Tribunal may be exercised, performed and discharged by any committee of the Tribunal consisting of not less than three members of the Tribunal, one of whom may be the Chairman of the Tribunal.

(9) Any act, finding or decision of any such committee is deemed to be the act, finding or decision of the Tribunal.

(10) The secretary shall, from time to time, summon such members of the Tribunal as may be nominated by the Chairman of the Tribunal, to constitute a committee of the Tribunal for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

(11) Subject to subsection (12), where the Chairman of the Tribunal is nominated under subsection (10) as a member of a committee, he shall

preside at every meeting of the committee, and where the Chairman is not nominated as a member of a committee, the Chairman shall determine which member of the committee shall preside at every meeting of that committee.

(12) Where the Chairman of the Tribunal or the member determined by the Chairman under subsection (11) (as the case may be) is absent at any committee meeting, such member of the committee as may be chosen by the members present shall preside.

(13) All matters coming before the Tribunal or a committee of the Tribunal at any sitting thereof shall be decided by a majority of votes of those members present and, in the event of an equality of votes, the Chairman of the Tribunal or any other member presiding shall have a second or casting vote.

(14) Members of the Tribunal may receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(15) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

- (a) prescribing the period within which appeals may be made;
- (b) prescribing the manner in which appeals shall be made to the Tribunal;
- (c) prescribing the procedure to be adopted by the Tribunal in hearing appeals and the records to be kept by the Tribunal;
- (d) prescribing the places where and the times at which appeals shall be heard by the Tribunal;
- (e) prescribing the fees to be paid in respect of any appeal under this Part;
- (f) prescribing the award of costs of or incidental to any proceedings before the Tribunal or the award of expenses, including any allowances payable to persons in connection with their attendance before the Tribunal; and
- (g) generally for the better carrying out of the provisions of this Part.

Powers and decisions of Tribunal

61. (1) The Tribunal shall, by notice to the Commission and the appellant, specify the date on and the place at which the appeal shall be heard.

(2) The Tribunal shall have all the powers and duties of the Commission that are necessary to perform its functions and discharge its duties under this Act.

(3) The Tribunal shall have the powers, rights and privileges vested in a court on the hearing of an action, including —

(a) the enforcement of the attendance of witnesses and their examination on oath or otherwise;

(b) the compelling of the production of documents; and

(c) the award of such costs or expenses as may be prescribed under section 60(15).

(4) A summons signed by such member of the Tribunal as may be authorised by the Tribunal shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(5) Where any person being duly summoned to attend before the Tribunal does not so attend, that person is guilty of an offence.

(6) A witness before the Tribunal shall be entitled to the same immunities and privileges as if he were a witness before a court.

(7) All appeals under this section shall be determined, having regard to the nature and complexity of the appeal, as soon as reasonably practicable.

(8) The Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may —

(a) remit the matter to the Commission;

(b) impose or revoke, or vary the amount of, a financial penalty;

(c) give such direction, or take such other step, as the Commission could itself have given or taken; or

(d) make any other decision which the Commission could itself have made.

(9) Any decision of the Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Commission.

(10) If the Tribunal confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

(11) The Tribunal shall notify the appellant of its decision in respect of his appeal and the reasons for its decision which shall be final.

PART 6

GENERAL

Power to conduct market review

62. (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.

(2) The market review includes a study into —

(a) the structure of the market concerned;

(b) the conduct of undertakings in the market;

(c) the conduct of suppliers and consumers to the undertakings in the market; or

(d) any other relevant matters.

Determination of market review

63. (1) Upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations.

(2) The report of the Commission shall be made available to the public.

General penalty

64. Any person who commits an offence under this Act for which no penalty is expressly provided is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Composition of offences

65. (1) Any offence under this Act or any regulations made thereunder, may be compounded under this section if the offence is prescribed as a compoundable offence.

(2) For the purpose of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) to prescribe the offences under this Act or any subsidiary legislation made thereunder as offences that may be compounded under this section;

(b) to designate the person who may compound such offences;
and

(c) to specify the maximum sum for which such offence may be compounded, except that the maximum sum so specified shall not exceed —

(i) one half of the amount of the maximum fine that is prescribed for the offence; or

(ii) \$5,000,

whichever is the lower.

(3) The person designated under subsection (2)(b) may compound any offence prescribed under subsection (2)(a) by collecting from a person who is reasonably suspected of having committed the offence a sum of money not exceeding the maximum sum that is specified under subsection (2)(c) in respect of that offence.

Offences by body corporate

66. (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management —

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, is deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he is liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed —

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Rights of private action

67. (1) Any person who suffers loss or damage directly as a result of an infringement of the section 11 prohibition, the section 21 prohibition or the section 23 prohibition shall have a right of action for relief in civil

proceedings in a court under this section against any undertaking which is or which has at the material time been a party to such infringement.

(2) No action to which subsection (1) applies may be brought —

(a) until after a decision referred to in subsection (3) has established that the section 11 prohibition, the section 21 prohibition or the section 23 prohibition has been infringed; and

(b) during the period referred to in subsection (4).

(3) The decisions which may be relied upon for the purposes of an action under this section are —

(a) the decision by the Commission under section 41; and

(b) the decision of the Tribunal under section 61 (on an appeal from the decision of the Commission under section 59).

(4) The period during which an action may not be brought under this section is the period during which an appeal may be made to the Tribunal under section 59(1).

(5) Where any appeal referred to in subsection (4) is made, the period specified in that subsection includes the period before the appeal is determined.

(6) No action to which subsection (1) applies may be brought after the end of 2 years after the period specified in subsection (4).

(7) In determining a claim under this section, the court shall accept as final and conclusive any decision referred to in subsection (3) which establishes that the prohibition in question has been infringed.

(8) The court may grant to the plaintiff in an action under subsection (1) all or any of the following reliefs —

(a) relief by way of injunction or declaration;

(b) damages; and

(c) such other relief as the court thinks fit.

(9) Nothing in this section shall be construed as conferring on any party to an agreement which infringes the section 11 prohibition a right of action for relief.

Co-operation between Commission and other regulatory authorities on competition matters

68. (1) The Commission may enter into any agreement with any regulatory authority for the purposes of —

(a) facilitating co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;

(b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and

(c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.

(2) An agreement that is entered into under subsection (1) is referred to in this section as a co-operation agreement.

(3) A co-operation agreement may include —

(a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions;

(b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter; and

(c) a provision requiring each party to consult with any other party before performing any function in circumstances where the respective exercise by each party of the function concerned involves the determination of issues of competition between undertakings that

are identical to one another or fall within the same category of such an issue, being a category specified in the agreement.

(4) In this section —

“issue of competition between undertakings” includes an issue of competition between undertakings that arises generally in the sector of activity in relation to which the Commission or the regulatory authority may exercise powers and such an issue that falls, or could fall, to be the subject of the exercise by the Commission or the regulatory authority of powers in particular circumstances;

“party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “other party” is used) shall, where there are two or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate.

Co-operation between Commission and foreign competition bodies

69. (1) The Commission may, with the approval of the Minister, enter into arrangements with any foreign competition body whereby each party to the arrangements may —

(a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions; and

(b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

(2) The Commission shall not furnish any information to a foreign competition body pursuant to such arrangements unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with terms specified in that requirement, including terms that correspond to the provisions of any other written law concerning the disclosure of that information by the Commission.

(3) The Commission may give an undertaking to a foreign competition body that it will comply with terms specified in a requirement made of the Commission by the body to give such an undertaking where —

(a) those terms correspond to the provisions of any written law in force in the country or territory in which the body is established, being provisions which concern the disclosure by the body of the information referred to in paragraph (b); and

(b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Commission pursuant to the arrangements referred to in subsection (1).

(4) In this section, “foreign competition body” means a person in whom there are vested functions under any written law of another country or territory with respect to the enforcement or the administration of provisions of written law of that country or territory concerning competition between undertakings (whether in a particular sector of the economy of that country or territory or throughout that economy generally).

Preservation of secrecy

70. (1) Subject to subsection (5), every specified person shall preserve, and aid in the preserving of, secrecy with regard to —

(a) all matters relating to the business, commercial or official affairs of any person;

(b) all matters that have been identified as confidential under subsection (3); and

(c) all matters relating to the identity of persons furnishing information to the Commission,

that may come to his knowledge in the performance of his functions and discharge of his duties under this Act and shall not communicate any such matter to any person, except in so far as such communication —

(i) is necessary for the performance of any such function or discharge of any such duty; or

(ii) is lawfully required by any court or the Tribunal, or lawfully required or permitted under this Act or any other written law.

(2) Any person who fails to comply with subsection (1) is guilty of an offence.

(3) Any person, when furnishing any information to the Commission, may identify information that he claims to be confidential information.

(4) Every claim made under subsection (3) shall be supported by a written statement giving reasons why the information is confidential.

(5) Notwithstanding subsection (1), the Commission may disclose any information relating to any matter referred to in subsection (1) in any of the following circumstances —

(a) where the consent of the person to whom the information relates has been obtained; or

(b) for the purposes of —

(i) a prosecution under this Act;

(ii) subject to subsection (6), enabling the Commission to give effect to any provision of this Act;

(iii) enabling the Commission, an authorised officer to investigate a suspected offence under this Act or to enforce a provision thereof; or

(iv) complying with such provision of an agreement between Brunei Darussalam and a country or territory outside Brunei Darussalam (referred to in this section as a foreign country or territory) as may be prescribed, where the conditions specified in subsection (7) are satisfied.

(6) If the Commission is considering whether to disclose any information under subsection (5)(b)(ii), the Commission shall have regard to —

(a) the need for excluding, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;

(b) the need for excluding, so far as is practicable —

(i) commercial information the disclosure of which would, or might, in its opinion, significantly harm the legitimate

business interests of the undertaking to which it relates;
or

- (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interest; and

(c) the extent to which the disclosure is necessary for the purposes for which the Commission is proposing to make the disclosure.

(7) The conditions referred to in subsection (5)(b)(iv) are —

(a) the information or documents requested by the foreign country or territory are available to the Commission;

(b) unless the Government otherwise allows, the foreign country or territory undertakes to keep the information given confidential at all times; and

(c) the disclosure of the information is not likely to be contrary to the public interest.

(8) In this section, “specified person” means a person who is or has been —

(a) a member, an officer, an employee or an agent of the Commission;

(b) a member of a committee of the Commission or any person authorised, appointed or employed to assist the Commission;

(c) an authorised officer or a person authorised, appointed or employed to assist an authorised officer; or

(d) a member of the Tribunal or any person authorised, appointed or employed to assist the Tribunal.

Protection against suit and legal proceedings

71. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against —

- (a) the Commission;

(b) any member of the Commission or any member of its committee; or

(c) any other person lawfully acting on behalf of the Commission,

in respect of any act, neglect or default done or committed by him or it in good faith or any omission omitted by him or it in good faith in such capacity.

Amendment of Schedules 3 and 4

72. The Minister may at any time, by order published in the *Gazette*, amend Schedules 3 and 4.

Regulations

73. (1) The Minister may, with the approval of the His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Act, including the prescription of fees and of any other thing required to be or which may be prescribed under this Act, and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters —

(a) the form and manner in which a notification under section 17(1) is to be made;

(b) the form and manner in which complaints that the section 11 prohibition has been infringed by any agreement, the section 21 prohibition has been infringed by any conduct, the section 23 prohibition will be infringed by any anticipated merger, if carried into effect, or the section 23 prohibition has been infringed by any merger, are to be submitted to the Commission;

(c) the acceptance of commitments, and the variation, substitution or release of commitments, including the parties that may apply for the variation, substitution or release of commitments and the form and manner in which applications for the variation, substitution or release of any commitment are to be submitted to the Commission;

(d) the form and manner in which notices of decisions and directions of the Commission are to be given, and the persons to whom such notices are to be given;

(e) the fees to be charged in respect of anything done or any services rendered by the Commission under or by virtue of this Act, including the calculation of the amount of fees by reference to matters including —

- (i) the turnover of all or any party to an agreement (determined in such manner as may be prescribed);
- (ii) the turnover of any person whose conduct the Commission is to consider (determined in such manner as may be prescribed);
- (iii) the turnover of all or any party to an anticipated merger (determined in such manner as may be prescribed); and
- (vi) the turnover of all or any party involved in a merger (determined in such manner as may be prescribed); and

(f) anything which may be prescribed or is required to be prescribed under this Act.

Transitional provisions

74. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for —

(a) the repeal or amendment of any written law which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act; and

(b) such transitional, savings and other consequential, incidental and supplemental provisions as he considers necessary or expedient, including providing —

- (i) for any transitional period (whether granted upon an application or otherwise), and any extension or early termination thereof;

- (ii) for different transitional periods to apply —
 - (A) to different provisions of this Act; or
 - (B) to different activities, agreements or conduct or different categories of activity, agreement or conduct, to which such provisions relate; and
- (iii) that any provision of this Act shall not apply, or shall apply in a modified form, for the purpose of or in connection with the transitional period, whether generally or in relation to any specific activity, agreement or conduct or category of activity, agreement or conduct.

SCHEDULE 1

(section 3(3))

PROCEEDINGS OF COMMISSION

Tenure of office of members of Commission

1. A member of the Commission shall hold office on such conditions and for such term of not less than 3 years and not more than 5 years as the Minister may determine, and shall be eligible for re-appointment.

Temporary Chairman

2. His Majesty the Sultan and Yang Di-Pertuan may appoint any person to be a temporary Chairman during the temporary incapacity from illness or otherwise, or during the temporary absence from Brunei Darussalam, of the Chairman.

Revocation of appointment

3. His Majesty the Sultan and Yang Di-Pertuan may, at any time, revoke the appointment of the Chairman or any member if he considers such revocation necessary in the interest of the effective and economical performance of the functions of the Commission under this Act or in the public interest.

Resignation

4. A member may resign from his office at any time by giving not less than one month's notice to His Majesty the Sultan and Yang Di-Pertuan.

Chairman may delegate function

5. The Chairman may, in writing, authorise any member of the Commission to exercise any power or perform any function conferred on the Chairman under this Act.

Vacation of office

6. The seat of a member shall become vacant —

(a) on his death;

(b) if he fails to attend three consecutive meetings of the Commission without sufficient cause (the sufficiency thereof to be decided by the Commission);

SCHEDULE 1 — (continued)

(c) if he becomes in any manner disqualified from membership of the Commission;

(d) if he resigns from his office; or

(e) if his appointment is revoked.

Filling of vacancies

7. If a vacancy occurs in the membership of the Commission, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to fill the vacancy, and the person so appointed shall hold office for the remainder of the term for which the vacating member was appointed.

Disqualification from membership

8. No person shall be appointed or shall continue to hold office as a member if he —

(a) is an undischarged bankrupt or has made any arrangement with his creditors;

(b) has been sentenced to imprisonment for a term exceeding 6 months and has not received a free pardon;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member.

Disclosure of interest by members

9. (1) A member who is in any way, directly or indirectly, interested in a transaction or project of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Commission and, after the disclosure, that member —

(a) shall not take part in any deliberation or decision of the Commission with respect to that transaction or project; and

SCHEDULE 1 — (continued)

(b) shall be disregarded for the purpose of constituting a *quorum* of the Commission for such deliberation or decision.

(3) For the purposes of this paragraph, a member whose spouse, parent, step-parent, son, adopted son, step-son, daughter, adopted daughter, step-daughter, brother, half-brother, step-brother, sister, half-sister or step-sister has an interest in the transaction or project referred to in subparagraph (1) is deemed to be interested in such transaction or project.

Salaries, fees and allowances payable to members of Commission

10. There shall be paid to the members of the Commission such salaries, fees and allowances as the Minister may from time to time determine.

Quorum

11. (1) At every meeting of the Commission, one half of the number of members shall constitute a *quorum*.

(2) The Chairman, or in his absence the temporary Chairman, shall preside at meetings of the Commission, and if both the Chairman and temporary Chairman are absent from any meeting or part thereof, such member as the members present may elect shall preside at that meeting or part thereof.

(3) A decision at a meeting of the Commission shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman or any other member presiding shall have a casting vote in addition to his original vote.

(4) Where not less than four members of the Commission request the Chairman by notice in writing signed by them to convene a meeting of the Commission for any purpose specified in the notice, the Chairman shall, within 7 days from the receipt of the notice, convene a meeting for that purpose.

Vacancies

12. The Commission may act notwithstanding any vacancy in its membership.

Procedure at meetings

13. (1) The Chairman or any other officer authorised by him shall, subject to such standing orders as may be made by the Commission under subparagraph (2), summon all meetings of the Commission for the despatch of business.

SCHEDULE 1 — *(continued)*

(2) Subject to the provisions of this Act, the Commission may make standing orders to regulate its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and auditing of accounts.

Validity of act or proceeding

14. No act or proceeding of the Commission shall be questioned on the ground —

(a) of any vacancy in, or defect in the constitution of, the Commission;

(b) of any defect in the appointment of any person acting as the Chairman or as a member;

(c) of any omission, defect or irregularity in the procedure of the Commission not affecting the merits of the case; or

(d) that any member has contravened paragraph 11.

SCHEDULE 2

(section 5(1))

POWERS OF COMMISSION

1. To conduct such investigations as may be necessary for enforcing this Act.
2. To require any person to furnish such returns and information as may be necessary for implementing the provisions of this Act.
3. To issue or make arrangements for approving codes of practice relating to competition and to give approval to or withdraw approval from such codes of practice.
4. To publish educational materials or carry out other educational activities relating to competition; or to support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.
5. To carry out research and studies and to conduct seminars, workshops and symposia relating to competition, or to support (financially or otherwise) the carrying out by others of such activity.
6. To become a member or an affiliate of any international body, the functions, objects or duties of which are similar to those of the Commission.
7. To do anything incidental to any of its functions under this Act or any other written law.

SCHEDULE 3

(sections 12, 22 and 72 and paragraph 2 of Schedule 4)

EXCLUSIONS FROM SECTION 11 PROHIBITION AND SECTION 21 PROHIBITION**Services of general economic interest etc.**

1. Neither the section 11 prohibition nor the section 21 prohibition shall apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

Compliance with legal requirements

2. (1) The section 11 prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The section 21 prohibition does not apply to conduct to the extent to which it is engaged in order to comply with a legal requirement.

(3) In this paragraph, “legal requirement” means any requirement imposed by or under any written law.

Avoidance of conflict with international obligations

3. (1) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part 3 and an international obligation of Brunei Darussalam, it would be appropriate for the section 11 prohibition not to apply to —

(a) a particular agreement; or

(b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 11 prohibition.

(2) An order under subparagraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

SCHEDULE 3 — (continued)

(3) An order under subparagraph (1) may also provide that the section 11 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that, in order to avoid a conflict between the provisions of Part 3 and an international obligation of Brunei Darussalam, it would be appropriate for the section 21 prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under subparagraph (4) may provide that the section 21 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) An international arrangement relating to civil aviation and designated by an order made by the Minister is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph, “specified” means specified in the order.

Public policy

4. (1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 11 prohibition ought not to apply to —

- (a) a particular agreement; or
- (b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the section 11 prohibition.

(2) An order under subparagraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under subparagraph (1) may also provide that the section 11 prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the section 21 prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

SCHEDULE 3 — (continued)

(5) An order under subparagraph (4) may provide that the section 21 prohibition is to be deemed never to have applied in relation to specified conduct.

(6) In this paragraph, “specified” means specified in the order.

Goods and services regulated by other competition law

5. The section 11 prohibition and the section 21 prohibition do not apply to any agreement or conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter.

Specified activities

6. (1) The section 11 prohibition and the section 21 prohibition do not apply to any agreement or conduct which relates to any specified activity.

(2) In this paragraph, “specified activity” means —

(a) the supply of waste management services, including the collection, treatment and disposal of waste;

(b) the supply of scheduled bus services by any person licensed and regulated under the Road Traffic Act (Chapter 68); and

(c) the licence to supply goods and services specified in the Schedule to the Monopolies Act (Chapter 73).

Clearing houses

7. The section 11 prohibition and the section 21 prohibition do not apply to any agreement or conduct which relates to the clearing and exchanging of articles undertaken by the Clearing House established under the Banking Order, 2006 (S 46/2006).

Vertical agreements

8. (1) The section 11 prohibition does not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

(2) In this paragraph, “vertical agreement” means any agreement entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the

SCHEDULE 3 — (continued)

conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

Agreements with net economic benefit

9. The section 11 prohibition does not apply to any agreement which contributes to —

- (a) improving production or distribution; or
- (b) promoting technical or economic progress,

but which does not —

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Provisions directly related and necessary to implementation of mergers

10. The section 11 prohibition and the section 21 prohibition do not apply to any agreement or conduct that is directly related and necessary to the implementation of a merger.

Mergers

11. (1) The section 11 prohibition does not apply to any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger.

(2) The section 11 prohibition does not apply to any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

SCHEDULE 4

(sections 24 and 72)

EXCLUSIONS FROM SECTION 23 PROHIBITION

1. The section 23 prohibition does not apply to any merger —

(a) approved by any Minister or regulatory authority (other than the Commission) pursuant to any requirement for such approval imposed by any written law;

(b) approved by the Brunei Darussalam Central Bank established by section 3 of the Brunei Darussalam Central Bank Order, 2010 (S 103/2010) pursuant to any requirement for such approval imposed under any written law; or
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(c) under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition issued under any written law.

2. The section 23 prohibition does not apply to any merger involving any undertaking relating to any specified activity as defined in paragraph 6(2) of Schedule 3.

3. The section 23 prohibition does not apply to any merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Brunei Darussalam.