

COMMERCE BILL

EXPLANATORY NOTE

THIS Bill is a revision of the Bill of the same name which was before the House last year.

As was the case with last year's Bill, this Bill consolidates, with substantial amendment, the Trade Practices Act 1958 and the Control of Prices Act 1947. It also makes provision for the control of monopolies, mergers, and takeovers.

In addition this Bill incorporates those provisions of last year's Bill which were passed and which became the Trade Practices (Commerce Commission and Pyramid Selling) Act 1974. That Act is repealed by this Bill.

This Bill repeals also the News Media Ownership Act 1965.

The main differences between this year's Bill and last year's are in those provisions of Part III which relate to mergers and takeovers. The types of proposal that are required to be notified to the Minister are now more limited. They must now come within the definition of the term "aggregation proposal" in *clause 66* and within the classes of proposal listed in the Third Schedule to the Bill.

Other important changes are as follows:

The Title is new.

Clause 4 (1), which deals with the term of office of members of the Commission, now provides for appointments for a term not exceeding 5 years instead of for a term not exceeding 3 years.

Clause 7, which enables the Commerce Commission to sit in separate Divisions, has been altered. The direction authorising it so to sit was previously to have been given by the Minister, with the concurrence of the Chairman. Under this Bill that direction is to be given by the Chairman, with the concurrence of the Minister. It is further provided that no Division may exercise any of the functions or powers conferred on the Commission by Part II or Part III unless the Chairman or the Deputy Chairman of the Commission acts as the Chairman of the Division at the meeting at which those functions or powers are exercised.

Clause 9, which provides that hearings of the Commission are to be held in public except in special circumstances, now specifies the procedure to be used in applying for orders that inquiries be heard in private or for orders prohibiting the publication of reports or evidence or of books or documents produced at any hearing of the Commission. In addition this clause is subject to the provisions of the new *clause 72*.

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Clause 11, which deals with the functions of the Commission, has been amended by deleting the function of inquiring into any aspect of trade and industry involving the manufacture and distribution of goods or the supply of services referred to it by the Minister.

Clause 14 is new. To a great extent it incorporates provisions which previously appeared in other clauses or Parts of last year's Bill, but it gives those provisions, in many cases, a wider application.

Clause 15, which deals with the representation of parties, is another provision of last year's Bill which is given a wider application. Its application, in last year's Bill was limited to certain inquiries into matters related to prices.

Clause 16, which provides that proceedings before the Commission are not to be held bad for want of form, incorporates, and gives wider application to, provisions set out in *clause 94* of last year's Bill.

Clause 17, which deals with incriminating answers, now provides that where the Commission is sitting in public, any person giving evidence before the Commission shall have the right to refuse to give evidence tending to incriminate himself or his spouse in respect of any offence against any Act (other than the Commerce Act or the Economic Stabilisation Act 1948 or the Commercial Trusts Act 1910 or the Control of Prices Act 1947 or the Trade Practices Act 1958 or the Consumer Information Act 1969).

A statement made in answer to any question put by or before the Commission is not, in criminal proceedings, to be admissible against the maker of the statement, except upon a charge of perjury against the maker of the statement in respect of his sworn testimony before the Commission or upon a charge of an offence against any of the provisions of the Acts already mentioned.

Clause 21, which deals with trade practices contrary to the public interest, has been amended. *Subclauses (2) and (3)* have been revised to set out in somewhat different terms to those used in last year's Bill the circumstances in which practices, although having one or more of the effects described in *subclause (1)*, are not to be deemed contrary to the public interest.

Clauses 22 to 30, which deal with trade practices (including collective pricing agreements and individual resale price maintenance agreements), have been rearranged and redrafted.

Clause 34, which deals with applications for approval of pyramid selling schemes, has been amended in one significant respect. In considering any such application the Commission is now to compare the retail price of the goods and services to be distributed under the scheme with the retail prices that would obtain for those goods and services if they were distributed otherwise than under a pyramid selling scheme. The present requirement under *subsection (1) (b)* is to compare that price with the prices of similar goods and services distributed in similar quantities otherwise than under a pyramid selling scheme.

There are minor amendments to *subclause (2) (d) and (f)* and *subclause (3)*.

Clauses 38 to 41, which deal with investigations and inquiries into trade practices, incorporate a number of changes designed to clarify the detailed steps to be taken by the Examiner and the Commission.

Clauses 42 to 47, which relate to appeals from certain decisions of the Commission, under Part II of the Bill, have been substantially amended. The clauses differ from corresponding provisions in last year's Bill in that there is a full right of appeal instead of an appeal limited to questions of law. The provisions are largely derived from the corresponding provisions of the Trade Practices Act 1958. There are two differences between that Act and this Bill. The Examiner is afforded a full right of appeal and there is no provision (comparable to section 31 of the Trade Practices Act 1958) for a further appeal on a question of law from the Administrative Division of the Supreme Court to the Court of Appeal.

Clauses 54 to 57, which deal with profiteering in goods and services, have been modified and split up. In general the modifications are not great.

Clause 61, which relates to inquiries into monopolies, has been amended by the insertion of two new subclauses.

The new *subclause (2)* provides that, before the Minister requires the Commerce Commission to conduct an inquiry, he shall give to the person or persons who, in the Minister's opinion, have a direct interest in the subject-matter of the proposed inquiry, a written notice setting out the proposed terms of the requisition and specifying a date (which shall not be less than 28 days after the date on which the notice is given) on or before which that person or those persons may make written representations to the Minister with respect to the proposed requisition.

The new *subclause (3)* provides that in any inquiry held by the Commission pursuant to a requisition under this clause, no reference shall be made to the notice given by the Minister under *subclause (2)* or to the nature and content of any representations made pursuant to *subclause (2)* or to any consultations that may have been held with the Minister by the person or persons to whom the notice was given.

Clause 64. The penalties for offences against this clause are increased. The penalties are now the same as those specified in *clause 78*.

Clause 65 is a new interpretation provision relating to mergers and take-overs.

Clause 66 is a new interpretation provision relating to aggregation proposals requiring notification if they are within the classes described in the Third Schedule to the Bill.

Clause 67. Subclause (1) specifies the manner in which aggregation proposals coming within the classes described in the Third Schedule to the Bill are to be notified to the Examiner.

Subclause (2) specifies certain exceptions to the requirements with regard to notification. These exceptions follow those contained in *clause 60A* of last year's Bill.

Subclause (3) enables the Governor-General, on the recommendation of the Minister, to amend the Third Schedule by Order in Council.

Subclause (4) provides that the Minister may require the Commission to hold an inquiry on the desirability of altering any of the values or sums shown in the Third Schedule.

Subclause (5) deals with the manner of determining the value of the assets of any participant in an aggregation proposal. This subclause is based on *clause 60A (3)* of last year's Bill.

Subclause (6) provides that for the purpose of determining the value of the assets involved in an aggregation proposal certain assets are to be grouped together.

Clause 68 deals with the action that the Minister may take after he receives from the Examiner a report indicating that in the view of the Examiner the aggregation proposal would, if implemented, be contrary to the public interest. The clause, although redrafted, is similar to clause 60 of last year's Bill. *Subclauses (5) and (6)* are entirely new. These two subclauses are along the same lines as the new *subclauses (2) and (3)* of *clause 61*.

Clause 70, which enables the Minister to require the Commission to conduct inquiries into mergers and takeovers (other than those that result from aggregation proposals required to be notified to him under *clause 67 (1)*), also incorporates new subclauses along the same lines as the new *subclauses (2) and (3)* of *clause 61*.

Clause 71 is new. It enables the Minister to give prior clearance to a merger or takeover (other than one that will be a consequence of an aggregation proposal required to be notified under *clause 67 (1)*).

Clause 72 is new. It enables the Minister, in certain circumstances, to require that the Commission hold its inquiry into an aggregation proposal in private.

Clauses 74 and 75 deal with appeals under Part III. Under last year's Bill the appeal procedure was to operate before the Commission's report was presented to the Minister. The procedure will now operate after the report is presented to the Minister. The Appeal Authority no longer has the power to direct the Commission to amend its report. The Appeal Authority may refer the report back to the Commission for reconsideration and may give directions for the rehearing of the whole or any part of the matter before the Commission.

Clause 81 (1) is new. It provides that the provisions relating to mergers and takeovers do not apply to transactions that require consent under section 72 or section 73 of the Meat Act 1964. These are transactions that involve the sale, lease, or other disposition of an export slaughterhouse or export packing house or the acquisition of an interest in an export slaughterhouse.

Clause 82 relates to price control and to the Positive List of Controlled Goods and Services. *Subclauses (7) to (10)* are new. *Subclause (7)* provides that, except in certain circumstances such as where an amendment to that list is immediately necessary in the public interest, the Minister shall before amending or revoking that list first refer to the Commission the subject-matter of the proposed amendment or revocation for inquiry and report.

Subclause (8) sets out the circumstances in which such a reference is not necessary.

Subclause (9) provides that where the Minister adds any goods or services to the list on the ground that that addition is immediately necessary in the public interest, any person or organisation or trade association representing the interests of any person or persons selling any such goods or supplying any such services may, after those goods or services have been on the list for at least 6 months, apply to the Minister for their omission. The Minister will then have a discretion to refer the matter to the Commission. If he so refers the matter and the Commission recommends the omission of all or any of those goods or services, the Minister may then give effect to recommendations of the Commission without further ado.

Clause 84 has been revised. It deals with the lawful price of goods and services which are subject to price control under *clause 82* but which are not for the time being subject to a price order or to a special approval made or given under this Bill.

Clause 93 is new. It deals with group price increase applications. Except in certain specified cases, such applications are not to be dealt with by the Secretary but are required to be referred by him to the Commission.

Where any group price application made by persons carrying on a collective pricing practice is referred to the Commission under *subclause (1)* of this clause, the Chairman of the Commission may direct that that application and the application for approval of the collective pricing practice be dealt with together.

Clause 98 sets out the considerations to be observed by the Secretary and the Commission on the determination of prices. *Paragraphs (d) and (f)* have been amended and two new *paragraphs (g) and (i)* have been added.

Clause 99 deals with appeals to the Commission from decisions of the Secretary on matters relating to the prices of goods or services. *Subclause (4)* is new. It requires the Secretary to supply the reasons for his decision and certain other information to the Commission and the appellant.

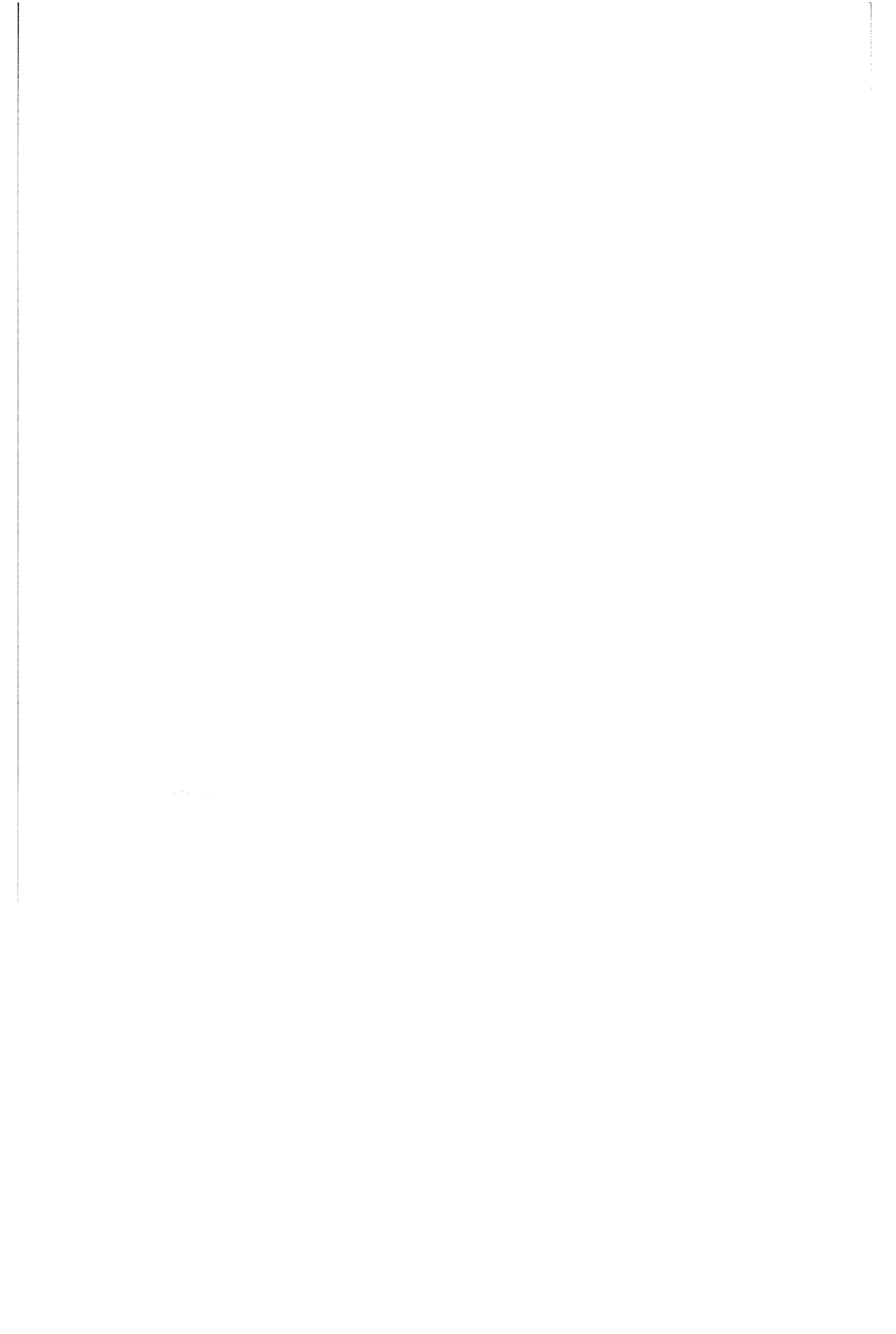
Clause 100 now provides that the decision of the Secretary appealed from shall remain in full force pending the determination of the appeal except where, in the case of a decision made pursuant to *clause 94 (2)* and effecting a reduction of prices, the Secretary or the Commission otherwise orders.

Under last year's Bill the decision of the Secretary appealed from was, unless the Secretary or the Commission otherwise ordered, to remain in full force pending the determination of the appeal.

Clause 132, which authorises the making of regulations has been amended in two respects. The power to prescribe requirements having a direct or indirect effect on the price at which goods are sold at auction has been deleted. Power has been taken to prescribe offences and penalties for them.

Third Schedule. This Schedule is new. It sets out the classes of aggregation proposals which require notification to the Minister.

Fifth Schedule. This Schedule of enactments repealed now includes two additional items, the News Media Ownership Act 1965 and the Trade Practices (Commerce Commission and Pyramid Selling) Act 1974.



Hon. Mr Freer

COMMERCE

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A BILL INTITULED

An Act to assist in the orderly development of industry and commerce and to promote its efficiency, and the welfare of consumers, through the regulation, where desirable in the public interest, of trade practices, of monopolies, mergers, and takeovers, and of the prices of goods and services

1. Short Title and commencement—(1) This Act may be cited as the Commerce Act 1975.
 (2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

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

“Appropriate pricing authority”, in relation to any prices that any person or authority has power to fix or approve under any of the enactments specified in the First Schedule to this Act, means that person or authority:

“Books or documents” include—
 (a) Accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, and other instruments:

(b) Any information recorded or stored by means of any computer or other device whatsoever; and any material subsequently derived from information so recorded or stored:

“Commission” means the Commerce Commission constituted by this Act:

- “Department” means the Department of Trade and Industry:
- “Examiner” means the Examiner of Commercial Practices appointed pursuant to this Act:
- “Goods” includes— 5
- (a) Ships, aircraft, and other vehicles; and
 - (b) Animals, including fish; and
 - (c) Minerals, trees, and crops, whether on, under, or attached to land or not; and
 - (d) Gas and electricity: 10
- “Land” includes any interest in land:
- “Local authority” includes every local authority and every public body or other authority created by or pursuant to any public Act or local Act:
- “Minister” means the Minister of Trade and Industry: 15
- “Oligopoly” means a situation in which a market for goods or services or both or a large part of a market for goods or services or both is supplied by a small number of enterprises:
- “Partial monopoly” means a situation in which the 20
- possession of a share of the market for any goods or services or for any particular description of goods or services or of both goods and services is such as to enable a predominant influence to be exercised over their supply or price or both: 25
- “Performance of services” or “services” includes, but without limiting the generality of that expression, the doing of any thing pursuant to a contract or agreement with any person (not being a contract or agreement of service between master and servant) 30
- which confers any right or benefit on that person or any other person:
- “Person” includes a local authority or public body, and any association of persons, whether incorporated or not: 35
- “Prescribed” means prescribed by this Act or by regulations or notices for the time being in force under this Act:
- “Price”, in relation to the sale of goods or to the performance of services, includes every valuable 40
- consideration whatsoever, whether direct or indirect; and includes any consideration which in effect relates to the sale of the goods or to the performance of the services, although ostensibly relating to any other matter or thing: 45

“Price order” means a price order made under section 89 of this Act:

5 “Retailer”, in relation to the sale of goods, includes every person, other than a wholesaler, who sells goods to any other person, and, in respect of the sale of goods by a wholesaler to any person for any purpose other than resale, includes that wholesaler:

10 “Sale” includes barter and every other disposition for valuable consideration:

“Secretary” means the Secretary of Trade and Industry appointed under the State Services Act 1962:

“Shop” has the same meaning as in the Shops and Offices Act 1955:

15 “Special approval” means an approval in respect of prices given under section 90 of this Act:

“Supplier”, in relation to services, includes a person who performs services and a person who arranges the performance of services:

20 “Supply”, in relation to the supply of goods, includes supply or resupply by way of sale, exchange, lease, hire, or hire purchase:

25 “Trade” means any trade, business, industry, profession, occupation, or undertaking relating to the sale of land or goods or the performance of services:

“Trade association” means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members:

30 “Trade practice” means any practice related to the carrying on of any trade; and includes any thing done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply, or price, in the course of trade, of any property, whether real or personal, or of any services; and also includes a single or isolated action of any person in relation to any trade:

40 “Wholesaler”, in relation to the sale of goods, means a person who sells the goods to any person for the purpose of resale.

(2) Where, after a contract of sale of goods has been made (in which no price has been expressly agreed upon) the seller, by himself or his agent, demands or receives any

price from the buyer, the seller shall be deemed for the purposes of this Act to have sold the goods at the price so demanded or received.

(3) For the purposes of this Act goods shall be deemed to be of the same kind as any other goods if they are in fact of the same nature and quality, or if they are substantially of the same nature and quality. 5

(4) For the purposes of this Act the publication or exhibition of a price list in respect of any goods or services or the furnishing of a quotation for any goods or services, or the exposure of any goods with a specification or an indication of the price thereof attached thereto or displayed in the vicinity thereof or in connection therewith, shall be deemed to constitute an offer to sell those goods or services, as the case may be, at the price so specified or indicated. 10 15

Cf. 1947, No. 51, ss. 2, 21, 43 (1), 50; 1958, No. 110, s. 2 (1); 1961, No. 124, s. 2 (2)-(3); 1969, No. 12, s. 2; 1971, No. 16, s. 2; 1972, No. 107, s. 2; 1974, No. 131, s. 2

PART I

20

COMMERCE COMMISSION

3. Commerce Commission—(1) There is hereby established a Commission to be called the Commerce Commission.

(2) The Commission shall consist of 4 or more members who shall be appointed by the Governor-General on the recommendation of the Minister. 25

(3) One member shall be appointed as Chairman of the Commission and another shall be appointed as Deputy Chairman of the Commission.

(4) In the absence of the Chairman or during any vacancy in the office of Chairman, the Deputy Chairman shall have and may exercise all the powers, functions, and duties of the Chairman, and shall preside at all meetings of the Commission. 30

(5) The Governor-General, on the recommendation of the Minister, may from time to time appoint an additional member or additional members of the Commission. 35

(6) In recommending persons for appointment as members or additional members of the Commission the Minister shall have regard not only to their personal attributes but also to their knowledge of or experience in trade, industry, economics, accountancy, commercial law, public administration, or consumer affairs. 40

(7) No member of the Commission shall be personally liable for any act or default done or made by the Commission or by any member of the Commission in good faith in the course of the operations of the Commission.

5 (8) The Commission constituted under this Act is hereby declared to be the same Commission as the Commerce Commission constituted immediately before the commencement of this Act under the Trade Practices (Commerce Commission and Pyramid Selling) Act 1974.

10 Cf. 1947, No. 51, s. 3; 1958, No. 110, s. 3 (1), (2), (4); 1974, No. 131, s. 3

4. **Term of office**—(1) Except as provided in subsection (2) of this section, every member of the Commission shall hold office for such term as the Governor-General shall specify in his appointment, being a term not exceeding 5 years, but may from time to time be reappointed.

15 (2) Any member of the Commission may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time
20 resign his office by writing addressed to the Minister.

(3) Notwithstanding that the term of office of a member of the Commission has expired or that a member of the Commission has resigned his office, he shall be deemed to
25 continue a member of the Commission for the purpose of—

(a) Deciding any inquiry, application, or matter that was wholly heard before the expiration of his term of office or before his resignation took effect, as the case may be:

30 (b) Stating any case on appeal from a decision of the Commission given while he was a member or while he was deemed to continue to be a member under the provisions of paragraph (a) of this subsection:

35 (c) Giving reconsideration to any matter following a direction of the Court under section 46 of this Act or of the Appeal Authority under section 75 of this Act, and amending the decision of the Commission (if the case so requires) or, as the case may be, confirming or revising the report of the Commission
40 to the Minister.

(4) The powers of the Commission shall not be affected by any vacancy in its membership.

Cf. 1974, No. 131, s. 4

5. Seal—The Commission shall have a seal, which shall be judicially noticed in all Courts and for all purposes.

Cf. 1947, No. 51, s. 4; 1958, No. 110, s. 3 (5); 1974, No. 131, s. 5

6. Meetings of Commission—(1) Subject to this section, the Chairman shall convene such meetings of the Commission as he thinks necessary for the efficient performance of the functions assigned to it under this Act. 5

(2) Meetings of the Commission shall be held at such places as the Chairman determines. 10

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

(4) In the absence of the Chairman and the Deputy Chairman from any meeting the members present shall appoint one of their number to be the Chairman for the purposes of that meeting. 15

(5) At any meeting of the Commission the quorum necessary for the transaction of business shall be 3 members:

Provided that none of the functions conferred on the Commission by Part II or Part III of this Act shall be exercised at any such meeting unless at least 4 members are present. 20

(6) All questions arising at any meeting of the Commission shall be decided by a majority of votes of the members present and voting. The presiding member shall have a deliberative vote and, in the event of an equality of votes shall also have a casting vote. 25

Cf. 1947, No. 51, s. 5 (1)–(4); 1958, No. 110, s. 4 (1)–(4); 1974, No. 131, s. 6

7. Chairman may direct Commission to sit in Divisions— (1) The Chairman may, by writing signed by him with the concurrence of the Minister, direct that the powers of the Commission under this Act or any other Act in relation to any matter or class of matter shall be exercised by separate Divisions of the Commission. 30 35

(2) Each Division shall consist of such members of the Commission as are for the time being assigned to that Division by the Chairman of the Commission:

Provided that no Division shall consist of less than 3 members and no Division that may exercise any of the functions or powers conferred on the Commission by Part II or Part III of this Act shall consist of less than 4 members. 40

(3) If the members appointed to any Division do not include either the Chairman or the Deputy Chairman, the Chairman shall from time to time nominate the member who is to be Chairman of that Division. In the absence of
 5 that member from any meeting of the Division the members present shall appoint one of their number to be the Chairman of the Division for the purposes of that meeting:

Provided that no Division may exercise any of the functions or powers conferred on the Commission by Part II or Part III
 10 of this Act unless the Chairman or the Deputy Chairman of the Commission acts as the Chairman of the Division at the meeting at which those functions or powers are exercised.

(4) For the purpose of the determination of a matter or class of matters specified in a direction given under subsection
 15 (1) of this section, the Commission shall be deemed to consist of the Division of the Commission specified in the direction and the powers of any such Division shall not be affected by any changes or vacancies in its membership.

(5) A Division of the Commission may exercise powers
 20 of the Commission under this Act notwithstanding that another Division of the Commission is exercising powers of the Commission at the same time.

(6) Any direction given under subsection (1) of this section may be revoked or amended by the Chairman with the
 25 concurrence of the Minister.

8. Procedure of Commission—Subject to the provisions of this Act and of any regulations made under this Act, the Commission may regulate its procedure in such manner as it thinks fit.

30 Cf. 1947, No. 51, s. 7; 1958, No. 110, s. 4 (5); 1974, No. 131, s. 7

9. Meetings to be held in public except in special circumstances—(1) Except as provided by subsections (2) to (4)
 of this section and by section 72 of this Act, every hearing of
 35 the Commission shall be held in public.

(2) The Commission may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.

(3) Where the Commission is satisfied that it is desirable
 40 to do so by reason of the confidential nature of any evidence or matter, the Commission may, of its own motion or on the application of any party to the proceedings,—

- (a) Order that any inquiry or any class of inquiries held by it be heard in private, either as to the whole or any portion thereof:
- (b) Make an order prohibiting the publication of any report or account of the evidence or other proceedings in any inquiry held by it (whether heard in public or in private) either as to the whole or any portion thereof: 5
- (c) Make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Commission. 10
- (4) Every application under subsection (3) of this section shall be heard in private by the Commission but the other parties to the proceedings shall be entitled to be present during the hearing of the application and to make submissions with regard to it. 15
- (5) Every person commits an offence against this Act who acts in contravention of any order made by the Commission under paragraph (b) or paragraph (c) of subsection (3) of this section. 20

Cf. 1947, No. 51, s. 5 (5)–(6); 1958, No. 110, ss. 5, 41; 1974, No. 131, s. 8

10. Remuneration and travelling allowances—(1) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 25

(2) There shall be paid to the members of the Commission, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowance, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly. 30

Cf. 1947, No. 51, s. 9; 1951, No. 79, s. 10 (1); 1958, No. 110, s. 7; 1974, No. 131, s. 9

11. Functions of Commission—(1) The principal functions of the Commission shall be those conferred on it— 35

- (a) By Part II of this Act in respect of trade practices:
- (b) By Part III of this Act in respect of monopolies and mergers and takeovers:
- (c) By Part IV of this Act in respect of the prices of goods and services: 40

(d) By those sections of this Act which provide for a right of appeal to the Commission.

(2) The Commission shall also have such other functions as are conferred on it by this Act or by any other Act.

5 Cf. 1947, No. 51, s. 10; 1958, No. 110, s. 8; 1971, No. 23, s. 3; 1974, No. 131, s. 10 (b)

12. Powers of inquiry and investigation—(1) For the purposes of any inquiry or investigation conducted by the Commission under this Act, any person authorised in that
10 behalf by writing under the seal of the Commission may—

(a) Inspect, examine, and audit any books or documents:

(b) Require any person to produce any books or documents in his possession or under his control, and to allow
15 copies of or extracts from any such books or documents to be made:

(c) Require any person to furnish, in a form to be approved by or acceptable to the Commission, any information or particulars that may be required by the Commission, and any copies of or extracts from any such
20 books or documents as aforesaid.

(2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Commission may require.

25 Cf. 1947, No. 51, s. 11 (4)–(5); 1958, No. 110, s. 18 (4)–(5); 1974, No. 131, s. 11

13. Powers of Commission to take evidence—(1) At any meeting of the Commission it may receive in evidence any statement, document, information, or matter that may in
30 its opinion assist it to deal effectively with the matter before it, whether or not the same would be otherwise admissible in a Court of law.

(2) The Commission may take evidence on oath and for that purpose a member of the Commission or the Executive
35 Officer of the Commission may administer an oath.

(3) A member of the Commission may by order under the seal of the Commission summon any person to appear before the Commission to give evidence as to the subject-matter of
40 the inquiry before it, and require any witness to produce to the Commission all or any books or documents in his possession or control relative to the subject-matter of the inquiry.

(4) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath, a written statement.

(5) Where any person has appeared as a witness before the Commission pursuant to a summons in that behalf, or has given evidence before the Commission, whether pursuant to a summons or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his expenses, not exceeding the amount that would be payable to him if his attendance had been as a witness for the Crown in a criminal case in accordance with the regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Cf. 1947, No. 51, s. 11 (2)–(3); 1958, No. 110, s. 18 (2)–(3); 1974, No. 131, s. 12

14. Rights to appear before any inquiry of Commission—In any proceeding before the Commission, other than a proceeding pursuant to section 99 of this Act, the following persons, and no others, may appear and be heard—

- (a) Where the proceedings relate to an application under section 29, section 33, or section 92 of this Act, the applicant:
- (b) Where the proceedings relate to a trade practice to which section 23 of this Act applies, the party or parties carrying on the trade practice in question:
- (c) Where the proceedings relate to a requisition made to the Commission by the Minister under section 61 or section 68 (4) or section 70 of this Act the person or persons whose activities or transactions or proposed activities or transactions are being inquired into pursuant to the requisition:
- (d) In the case of any proceeding under Part II or Part III of this Act, the Examiner:
- (e) In the case of any proceeding under Part IV of this Act, the Secretary:
- (f) In the case of a proceeding pursuant to subsection (7) or subsection (9) of section 82 or paragraph (a) or paragraph (c) of section 104 (1) of this Act, any person with a substantial interest in the subject-matter of the inquiry:

- 5 (g) Any incorporated or unincorporated body the principal object of which is the protection of the interests of manufacturers or distributors or suppliers of the goods or services or class of goods or services to which the inquiry relates:
- 10 (h) Any person who represents persons to whom any goods or services to which the inquiry relates are sold or supplied or any class of those persons or any class of workers if, in the opinion of the Commission, the appearance of that person at the inquiry would assist the Commission to ascertain the views of consumers, or of workers engaged in the sale or production, of those goods or the performance of those services:
- 15 (i) Any other person who in the opinion of the Commission has a special interest in the matter under inquiry.

20 **15. Representation of parties**—(1) Where any person is entitled under paragraphs (a) to (f) of section 14 of this Act to appear and be heard in relation to proceedings before the Commission that person may appear in person or by his counsel, solicitor, or agent, and shall have the right to produce evidence and to cross-examine witnesses.

25 (2) Any other person authorised to appear and be heard under paragraph (g) or paragraph (h) or paragraph (i) of section 14 of this Act may appear in person or by his counsel, solicitor, or agent, but may adduce evidence and cross-examine witnesses only with the leave of the Commission.

30 **16. Proceedings before Commission not to be held bad for want of form**—Proceedings before the Commission under this Act shall not be held bad for want of form or be void or in any way vitiated by reason of any informality or error of form.

35 **17. Incriminating answers**—(1) A person shall not be excused from complying with any requirement under sections 12, 38 (2), 80, or 86 of this Act or, on appearing before the Commission, from answering any question or producing any books or documents on the ground that he might tend to incriminate himself if he complied with the requirement or gave the answer or produced the books or documents.

(2) Where the Commission is sitting in public, any person giving evidence before the Commission shall, notwithstanding anything in subsection (1) of this section, have the right to refuse to give evidence tending to incriminate himself or his spouse in respect of any offence against any Act (other than this Act or the Economic Stabilisation Act 1948 or the Commercial Trusts Act 1910 or the Control of Prices Act 1947 or the Trade Practices Act 1958 or the Consumer Information Act 1969).

(3) A statement made by any person in answer to any question put by or before the Commission shall not, in criminal proceedings, be admissible against the maker of the statement, except upon a charge of perjury against the maker of the statement in respect of his sworn testimony before the Commission or upon a charge of an offence against any of the provisions of this Act or the Economic Stabilisation Act 1948 or the Commercial Trusts Act 1910 or the Control of Prices Act 1947 or the Trade Practices Act 1958 or the Consumer Information Act 1969.

(4) Except for the purposes of this Act or for the purposes of any charge of a kind mentioned in subsection (3) of this section, no Court or other person shall be entitled to require any member of the Commission, or any officer of the Commission, or any officer of the Department, or any other person present at any private sitting of the Commission, to divulge or communicate any evidence given, or documents tendered, in respect of any matter at any private sitting of the Commission.

(5) Nothing in subsection (4) of this section shall limit the provisions of section 19 of this Act.

18. Appointment of officers and administration—(1) There shall from time to time be appointed under the State Services Act 1962—

(a) An Examiner of Commercial Practices who shall be an officer of the Department:

(b) Such other officers of the Department as may be required for the administration of this Act.

(2) There shall also be appointed from time to time under the State Services Act 1962—

(a) An Executive Officer of the Commission:

(b) Such other officers as may be required to assist the Commission and the Executive Officer in the management of the affairs of the Commission and in the carrying out of its functions.

(3) The Department shall, at the request of the Commission, provide such administrative services, and conduct or commission such research as may be necessary for the efficient carrying out of the Commission's functions or requirements
5 under this Act.

Cf. 1958, No. 110, s. 10; 1961, No. 124, s. 2 (1); 1974, No. 131, s. 13

19. Members and officers to maintain secrecy—(1) Every member of the Commission, the Secretary, the Examiner,
10 and every person engaged or employed in connection with the work of the Commission, the Secretary, or the Examiner shall—

(a) Maintain and aid in maintaining the secrecy of all matters which come to his knowledge, when carrying
15 out his functions or duties under this Act, and shall not communicate any such matters to any person except for the purpose of carrying the Act into effect; and

(b) Before he begins to perform any official duty under this Act, take and subscribe to such oath of fidelity and
20 secrecy as may be prescribed, which oath may be administered by any member of the Commission or by any Justice of the Peace or by any barrister or solicitor of the Supreme Court.

(2) Every person who wilfully acts in contravention of the true intent of that oath commits an offence against this Act, and is liable to imprisonment for a term not exceeding 3
25 months or to a fine not exceeding \$1,000 or to both.

Cf. 1958, No. 110, s. 6; 1947, No. 51, s. 8; 1974, No. 131,
30 s. 14

PART II

TRADE PRACTICES

20. Application of this Part—The provisions of this Part of this Act relate to trade practices of the following classes—

35 (a) Trade practices which are described in section 23 of this Act and in respect of which the Commission may make orders, if it finds that the introduction or continuation or repetition of the practice would be contrary to the public interest:

- (b) Trade practices in respect of which the Commission may make a recommendation under section 23 (1) (n) of this Act:
- (c) Trade practices which are prohibited unless approved by the Commission, being practices dealt with in sections 27 to 37 of this Act under the headings of *Pricing Agreements* and *Pyramid Selling Schemes*: 5
- (d) Prohibited practices which are referred to in sections 48 to 57 of this Act and which constitute offences against this Act. 10

Public Interest

21. Trade practices deemed contrary to the public interest—

(1) For the purposes of this Act, a trade practice shall be deemed contrary to the public interest only if, in the opinion of the Commission, the effect of the practice is or would be— 15

- (a) To increase the costs relating to the production, manufacture, transport, storage, or distribution of goods, or to maintain such costs at a higher level than would have obtained but for the trade practice; or 20
- (b) To increase the prices at which goods are sold or to maintain such prices at a higher level than would have obtained but for the trade practice; or
- (c) To hinder or prevent a reduction in the costs relating to the production, manufacture, transport, storage, or distribution of goods, or in the prices at which goods are sold; or 25
- (d) To increase the profits derived from the production, manufacture, distribution, transport, storage, or sale of goods, or to maintain such profits at a higher level than would have obtained but for the trade practice; or 30
- (e) To prevent competition in the production, manufacture, supply, transportation, storage, sale, or purchase of any goods; or 35
- (f) To reduce or limit competition in the production, manufacture, supply, transportation, storage, sale, or purchase of any goods; or
- (g) To limit or prevent the supply of goods to consumers; or
- (h) To reduce or limit the variety of goods available to consumers or to alter, restrict, or limit, to the disadvantage of consumers, the terms or conditions under which goods are offered to consumers. 40

(2) Notwithstanding that the Commission is of the opinion that the effect of any trade practice is or would be any of those described in subsection (1) of this section, that practice shall not be deemed contrary to the public interest if the parties to the practice satisfy the Commission that, in the particular case,—

(a) The practice has or would have effects of demonstrable benefit to the public sufficient to outweigh any of the effects described in subsection (1) of this section, which in the opinion of the Commission, the practice has or would have; or

(b) Even though the Commission is of the opinion that the effect of the practice is or would be one or more of those described in paragraphs (a), (b), (d), (f), or (h) of subsection (1) of this section, that effect or effects is or are not unreasonable.

(3) In considering, under subsection (2) (b) of this section, whether any effect mentioned in paragraph (a), paragraph (b), or paragraph (d) of subsection (1) of this section is not unreasonable, the Commission may where applicable have regard to the considerations laid down in section 98 of this Act for the purpose of determining—

(a) The price that would obtain for the goods if they were subject to price control under section 82 of this Act; or

(b) Where the practice is a collective pricing practice under paragraph (b) or paragraph (d) or paragraph (e) of section 23 (1) of this Act or to which section 27 (1) of this Act applies, the price that would obtain in respect of the goods (if the goods were subject to price control under section 82 of this Act)—

- (i) For each individual party to the practice; and
- (ii) On an industry or group basis.

(4) In considering, under subsection (2) (b) of this section, whether any effect mentioned in paragraph (f) of subsection (1) of this section is not unreasonable, the Commission shall—

(a) Be guided by the principle that free and unrestricted competition is prima facie desirable; and

- (b) Have regard, among other things, to the total demand or total potential demand for the goods in question, and then have regard to the portion of the total demand or total potential demand over which a reduction in competition is likely to result from the trade practice. 5

Cf. 1958, No. 110, s. 20; 1965, No. 133, s. 6; 1971, No. 23, s. 10

Control of Certain Trade Practices

22. Orders of Commission against certain trade practices— 10

(1) Subject to the provisions of this Part of this Act, where the Commission after either holding an inquiry or dispensing with one as permitted by section 40 (4) of this Act is of the opinion that a trade practice is substantially within one or more of categories specified in section 23 of this Act and that the introduction or continuance or repetition of the trade practice would be contrary to the public interest, the Commission may make an order— 15

- (a) Directing the discontinuance or prohibiting the introduction or repetition of the practice; or 20
- (b) Permitting the introduction, continuance, or repetition of the practice subject to such conditions as may be specified in the order; or
- (c) Directing the discontinuance or prohibiting the repetition of the practice and directing (in either case) that in order to remove in whole or in part the consequences of the practice the person carrying on the practice shall revert in whole or in part to the trading conditions, including prices, existing before the trade practice was entered into or was last applied. 25 30

(2) Before making any order under this section the Commission shall have regard to any representations made to it by any party to the trade practice in question, and the Commission may, instead of making an order, permit any party who has made representations as aforesaid to take such steps, within such time as may be limited in that behalf by the Commission, as may be necessary to ensure that the trade practice is not contrary to the public interest, and, in any such case, if the Commission is satisfied that the necessary steps have been taken within the time limited as aforesaid, it may decide not to make an order under this section in respect of the matter. 35 40

(3) Any order made by the Commission under this section may be general in its application or may be limited to any particular class of traders, or to an individual trader, or to a particular class of trade practice or to a particular trade
5 practice, or to a particular locality.

(4) In any order made under this section the Commission may make such provisions, not inconsistent with this Act, as it thinks necessary or desirable for the proper administration of the order or to ensure compliance with the terms thereof.

10 (5) Every order made under subsection (1) of this section shall be published in the *Gazette* and shall come into force on such date as is specified in that behalf in the order.

15 (6) Every person commits an offence against this Act who, without lawful justification or excuse, does any act in contravention of or fails to comply in any particular with any obligation or duty imposed on him by any order made under subsection (1) of this section.

(7) Nothing in this section or in section 23 of this Act shall authorise the making of an order in respect of—

20 (a) A trade practice expressly authorised by any Act; or
(b) A trade practice to which section 29 (1) of this Act applies; or

25 (c) Any practice which is referred to in sections 45 to 53 of this Act and which constitutes an offence against this Act.

Cf. 1958, No. 110, ss. 19 (1), (4)–(6), (10), 21 (1), (3), (4), 41; 1971, No. 23, s. 8 (1), (3)

23. Trade practices against which Commission may make orders—(1) The categories of trade practices referred to in

30 section 22 (1) of this Act are:

(a) Any agreement or arrangement between wholesalers to restrict by any method the class or number of buyers to whom they sell; or any agreement or arrangement
35 between any 2 or more retailers to restrict by any method the class or number of wholesalers from whom they buy:

(b) Any agreement or arrangement between wholesalers to sell goods only at prices or on terms agreed upon between those wholesalers:

40 (c) Any agreement or arrangement between wholesalers, retailers, or contractors to buy, or to offer to buy, goods only at prices or on terms agreed upon between any such wholesalers, retailers, or contractors:

- (d) Any agreement or arrangement between wholesalers or retailers or contractors or any combination of persons engaged in the selling of goods or the performance of services, to sell goods, or perform services, only at prices or on terms agreed upon between the parties to any such agreement or arrangement: 5
- (e) Any agreement or arrangement between wholesalers to sell goods on the condition that prices charged or conditions of sale by retailers shall be the prices or conditions of sale stipulated by those wholesalers: 10
- (f) Any agreement or arrangement between sellers or between sellers and buyers to grant rebates or discounts to buyers of goods calculated with reference to the quantity or value of the total purchases by those buyers from those sellers: 15
- (g) Any agreement or arrangement between sellers not to sell goods in any particular form or of any particular kind to buyers or any class of buyers; or any agreement or arrangement between resellers not to buy goods in any particular form or of any particular kind from sellers or any class of sellers: 20
- (h) Any agreement or arrangement between wholesalers or retailers not to employ or to restrict or favour the employment of any method, machinery, process, or labour: 25
- (i) Subject to subsections (5) and (6) of this section, any unjustifiable refusal—
- (i) By a wholesaler to sell or supply, or to continue to sell or supply, goods to a retailer, a manufacturer, or a supplier of services: 30
- (ii) By a retailer to sell or supply, or to continue to sell or supply, goods to a manufacturer, or a supplier of services:
- (iii) By a manufacturer to sell or supply, or to continue to sell or supply, goods to a wholesaler, a retailer, a manufacturer, or a supplier of services: 35
- (iv) By a supplier of services to supply, or to continue to supply, services to a wholesaler, a retailer, a manufacturer, or a supplier of services: 40
- (j) Any agreement or arrangement between persons whether as producers, wholesalers, retailers, buyers, or others to limit or restrict the output or supply of any goods, or withhold or destroy supplies of goods, or allocate territories or markets for the disposal of goods: 45

(k) Any payment to any person by sellers, or resellers, by way of royalty, commission, licence, fee, retainer, or otherwise which in the circumstances is excessive:

5 (1) The unjustifiable exclusion from any trade association of any person carrying on, or intending to carry on, in good faith the trade in relation to which the association is formed. For the purpose of determining whether any exclusion from such an association is unjustifiable the Commission may examine, in
10 addition to any other matters which it considers relevant, not only the application of any rules of that association but also the reasonableness of any such rules themselves:

15 (m) Any agreement or arrangement to enforce the carrying out of any agreement or arrangement referred to in the foregoing provisions of this subsection:

20 (n) Any agreement or arrangement or action not referred to in the foregoing provisions of this subsection prescribed for the purposes of this subsection by an Order in Council which is published in the *Gazette* and which is made pursuant to a recommendation in that behalf by the Commission.

25 (2) For the purposes of this section, where a seller sells goods to a buyer for the purpose of resale, the seller shall be deemed to be a wholesaler and the buyer shall be deemed to be a retailer in respect of that sale, notwithstanding that the buyer intends to resell the goods to another buyer for the purposes of resale, and, in respect of any such resale, the seller shall be deemed to be a wholesaler and the buyer shall be
30 deemed to be a retailer in respect of that resale.

(3) For the purposes of paragraph (b), paragraph (d), and paragraph (e) of subsection (1) of this section and of sections 27 and 29 of this Act—

35 (a) Any recommendation, made directly or indirectly by a trade association to its members or to any class of its members,—

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

(ii) Which relates to the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such members or any such

class of members and which directly affect prices, margins included in the prices, or the pricing formula used in the calculation of prices,— shall be deemed to be a trade practice coming within paragraph (b) or, as the case may require, paragraph (d) or paragraph (e) of subsection (1) of this section notwithstanding any statement in the recommendation or elsewhere to the effect that the recommendation may or may not be complied with as the members or class of members think fit; and

(b) Any recommendation made by any person for the purpose of or having the effect of, in any way, whether directly or indirectly, enabling any trade association to defeat or evade the provisions of this Act shall be deemed to have been made by that trade association.

(4) For the purposes of this section and of sections 27 and 29 of this Act, and without limiting the meaning of that expression in any other provision of this Act, the expression “combination of persons” in paragraph (d) of subsection (1) of this section does not include a partnership, all the members of which are individuals, by which the goods are sold or are to be sold or the services are performed or are to be performed.

(5) For the purposes of subsection (1) (i) of this section and without limiting the generality of that paragraph, a refusal to sell or supply, or, as the case may be, a refusal to continue to sell or supply, shall be deemed to have occurred if there has been a refusal to sell or supply the goods or services, except at prices or upon terms as to credit, discount, or otherwise, which—

(a) Are so disadvantageous as to be likely to deter the prospective purchaser from acquiring those goods or services; or

(b) Are higher or more onerous, as the case may be, than the prices or terms available to purchasers of the same class acquiring those goods or services in similar quantities under similar conditions of purchase.

(6) For the purposes of subsection (1) (i) of this section and without limiting the generality of that paragraph, a refusal by a person to sell or supply, or to continue to sell or supply, goods or services to any other person shall not be justified solely by one or more of the following facts, namely—

- (a) The fact that the business of that other person has been formed or capitalised as a co-operative or operates on that basis; or
- 5 (b) The fact that that other person is not a member of any recognised trade group or association; or
- (c) The fact that, where that other person is a retailer, he intends or is likely to sell the goods at a price lower than the ruling price unless—
 - 10 (i) The sale of those goods at a price lower than the ruling price would be an offence; or
 - (ii) A sale of those goods at any such lower price would be contrary to the terms of an individual resale price maintenance agreement or arrangement approved by the Commission under section 29 (4) of this Act or deemed to have been approved under section 29 (10) of this Act.
- (7) Nothing in subsection (1) of this section shall apply in respect of any agreement or arrangement between consumers relating to goods which are bought by them for consumption and not for resale.
- 20 (8) Where any agreement is made by a trade association, the agreement shall be deemed to be made by the association and by all persons who are members of the association or represented thereon as if each such person were a party to
- 25 the agreement.
- (9) Where a trade practice relating to the sale or supply of goods, or the performance of services, in New Zealand is substantially within one or more of the categories referred to in subsection (1) of this section, and any party to the practice
- 30 does not carry on business in New Zealand, that part of the trade practice being carried out in New Zealand shall be deemed to be a practice coming within that category or those categories for the purposes of this Part of this Act.
- (10) Where specific recommendations, whether express or
- 35 implied, are made by or on behalf of a trade association to its members or to any class of its members, concerning the action to be taken or not to be taken by them in relation to any matter affecting the trading conditions of those members, the provisions of this Act shall apply as if membership of the
- 40 association constituted an agreement under which the members agreed with the association and with each other to comply with the recommendations, notwithstanding anything to the contrary in the constitution or rules of the association.

(11) This section shall apply to any agreement or arrangement referred to in subsection (1) of this section whether or not the agreement or arrangement is intended to be enforceable by legal proceedings.

Cf. 1958, No. 110, ss. 2 (2), 18A (2), 19 (2), (3), (7)–(9), 23BB (4); 1961, No. 124, s. 7; 1971, No. 23, ss. 6, 8 (2), 9, 12 5

24. Revocation or amendment of orders—Any order made by the Commission under section 22 of this Act may at any time be amended or revoked by a subsequent order: 10

Provided that, except with the consent of the Examiner and all parties directly affected by the order, no such amendment or revocation shall be made unless the Examiner and all such parties have been given a reasonable opportunity of making such representations as they think fit with respect to the amendment or revocation. 15

Cf. 1958, No. 110, s. 21 (2); 1961, No. 124, s. 8

25. Recommendations as to price control—Where after inquiry under this Part of this Act the Commission is of the opinion that it would be in the public interest that any goods or services to which the inquiry relates should be subject to price control under section 82 of this Act the Commission shall, within 28 days after the date of the conclusion of the inquiry, report to the Minister its findings in that respect together with any recommendation it thinks fit to make in relation to the imposition of price control. 20 25

Cf. 1958, No. 110, s. 22

26. Notification of trade practice—(1) If the Examiner has reasonable cause to believe that persons engaged in any particular trade or class of trading are parties to a trade practice substantially within one or more of the categories referred to in section 23 (1) of this Act, which might be contrary to the public interest in accordance with section 21 of this Act, he may apply to the Commission for an order requiring those persons to furnish to the Examiner the following particulars in respect of any such trade practice: 30 35

- (a) The names of the persons who are parties to the trade practice; and
- (b) The whole of the terms of the trade practice.

(2) Where the Examiner considers it desirable to do so, and without prejudice to any action that he may take under section 38 of this Act, he may apply to the Commission for an order requiring any persons (who are ascertained under subsection (1) of this section to be parties to any such trade practice) to notify the Examiner whenever any change occurs in respect of any of the matters referred to in paragraphs (a) and (b) of subsection (1) of this section, and the nature and extent of any such changes.

10 (3) As soon as conveniently may be after the receipt of an application for an order under this section, the Commission shall fix a time and place for the hearing of the application and shall give notice thereof to the Examiner and to any person believed by the Examiner to be engaged in carrying
15 on the trade practice.

(4) At the hearing of the application the Commission shall hear the representations made by the Examiner and any persons believed by the Examiner to be carrying on the trade practice.

20 (5) In its determination of an application made under this section, the Commission may refuse to grant an order or may grant an order subject to such conditions as may be prescribed in the order.

25 (6) Every person commits an offence against this Act who, without lawful justification or excuse, does any act in contravention of or fails to comply in any particular with any obligation or duty imposed on him by any order made under this section.

30 (7) Nothing in this section shall authorise the making of an order in respect of—

- (a) A trade practice expressly authorised by any Act; or
- (b) A trade practice to which section 29 (1) of this Act applies.

Cf. 1958, No. 110, s. 18B; 1971, No. 23, s. 7

35 *Pricing Agreements*

27. Collective pricing agreements—(1) No person shall be a party to or carry on any trade practice that comes substantially within any of the categories specified in paragraph (b), paragraph (d), or paragraph (e) of section 23 (1) of this
40 Act unless—

- (a) That practice is approved under section 29 of this Act; and

- (b) Any conditions imposed by the Commission in giving its approval under the said section 29 are being observed.
- (2) Every person commits an offence against this Act who acts in contravention of subsection (1) of this section. 5
- (3) Nothing in subsection (1) of this section shall apply to:
- (a) A trade practice affecting fees for personal or professional services of a type or class specified in the Second Schedule to this Act or to any services for the time being specified in regulations made under this Act as services to which this paragraph applies: 10
- (b) Any trade practice that consists of the issue by a trade association to its members, or to any class of its members, of a price list or similar document showing prices fixed, nominated, or recommended by an individual wholesaler (not being a wholesaler acting in concert with any other wholesaler) pursuant to an agreement or arrangement to which subsection (1) or subsection (2) of section 28 of this Act applies, if— 15
- (i) That agreement or arrangement has been approved by the Commission or conforms with section 28 (2) of this Act and the prices shown are specified in a manner which conforms with the terms of the approval and any relevant condition thereof or, as the case may be, with section 28 (2) (a) of this Act; and 25
- (ii) The resellers collectively take no part in fixing or enforcing the resale prices or the margins or mark-ups contained in them. 30

Cf. 1958, No. 110, ss. 18A (1)–(2), 23BB (1)–(3); 1971, No. 23, ss. 6, 12

28. Individual resale price maintenance arrangements— 35

- (1) After the 1st day of February 1976, no person shall be a party to any agreement or arrangement between a wholesaler and a retailer by which the wholesaler agrees to sell goods to the retailer on the condition that the prices charged by the retailer or the conditions of sale affecting prices on which he sells shall be the prices or conditions of 40

sale stipulated by the wholesaler or to any agreement or arrangement between a wholesaler and a retailer by which the retailer agrees to comply with any such condition (except an agreement or arrangement which complies with subsection
 5 (3) of this section), or operate any such agreement or arrangement, unless—

(a) The particular agreement or arrangement has been approved by the Commission pursuant to section 29
 of this Act; and

10 (b) Any conditions imposed by the Commission under that section are being observed.

(2) Subsection (1) of this section shall apply in respect of any agreement or arrangement of the type described in that subsection to the extent that it is carried on in New Zealand,
 15 notwithstanding that one or more of the parties to an agreement or arrangement does not carry on business in New Zealand.

(3) Subsection (1) of this section shall not apply in respect of any agreement or arrangement of the type described in
 20 subsection (1) of this section, and the approval of the Commission to the agreement or arrangement shall not be required, if—

(a) The resale prices fixed or nominated under the agreement or arrangement are maximum prices only, and the retailers who are parties to it have been
 25 expressly informed in writing that they may charge lower prices without the risk of incurring sanctions of any kind; and

(b) The wholesaler has given particulars of the agreement or arrangement to the Examiner and notified him
 30 that he accepts the conditions set out in subsection (3) of this section.

(4) The conditions referred to in subsection (3) (b) of this section are that:

35 (a) The wholesaler shall give to the Examiner, not later than the day on which any increase in the resale prices fixed or nominated under the agreement or arrangement or any variation in the reseller's terms of sale which is disadvantageous to the buyer takes
 40 effect, written notice of that increase or variation, and, in the case of any such increase which involves an increase in the reseller's margins and in the case

of any such variation which is to the disadvantage of the buyer, shall accept such conditions as the Commission shall impose in respect of that increase or variation:

Provided that this paragraph shall not apply 5
where any such increase or variation requires approval or consent under Part IV of this Act or under any other Act:

- (b) The wholesaler shall comply with any requirement for 10
the time being imposed by the Examiner for the promulgation of the maximum recommended resale prices of all or any of the goods to which the agreement or arrangement relates, including any such requirement to the effect that those prices be shown 15
on the product, or on any label, or on any container or package in which the product is sold or offered for sale:

Provided that this paragraph shall not apply in 20
respect of any goods if a price order or special approval relating to those goods remains in force and the Secretary has exercised his power under section 92 (6) of this Act in respect of the prices of those goods.

(5) Nothing in this section shall apply to any trade practice 25
expressly authorised by any Act.

(6) Notwithstanding that any agreement or arrangement 30
or practice of the type described in subsection (1) or subsection (2) of this section complies with subsection (3) of this section, the Commission may at any time after conducting an inquiry following a report made by the Examiner after 35
investigation by him in accordance with sections 38 to 40 of this Act, make an order with respect to that agreement, arrangement, or practice if it finds it is or is likely to be contrary to the public interest in terms of section 21 of this Act. All the provisions of section 22 and of sections 24, 25, 35
and 41 of this Act shall apply with all necessary modifications as if the agreement, arrangement, or practice were described in section 23 (1) of this Act.

(7) Every person commits an offence against this Act who 40
acts in contravention of subsection (1) of this section.

29. Approval of collective pricing agreements and individual resale price maintenance agreements—(1) Any wholesaler, retailer, supplier of services, contractor, trade association, or

combination of persons, who or which is carrying on or intending to carry on any trade practice to which section 27 (1) or section 28 (1) of this Act applies, may apply to the Commission for its approval of that trade practice. Every such
 5 application shall be made in duplicate in a form provided or approved by the Commission.

(2) A copy of the application shall be supplied by the Commission to the Examiner for investigation and report.

(3) Any application made pursuant to section 18A of the
 10 Trade Practices Act 1958 and not determined by the Commission or withdrawn by the applicant at the commencement of this Act shall be treated as an application under subsection (1) of this section and shall be dealt with accordingly.

(4) Where application is made to the Commission under
 15 subsection (1) of this section, the Commission shall grant its approval if in its opinion the effect of the trade practice is not and is not likely to be contrary to the public interest in accordance with the provisions of section 21 of this Act.

(5) Any such approval may be subject to such conditions
 20 as the Commission thinks fit and, in any such approval, the Commission may make such provisions not inconsistent with this Act as it thinks necessary or desirable for the proper administration of the approval or to ensure compliance with the terms thereof.

(6) Any such approval given by the Commission may be
 25 limited in its application.

(7) The Commission may deal with applications under this section in such order as it thinks fit, but shall, as far as
 30 practicable, give priority to applications for its approval of trade practices that are not already being carried on by the applicants.

(8) Where approval of a trade practice has been granted under this section, or is deemed to have been so granted, the Commission, on the application of the Examiner or of the
 35 person on whose application the practice was approved or of any person carrying on that trade practice, may at any time—

(a) Revoke the approval; or

(b) Alter or revoke any conditions subject to which the approval was granted or impose new or additional
 40 conditions.

(9) The procedure on any application under subsection (8) of this section shall be the same, with the necessary modifications, as in the case of an application for approval made under subsection (1) of this section.

(10) Where, before the commencement of this Act,—

(a) The Trade Practices and Prices Commission, after either holding an inquiry into any trade practice to which section 18A or section 19 (2) (e) of the Trade Practices Act 1958 applies or dispensing with such an inquiry, has granted its approval of that practice, either absolutely or subject to conditions or has not made an order directing the discontinuance, or prohibiting the repetition or introduction, of the practice; or

(b) Any trade practice subject to section 18A of the Trade Practices Act 1958 was deemed pursuant to subsection (10) of that section to have been approved by the Trade Practices and Prices Commission, either absolutely or subject to conditions;

then that practice shall, for the purposes of this Act, be deemed to have been approved under this section or, as the case may require, be deemed to have been approved subject to the conditions prescribed in the approval or order.

(11) The Commission shall publish in the *Gazette* such particulars as it thinks fit of every decision made by it under this section, and no such decision shall come into force before the date of the publication of those particulars in the *Gazette*.

30. Transitional provision in respect of individual resale price maintenance agreements and collective pricing practices—(1) Where before the 1st day of February 1976 application for the approval of the Commission of any individual resale price maintenance agreement or arrangement being carried on before the commencement of this Act is made under section 29 of this Act; or where application for approval of a collective pricing practice was made before the 1st day of April 1972 under section 18A of the Trade Practices Act 1958; but the application and any appeal from the decision of the Commission on the application have not been determined before the 1st day of February 1976, then, without limiting any other provision of this Act in relation to that agreement, arrangement, or practice, it shall not be an offence against section 27 or section 28 of this Act for the parties concerned to carry on the agreement, arrangement, or practice without change in its nature pending the determination of the application or any such appeal so long as those parties comply with such requirements as the Commission may impose in respect of the notification, implementation, or extent of—

- 5 (a) Any increase in the prices of any goods or services to which the agreement, arrangement, or practice applies, or in the margins or markups included in any such prices, or in the terms of any pricing formula used in the calculation of any such prices; or
- (b) Any variation in the selling terms of any such goods or services.
- 10 (2) Nothing in subsection (1) of this section shall limit the provisions of section 93 of this Act or the powers of any appropriate pricing authority.

Pyramid Selling Schemes

31. Definition of pyramid selling scheme—(1) For the purposes of this Act a pyramid selling scheme is a scheme
15 which includes the following elements—

- 20 (a) Goods or services, or both, are to be provided by the person promoting the scheme (hereinafter referred to as “the promoter”) or by any person acting on his behalf or, in the case of a scheme promoted by two or more persons acting in concert (hereinafter referred to as the “promoters”), are to be provided by one or more of those persons, or by any other person acting on their behalf; and
- 25 (b) The goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is hereinafter referred to as a participant); and
- 30 (c) Those transactions (not being transactions between the promoter and a participant or between participants), or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business; and
- 35 (d) The prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the following matters—
 - 40 (i) The introduction of other persons who become participants:
 - (ii) The promotion, transfer, or other change in status of participants within the trading scheme:

(iii) The supply of goods to other participants:

(iv) The supply of training facilities or other services for other participants:

(v) Transactions effected by other participants under which goods are to be supplied to, or services are to be supplied for, other persons: 5

(vi) Any matter specified in regulations made under this Act as a relevant matter for the purposes of this paragraph.

(2) For the purposes of this Act a scheme shall be taken to include the element referred to in subsection (1) (b) of this section whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity. 10 15

(3) In determining for the purposes of subsection (1) (c) of this section, whether any premises are premises at which a participant in a scheme carries on business, no account shall be taken of transactions effected or to be effected by him under that scheme. 20

(4) For the purposes of this Act such a prospect as is mentioned in subsection (1) (d) of this section shall be taken to be held out to a participant—

(a) Whether it is held out so as to confer on him a legally enforceable right or not; and 25

(b) In so far as it relates to the introduction of new participants whether it is limited to the introduction of new participants by him or extends to the introduction of new participants by other persons.

(5) In this section “scheme” includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not. 30

(6) In this section any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party. 35

(7) For the purposes of this Act the term pyramid selling scheme does not include any scheme for the time being declared by the Minister by notice in the *Gazette* to be excluded from that term. 40

Cf. Fair Trading Act 1973 (U.K.), s. 118; 1974, No. 131, s. 15

32. Pyramid selling schemes—(1) No person shall act as the promoter of a pyramid selling scheme or operate any such scheme on behalf of the promoter unless—

- 5 (a) The particular scheme is for the time being approved by the Commission pursuant to section 34 of this Act; and
 - (b) Any conditions imposed by the Commission in giving its approval under that section are being observed.
- (2) Every person who contravenes subsection (1) of this
- 10 section commits an offence against this Act.

Cf. 1974, No. 131, s. 16

33. Applications for approval of pyramid selling schemes—

(1) Any person who wishes to act as the promoter of a pyramid selling scheme may apply to the Commission for its approval

15 of that scheme.

(2) Every such application shall be made in duplicate in a form provided or approved by the Commission, and be accompanied by evidence that adequate security will be provided by the applicant for the performance of his

20 obligations under the scheme, including his obligations under section 36 of this Act.

(3) The Commission shall supply a copy of the application to the Examiner for investigation and report.

Cf. 1974, No. 131, s. 17

25 **34. Approval of pyramid selling schemes**—(1) Where an application is made to the Commission under section 33 of this Act in respect of a pyramid selling scheme, the Commission shall hold a public inquiry into the application, and after

30 doing so shall grant its approval of the scheme only if it is satisfied—

- (a) That the effect of the scheme, if it were a trade practice, would not be and would not be likely to be contrary to the public interest in accordance with the provisions of section 21 of this Act; and
- 35 (b) That the retail price of any goods and services to be distributed under the scheme will not be substantially higher than the retail prices that would obtain for those goods or services if they were distributed otherwise than under a pyramid selling scheme; and

- (c) That provision is made in the scheme for the number of persons who are to participate in the scheme to be limited or controlled so that every person who participates in the retail sale of goods or services under the scheme in an efficient and businesslike manner will have the prospect of obtaining a reasonable reward from his participation; and 5
- (d) That adequate security will be provided by the applicant for the performance of his obligations under the scheme, including his obligations under section 36 of this Act to any participant in the proposed scheme who rescinds a contract in accordance with that section— 10

but otherwise shall refuse to approve the scheme.

(2) Where the Commission grants its approval under this section of a pyramid selling scheme, it may impose such conditions to that approval as it thinks fit and in particular, but without limiting the generality of this subsection, it may— 15

- (a) Limit the number of persons who may participate in the scheme; and 20
- (b) Define areas in which persons may participate in the scheme; and
- (c) Limit to one or more persons the number of persons who may participate in the scheme in any such area or areas; and 25
- (d) Prohibit any person who is the promoter of or a participant in the scheme from making, before its commencement or in the course of its operation, any claim which in the opinion of the Commission would be likely to mislead any person as to any benefit that may be obtained by any person from his participation in the scheme; and 30
- (e) Specify rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under the scheme; and 35
- (f) Require the rights and obligations of every participant under the scheme (including any rights and obligations conferred or imposed by this Act or any decision of the Commission) to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters. 40

(3) The Commission shall publish in the *Gazette* such particulars as it thinks fit of every decision made by it under this section, and no such decision shall come into force before the date of the publication of those particulars in the *Gazette*.

5 Cf. 1974, No. 131, s. 18

35. Revocation or variation of approval—(1) Where approval of a pyramid selling scheme has been granted under section 34 of this Act, the Commission may at any time on the application of the Examiner, or of the person on whose application the scheme was approved, or of any other person operating the scheme, or of any participant in the scheme,—

- (a) Revoke the approval; or
- (b) Alter or revoke the conditions subject to which the approval was granted, being conditions imposed under section 34 (2) of this Act; or
- (c) Impose new or additional conditions.

(2) The procedure on any application under subsection (1) of this section shall be the same, with the necessary modifications, as in the case of an application for approval of a pyramid selling scheme made under section 33 of this Act.

20 Cf. 1974, No. 131, s. 19

36. Statutory right to rescind contract entered into under pyramid selling scheme—(1) Where the promoter of a pyramid selling scheme or any participant enters into any contract with any participant or any other participant, as the case may be, whereby the other party acquires any right to the property in, or to the sale or distribution of, any goods or to entitlements, or to the sale of entitlements, to the performance of services, or any right to recruit any person or persons to sell or distribute or arrange the sale or distribution of any goods or entitlements to services, or any other right, there shall be implied in that contract a term (a condition) that the other party may rescind the contract at any time and—

- 35 (a) If the rescission takes place within 1 month after the date on which the contract was made, shall be entitled—
 - 40 (i) To be refunded all money paid by him under the contract for any right to the property in, or to the sale and distribution of, any goods or sales material to the extent that the goods or sales material are

returned in substantially the same state as when they were delivered to him, and, where he has paid for any goods or sales material which have not been delivered to him, to be refunded all money paid by him under the contract for those goods or that sales material; and 5

(ii) To be refunded all money paid by him under the contract for any right to entitlements or the sale of entitlements to the performance of services to the extent that those entitlements have not been sold, and, where he has paid for entitlements which he has not received, to be refunded all money paid by him under the contract in respect of those entitlements; and 10

(iii) To receive by way of refund the amount by which his receipts under the contract in respect of any right (other than the right to property in, or to the sale and distribution of, any goods or to entitlements, or to the sale of entitlements, to the performance of services) acquired under the contract have fallen short of payments (other than payments of the kind described in subparagraphs (i) and (ii) of this paragraph) made by him; or 15 20

(b) If the rescission takes place more than 1 month after the date on which the contract was made, to have refunded 90 percent of the amounts that he would have received if he had rescinded the contract within one month: 25

Provided that he shall be entitled to have refunded 100 percent of the amounts paid by him for goods and sales material not delivered to him and for entitlements to the performance of services not received by him. 30

(2) The provisions of subsection (1) of the section shall apply notwithstanding any provision to the contrary in any deed, contract, instrument, or agreement. 35

(3) Where a pyramid selling scheme is approved by the Commission under section 34 of the Act, the Commission may approve conditions that shall apply instead of any or all of the conditions set out in subsection (1) of this section. 40

(4) This section shall have effect in relation to any contract entered into under any pyramid selling scheme after the 9th day of October 1974.

Cf. 1974, No. 131, s. 20

37. Particulars of payments—(1) The promoter of a pyramid selling scheme or any participant who enters into a contract under that scheme with any other party (being a participant) shall show in the contract the total of all
 5 amounts paid or to be paid by that other party upon entering into the contract and shall also show particulars of any amount paid or to be paid initially for—

(a) The right to the property in, or to the sale or distribution of, any goods:

10 (b) The right to entitlements to the performance of services or to sell entitlements to the performance of services:

(c) Any other purpose.

(2) Every person commits an offence against this Act who acts in contravention of subsection (1) of this section.

15 Cf. 1974, No. 131, s. 21

Investigations and Inquiry Into Trade Practices

38. Investigations by Examiner—(1) The Examiner shall investigate—

20 (a) On complaint that may be made direct to the Examiner or to the Department or on his own motion, any trade practice which appears to be contrary to the public interest:

(b) Every application referred to him by the Commission under this Part of this Act.

25 (2) For the purpose of any investigation conducted by the Examiner under this Part of this Act, the Examiner, and any person authorised in that behalf by writing under the seal of the Commission, shall have and may exercise all the powers conferred on the Commission by paragraphs (a) to (c) of
 30 subsection (1), and by subsection (2), of section 12 of this Act.

(3) The Examiner may, if he thinks fit, request the Secretary or the Department to supply any specified information for the purpose of assisting him in the conduct of any
 35 investigation under this Part of this Act, and it shall be the duty of the Secretary or the Department to supply to the Examiner any such information which he or it has available.

Cf. 1958, No. 110, s. 16 (1)–(3); 1961, No. 124, s. 4; 1971, No. 23, s. 4

39. Conciliation provisions—(1) Where after investigation pursuant to section 38 (1) (a) of this Act the Examiner is of the opinion that any person is carrying on a trade practice contrary to the public interest, the Examiner shall furnish to that person a statement in writing: 5

- (a) Informing him of the Examiner's opinion as to the practice which he believes is being carried on by that person; and
- (b) Stating on which of the grounds referred to in section 21 of this Act he bases his opinion; and 10
- (c) Requiring him to reply in writing within 21 days stating:
 - (i) Whether or not he accepts the Examiner's opinion:
 - (ii) Whether or not he is prepared to abandon 15 forthwith the practice in question:
 - (iii) Whether or not he is prepared to alter the trade practice in question so that it conforms with the public interest.

(2) Where after investigation pursuant to section 38 (1) 20 (b) of this Act, the Examiner is of the opinion that the carrying on of, or the proposal to carry on, any practice or pyramid selling scheme to which any application referred to him by the Commission relates is or may be contrary to the public interest or, in the case of a pyramid selling scheme, does not 25 comply with paragraphs (b) to (d) of section 34 (1) of this Act, the Examiner shall furnish to that person a statement in writing:

- (a) Informing him of the Examiner's opinion:
- (b) Stating on which of the grounds set out in section 21 30 of this Act he bases his opinion and, in the case of a pyramid selling scheme, stating the respects in which, in his opinion, the scheme does not comply with paragraphs (b) to (d) of section 34 (1) of this Act:
- (c) Requiring him to reply in writing within 21 days 35 stating:
 - (i) Whether or not he accepts the Examiner's opinion:
 - (ii) Whether or not he is prepared to withdraw the application for approval and, if the case so 40 requires, to abandon forthwith the practice:

(iii) Whether or not he is prepared to alter the practice or proposed practice or proposed pyramid selling scheme in question so that it conforms with the public interest, or, if the case so requires, with paragraphs (b) to (d) of section 34 (1) of this Act.

5

(3) Where any person to whom the Examiner has furnished a statement in accordance with subsection (1) or subsection (2) of this section does not reply in accordance with the subsection under which the statement was furnished, the Examiner shall forthwith report to the Commission in accordance with section 40 of this Act.

10

(4) Where any such person replies in accordance with paragraph (c) of subsection (1) or paragraph (c) of subsection (2) of this section, the Examiner, if he considers the person, although carrying on or proposing to carry on a practice or scheme which, in the opinion of the Examiner, is or may be contrary to the public interest or, as the case may be, does not comply with paragraphs (b) to (d) of section 34 (1) of this Act, might agree to carry out such of the following actions as are appropriate, namely—

15

- (a) To abandon the practice:
- (b) To withdraw the application:
- (c) To alter the practice or the proposed practice or the proposed scheme so that it conforms with the public interest:

20

(d) In the case of a pyramid selling scheme, to alter it so that it conforms with paragraphs (b) to (d) of section 34 (1) of this Act,—

25

shall invite that person to confer with him for the purpose of reaching agreement on the nature of a recommendation to be made by the Examiner to the Commission.

30

(5) In any case where the Examiner invites any person to confer with him under subsection (4) of this section he shall, if necessary for the purpose of reaching agreement with that person, allow 14 days from the date of inviting that person to confer with him, or such longer period as the Examiner in special circumstances thinks fit, before reporting to the Commission in accordance with section 40 of this Act.

35

(6) This section shall not apply to any of the practices which are offences against any of the provisions of sections 48 to 57 of this Act.

40

40. Report by Examiner—(1) The Examiner shall furnish a report to the Commission—

- (a) On all applications referred to him by the Commission under any provision of this Part of this Act: 5
 - (b) On any trade practice investigated by him on complaint made direct to him or to the Department or on his own motion which, in his opinion, comes substantially within one or more of the categories set out in section 23 (1) of this Act and which, in his opinion, has or is likely to have effects contrary to the public interest: 10
 - (c) On any trade practice of a kind referred to in paragraph (b) of this subsection which, as a result of modifications agreed to by the parties in conciliation, he considers will not have or is not likely to have effects contrary to the public interest: 15
 - (d) On any trade practice which, in his opinion, has or is likely to have effects contrary to the public interest and does not come substantially within any of the categories set out in section 23 (1) of this Act but which, in his opinion, is a practice in respect of which the Commission should consider making a recommendation for the purposes of paragraph (n) of the said section 23 (1). 20
- (2) The report shall show: 25
- (a) The nature of the trade practice or pyramid selling scheme: 25
 - (b) The person or persons who are parties to the trade practice or promoters of the pyramid selling scheme:
 - (c) In the case of a trade practice investigated under section 38 (1) (a) of this Act,— 30
 - (i) Where, in the Examiner's opinion, the trade practice is substantially within one or more of the categories specified in section 23 (1) of this Act, the category or categories; and
 - (ii) By reference to section 21 (1) of this Act, 35
 - the grounds on which he considers the practice has or is likely to have effects contrary to the public interest, or, in the case of a trade practice to which subsection (1) (c) of this section refers, the grounds on which he considers the practice had or would have had those effects if the parties had not agreed to modifications in conciliation; and 40

(iii) The result of any action by the Examiner under section 39 of this Act in respect of the trade practice in question; and

5 (iv) A recommendation concerning the nature of the order or such other action that he considers the Commission should make or take; and

(v) The conditions (if any) to which any such order should be subject; and

10 (vi) Whether or not the recommendation is concurred in by all persons who would be bound by any such order:

(d) In the case of a trade practice or proposed trade practice or proposed pyramid selling scheme investigated under section 38 (1) (b) of this Act,—

15 (i) Whether in his opinion, the practice or scheme has or is likely to have effects contrary to the public interest; and

(ii) By reference to section 21 (1) of this Act, the grounds on which he bases his opinion; and

20 (iii) In the case of a pyramid selling scheme, whether the scheme complies with paragraphs (b) to (d) of section 34 (1) of this Act; and

(iv) The result of any action by the Examiner under section 39 of this Act in respect of the trade practice or pyramid selling scheme in question; and

25 (v) Whether he considers the application should be approved and, if so, whether or not it should be approved with or without conditions and whether any other action should be taken by the Commission.

30 (3) If on completing any investigation under section 38 of this Act, the Examiner is in doubt as to whether or not a trade practice is contrary to the public interest, he may in his discretion report that fact to the Commission and furnish to the Commission a report showing—

35 (a) The nature of the trade practice:

(b) The person or persons who are parties to the trade practice in question:

(c) The nature and extent of the discussions held by the Examiner with that person or those persons:

40 (d) Such other matters as the Examiner considers relevant—

and the Commission may conduct an inquiry into the matter under section 41 of this Act.

(4) In any case where the Examiner, in reporting in accordance with paragraph (c) of subsection (1) of this section, satisfies the Commission that all persons who would be bound by any order made pursuant to the recommendation have concurred with the recommendation made, the Commission may dispense with any inquiry under section 41 of this Act. 5

(5) Where the Commission proposes to hold an inquiry into any trade practice or any proposed trade practice or any proposed pyramid selling scheme concerning which a report has been furnished to it under subsection (1) or subsection (3) of this section, it shall provide a copy of the report to the parties to the trade practice who are named in the report, or to the promoter of the pyramid selling scheme, or to their representatives, and to any other person who in the opinion of the Commission is affected by the report, or their representatives; and those parties and persons, or their respective representatives, shall furnish to the Commission, in a form approved by the Commission, an answer to the report within such time as may be limited in that behalf by the Commission: 10 15 20

Provided that the form of an answer from any person (other than a party to the trade practice) who has been furnished with the report shall not require to be approved by the Commission if that answer consists of a written statement from that person to the effect that he has seen the report and does not wish to comment on it. 25

(6) A copy of the answer shall be furnished to the Examiner.

Cf. 1958, No. 110, s. 17 (1)–(4); 1965, No. 133, s. 3 (1); 1971, No. 23, s. 5 (1)–(2) 30

41. Inquiry by Commission—(1) Where a report is made to the Commission under section 40 (1) of this Act, the Commission, unless it decides under subsection (4) of that section to dispense with an inquiry, shall conduct an inquiry into the matter. 35

(2) Subject to the provisions of this Act, at any inquiry under this section the Commission shall determine—

(a) Where the Examiner has furnished his report under section 40 (1) (a) of this Act, whether the application to which the report relates should be granted and, if so, with or without conditions: 40

- (b) Where the Examiner has furnished his report under section 40 (1) (b) of this Act, whether the trade practice to which the report relates does in fact exist; and if so—
- 5 (i) Whether it comes substantially within one or more of the categories referred to in section 23 (1) of this Act; and if so
- (ii) Whether or not the trade practice is contrary to the public interest; and
- 10 (iii) Whether an order should be made under section 22 of this Act in respect of that practice and whether other action should be taken additional to or instead of the making of an order:
- (c) Where the Examiner has furnished a report under section 40 (1) (d) of this Act or where the Commission is of the opinion that the practice does not come substantially within any of the categories set out in section 23 (1) of this Act, whether or not it should make a recommendation for the purposes of section 23 (1) (n) of this Act:
- 15 (d) Where the Examiner has furnished his report under section 40 (1) (c) of this Act, whether the trade practice to which it relates, is, notwithstanding any modifications agreed to by the parties and the Examiner in conciliation, contrary to the public interest and the nature of the order to be made in respect of the trade practice.
- 25 Cf. 1958, No. 110, s. 18 (1); 1965, No. 133, s. 4 (1); 1971, No. 23, s. 5 (3)

30 *Appeals from Decisions of Commission*

42. Appeals from decisions of Commission—(1) Subject to sections 43 and 44 of this Act, there shall be a right of appeal to the Administrative Division of the Supreme Court (in this Part of this Act, unless the context otherwise requires, referred to as the Court) against a decision of the Commission in respect of any of the matters specified in section 43 of this Act.

(2) Every such appeal shall be made by giving notice of appeal within 28 days after the date of the publication in the *Gazette* of the order or decision appealed against.

(3) It shall not be necessary to state in the notice the grounds of appeal.

(4) Subject to the provisions of sections 44 to 47 of this Act, the procedure in respect of any such appeal shall be in accordance with the rules of Court.

Cf. 1958, No. 110, s. 24; 1971, No. 23, s. 14; 1974, No. 131, s. 22

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43. Matters on which appeals lie—The right of appeal under section 42 of this Act shall be from the whole or any part of any order or decision of the Commission made under any of the provisions of sections 22, 24, 29, 34, and 35 of this Act.

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Cf. 1958, No. 110, s. 25; 1971, No. 23, s. 14; 1974, No. 131, s. 22

44. Persons entitled to appeal—The following persons and no others may exercise such right of appeal as aforesaid:

- (a) The applicant under any application made under section 29 of this Act for the approval of a trade practice or proposed trade practice, where the Commission by its decision refuses the application or grants an approval which is subject to conditions or is limited in its application: 15 20
- (b) The person on whose application the Commission has under section 29 of this Act approved a trade practice or proposed trade practice, where—
- (i) Under subsection (8) of that section the Commission revokes its approval; or 25
- (ii) Under the said subsection (8), the Commission alters any conditions subject to which its approval was granted or imposes new or additional conditions; or
- (iii) The Commission refuses an application made by that person under the said subsection (8) for the alteration or revocation of any conditions subject to which its approval was granted: 30
- (c) The applicant under any application made under section 33 of this Act for the approval of a pyramid selling scheme, where the Commission by its decision refuses the application or grants an approval which is subject to conditions or is limited in its application: 35
- (d) The person on whose application the Commission has under section 34 of this Act approved a pyramid selling scheme, where— 40

- (i) Under section 35 (1) (a) of this Act the Commission revokes its approval; or
 - (ii) Under section 35 (1) (b) of this Act, the Commission alters any conditions subject to which its approval was granted or imposes new or additional conditions; or
 - (iii) The Commission refuses an application made by that person under section 35 of this Act for the alteration or revocation of any conditions subject to which its approval was granted:
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- 10 (e) Any person who by an order made under section 22 of this Act—
- (i) Is directed to discontinue or not to repeat any trade practice; or
 - (ii) Is permitted to continue or repeat a trade practice subject to conditions prescribed by the order; or
 - (iii) Is directed to discontinue any trade practice or not to repeat any trade practice and (in either case) to revert in whole or in part to the trading conditions (including prices) that formerly obtained:
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- 20 (f) Where any order referred to in paragraph (e) of this section is directed to a class of persons, any person belonging to that class or representing that class:
- 25 (g) The Examiner, where the Commission by a decision under section 29 of this Act—
- (i) Gives its approval to a trade practice or proposed trade practice, whether or not that approval is subject to conditions or limited in its application; or
 - (ii) Refuses an application made under section 29 (8) of this Act by the Examiner for the revocation of any such approval; or
 - (iii) Alters any conditions subject to which any such approval was granted, or imposes new or additional conditions; or
 - (iv) Refuses an application made under section 29 (8) of this Act by the Examiner for the alteration of any such conditions or the imposition of new or additional conditions:
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- (h) The Examiner, where the Commission by a decision under section 34 or section 35 of this Act—
- (i) Gives its approval to a proposed pyramid selling scheme, whether or not that approval is subject to conditions or limited in its application; or 5
 - (ii) Refuses an application by the Examiner for the revocation of any such approval; or
 - (iii) Alters any conditions subject to which any such approval was granted, or imposes new or additional conditions; or 10
 - (iv) Refuses an application by the Examiner for the alteration of any such conditions or the imposition of new or additional conditions:
- (i) The Examiner, where the Commission makes an order under section 22 of this Act or refuses to make such an order. 15

Cf. 1958, No. 110, s. 26; 1971, No. 23, s. 14; 1974, No. 131, s. 22

45. Hearing and determination of appeal—(1) The Court may in any case, if it considers it is in the interests of the parties or of any of them and is not contrary to the interests of other persons concerned or the public interest, order that the hearing or any part of it shall be held in private. 20

(2) The Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private); but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or of any decision of the Court. 25 30

(3) In its determination of any appeal, the Court may confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision.

(4) The decision of the Court on any appeal under subsection (3) of this section shall be final and conclusive. 35

Cf. 1958, No. 110, s. 27; 1971, No. 23, s. 14; 1974, No. 131, s. 23

46. Court may refer appeals back for reconsideration—

(1) Notwithstanding anything in section 45 of this Act, the Court may in any case, instead of determining any appeal under that section, direct the Commission to reconsider, 40

either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

5 (2) In giving any direction under this section, the Court shall—

(a) Advise the Commission of its reasons for so doing; and

10 (b) Give to the Commission such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(3) In reconsidering the matter so referred back, the Commission shall have regard to the Court's reasons for giving a direction under subsection (1) of this section and 15 to the Court's directions under subsection (2) of this section.

Cf. 1958, No. 110, s. 28; 1971, No. 23, s. 14; 1974, No. 131, s. 24

20 **47. Provisions pending determination of appeal**—Pending the determination of any appeal to the Administrative Division of the Supreme Court under this Part of this Act, the order or decision to which the appeal relates shall be deemed to have no effect.

Cf. 1958, No. 110, s. 30; 1971, No. 23, s. 14; 1974, No. 131, s. 25

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Prohibited Practices

30 **48. Collective tendering**—(1) It shall be an offence against this Act for any 2 or more persons, being either wholesalers, retailers, or contractors, or suppliers of services, to tender for the supply or purchase of any goods or services at prices, or on terms, agreed, or arranged between them; and it shall be an offence against this Act for 2 or more of any such persons to agree or arrange for all or any of them to abstain from tendering for the supply or purchase of any goods or services, tenders for the supply or purchase of which have been 35 invited.

(2) It shall not be a defence in proceedings for an offence against this section—

(a) That the invitation to tender or the tender was not made or submitted in writing; or

40 (b) That the invitation to tender or the tender was not described as such or was given some other description; or

- (c) That the invitation to tender was extended to some or all of the parties to the agreement or arrangement at different times; or
- (d) That the tender of any party to the agreement or arrangement was submitted before that party had consulted with all or some of the other parties to the agreement or arrangement on the prices or the terms that those other parties were to submit or on the question as to whether all or some of those parties should abstain from tendering; or
- (e) That the persons involved have secured the approval of the Commission to a collective pricing practice.
- (3) Nothing in this section shall apply with respect to any tender made by 2 or more persons jointly at the express request or with the prior express consent of the person inviting the tender (whether made in the name of 1 person or in the names of 2 or more persons), where the tender is made with the intention that if it is successful the supply or purchase of the goods or services or the goods or services purchased, as the case may be, will or may be shared by 2 or more persons.

Cf. 1958, No. 110, s. 23A; 1965, No. 133, s. 7; 1971, No. 23, s. 11

49. Collective bidding at auction—It shall be an offence against this Part of this Act for any 2 or more persons, being either wholesalers, retailers, or contractors, to enter into any agreement or arrangement as to the price or prices which any of them will bid at any auction sale of goods, or any agreement or arrangement whereby any party to that agreement or arrangement agrees to abstain from bidding at any auction sale of goods.

Cf. 1958, No. 110, s. 23B; 1965, No. 133, s. 7

50. Refusal to sell goods or services unless other goods or services are also purchased—(1) Every person commits an offence against this Act who, whether as principal or agent, and whether by himself or his agent, refuses to sell any goods or services except on the condition that other goods or services are also purchased from him or from any other person nominated by him, or attempts to impose any such condition.

(2) Nothing in this section shall render unlawful any condition—

- (a) Against the separate sale of any goods forming part of a set or forming part of a single or composite article; or
 - (b) Imposed with the authority in writing of the Examiner; or
 - (c) Expressly authorised by any Act to be imposed.
- Cf. 1947, No. 51, s. 31

10 **51. Hoarding, etc.**—Every person commits an offence against this Act who, being in possession of goods for mercantile purposes, destroys or hoards the goods, or refuses to sell the goods or to make them available for sale, if such destruction or hoarding or refusal raises, or tends to raise, or is intended to raise the cost of other similar goods to the public.

Cf. 1947, No. 51, s. 25

20 **52. Black marketing**—Every person commits an offence against this Act who, whether as principal or agent, and whether by himself or his agent, sells any goods for purposes of resale, unless he is satisfied—

- (a) That the goods are required by the buyer, in good faith, for the legitimate purposes of his business; and
- (b) In particular, that the effect of the transaction, whether by itself or taken in conjunction with transactions of the same or of a similar nature, will not be to increase or will not tend to increase the price to the ultimate buyer of the goods above a fair and reasonable price (whether that price be a lawful price or not):

30 Provided that this section shall not apply with respect to the sale of any goods to a retailer for purposes of retail sale.

35 Cf. 1947, No. 51, s. 24

53. Mandatory trade-ins prohibited—Every person who, in the course of trade, sells goods at retail or supplies services (in this section called the seller) commits an offence against this Act if he, whether as principal or

agent and whether by himself or his agent, indicates in the course of bargaining with any purchaser or prospective purchaser of those goods or services—

- (a) That he will sell goods or supply services to that purchaser or prospective purchaser only if he sells or arranges the sale of secondhand goods to the seller or to a person nominated by the seller; or 5
- (b) That the terms and conditions on which he will sell those goods or supply those services will be less favourable than those upon which he would make them available if the purchaser or prospective purchaser were to sell or to arrange the sale of secondhand goods to the seller or to a person nominated by the seller: 10

Provided that it shall not be an offence against this section for a seller to stipulate for secondhand goods in part exchange for reconditioned goods of the same kind if— 15

- (a) The secondhand goods (not being or including a motor vehicle within the meaning of the Motor Vehicle Dealers Act 1958) are required for reconditioning and resale; and 20
- (b) The scheme under which that stipulation is made is for the time being approved in writing by the Examiner. 20

54. Profiteering in goods or services—(1) Every person commits an offence against this Act who whether as principal or agent, and whether by himself or his agent, sells or agrees or offers to sell any goods or services at a price which is unreasonably high. 25

(2) In determining, in the course of any proceedings for an offence against this section, whether or not the price of any goods is or was unreasonably high, no account shall be taken of— 30

- (a) The cost to the seller or, as the case may be, to his principal, which has been or which would be involved in replacing those goods for the purposes of his business; or 35
- (b) The into-store cost or the landed cost of any other goods; or
- (c) The selling price of any other goods or services sold by the seller or his principal. 40

(3) For the purposes of this section, the price at which any goods or services are sold or agreed to be sold or offered for sale shall, unless the contrary is proved, be deemed to be unreasonably high if, at the time of the sale, agreement, 5 or offer—

(a) The price of those goods or services is subject to control or restraint under this Act or any other Act, and the price at which the goods or services are sold, or agreed to be sold, or offered for sale, 10 as the case may be, or the charge-out rate included in the price of the service, is 20 percent or more above the maximum price or charge-out rate which the seller is authorised or permitted to charge under this Act, or, as the case may be, under any other Act, 15 for those goods or services; or

(b) The price of those goods or services is not subject to control or restraint under this Act or any other Act, and the price at which the goods or services are sold or agreed to be sold, or offered for sale, 20 as the case may be, or the charge-out rate included in the price of the service, is 20 percent or more above the prevailing price or charge-out rate for goods or services of the same kind sold by comparable traders under similar conditions of sale and 25 purchase.

(4) Where in any proceedings for an offence against this section the price of the goods or services to which those proceedings relate is not subject to control or restraint under this Act or any other Act and it is, in the opinion of the Court, not 30 practicable, by reason of the absence of goods or services of the same kind or of the absence of comparable sellers or of any other fact, to calculate a prevailing price for the purposes of subsection (3) (b) of this section, the Court may—

(a) Where the alleged offender is an importer, wholesaler, 35 or retailer,—

(i) Accept as the prevailing price of the goods to which the proceedings relate a price calculated by taking the into-store cost or landed cost, as the case may be, of the goods to the alleged offender and 40 adding thereto a percentage representing the prevailing margin being obtained on the same class of goods by comparable traders who offer similar conditions of sale and who are subject to similar conditions of purchase; or

(ii) If it is, in the opinion of the Court, not practicable, by reason of the absence of comparable traders who offer similar conditions of sale and who are subject to similar conditions of purchase, to apply subparagraph (i) of this paragraph, take it as established that the price at which the goods were sold or agreed to be sold or offered for sale was unreasonably high where it is proved that that price was 20 percent or more above the price calculated by applying to the into-store cost or landed cost, as the case may be, of the goods to the alleged offender the same margin as he was lawfully applying, expressed as a percentage, to the into-store cost or landed cost, as the case may require, of goods of the same kind when they were last subject to price control or restraint or when he commenced business or 4 years before the date of the alleged offence, whichever is the most recent; or

(b) Where the alleged offender is a manufacturer or supplier of services,—

(i) Take it as established that the price at which the goods or services were sold or agreed to be sold or offered for sale or the charge-out rate included in the price of the service was unreasonably high where it is proved that that price was 20 percent or more above the price or charge-out rate calculated by applying costs incurred by the alleged offender in respect of the goods or services in question in accordance with the formula, convention, or method of pricing (including the same percentage margin of profit on total cost) applied by the trader in the case of goods or services of the same kind or of goods or services of the same type or class manufactured or supplied by him when they were last subject to price control or restraint or when he commenced business or 4 years before the date of the alleged offence, whichever is the most recent; or

(ii) If it is, in the opinion of the Court, not practicable by reason of the inadequacy of the records of the alleged offender or for any other cause, to apply subparagraph (i) of this paragraph, take it as established that the price at which the goods or services were sold or agreed to be sold or offered for sale or the charge-out rate included in the price

5 of the services was unreasonably high where it is proved that the price or, where appropriate the charge-out rate included in the price of the services, incorporates a profit which, taken in relation to the alleged offender's costs of the production of the goods or the performance of the services, produces, in the opinion of the Court, more than a fair and reasonable rate of commercial profit.

10 (5) In any prosecution for an offence against this section, it shall be a defence if the defendant proves that the prices or charge-out rates taken by him, and to which the prosecution relates, although exceeding the limits set out in subsection (3) or subsection (4) of this section, were not in the circumstances unreasonable.

15 (6) Notwithstanding anything in subsections (3) and (4) of this section, the Court may, if it thinks fit, after having regard to the margin obtained on the particular transaction and any other relevant factors, determine for the purposes of this section that a price less than the price calculated in accordance with those subsections is unreasonably high.

20 (7) Nothing in this section shall apply in relation to the prices of goods or services to which section 56 of this Act applies.

25 **55. Selection of traders for purpose of determining prevailing prices**—In any selection of traders made for the purpose of determining a prevailing price, mark-up, or margin for goods or services sold or supplied subject to comparable conditions of sale and purchase to those sold or supplied by the defendant, the Court shall have regard to such of the following factors as it considers appropriate, namely—

- 30 (a) The location and nature of the business from which the goods are sold:
- (b) The level of distribution at which the transaction takes place:
- 35 (c) The terms and conditions of sale or supply:
- (d) The costs of producing the goods or providing the services:
- (e) The into-store cost of the goods including freight:
- 40 (f) The quality of the goods or services:
- (g) The benefit of any guarantee or warranty provided with any goods or services:
- (h) Such other factors as the Court considers relevant.

56. Profiteering in specified goods or services—(1) This section shall apply in relation to—

(a) The prices of live animals:

(b) The prices of any class of goods or services or any description of goods or services which are for the time being specified by the Minister by notice in the *Gazette* as a class or description of goods or services to which this section shall apply. 5

(2) Every person commits an offence against this Act who, whether as principal or agent, and whether by himself or his agent, sells or agrees or offers to sell any goods or services to which this section applies at a price which is unreasonably high. 10

(3) For the purposes of this section the price of any goods or services shall be deemed to be unreasonably high if it produces, or is calculated to produce, more than a fair and reasonable rate of commercial profit to the person selling, or agreeing or offering to sell, those goods, or to his principal. 15

(4) In determining in the course of any proceedings for an offence against this section, whether or not the price of any goods is or was unreasonably high, no account shall be taken of: 20

(a) The cost to the seller or, as the case may be, to his principal, which has been or which would be involved in replacing those goods for the purpose of his business; or 25

(b) The into-store cost or the landed cost of any other goods; or

(c) The selling price of any other goods or services sold by the seller or his principal. 30

(5) Subject to the foregoing provisions of this section, the Court, in any proceedings for an offence against this section, shall determine as a matter of fact and not of law whether or not any price is or was unreasonably high.

57. Profiteering in multiple wholesaling—(1) Every wholesaler commits an offence against this Act who sells any goods that have been purchased by him from a wholesaler (including a wholesaler who imported the goods) to another wholesaler or to a retailer at a price which includes a mark-up or margin applied by him which is unreasonably high. 35
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(2) For the purpose of determining whether a mark-up or margin applied by such a wholesaler is unreasonably high, for the purposes of subsection (1) of this section, the Court shall have such regard as it thinks fit to:

- 5 (a) The aggregate margins or mark-ups applied by all the wholesalers who have sold the goods in question, as between the landed cost or the into-store cost or the manufacturer's selling price, as the case may be, of the goods, and the selling price of the goods to the retailer, and—
 - 10 (i) The proportion of that aggregate applied by the defendant wholesaler; and
 - 15 (ii) That aggregate as compared with the aggregate margin hitherto being applied in respect of goods of that kind sold by one or more wholesalers under similar marketing conditions; or the aggregate margin prevailing in respect of goods of the same kind sold under comparable conditions by one or more wholesalers:
 - 20 (b) The number of such other wholesalers of the type described in subsection (1) of this section who have marketed the goods between the point of landing or manufacture and their sale to the retail trade:
 - 25 (c) The effort or exertion expended or function performed by the wholesaler in respect of the transaction in relation to the effort or exertion expended or function performed by any other wholesaler of the goods in question:
 - 30 (d) The cost of freight incurred by the wholesaler:
 - (e) Whether the goods are taken into store by the wholesaler:
 - (f) Any other matter the Court thinks relevant.
- (3) Nothing in this Act shall prevent the conviction of more than one defendant wholesaler of the type described in subsection (1) of this section, notwithstanding the fact that each such wholesaler had sold the same goods in different transactions.
- (4) Nothing in this Act or in regulations made under this Act, or in any other Act shall prevent the conviction of any person under this section, notwithstanding the fact that the margin or mark-up applied by that person was not unlawful under those regulations or under that other Act, except where a specific price for the sale of the goods to retailers has been

fixed or approved or a specific margin or aggregate margin, for application to the landed cost or into-store cost or manufacturer's selling price of the goods in calculating that price to retailers, has been fixed or approved, and that price or margin has not been exceeded in the transaction or transactions in question. 5

(5) For the purposes of subsection (1) of this section, a manufacturer shall not be treated as a wholesaler unless he performs the function of a wholesaler.

58. Penalties—(1) Every person who commits an offence 10 against section 32, section 51, section 52, section 54, section 56, or section 57 of this Act is liable—

(a) In the case of an individual, to a fine not less than \$100 but not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both such 15 fine and such imprisonment, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued:

(b) In the case of a body corporate, to a fine not less 20 than \$200 but not exceeding \$50,000, and, if the offence is a continuing one, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence has continued.

(2) Every person who commits an offence against section 27, section 28, section 48, or section 49 of this Act is liable— 25

(a) In the case of an individual, to a fine not exceeding \$5,000, and, if the offence is a continuing one, to a further fine not exceeding \$250 for every 30 day or part of a day during which the offence has continued:

(b) In the case of a body corporate, to a fine not exceeding \$25,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for 35 every day or part of a day during which the offence has continued.

(3) Every person who commits an offence against any of the foregoing provisions of this Part of this Act for which no penalty is provided by subsection (1) or subsection (2) of this section is liable— 40

- 5 (a) In the case of an individual, to a fine not exceeding \$1,000, and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued:
- 10 (b) In the case of a body corporate, to a fine not exceeding \$5,000, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued.
- Cf. 1947, No. 51, s. 26; 1948, No. 77, s. 5 (a)

15 **59. Forfeiture of goods**—(1) If on the conviction of any person for an offence against section 51 or section 52 of this Act the goods or any of the goods in respect of which the proceedings were taken are found to be the property of the convicted person, the convicting Court, in addition to imposing any other penalty, may make an order for the forfeiture of those goods or of any of them to the Crown.

20 (2) All goods forfeited under this section shall, on forfeiture become the property of the Crown, and may be sold or otherwise disposed of as the Minister may direct.

25 (3) The net proceeds derived from the sale or other disposition of any such goods (after defraying the cost of sale or other disposition and any claims in respect thereof made and proved by innocent persons) shall be paid into the Consolidated Revenue Account.

Cf. 1947, No. 51, s. 27

30 **60. Excess price may be forfeited and refunded to purchaser**—(1) On the conviction of any person of an offence against section 54, section 56, or section 57 of this Act the convicting Court, on application by the Examiner, may, in addition to imposing any monetary or other penalty, make an order for payment by the defendant of an amount which, in the opinion of the Court, is equivalent to the excess paid by the buyer to the defendant.

35 (2) All money payable pursuant to an order made under this section shall be recoverable, in accordance with the Summary Proceedings Act 1957, in the same manner as fines and costs are recoverable.

(3) Where an order is made under subsection (1) of this section, the convicting Court, if having regard to all the circumstances of the case it deems it just and equitable to do so, may make an order authorising the payment to any person by whom the whole or any part of the excess was paid to the defendant of such amount as the Court thinks fit, not exceeding the amount of the excess so paid by that other person. 5

(4) An order made under subsection (3) of this section shall be sufficient authority to the Registrar of the Court to pay the amount so authorised: 10

Provided that in no case shall the total amount so paid exceed the amount recovered from the defendant under this section.

(5) Where the Court on the conviction of any person of an offence against section 114 of this Act (which relates to the commission of an act in respect of which proceedings are also instituted under section 54, section 56, or section 57 of this Act) makes an order against the defendant under section 117 of this Act, this section shall not apply. 20

Cf. 1947, No. 51, s. 34

PART III

MONOPOLIES, MERGERS, AND TAKEOVERS

Monopolies

61. Inquiries into monopolies—(1) The Minister may from time to time require the Commission to conduct an inquiry and report to him— 25

(a) Whether there exists in New Zealand or in any part of New Zealand—

(i) Any complete or partial monopoly or any oligopoly of the supply of any goods or services or of any particular description of goods or services or of both goods and services; or 30

(ii) Any circumstances that are tending or may tend to bring about any such complete or partial monopoly or oligopoly; and 35

(b) Whether, in terms of section 73 of this Act, any such complete or partial monopoly or oligopoly or any such circumstances found by the Commission to exist, is or is likely to be contrary to the public interest. 40

(2) Before making a requisition under subsection (1) of this section, the Minister shall give to the person or persons, who, in the Minister's opinion, have a direct interest in the subject-matter of the proposed inquiry, a written notice
 5 setting out the proposed terms of the requisition and specifying a date (which shall not be less than 28 days after the date on which the notice is given) on or before which that person or those persons may make written representations to the Minister with respect to the proposed
 10 requisition.

(3) In any inquiry held by the Commission pursuant to a requisition under subsection (1) of this section, no reference shall be made to the notice given by the Minister under subsection (2) of this section or to the nature and content of
 15 any representations made pursuant to subsection (2) of this section or to any consultations that may have been held with the Minister by the person or persons to whom the notice was given.

(4) The Minister shall furnish a copy of every requisition
 20 made under subsection (1) of this section to the Examiner who shall then investigate all relevant aspects of the matter to be inquired into and report his findings to the Commission with or without recommendations.

(5) Before beginning any inquiry under this section the
 25 Commission shall give to every person who, in its opinion, has a substantial interest in the subject-matter of the inquiry, a copy of the report made by the Examiner under subsection (4) of this section and shall specify a time within
 30 which the person to whom the copy is given shall supply to the Commission a written reply commenting on, agreeing with, or disputing, any of the contents, findings, or recommendations of the report.

(6) Without limiting section 14 of this Act, it is hereby declared that at any hearing held by the Commission in the
 35 course of an inquiry under this section, the Examiner and every person who, in the opinion of the Commission, has a substantial interest in the subject-matter of the inquiry shall be entitled to appear, to be represented, to call evidence, and to examine and cross-examine witnesses.

(7) The Commission shall complete its inquiry and deliver
 40 a report of its findings to the Minister within such time as he may specify.

(8) In the course of any inquiry under this section the Commission shall have such regard as it thinks fit to any report of the Examiner, to any representations made to it by any person including the Examiner, and to any other matters it considers relevant.

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(9) The Commission may in its report to the Minister make such recommendations as it thinks fit.

(10) The Examiner may at any time, whether in the course of an investigation under section 38 of this Act or not, and without being obliged to comply with sections 39 and 40 of this Act recommend to the Minister that he exercise his power under subsection (1) of this section to require the Commission to conduct an inquiry.

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62. Action on Commission's report—(1) Where the Commission, in any report delivered to the Minister pursuant to section 61 (7) of this Act, states that—

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(a) There exists in New Zealand or in any part of New Zealand any complete or partial monopoly or oligopoly or circumstances of the kind described in subsection (1) (a) of that section; and

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(b) The existence of that complete or partial monopoly or oligopoly or those circumstances is or is likely to be contrary to the public interest—

the Minister may, in his discretion, for the purpose of giving effect to the recommendations of the Commission or of otherwise dealing with the complete or partial monopoly or oligopoly or circumstances, recommend to the Governor-General the making of an Order in Council under subsection (2) of this section.

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(2) The Minister shall not make any recommendation under subsection (1) of this section until the time for lodging appeals against the Commission's report has expired or, in the case of an appeal, until the Commission's revised or confirmed report is delivered to him.

30

(3) The Governor-General may from time to time by Order in Council, made on the recommendation of the Minister under subsection (1) of this section and published in the *Gazette*,—

35

- 5 (a) Require any person to dispose of his business or any part of it, or to restrict or limit the area within which he carries on business or any specified business or to restrict or limit the extent to which he carries on business or any specified business:
- 10 (b) Require any person to terminate or cease to be a party to any agreement, arrangement, or undertaking, or to refrain from applying any business practice or method of trading, either wholly or to such extent or in such manner as may be specified in the Order in Council:
- 15 (c) Declare any such complete or partial monopoly or oligopoly or circumstances to be unlawful, and require any person who, in the opinion of the Governor-General in Council, is concerned in the existence of the complete or partial monopoly or oligopoly or circumstances, to take such action, including steps for the dissolution of any body corporate or unincorporate or the severance of any connection or of any form of association between 2 or more persons, including any such bodies, as the Governor-General in Council considers necessary.
- 20 (4) Any Order in Council made pursuant to subsection (3) of this section may—
- 25 (a) Apply to all persons or to all persons belonging to any class or group of persons or to one or more specified persons:
- 30 (b) Prescribe such requirements as the Governor-General in Council may consider necessary to achieve the objects of that order, and specify the persons by whom the terms of such order or any such requirement shall be complied with, and the times within which, and the conditions subject to which those terms or that requirement shall be complied with
- 35 (5) Before making a recommendation under subsection (1) of this section, the Minister shall inform the person or persons to whom the Minister intends the recommendation to apply of his intentions and shall give that person or those persons an
- 40 opportunity to put forward, within a period not exceeding 1 month, any voluntary proposals he or they may have for remedying or substantially remedying the situation that gave rise to the Commission's recommendations.

63. Minister may take other action—(1) In any case where the Minister is authorised under section 62 (1) of this Act to recommend the making of an Order in Council, he may decline to recommend the making of an Order in Council but may instead, in his discretion, after considering any voluntary proposals put forward under section 62 (5) of this Act, accept all or any of such proposals. 5

(2) Where the Minister accepts any proposals pursuant to subsection (1) of this section, he shall, by notice in the *Gazette*, publish details of those proposals and of his acceptance of them and may, in addition, take all or any of the steps set out in paragraphs (a) to (c) of subsection (3) of this section. 10

(3) In any case where the Minister is authorised under section 62 (1) of this Act to recommend the making of an Order in Council, the Minister, in addition to or instead of making a recommendation under that subsection, may— 15

(a) Where any goods or services to which the inquiry relates are not for the time being subject to price control in accordance with section 82 of this Act, exercise his power under subsection (1) of that section, in order to subject any such goods or services to price control: 20

(b) For the purpose mentioned in section 62 (1) of this Act, exercise any of the powers in respect of the control of imports conferred on him by any Order in Council made under section 16B of the Trade and Industry Act 1956: 25

(c) By notice in the *Gazette*, with the concurrence of the Minister of Customs, remit the duty payable on any goods imported into New Zealand or reduce the amount or rate of the duty on any such goods, and every notice under this paragraph shall have the effect of an order under section 179 (2) of the Customs Act 1966 and may be revoked or varied accordingly. 30 35

(4) Nothing in subsection (3) of this section shall limit the exercise of any power conferred on the Minister or the Governor-General in Council by any other Act or by any other provision of this Act. 40

64. **Offences**—(1) Every person commits an offence who contravenes or fails to comply with any Order in Council made under section 62 of this Act or who fails to carry out any proposals made by him and notified by the Minister under section 63 (2) of this Act, and is liable on conviction on indictment—

(a) In the case of an individual to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months:

10 (b) In the case of a company or other corporation to a fine not exceeding \$100,000.

(2) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of any offence against this section the Court may 15 sentence him to pay a fine not exceeding \$20,000 whether or not, in the case of an individual, the person is sentenced to a term of imprisonment as well.

(3) No prosecution for an offence against this section shall be commenced except with the leave of the Minister.

20

Mergers and Takeovers

65. **Interpretation in relation to mergers or takeovers**—

(1) In this section and in sections 70, 71, and 73 of this Act, unless the context otherwise requires,—

25 “Business” includes any undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge:

“Enterprise” means the activities or any part of the activities of a business:

30 “Merger or takeover” means a transaction or other action which results in any two or more enterprises ceasing to be distinct:

35 “Relative” means a parent, grandparent, stepfather, stepmother, brother, sister, half-brother, half-sister, son, daughter, grandson, granddaughter, stepson, or stepdaughter.

(2) For the purposes of the definition of the expression “merger or takeover” in subsection (1) of this section, two or more enterprises are to be treated as ceasing to be distinct 40 if at any time—

- (a) They are brought by any means whatsoever under common ownership or common control (whether or not any business to which either of them formerly belonged continues to be carried on under the same or different ownership or control); or 5
- (b) If either enterprise ceases to be carried on at all and does so under or in consequence of any arrangements or transactions entered into to prevent or restrict competition between the enterprises.
- (3) For the purposes of subsection (2) of this section the following enterprises shall be treated as carried on under common control (without prejudice to the generality of that expression) that is to say— 10
- (a) The enterprises of interconnected bodies corporate:
- (b) The enterprises carried on by any 2 or more bodies corporate of which the same person or group of persons has control: 15
- (c) Any enterprise carried on by a body corporate and any enterprise carried on by a person or group of persons having control of that body corporate. 20
- (4) For the purposes of subsection (3) of this section, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 158 of the Companies Act 1955) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and for the purposes of that subsection “interconnected bodies corporate” shall be construed accordingly. 25
- (5) For the purposes of subsection (2) and subsection (6) of this section, a person or group of persons able, directly or indirectly, to control the policy of a body corporate, or the policy of any person in carrying on an enterprise, shall, without having a controlling interest in the body corporate or enterprise, be deemed to have control of it, whether or not that control results from— 35
- (a) The ownership of any of the assets employed in the activities of the body corporate or enterprise; or
- (b) The right to appoint directors of the body corporate or the holding of directorships in the body corporate; or 40
- (c) Rights conferred on the person or group in its capacity as a lender of money to the body corporate or enterprise; or
- (d) Any other cause.

(6) Notwithstanding the provisions of subsection (5) of this section, enterprises shall be treated as ceasing to be distinct enterprises where a person or group of persons already able to control the policy of a body corporate or of a person carrying on an enterprise acquires a controlling interest in that body corporate or enterprise.

(7) For the purpose of determining under this section whether any two or more enterprises have been brought under common ownership or common control, associated persons and any bodies corporate or other enterprises which they or any of them control shall be treated as one person. The following persons shall be regarded as associated with one another—

- (a) Any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of the individual's husband or wife:
- (b) Any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor:
- (c) Persons carrying on business in partnership and the husband or wife and relatives of any of them:
- (d) Any 2 or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprises or assets.

(8) For the purposes of this section, a person appointed as the receiver or manager of the property of a body corporate or as the liquidator of a body corporate is not, by reason of his appointment, a person having control of that body corporate.

66. Interpretation in relation to aggregation proposals requiring notification if within classes in Third Schedule—

(1) In this section, in sections 67, 68, 69, 72, 73, 76, 77, and 79, and in the Third Schedule to this Act, unless the context otherwise requires,—

“Aggregation proposal” means—

- (a) A proposal involving the making of an offer or offers relating to the acquisition or disposition of any shares in a company which, together with shares, if any, to which the offeror is already beneficially entitled or in which the offeror already has a beneficial interest, carry the right to exercise or control the exercise—

- (i) In the case of a private company, of 51 per-
cent or more of the voting power at any
general meeting of the offeree company;
or
- (ii) In the case of any other company, of 25 per- 5
cent or more of the voting power at any
general meeting of the offeree company;
or
- (b) A proposal involving the making of an offer or 10
offers for the acquisition of any share in the capital
of the business of any person or body of persons
(other than a company) which together with any
share in the capital of the business, gives the offeror
51 percent or more of the capital of the business; or
- (c) A proposal involving the making of an offer or 15
offers for the acquisition of a share in a section of the
business, being a share which together with the
amount of any equity interest already held in that
section amounts to 51 percent or more of the value
of the net assets used in carrying on that section of 20
the business; or
- (d) A proposal which if effected would result in
the establishment of a new business to acquire by
any of the means set out in paragraphs (a), (b),
and (c) of this subsection a controlling interest in 25
two or more independently owned businesses or in
any two or more sections of businesses capable in
themselves of being operated as businesses:
- “Business” means any undertaking which is carried on
for gain or reward or which is an undertaking in 30
the course of which goods or services are sold or
supplied otherwise than free of charge:
- “Company” has the same meaning as in the Companies
Act 1955; and includes an overseas company within
the meaning of that Act: 35
- “Nominee”, in relation to any person, means any other
person who may be required to exercise his voting
power in relation to any company in accordance with
the direction of the first-mentioned person, or who
holds shares directly or indirectly on behalf of that 40
person:
- “Offer” includes any proposal to make an offer or an
invitation to make an offer whether in writing or not:

- “Offeree”, in relation to an aggregation proposal, means a holder of shares that are sought to be acquired under the proposal:
- 5 “Offeree company” means a company whose shares, or any of them, are sought to be acquired under an aggregation proposal:
- 10 “Offeror” means a person who makes an aggregation proposal, whether in concert or jointly with any other person or not, and whether by himself or his agent:
- “Participant”, in relation to an aggregation proposal, means—
- 15 (a) Where the proposal is of the kind described in paragraph (a) of the definition of that term, the offeror and the offeree company;
- (b) Where the proposal is of the kind described in paragraph (b) of the definition of that term, the offeror and the business in which the share is sought:
- 20 (c) Where the proposal is of the kind described in paragraph (c) of the definition of that term, the offeror and the section of the business which is sought to be acquired:
- (d) Where the proposal is of a kind described in paragraph (d) of the definition of that term, each
- 25 business, or section of the business involved in the proposal:
- “Private company” has the same meaning as in the Companies Act 1955:
- 30 “Section of a business” means a section of a business which is capable in itself of being operated independently as a business:
- “Share”, in relation to a company, includes stock, any beneficial interest in any share, and any perpetual debenture or perpetual debenture stock.
- 35 (2) The reference in paragraph (a) of the definition of the term “aggregation proposal” in subsection (1) of this section to shares to which the offeror is beneficially entitled shall be read as including a reference to:
- 40 (a) Shares held by any person or body corporate as trustee for or nominee or agent of the offeror; and
- (b) Shares in or over which the offeror has any right, title, interest, or control or in respect of which he has any control over the vote; and

- (c) Shares which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and
- (d) If the offeror is a company within the meaning of section 158 of the Companies Act 1955, shares to which any interconnected body corporate (as defined for the purposes of section 65 (2) of this Act) is already beneficially entitled, or to which any such interconnected body corporate is or will be entitled to acquire in any such manner as aforesaid.

(3) For the purposes of paragraph (c) of the definition of the term aggregation proposal in subsection (1) of this section, the value of the net assets of any participant involved in any aggregation proposal shall be determined by reference to the value at which, on the giving of notice under section 67 (1) of this Act in respect of the aggregation proposal, the assets (less any related liabilities) are shown in the books of the relevant businesses, less any relevant provisions for depreciation:

Provided that, where any assets (including goodwill) or liabilities are shown as having a different value in any valuation or assessment made for the purposes of the aggregation proposal, the value of those assets or liabilities shall be determined by that different value and not by the value at which those assets or liabilities are shown in the books of the business.

(4) For the purposes of the Third Schedule to this Act, where any activity specified in the first column of Class A of that Schedule is carried on by one or more of a number of interconnected bodies corporate (as defined for the purposes of section 65 (2) of this Act) that activity shall be deemed to be carried on by all of those interconnected bodies corporate.

67. Certain aggregation proposals to be notified—(1) Written notice of every aggregation proposal coming within any of the classes described in the Third Schedule to this Act shall be given in the prescribed form to the Examiner by or on behalf of a person who is or has control of one or more of the participants involved. Such notice shall be given not later than the time when the aggregation proposal has the provisional acceptance of the parties to it or otherwise appears likely to be completed unless prohibited under section 76 of this Act.

(2) Nothing in the Third Schedule to this Act shall require the notification under subsection (1) of this section of any aggregation proposal if—

- 5 (a) The participants involved in the proposal are principally engaged in the provision of personal and professional services of such nature that trade practices affecting fees for those services are, by virtue of section 27 (3) (a) of this Act, outside the application of section 27 (1) of this Act; or
- 10 (b) One of the participants involved in the proposal (being a transaction involving not more than 2 participants in respect of which consent has been obtained under any provision of the Overseas Investment Act 1973 or of any regulations made under that Act) is
- 15 carried on by any person (within the meaning of that Act) who is declared by or on behalf of the Minister of Finance to be an overseas person who has no other significant business interest in New Zealand; or
- 20 (c) None of the participants involved carry on business in New Zealand, or are under the control of a body corporate incorporated in New Zealand.

(3) The Governor-General on the recommendation of the Minister, may from time to time, by Order in Council published in the *Gazette*, amend the Third Schedule to this Act by:

- (a) Adding or omitting from Class A of that Schedule any specified industry, trade, or class of business:
- 30 (b) Varying in respect of any industry, trade, or class of business specified in Class A of that Schedule, or in respect of all aggregation proposals covered by Class B of that Schedule or any specified class of them, the specified minimum value of the assets of all participants, or the specified minimum value of the
- 35 assets of the smaller participant, involved in any aggregation proposal, being a value which must be equalled or exceeded before that aggregation proposal is one to which subsection (1) of this section applies.
- 40 (4) Where, in respect of any class or kind of aggregation proposal specified in the Third Schedule to this Act, notification is required under this section in those cases where the aggregate value of the assets of all the participants involved or the value of the assets of any one participant involved

equals or exceeds sums specified in that Schedule, the Minister may in his discretion, of his own motion or on the application of any groups or persons who have, in the opinion of the Minister, an interest in the matter, require the Commission to hold an inquiry into, and report to him on, the desirability of altering, under subsection (3) of this section, all or any of those values or sums specified by him. 5

(5) The value of the assets of any participant in the aggregation proposal shall, for the purposes of this section and the Third Schedule to this Act, be determined by reference to the value at which, on the giving of notice under subsection (1) of this Act in respect of the aggregation proposal, the assets stand in the books of the participants, less any relevant provisions for depreciation: 10

Provided that where any assets (including goodwill) are shown as having a higher value in any valuation or assessment made for the purposes of the aggregation proposal the value of those assets shall be determined by that higher value and not by the value at which those assets stand in the books of the participant. 15 20

(6) For the purposes of the Third Schedule to this Act, the assets involved in any aggregation proposal shall include—

(a) Where any participant in the aggregation proposal is a body corporate that is interconnected (as defined in section 65 (4) of this Act) with other bodies corporate and the existing relationship between those interconnected bodies corporate will not be disturbed by the aggregation proposal, the assets of all of those bodies corporate: 25

(b) Where an existing business has a controlling interest in any new business formed as mentioned in paragraph (d) of the definition of the term aggregation proposal in section 66 (1) of this Act,— 30

(i) The assets of the businesses or sections of businesses in which a controlling interest is being acquired; and 35

(ii) The assets of the new business, not including those set out in subparagraph (i) of this paragraph, but including the assets of the business having a controlling interest in the new business, including, where that business is to be carried on by a company which is one of a number of interconnected bodies corporate (as defined in section 65 (4) of this Act), the assets of all of those bodies corporate. 40

68. Action on notification of aggregation proposal—(1) The Examiner shall forward to the Minister every notice given under section 67 (1) of this Act together with a provisional report indicating whether in the view of the Examiner
5 the aggregation proposal would, if implemented, be contrary to the public interest.

(2) Subject to subsections (3) to (5) of this section, the Minister may in his discretion, within 35 days after the date on which the notice of the aggregation proposal is given to
10 the Examiner, consent to the aggregation proposal unless that proposal is one to which subsection (3) of this section applies.

(3) Where the aggregation proposal is one that requires consent under any provision of the Overseas Investment Act 1973 or of any regulations made under that Act, the Minister
15 may in his discretion, on or within 21 days after the day on which the Minister of Finance completes with him the consultation required by section 15A of that Act, and with the concurrence of the Minister of Finance, consent to the proposal.

(4) If, during the period specified in subsection (2) of this section, or if, in the case of a proposal to which subsection (3) of this section applies, during the period specified in subsection (3) of this section, the Minister forms the provisional
20 view that the aggregation proposal may be against the public interest he shall not consent to the proposal but may, by notice in the *Gazette*, require the Commission to conduct an inquiry into the proposal for the purpose of determining
25 whether in its view it is contrary to the public interest in terms of section 73 of this Act.

(5) Before publishing a notice under subsection (4) of this section, the Minister shall give to the person who gave the notice under section 67 (1) of this Act and to such other
30 persons who, in the Minister's opinion, have a direct interest in the subject-matter of the proposed inquiry, a written notice setting out the terms of the proposed notice and specifying a
35 date on or before which that person or those persons may make written representations to the Minister with respect to the proposed notice.

(6) For the purpose of giving any person an adequate
40 opportunity to make written representations to the Minister, or, to enable the Minister to give consideration to any written representations made under subsection (5) of this section, the Minister may, by notice in writing to the person or persons

notified under subsection (5) of this section, extend the period applicable pursuant to subsection (4) of this section, and any such period as so extended shall be deemed, for the purpose of this Part of this Act, to be the period applicable pursuant to subsection (4) of this section.

5

(7) In any inquiry held by the Commission pursuant to a notice under subsection (4) of this section, no reference shall be made to the notice given by the Minister under subsection (5) of this section or to the nature and content of any representations made pursuant to subsection (5) of this section or to any consultations that may have been held with the Minister by the person or persons to whom the notice was given.

10

(8) Where the Minister requires an inquiry to be held, the Examiner shall conduct an investigation into the aggregation proposal and report his findings to the Commission with or without recommendations.

15

(9) It shall not be lawful for the aggregation proposal to be implemented while any application for consent to the proposal is pending under the Overseas Investment Act 1973 or any regulations made under that Act, or, unless the Minister consents to the aggregation proposal, during the period applicable pursuant to subsection (4) of this section.

20

(10) If the Minister consents to the aggregation proposal it shall be lawful for the proposal to be implemented within the 12 months following the date of publication of the notice giving that consent.

25

(11) Where the period applicable pursuant to subsection (4) of this section expires without the Minister having published a notice under that subsection in respect of the aggregation proposal, it shall be lawful for the proposal to be implemented within the 12 months following the expiration of that period unless the implementation of the proposal is unlawful under subsection (9) or subsection (12) of this section.

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(12) Nothing in this section shall limit the powers of the Minister of Finance, under the Overseas Investment Act 1973 or any regulations made under that Act, to refuse his consent to any aggregation proposal and if that Minister, acting under that Act or those regulations, refuses his consent to any aggregation proposal that proposal shall be deemed to have been prohibited by the Minister of Trade and Industry under section 76 of this Act.

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69. Inquiry by Commission into aggregation proposal—

(1) Where the Commission is required by a notice published pursuant to section 68 (4) of this Act, to conduct an inquiry into any aggregation proposal—

5 (a) The Commission shall report its findings and such recommendations as it thinks fit to the Minister within 2 months of the date of the publication of the notice, or within such further time, not exceeding 2 months, as the Minister may allow and, where
10 as a result of an appeal the Appeal Authority refers the Commission's report back for further consideration, the Commission shall as soon as practicable resubmit its report to the Minister, with or without alterations; and

15 (b) It shall not be lawful for the aggregation proposal to be implemented while the inquiry or any appeal under section 74 of this Act is being conducted or, unless the Minister consents to the aggregation proposal, within 2 months after the date on which the
20 Commission's report, or confirmed or revised report, as the case may require, is presented to the Minister.

(2) Before beginning the inquiry the Commission shall give to the persons who in its opinion are directly involved in the proposal a copy of the report made by the Examiner under
25 section 68 (8) of this Act and shall specify a time within which those persons shall supply to the Commission and the Examiner a written reply commenting on, agreeing with, or disputing, any of the contents, findings, or recommendations of the report.

30 (3) In the course of any such inquiry the Commission shall have such regard as it thinks fit to any report of the Examiner, to any representations made to it by any person including the Examiner, and to any other matters it considers relevant.

35 (4) The Commission shall, whenever it furnishes an initial, confirmed, or revised report to the Minister, send copies of that report to the persons directly involved in the proposed transaction and to the Examiner.

70. Inquiry into merger or takeover—(1) Where it appears to the Minister that a merger or takeover (other than one
40 that is a consequence of an aggregation proposal required to be notified under section 67 (1) of this Act) has or may have

taken place, or that arrangements are or may be in progress or in contemplation which, if carried into effect, will result in such a merger or takeover taking place, he may, if:

(a) One or more of the enterprises involved is carried on in New Zealand or by or under the control of a body corporate incorporated in New Zealand; and 5

(b) He considers that the merger or takeover may be or is likely to be contrary to the public interest,—

by notice in the *Gazette*, require the Commission to conduct an inquiry into the merger or takeover, and report on it to the Minister. 10

(2) In every such report the Commission shall state—

(a) Whether a merger or takeover has taken place or, as the case may be, whether arrangements are in progress or in contemplation which will, if carried into effect, result in a merger or takeover; and 15

(b) If so, whether, in the Commission's view, the merger or takeover is contrary to the public interest in terms of section 73 of this Act.

(3) Before publishing a notice under subsection (1) of this section, the Minister shall give to the person or persons who, in the Minister's opinion, have a direct interest in the subject-matter of the proposed inquiry, a written notice setting out the terms of the proposed notice and specifying a date on or before which that person or those persons may make written representations to the Minister with respect to the proposed notice. 25

(4) In any inquiry held by the Commission pursuant to a notice under subsection (1) of this section, no reference shall be made to the notice given by the Minister under subsection (3) of this section or to the nature and content of any representations made pursuant to subsection (3) of this section or to any consultations that may have been held with the Minister by the person or persons to whom the notice was given. 30 35

(5) The power conferred on the Minister by subsection (1) of this section shall not be exercised—

(a) In respect of any merger or takeover if more than 24 months have elapsed since the merger or takeover took place; or 40

- (b) Without the concurrence of the Minister of Finance, in respect of any merger or takeover which, by reason of the provisions of section 67 (3) (b) of this Act, is not required to be notified under section 67 (1) of this Act.
- 5 (6) The provisions of sections 68 (8) and 69 of this Act shall apply with all necessary modifications to any notice given by the Minister under subsection (1) of this section and to any inquiry by the Commission as a result of any such notice.
- 10 (7) Where the Commission finds that a merger or takeover has taken place and that the merger or takeover is or is likely to be contrary to the public interest, the Minister may, irrespective of whether the merger or takeover has resulted in or is likely to result in any monopoly or partial monopoly or
- 15 oligopoly or any circumstances of the kind described in section 61 (1) (a) of this Act,—
- (a) Recommend (subject to compliance with section 62 (5) of this Act) the making of an Order in Council under section 62 (3) of this Act; or
- 20 (b) Take any other step mentioned in section 63 of this Act,—
- as he may consider necessary for the purpose of remedying or preventing the effects of the merger or takeover which are or are likely to be contrary to the public interest.
- 25 (8) Where the Commission finds that arrangements are in progress or in contemplation which, if carried into effect, would result in a merger or takeover, the Minister may exercise in respect of those arrangements any of the powers conferred on him by section 76 of this Act, and the provisions
- 30 of that section and of sections 78 and 79 of this Act shall apply accordingly, with all necessary modifications, as if those arrangements were a proposal notified under section 67 (1) of this Act.

71. Minister may give prior clearance to merger or takeover—

35 (1) Where any arrangements are in contemplation which, if carried into effect, will result in a merger or takeover (other than one that will be a consequence of an aggregation proposal required to be notified under section 67 (1) of this Act) and all the persons who have control of the enterprises

40 involved consent in writing to the proposed merger or takeover,

any person acting on behalf of those persons may make written application to the Minister for his clearance of the proposed merger or takeover.

(2) Every application under subsection (1) of this section shall contain a statement of all the relevant particulars relating to the proposed merger or takeover and the applicant shall provide such other information as the Minister requires. 5

(3) The Minister may in his discretion—

(a) Give his written clearance to the proposed merger or takeover, in such terms and subject to such conditions as he thinks fit, to the applicant; or 10

(b) Refer the proposed merger or takeover to the Commission for inquiry and report.

(4) Where the Minister refers a proposed merger or takeover to the Commission under subsection (3) (b) of this section, all the provisions of section 70 of this Act shall apply accordingly with such modifications as are necessary. 15

(5) Where the Minister gives any such clearance in respect of a proposed merger or takeover, he shall not subsequently take any action under section 70 of this Act in respect of that merger or takeover, unless the merger or takeover or the arrangements in progress to effect the merger or takeover do not comply with the terms and conditions of the clearance. 20

72. Minister may require certain inquiries into aggregation proposals to be held in private—If the Minister is of the opinion that the business or any activities or arrangements in the course of the business carried on by any person would be seriously prejudiced in a material respect if the Commission were to sit in public with respect to an aggregation proposal, he may in the notice signed by him under section 68 (2) of this Act require the Commission to hold its inquiry into that proposal, or any part of it, in private and may, at the request of an interested party, direct that the notice be not published in the *Gazette*. 30

Public Interest

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73. Public interest—In determining for the purposes of this Part of this Act whether the existence of any complete or partial monopoly or of any oligopoly or of any circumstances that are tending to bring about any complete or partial monopoly or oligopoly or whether any aggregation proposal or any merger or takeover is or is likely to be contrary 40

to the public interest regard shall be had not only to the provisions of section 21 of this Act but also to any economic or other effects which any such monopoly, oligopoly, circumstances, aggregation proposal, merger, or takeover has or is
5 likely to have on the well-being of the people of New Zealand and which would not take place in the absence of the monopoly, oligopoly, circumstances, aggregation proposal, merger, or takeover.

Appeals

10 **74. Appeals**—(1) Any of the parties to any inquiry held pursuant to section 61 of this Act or to a notice under section 68 (4) or section 70 of this Act (including the
15 Examiner) may exercise a right of appeal under this section if he is dissatisfied with the report or with any decision made by the Commission in the course of the inquiry on the ground
20 that the report or the decision is erroneous in point of law.

(2) Notice of any appeal under this section shall be given to the Commission, to the Minister, and to all parties to the inquiry within 21 days after a copy of the report has been
25 given to the appellant.

(3) The Minister, on receipt of the notice of appeal, shall appoint a person as an Appeal Authority who shall be a barrister or solicitor of the Supreme Court of not less than
25 7 years' practice, whether or not he holds or has held judicial office.

(4) The person appointed as Appeal Authority may hold that office concurrently with any other office held by him.

(5) There shall be payable to the Appeal Authority out of the Consolidated Revenue Account such remuneration
30 by way of fees, salary, and allowances as is fixed from time to time by the Minister of Finance:

Provided that nothing in this subsection shall apply with respect to any person appointed as Appeal Authority who for the time being receives out of public money a salary in
35 respect of any office that he holds concurrently with his office as Appeal Authority.

(6) Before entering upon the duties of his office, the person appointed as Appeal Authority (not being a person who has already taken the judicial oath in respect of any
40 other judicial office for the time being held by him) shall take and subscribe an oath before a Judge of the Supreme Court that he will faithfully and impartially perform the duties of his office.

(7) The functions of the Appeal Authority shall be to sit as a judicial authority to determine appeals under this section.

(8) The Appeal Authority shall determine its own procedure.

5

75. Hearing of appeals—(1) The Appeal Authority shall as soon as practicable hear the appeal and may—

(a) Confirm the report; or

(b) Refer the report to the Commission for further consideration in respect of such matters as may be indicated by the Appeal Authority. 10

(2) In making any reference under subsection (1) (b) of this section, the Appeal Authority shall—

(a) Advise the Commission and the parties to the inquiry (including the Examiner) of its reasons for so doing; and 15

(b) Give to the Commission such directions as it thinks just for the rehearing or reconsideration or otherwise of the whole or any part of the matters mentioned by the Appeal Authority. 20

(3) In giving further consideration to any matters on a reference under subsection (1) (b) of this section, the Commission shall have regard to the Appeal Authority's reasons for making the reference and to the Appeal Authority's directions under subsection (2) (b) of this section. 25

(4) There shall be no appeal from any determination of the Commission made after further consideration pursuant to a reference under subsection (1) (b) of this section.

(5) Every appeal shall be in the form of a case agreed upon by the Commission and the appellant, or, if they cannot agree, the Appeal Authority may hear the appeal without an agreed case. 30

(6) The Commission and every party to the inquiry (including the Examiner) may be represented at the hearing of any appeal by its solicitor or counsel or agent. 35

(7) Every decision of the Appeal Authority shall be final and binding on the persons affected thereby.

(8) If the appellant does not prosecute his appeal with due diligence, the Appeal Authority may on the application of any person affected by the appeal (including the Examiner) dismiss the appeal, and thereupon the Commission's report shall be deemed to have been confirmed. 40

76. **Action following Commission's report**—(1) The Minister may, in his discretion, within 1 month of the expiration of the time for lodging appeals against the Commission's report or, in the case of an appeal, within 1 month after
 5 the revised or confirmed report is presented to him, by notice in the *Gazette*,—

(a) Consent to the aggregation proposal; or

(b) If the Commission determines that the aggregation proposal is contrary to or is likely to be contrary to the
 10 public interest in terms of section 73 of this Act, prohibit the proposal or permit it to proceed subject to compliance with such conditions as he shall specify in the notice.

(2) Before publishing any notice pursuant to subsection 15 (1) (b) of this section, the Minister shall invite the persons who are or have control of the participants involved in the proposal to confer with him for the purpose of reaching agreement on steps to be taken to remove his objections to the proposal.

20 (3) If, within the said period of 1 month, the Minister consents to the proposal, it shall be lawful for the aggregation proposal to be implemented within the 12 months following the date of publication of the notice giving that consent.

25 (4) If the said period of 1 month expires without the Minister having published a notice under subsection (1) of this section in respect of the aggregation proposal, it shall be lawful for the aggregation proposal to be implemented within the 12 months following the expiration of that period.

77. **Offences**—(1) Where any aggregation proposal is im-
 30 plemented, then, every person who is knowingly concerned in or privy to the aggregation proposal commits an offence against this Act if—

(a) The aggregation proposal is one to which section 67 (1) of this Act applies and the notice required by that
 35 section has not been given; or

(b) The aggregation proposal is one to which section 67 (1) of this Act applies and was not implemented at a time when it was lawful under section 68, section 69, or section 76 of this Act; or

40 (c) The proposed transaction has been prohibited under section 76 of this Act; or

(d) Any conditions prescribed by the Minister under section 76 of this Act in respect of the proposed transaction have not been observed.

(2) No prosecution for an offence against this section shall be commenced except with the leave of the Minister. 5

78. Penalty—(1) Every person who commits an offence against section 77 of this Act is liable on conviction on indictment—

(a) In the case of an individual, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months: 10

(b) In the case of a company or other corporation, to a fine not exceeding \$100,000.

(2) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of any offence against this section the Court may sentence him to pay a fine not exceeding \$20,000 whether or not, in the case of an individual, the person is sentenced to a term of imprisonment as well. 15

79. Powers of Minister—Where any aggregation proposal is implemented contrary to section 76 of this Act the Minister, without limiting the liability of any person to prosecution for an offence against this section,— 20

(a) May, if no inquiry has been conducted by the Commission into the aggregation proposal, require the Commission to conduct such an inquiry; and 25

(b) Where any inquiry into the aggregation proposal has been held pursuant to paragraph (a) of this section or pursuant to any other provision of this Part of this Act and the Commission has found that the aggregation proposal is or is likely to be contrary to the public interest, may, irrespective of whether the implementation of the aggregation proposal has resulted in any complete or partial monopoly, or oligopoly, or circumstances of the kind described in section 61 (1) (a) of this Act,— 30 35

(i) Recommend (subject to compliance with section 62 (4) of this Act) the making of an Order in Council under section 62 (2) of this Act; or

(ii) Take any other step mentioned in section 63 of this Act. 40

80. Investigations—For the purpose of any investigation conducted by the Examiner under this Part of this Act, the Examiner, and any person authorised in that behalf by writing under the seal of the Commission, shall have and
 5 may exercise all the powers conferred on him by subsections (2) and (3) of section 38 of this Act.

81. Exception and saving—(1) Nothing in sections 65 to 80 of this Act shall apply to any transaction that requires consent under section 72 or section 73 of the Meat Act 1964.
 10 (2) Nothing in this Part of this Act shall affect the provisions of Part I of the Companies Amendment Act 1963 or the obligations of an offeror or of any other person under that Part of that Act.

PART IV

15 **CONTROL OF PRICES**

82. Price control—(1) The Minister may from time to time publish in the *Gazette* a notice, to be called the Positive List of Controlled Goods and Services, which shall specify the goods and services for the time being subject to price
 20 control.

(2) Goods and services so specified shall be subject to price control under this Part of this Act.

(3) Any notice published under this section may—

25 (a) Divide into groups or classes the goods or services specified in it:

(b) Specify the circumstances in which any goods or services are or are not to be subject to price control:

30 (c) Specify the day which is to be the maximum price day for the purposes of section 84 (1) of this Act in respect of any goods or services.

(4) Any notice published under this section may identify the goods and services to which it relates—

35 (a) By a description of the goods and services; or

(b) By a description of the kind or class to which the goods or services belong.

(5) Any notice published under this section may relate to goods and, with all necessary modifications, to services—

40 (a) Sold by wholesalers or by wholesalers of different classes:

(b) Sold by retailers or by retailers of different classes:

- (c) Sold in or for delivery within specified areas or localities:
- (d) Sold in different quantities, qualities, grades, or classes:
- (e) Sold by or to or for the use of different persons or classes of persons. 5
- (6) Subject to subsection (7) of this section, any notice under this section may be at any time amended or revoked by the Minister by a subsequent notice published in the *Gazette*. 10
- (7) Except as provided in subsection (8) of this section, the Minister shall before amending or revoking any notice under this section first refer to the Commission the subject-matter of the proposed amendment or revocation for inquiry and report to him by such date as he shall specify. 15
- (8) Nothing in subsection (7) of this section shall require the Minister to make any reference to the Commission if, in his opinion, the making of a notice is required for the purpose of effecting—
- (a) An amendment that is immediately necessary in the public interest; or 20
- (b) An amendment necessary to correct any error or omission in any notice made under this section; or
- (c) The consolidation of existing amendments to the Positive List; or 25
- (d) An amendment made pursuant to a recommendation of the Commission made under section 25 of this Act; or
- (e) An amendment made in terms of section 63 (3) (a) of this Act. 30
- (9) If any amendment adds any goods or services to the Positive List in the circumstances mentioned in subsection (8) (a) of this section, any person or organisation or trade association representing the interests of any person or persons selling any such goods or supplying any such services may apply in writing to the Minister, not sooner than 6 months after the date of the publication of that amendment in the *Gazette*, for the omission of those goods or services from the Positive List and the Minister may, in his discretion, refer the matter to the Commission for inquiry and report to him by such date as he shall specify. If the Commission includes in its report a recommendation for the omission of all or any of those goods or services from the Positive List the Minister may, by notice published under subsection (6) of this section, 40

give effect to that recommendation without further reference to the Commission and subsection (7) of this section shall be deemed to have been complied with.

(10) Every report furnished by the Commission to the
5 Minister shall include such recommendations as the Commission thinks fit.

Cf. 1947, No. 51, s. 18; 1953, No. 117, s. 3; 1956,
No. 105, s. 2; 1969, No. 124, s. 2

83. Price restraint—(1) Regulations made under this Act
10 may provide for the imposition of price restraint in respect of goods and services (not being goods or services subject to price control under section 82 of this Act) which may be specified in the regulations or notified from time to time by the Minister by notice published in the *Gazette*.

(2) Any such regulations or notice may specify circum-
15 stances in which any such goods or services are or are not to be subject to price restraint under this Part of this Act and the manner in which the prices of any such goods or services or any class of such goods or services are to be
20 restrained.

84. Lawful price in respect of goods or services not for the time being subject to price order or special approval—

(1) Where any goods or services are subject to price control under section 82 of this Act and are not for the time being
25 subject to a price order or to a special approval made or given under this Act, the maximum price that may be charged or received for any goods or services until a price order or special approval is in force in respect of those goods or services shall be the maximum price lawfully being charged, for goods or,
30 the case may be, services of that kind when sold in the same or substantially the same quantities and on the same or substantially the same terms on the day immediately before the date of the publication of the notice by which they are made subject to price control under section 82 of this Act or on
35 such other day as is specified in that notice as the maximum price day in respect of those goods or services:

Provided that if there are no goods or services of the same kind sold in the same or substantially the same quantities and on the same or substantially the same terms on the day
40 immediately before the date of the publication of the notice, or, if for any other cause the Secretary thinks fit, he may,

with the authority of the Minister, fix on or immediately after the publication of the notice, by way of price order or special approval, the maximum, actual or minimum price, as the case may be, that may be charged or received for those goods or services pending an application under section 92 or a review under section 94 of this Act. 5

(2) Nothing in this section shall apply in respect of any goods or services prohibited from sale pursuant to section 100 of this Act and nothing in this section shall affect any power to fix minimum or actual prices under this Part of this Act. 10

Cf. 1947, No. 51, ss. 17 (2), 19

General Powers and Functions of Secretary

85. General powers and functions—The general powers and functions of the Secretary under this Part of this Act shall be: 15

- (a) To fix, subject to a right of appeal to the Commission, prices for goods and services subject to price control under section 82 of this Act: 15
- (b) To investigate complaints that may be made direct to the Secretary or that may be referred to him by the Minister with respect to the prices of any goods or services: 20
- (c) To conduct such investigations as the Minister may require him to undertake under this Part of this Act: 25
- (d) To maintain a survey of the prices of goods and services, to institute proceedings for offences against this Part of this Act, and to take such other steps as in his opinion may be necessary to prevent the exploitation of the public. 30

Cf. 1947, No. 51, s. 10

86. Investigations—(1) In the exercise of his functions under this Part of this Act or under any regulations made for the purposes of this Part of this Act, the Secretary may conduct such investigations as he thinks fit. 35

(2) For the purposes of any investigation conducted by the Secretary, any person authorised in writing in that behalf by the Secretary may—

- (a) Inspect, examine, and audit any books or documents:

- (b) Require any person to produce any books or documents in his possession or under his control, and to allow copies of or extracts from any such books or documents to be made:
- 5 (c) Require any person to furnish, in a form to be approved by or acceptable to the Secretary, any information or particulars that may be required by the Secretary, and any copies of or extracts from any such books or documents as aforesaid.
- 10 (3) The Secretary may, if he thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Secretary may require.

Cf. 1947, No. 51, s. 11 (1), (4), (5)

- 15 **87. Returns**—(1) The Secretary may from time to time, by notice given in such manner as he thinks fit, require any person engaged in the production, manufacture, distribution, or sale of goods, or all persons belonging to any specified class or to specified classes of persons so engaged
- 20 (with or without exception) to furnish, within a specified time and in a specified form or in a form acceptable to the Secretary, returns setting forth all or any of the following particulars, namely:
 - 25 (a) The quantity of such goods or of any such goods in the possession or under the control on a specified date of the person making the return:
 - (b) The cost price of such goods to the person making the return:
 - 30 (c) The methods and principles in accordance with which such cost price has been determined:
 - (d) The prices for which and the terms and conditions on which he proposes to sell any such goods, or the prices, terms, and conditions for and subject to which he has theretofore sold any such goods:
 - 35 (e) The prices charged for goods, on any date specified by or acceptable to the Secretary, by the person making the return:
 - (f) Such further particulars in relation to any such goods or prices or conditions of sale as the
 - 40 Secretary may require.
- (2) Every return furnished under this section shall be verified by statutory declaration or otherwise as the Secretary may require.

(3) In any prosecution for an offence against this Part of this Act, the production of any return furnished by the defendant under this section or under the corresponding provisions of the Control of Prices Act 1947, or the production of any copy of or extract from any such return, verified as such by the statutory declaration of the Secretary, shall in the absence of proof to the contrary be sufficient evidence against the defendant of the truth of the statements contained therein. 5

Cf. 1947, No. 51, s. 13 10

88. Power to inspect stocks and take samples—(1) Any person authorised in writing in that behalf by the Secretary may at any reasonable time enter upon and search any premises used or reasonably supposed to be used for the manufacture or storage of goods intended for sale, and may inspect and take records of any stocks of goods found thereon or therein, and may on payment or tender of a reasonable price, take samples of any such goods. 15

(2) Every person authorised in writing as aforesaid shall produce his authority when so required by any person on whose premises he enters in the course of his duty. 20

(3) Every person who falsely represents himself to be a person authorised in writing as aforesaid commits an offence against this Act.

Cf. 1947, No. 51, s. 14 25

Price Orders

89. Price orders—(1) The Secretary may from time to time make orders (in this Act referred to as price orders) fixing, in such manner as he thinks fit, the actual or the maximum or the minimum prices that may be charged or received for any goods, or services to which any such order relates and which are subject to price control under section 82 of this Act. 30

(2) In any price order the Secretary, having regard to different forms, modes, or conditions of sale or delivery, or to the purposes for which any goods are used or intended to be used, or to the places or localities at or within which any goods are sold or delivered, or to any other relevant considerations, may fix different prices for goods of the same kind or class, and, in particular, may fix different prices in respect of sales of any of the following classes, namely: 40

- (a) Sales by wholesalers or by wholesalers of different classes:
- (b) Sales by retailers or by retailers of different classes:
- (c) Sales for delivery within specified areas or localities:
- 5 (d) Sales of different quantities, qualities, grades or classes of goods:
- (e) Sales by or to or for the use of different persons or classes of persons.
- (3) Any price order may be limited in its application
10 to sales of any one or more of the classes referred to in subsection (2) of this section.
- (4) The Secretary may, in like manner, in any price order relating to services fix different prices for services of
15 the same kind or class to meet differing circumstances relating to the supply of those services.
- (5) In any price order the Secretary may include such provisions, not inconsistent with this Act, as he thinks
20 necessary or desirable for the proper administration of the price order or to ensure compliance with the terms thereof, and every person shall be deemed to have committed an offence against this Act who commits a breach of or fails to comply with any obligations imposed on him by any such provisions.
- (6) Any price order may be at any time in like manner
25 amended with respect to the prices fixed thereby or in any other particular or respect, or may be at any time in like manner revoked.
- (7) Every price order shall be published in the *Gazette*,
30 and no price order shall come into force before it has been so published.
- (8) On and after the expiration of 14 days from the date of publication in the *Gazette* of a price order fixing the retail price of any goods or services it shall be the duty of
35 every person who in the course of trade, sells those goods at retail or supplies those services to keep a copy of the price order, or a statement of the retail prices fixed thereby in respect of any goods or services, prominently displayed in his shop or place of trade in such a position that customers may examine the price order or statement without having
40 to ask for its production or without having to obtain permission to examine it:
- Provided that if the Secretary declares that this subsection shall not apply to any price order or class of price orders specified in the declaration, this subsection shall not
45 apply with respect to that price order or class of price orders so long as the declaration continues in force.

(9) Every price order made by the Price Tribunal constituted under the Control of Prices Act 1947 and in force at the commencement of this Act, shall be deemed to be a price order made under this section.

Cf. 1947, No. 51, s. 15 (1), (4)–(8); 1953, No. 117, s. 2

Specially Approved Prices

90. Specially approved prices—(1) The Secretary may, by approval given in accordance with this section, authorise a maximum selling price in respect of the sale of any goods or services which are subject to price control under section 82 of this Act. 10

(2) Any approval given for the purposes of this section—

(a) May be absolute or conditional; or

(b) May apply to specified goods or services or to goods or services of a specified kind or class; or 15

(c) May apply with respect to the sale of goods or services by a specified person or by persons of a specified class; or

(d) May be of general application throughout New Zealand or may be limited in its application to any specified locality or specified class. If the approval is not expressed to be limited to any locality or localities it shall be deemed to have been given in respect of the whole of New Zealand. 25

(3) Any approval given for the purpose of this section may specify the maximum prices that may be charged for the goods or services to which the approval relates, or may fix the maximum prices that may be so charged in any manner that the Secretary thinks fit. 30

(4) Any approval given under this section shall to the extent thereof operate as if it were a price order fixing the approved price as the maximum price of the goods or services to which it relates.

(5) The provisions of section 89 of this Act, as to price orders, other than the provisions contained in subsections (7) and (8) thereof, shall, so far as applicable and subject to any necessary modifications, apply with respect to approvals given under this section in the same manner as they apply to price orders. 40

Cf. 1947, No. 51, s. 16

*Powers in Relation to Price Orders and Special Approvals***91. Secretary may fix maximum distributive margins—**

(1) The Secretary, in any price order made or special approval given by him, may instead of fixing maximum
5 selling prices, stipulate the maximum margins or mark-ups, which a person or class of person to whom the order or special approval or any part of it relates, shall apply to a cost price, fixed or defined by the aforesaid order or special approval, in order to calculate the maximum selling prices
10 which may be charged or received by that person or class of persons.

(2) The Secretary, in any price order made or special approval given by him, may stipulate the aggregate margin (inclusive or exclusive of freight) that may be applied as be-
15 tween the landed cost or the into-store cost or the manufacturer's selling price, as the case may be, of any goods sold by any one or more wholesalers and the selling price of the goods to any retailer or class of retailer.

(3) Nothing in this section shall limit the provisions of
20 sections 89 and 90 of this Act.

92. Applications for increased prices, etc.—(1) Any manufacturer, packer, importer, wholesaler, retailer, or other trader or seller or supplier of goods or services may, in respect of
25 any goods or services which are sold or supplied by him and which are specified in a notice made pursuant to section 82 of this Act, apply to the Secretary for an amendment to any price order or special approval remaining in force in respect of those goods or services.

(2) Every such application shall be accompanied by such
30 information as the Secretary requires and the applicant shall also supply to the Secretary such additional information as may be required by regulations made under this Act.

(3) Except where the Secretary is required by section 93
35 of this Act to refer the application to the Commission, he may deal with the application himself or may recommend to the Minister that he refer the application to the Commission to be dealt with in terms of section 91 of this Act.

(4) If the Secretary does not so recommend, or if the
40 Minister does not accept his recommendation, the Secretary shall consider the application on its merits, and having regard to his duties under sections 97 and 98 of this Act, shall either approve the application, in whole or in part, or refuse it.

(5) Where the Secretary has approved an application, in whole or in part, he may, for the purpose of giving effect to his decision exercise any of the powers conferred on him by sections 89 to 91 of this Act.

(6) The Secretary may, as a condition of the approval of any application, require the applicant to publish or communicate to buyers, in such manner as the Secretary thinks fit, such information relating to the decision as the Secretary requires. 5

93. Group price increase applications—(1) Notwithstanding anything to the contrary in this Act, each group price increase application shall be referred by the Secretary to the Commission unless— 10

(a) The application is made by two or more persons who are carrying on or propose to carry on a collective pricing practice (with respect to the goods or services in respect of which the application is made) to which section 27 (1) of this Act applies; and 15

(i) The application for the approval of that practice or proposed practice has been approved or is deemed to have been approved under section 29 of this Act; and 20

(ii) The group price increase application and any increase, if approved in whole or in part, would be in conformity with any conditions attached to the approval of the collective pricing practice or proposed practice by the Commission or pursuant to this Act; or 25

(b) The group price increase application (not being an application of a kind described in paragraph (a) of this subsection) is made with respect to goods or services in respect of which a price order or special approval, fixing or approving the prices of those goods or services on the basis of all the sellers or any two or more of them, remains in force, whether or not the order or approval fixes or approves uniform prices or uniform increases in prices obtaining before the making or giving of the order or approval. 35

(2) Every group price increase application referred to the Commission under subsection (1) of this section shall be dealt with by the Commission as if it had been referred to the Commission by the Minister in terms of section 104 of this Act: 40

5 Provided that nothing in this subsection or in subsection (1) of this section shall require the Commission to deal with a group price increase application made by persons who are carrying on or propose to carry on a collective pricing practice (with respect to the goods or services in respect of which the group price increase application is made) to which section 27 (1) of this Act applies if—

10 (a) An application for the approval of that practice is first required to be approved under Part II of this Act; or

15 (b) In the case of a collective pricing practice which may be carried on pursuant to section 30 (1) of this Act, there are not, in the opinion of the Commission, exceptional reasons for the group price increase application being dealt with in advance of the determination of the application for the approval of the collective pricing practice under section 27 (1) of this Act.

20 (3) Without limiting section 6 (1) or section 8 of this Act or paragraph (b) of the proviso to subsection (2) of this section, the Chairman of the Commission may direct that any group price increase application made by persons carrying on or proposing to carry on a collective pricing practice, and referred to the Commission under subsection (1) of this section, shall be dealt with by the Commission sitting jointly in the matter of that application and the application for the approval of the collective pricing practice.

25 (4) In this section the expression “group price increase application” means every application made under section 92 of this Act, by or on behalf of two or more persons, for an increase in the price, or the mark-up or margin included in the price, or any change in the terms of sale, or any variation in any of the terms of the pricing formula used in the calculation of the price, of any goods or services, on the basis of all manufacturers, or, as the case may be, all suppliers of services, or importers, wholesalers, or retailers or any two or more of them (whether or not such an increase or variation would result in the same or substantially the same prices being charged by any two or more of such persons); and includes every application made by a single trader for any such increase or variation where the approval of that application would, by itself or with others, result in a uniform price being charged for any goods or

services by two or more traders notwithstanding that any one or more of those traders was lawfully permitted under this Part of this Act to charge a price higher than the price actually being charged.

94. Secretary may review prices on his own motion-- 5

(1) Notwithstanding anything in this Part of this Act the Secretary may, on his own motion, but with the consent of the Minister, and after giving notice to the interested parties of his intention to do so, review the prices being charged for any goods or services, the margins incorporated 10 in any such prices, and the terms of any pricing formula used in the calculation of charges for goods or services.

(2) Where the review made by the Secretary relates to goods and services which are subject to price control under this Part of this Act, he may, for the purpose of giving 15 effect to the findings of his review, exercise any of the powers conferred on him by any of the provisions of sections 89 to 91 of this Act.

(3) Where the review made by the Secretary relates to goods or services which are not subject to price control 20 under this Part of this Act, he shall report the findings of his review to the Minister together with any recommendation he has for making those goods or services subject to price control under this Part of this Act.

95. Reasons for decision of Secretary to be given on 25
request—The Secretary shall give in writing to the applicant, and to any other person whom he regards as having a direct interest in any decision that he has made in relation to the price of goods or services, his reasons for the decision, if the applicant or any such other person so requests. 30

96. Decisions of Secretary not to be questioned except
before Commission—Proceedings of the Secretary under this Part of this Act shall not be held bad for want of form. Except on the ground of lack of jurisdiction, no order, approval, proceeding, or decision of the Secretary under 35 this Part of this Act shall be liable to be challenged, reviewed, quashed, or called in question in any Court, but there shall be a right of appeal to the Commission in accordance with section 99 of this Act.

97. **Certain duties to be discharged by Secretary in determining prices**—Before coming to any decision on any application lodged under section 92 of this Act, or making any price order or giving any special approval in
15 respect of any goods or services following a review under section 94 of this Act of the prices being charged for those goods or services, the Secretary shall ensure that the applicant and such other persons as in his opinion have a direct interest in the matter are given—

- 10 (a) A reasonable opportunity to make either written or oral submissions in respect to the matter:
- (b) A reasonable opportunity to rebut any information obtained as a result of any investigation conducted by the Secretary which, in the opinion of the
15 Secretary, may prejudice the position of that person:
- (c) Notice of any intention of the Secretary to disallow any portion of any price increase sought on application, so that the applicant may, if he so desires,
20 make further representations to the Secretary:
- (d) Notice of any intention of the Secretary to reduce prices as a result of any review conducted on his own motion, and a full opportunity to present submissions to show cause why this course should
25 not be followed.

98. **Considerations to be observed by Secretary and Commission on determination of prices**—In any proceedings under this Part of this Act, including appeal proceedings, the Secretary or the Commission, as the case may be, shall have due
30 regard to:

- (a) The desirability of maintaining a stable internal price level and of achieving the maximum degree of efficiency in the manufacture, distribution, and sale of goods or services as is consistent with the
35 achievement of the optimum rate and pattern of development of industry and commerce in New Zealand and of full employment:
- (b) The costs of production and distribution of the goods or services in question:
- 40 (c) The profitability of the manufacturer or distributor of the goods or the supplier of the services, in relation to shareholders' funds, or, as the case may be, to the equity capital invested by the proprietor

- or partners, or to the assets employed in, or to the annual sales of, the whole of that person's business (or if the Secretary or Commission thinks fit, any particular section thereof), and the extent to which that person has the capacity to absorb any part of any costs or any increases in costs, without the financial stability and viability of his business (or if the Secretary or the Commission thinks fit, of any particular section thereof) being affected: **5**
- (d) The extent to which the manufacturer or distributor of goods or the supplier of services receives direct or indirect financial support by way of subsidy or otherwise from public funds: **10**
- (e) The extent to which the applicant is able to demonstrate improvements in productivity or efficiency with regard to his operations: **15**
- (f) The conditions of competition and the commercial risk under which the goods or services are produced, manufactured, supplied, or distributed:
- (g) The method of financing the manufacture, supply, or distribution of the goods or services: **20**
- (h) The terms of any regulations made, or of any agreements with industry entered into, by the Government from time to time, dealing with the foregoing matters; or otherwise indicating the policy of the Government in regard to the control of prices of goods and services or the stability of the economy of New Zealand: **25**
- (i) Any other matter the Secretary or the Commission thinks relevant. **30**

Appeals

99. Commission may hear appeals—(1) The Commission shall sit as a judicial authority for the determination of appeals from the whole or any part of any decision of the Secretary under section 84, section 89, section 90, section 91, section 92 (4), or section 94 (2) of this Act. **35**

(2) The following persons, and no other, may appeal against the whole or any part of any decision of the Secretary under section 84, section 89, section 90, section 91, section 92 (4), or section 94 (2) of this Act. **40**

- (a) The person in respect of whose application the decision was given or any other person who, in the opinion of the Commission, has a substantial interest in the subject-matter of the application:
- 5 (b) In the case of any decision to make a price order under section 89 or to give a special approval under section 90 of this Act for the purposes of section 84 of this Act or for the purpose of giving effect to a review under section 94 of this Act, any person
- 10 recognised by the Commission as having a substantial interest in the decision:
- (c) Where any decision to make a price order under section 89 or to give a special approval under section 90 of
- 15 this Act is made under section 92 (4) of this Act or for the purpose of giving effect to a review under section 94 of this Act, any person who is granted leave to appeal by the Commission, being a person who has made representations to the Secretary in relation to the application or the subject-matter of
- 20 the review.
- (3) Every appeal under this section shall be made to the Commission in writing setting out the particulars of the decision to which the appeal relates and the grounds for
- 25 appeal, within 21 days after the date of the decision or within such extended time as the Commission may allow.
- (4) The Commission shall send a copy of the notice of appeal to the Secretary, who shall forthwith furnish to the Commission the reasons for his decision and all the evidence on which it was based. He shall also, as soon as practicable,
- 30 provide to the Commission, in a form required by it, any restatement of information (including financial figures) relevant to the decision and available to him at the time of his decision. A copy of all such documents or other material so furnished to the Commission shall be given to the
- 35 appellant as soon as practicable.
- (5) As soon as conveniently may be after the receipt of any appeal by the Commission, the Commission shall fix a time and place for the hearing of the appeal, shall give not less than 14 clear days public notice thereof, and shall
- 40 also give not less than 14 clear days notice in writing thereof to the appellant and to the Secretary.

100. Validity of decision of Secretary pending determination of appeal—The decision of the Secretary appealed from shall remain in full force pending the determination of the appeal except where, in the case of a decision made pursuant to section 94 (2) of this Act and effecting a reduction of prices, the Secretary or the Commission otherwise orders. 5

Cf. 1947, No. 51, s. 39 (6)

101. Hearing and determination of appeal—(1) At the hearing of any appeal to the Commission, the Commission shall hear and consider all evidence tendered and representations made by or on behalf of the appellant and any other person entitled to or authorised to appeal under section 99 (2) of this Act who may wish to take part in the proceedings. 10

(2) At the hearing of any appeal to the Commission against a decision of the Secretary, the Secretary shall be represented and shall make such submissions as he thinks fit. 15

(3) After hearing the evidence and representations as aforesaid, the Commission may confirm, discharge or vary the decision of the Secretary and generally make such orders as it considers just and equitable in the circumstances of the case. Every such order shall take effect from the date thereof or from such later date as may be specified therein. 20

(4) For the purpose of implementing any decision of the Commission on any such appeal, the Commission shall have the same powers to issue price orders and special approvals as are conferred on the Secretary by sections 89 to 91 of this Act. 25

102. Commission may refer appeals back to Secretary—

(1) Notwithstanding anything to the contrary in section 101 of this Act, the Commission may in any case, instead of determining any appeal, refer the matter back to the Secretary for reconsideration together with a note of the matters to be taken into account in such reconsideration. 30

(2) There shall be no appeal from any decision of the Secretary made in any matter after that matter has been referred back to him for further consideration. 35

103. Notice of decision on appeal—The determination of the Commission in any appeal shall be communicated by the Executive Officer to the Secretary and to all other parties to the appeal. The Executive Officer shall also give public notice of the Commission's decision together with all other relevant particulars. 40

Inquiry by Commission

104. Minister may require Commission to conduct an inquiry—(1) Notwithstanding anything to the contrary in this Part of this Act, the Minister may—

- 5 (a) On his own motion; or
(b) In the case of an application under section 92 of this Act, on the recommendation of the Secretary; or
(c) On representations being made to him by any other person,—
- 10 by notice in writing, require the Commission to conduct a public inquiry into any matter related to the prices of goods or services or into the subject-matter of any application made under section 92 of this Act, and, except in the case of any such application, to report its findings and recom-
- 15 mendations to him by such date as he shall specify.

(2) Where the Commission receives a notice from the Minister under subsection (1) of this section it shall fix a date and place for the holding of the inquiry and shall give adequate public notice thereof in such newspapers as it thinks fit. The Commission shall also give notice in writing

20 to the Secretary, the applicant (if any), and such other persons as it thinks fit.

(3) For the purpose of dealing with any application under section 92 of this Act the Commission shall have the powers

25 exercisable by the Secretary under any of the provisions of sections 89 to 91 of this Act.

(4) In determining prices after conducting a public inquiry under this section the Commission shall have regard to the considerations set out in section 98 of this Act and in making

30 any report to the Minister shall have regard to those same considerations, as well as to any other matters that the Minister has asked in writing be taken into account.

105. Proceedings before Commission not to be appealed against—No appeal shall lie from any order, direction,

35 or decision of the Commission under this Part of this Act.

General Provisions relating to Prices

106. Secretary may prohibit sale of declared classes of goods or services—(1) Subject to subsection (5) of this section, the Secretary may at any time by notice published in the *Gazette*

40 and in such other manner, if any, as he thinks fit, declare any goods or services or goods or services belonging to a specified

kind or class to be goods or services to which the provisions of this section shall be applicable. Any notice given under this subsection may be of general application to all goods or services specified or referred to therein or may be limited in its application to goods belonging to or in the disposition of any person, or to services supplied by any particular person or class of person, or may be otherwise limited in any manner that the Secretary thinks fit. 5

(2) By the same or a subsequent notice, given in such manner as the Secretary deems adequate in the circumstances of the case, the Secretary may prohibit absolutely or conditionally the sale of any such goods or services by any specified person or by any person of a specified class or by any person whomsoever unless a selling price or a maximum selling price applicable to the sale has been fixed or approved by a price order or a special approval under this Part of this Act. 10 15

(3) Every person who, while a notice under subsection (2) of this section remains in force, sells or agrees or offers to sell any goods in contravention of the terms of that notice shall be guilty of an offence against this Act. 20

(4) If in any proceedings for an offence against this section the defendant alleges that the goods or any of the goods to which the proceedings relate were not goods subject to the terms of a notice given by the Secretary under this section the burden of proving in respect of those goods that they were not subject to the terms of such notice shall be on the defendant. 25

(5) This section shall apply only to goods and services and classes of goods and services which are for the time being subject to price control under section 82 of this Act. 30

(6) Any person directly affected by any decision of the Secretary under this section may appeal therefrom to the Commission, as if that decision were made under section 92 (4) of this Act, and the provisions of this Act in so far as they relate to appeals from decisions under the said section 92 (4) shall apply accordingly with all necessary modifications. 35

Cf. 1947, No. 51, s. 40

107. New varieties of goods or services—(1) Where a price order or special approval is in force in respect of any goods or services, no person shall charge or receive or attempt to 40

charge or receive a price in respect of any new variety, type, or pack of those goods or of any new method of supplying those services unless that price has the approval of the Secretary.

5 (2) Every application for approval shall be in accordance with section 92 of this Act as if it were an application under that section.

(3) Any person directly affected by any decision of the Secretary on any application made pursuant to subsection (2) of this section may appeal therefrom to the Commission, as if that decision were made under section 92 of this Act, and the provisions of this Act in so far as they relate to appeals from decisions under the said section 92 shall apply accordingly with all necessary modifications.

15 (4) Every person who acts in contravention of subsection (1) of this section commits an offence against this Act.

108. Ticketing of goods not subject to price orders—(1) The Minister may, from time to time, by notice published in the *Gazette*, direct that any retailers or class or classes of retailers specified in the notice who offer or expose for sale any goods specified in the notice which are not for the time being subject to a price order or special approval under this Part of this Act shall keep in a prominent position in such proximity to the goods to which it relates as to be obviously in relation thereto a ticket, placard, or label on which is stated in legible and prominent characters the retail price of the goods or the retail price per unit of weight or measurement as prescribed in the notice, whichever is appropriate, and any other details specified in the notice which the Minister considers necessary for identifying the goods.

(2) The Minister may also by the same notice, or by a separate notice published in the *Gazette*, direct that any retailer or class or classes of retailers specified in the notice shall keep a statement of the retail price of any goods specified in the notice prominently displayed in such one or more places in their shops as the notice specifies.

(3) Every person commits an offence against this Act who does any act in contravention of or fails to comply in any respect with any obligation or duty imposed on him by any notice published under this section.

Cf. 1947, No. 51, s. 47A; 1958, No. 59, s. 2; 1970, No. 55, s. 2 (1)

109. Authorising contracts of sale whereby price of goods is to be determined with reference to application for special approval—Where a written application has been made to the Secretary for an approval of a price under section 92 of this Act, nothing in this Part of this Act shall render 5
unlawful any contract of sale between the applicant and any other person in respect of goods to which the application relates if—

- (a) The price of the goods is fixed with reference to the selling price to be approved by the Secretary 10
pursuant to the application; and
- (b) The applicant has the approval of the Secretary to apply paragraph (a) of this section.

Cf. 1947, No. 51, s. 29A; 1952, No. 81, s. 30 (1)

110. Application of this Part to hire purchase agreements— 15

(1) For the purposes of this section—

“Hire purchase agreement” means an agreement whereby goods are let or hired with an option to purchase and an agreement for the purchase of goods by instalment payments (whether the agreement describes the pay- 20
ment as rent or hire or otherwise) :

“Vendor” and “purchaser” have respectively the same meanings as in the Hire Purchase Act 1971.

(2) The disposition of any goods by a hire purchase agreement entered into after the 1st day of December 1947 (being 25
the date of the coming into force of the Control of Prices Act 1947) shall be deemed for the purpose of this Act and for the purpose of any orders, approvals or other acts of authority that originated under the Control of Prices Act 1947, and continue in force by virtue of section 133 of this Act, to be 30
a sale of those goods from the vendor to the purchaser on the date on which possession of the goods is delivered to the purchaser. Where in any hire purchase agreement the amount to be paid or other consideration to be given is separately fixed with respect to any item or items, the 35
agreement shall, for the purposes of this Act and for the purpose of any orders, approvals, or other acts of authority that originated under the Control of Prices Act 1947, and continue in force by virtue of this Act, be deemed to be a separate agreement in its application to each of the items for 40
which the consideration is so fixed.

(3) The purchase price of any goods subject to a hire purchase agreement as aforesaid shall be deemed to be the total amount of the money required to be paid for those goods by the purchaser under the agreement and the value of any
 5 other consideration provided or required to be provided by the purchaser.

Cf. 1947, No. 51, s. 41

111. Restrictions on powers of local authorities—(1) Where
 10 any local authority is empowered by any Act to fix or approve prices for any goods sold by any person other than the local authority, the powers of the local authority shall be subject to the following restrictions, namely—

(a) If in respect of any goods the Secretary or the Commission has issued a price order or has given its approval
 15 of any prices, the local authority shall have no power to fix or approve any prices that are not in conformity with the terms of the order or approval determined by the Secretary or the Commission, and any prices that have been fixed or approved by the local
 20 authority before the coming into force of the price order or the special approval shall thereafter be read subject to the terms of that order or approval:

(b) In any other case the local authority shall have no
 25 power to fix or approve any prices in excess of the appropriate maximum prices fixed by this Act.

(2) Notwithstanding anything in subsection (1) of this section, where any local authority, purporting to be acting under the authority of any Act, has heretofore fixed or approved any prices, those prices shall be deemed to have been
 30 lawfully fixed or approved and shall continue to operate as maximum prices until reduced by the local authority of its own motion or by direction of the Secretary or the Commission, or until altered by the Secretary or the Commission by means of a price order or unless and until other prices have been
 35 approved by the Secretary or the Commission.

Cf. 1947, No. 51, s. 43

112. Freight charges—Where the seller of any goods has been authorised by the Secretary or the Commission, in or
 40 for the purposes of any price order or special approval, to take any freight charges into account in ascertaining the selling price or the maximum selling price of any goods, the maximum amount that may be taken into account in respect of such

charges shall, in case of dispute, be provisionally fixed by the Secretary or Commission, as the case may require, and in any proceedings in which the amount of such freight charges is in issue the burden of proving that the actual freight charges exceeded the amount provisionally fixed shall be on the defendant. 5

Cf. 1947, No. 51, s. 49

Offences

- 113. Statements as to prices to be charged or received—**
 Every person commits an offence against this Act who— 10
- (a) Makes any false or misleading statement, in writing or otherwise, as to whether any price has or has not been fixed or approved by or under this Act, or as to the amount of any price that has been so fixed or approved; or makes any false or misleading statement or any material omission in any statement, in writing or otherwise, purporting to give the whole or any part of the terms or effect of a price order or special approval: 15
- (b) Describes or refers to as an actual or minimum price, or otherwise than as a maximum price, any maximum price fixed or approved by or under this Act. 20

Cf. 1947, No. 51, s. 32 (2)

- 114. Sales and purchases otherwise than at fixed price—**
- (1) While a price order or a special approval in respect of any goods or services remains in force every person who, whether as principal or agent, and whether by himself or his agent, sells or agrees or offers to sell any goods or services to which the order or approval relates for a price that is not in conformity with the order or approval commits an offence against this Act. 25 30
- (2) While a price order or a special approval in respect of any goods or services remains in force every person who, whether as principal or agent, and whether by himself or his agent, sells any goods or services to which the order or approval relates and thereafter demands for any such goods or services a price that is not in conformity with the order or approval commits an offence against this Act. 35
- (3) While a price order or a special approval in respect of any goods or services remains in force every person who, whether as buyer or seller or otherwise howsoever, is party 40

to any device, plan, or scheme for the purchase or sale of any goods to which the order or approval relates at a price that is not in conformity with the order or approval commits an offence against this Act.

- 5 (4) For the purposes of this section, the price of any goods or services, shall be deemed to be not in conformity with an order or approval if there has been any variation in the nature, quality, or quantity of the goods or services (in relation to any other goods or services which the seller was
10 selling at the maximum price so fixed or approved under this Part of this Act) or of the terms of sale of the goods or services (in relation to the terms of sale of any other goods or services which the seller was selling at the maximum price so fixed or approved under this Part of this Act), being a
15 variation that is disadvantageous to the purchaser of the goods or services, without any proportionate reduction in price.

- (5) The foregoing provisions of this section shall, with the necessary modifications, apply with respect to the sale or offer
20 for sale, at a price in excess of the appropriate maximum price, of any goods and services if at the time of the sale or offer the maximum price was determined by section 84 of this Act.

Cf. 1947, No. 51, s. 29 (1)–(3)

- 25 **115. Sales of goods of which prices are fixed together with other goods**—While a price order or a special approval in respect of any goods remains in force, every person commits an offence against this Act who, whether as principal or agent, and whether by himself or his agent, sells or agrees
30 or offers to sell any goods to which the order or approval relates together with any other goods of a different kind or class, unless the price demanded or received for the first-mentioned goods is specified separately, whether or not the other goods are subject to the same or any other
35 price order or special approval:

Provided that this section shall not apply with respect to any sale or agreement or offer to sell made or entered into with the authority in writing of the Secretary.

Cf. 1947, No. 51, s. 30

- 40 **116. General penalty for offences against this Part of this Act**—Every person who commits any offence against this Part of this Act is liable—

- (a) In the case of an individual, to a fine not exceeding \$1,000 and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued: 5
- (b) In the case of a company or other corporation, to a fine not exceeding \$5,000 and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued. 10
- Cf. 1947, No. 51, s. 38; 1948, No. 77, s. 5 (b)

117. Excess price may be forfeited and refunded to purchaser—(1) In this section the expression “authorised price” in relation to any goods or services, means the price or the maximum price for which those goods may lawfully be sold. 15

(2) On the conviction of any person of an offence involving the sale of any goods or services at a price in excess of the authorised price the convicting Court, on application by or on behalf of the Secretary, may make an order for payment by the defendant of an amount not exceeding the difference (to be ascertained and specified by the Court) between the price actually charged by the defendant and the authorised price. 20

(3) All money payable pursuant to an order made under this section shall be recoverable, in accordance with the Summary Proceedings Act 1957, in the same manner as fines and costs are recoverable. 25

(4) Where in any such case the convicting Court is satisfied that the whole or any part of the price has been paid to the defendant by any other person, the Court, if having regard to all the circumstances of the case it deems it just and equitable so to do, may make an order authorising the payment to that other person of such amount as the Court thinks fit, not exceeding the amount by which the price paid exceeded the authorised price. 30 35

(5) An order made under subsection (4) of this section shall be sufficient authority to the Registrar of the Court to pay the amount so authorised:

Providing that in no case shall the total amounts so paid exceed the amount recovered from the defendant under this section. 40

Cf. 1947, No. 51, s. 34

118. Other Acts not affected—Nothing in this Part of this Act shall affect the exercise by any person of any power to fix prices or charges in accordance with any of the Acts specified in the First Schedule to this Act or under any other
5 Act for the time being prescribed by regulations under this Act as an Act to which this section applies.

119. Notices—(1) Any notice, special approval, or decision given by the Commission under or for the purposes of this Part of this Act shall be deemed to be sufficiently given if
10 it is given in writing signed by one or more members of the Commission or by any person purporting to act by direction of the Commission and is delivered or posted to the person or persons primarily concerned therewith or to any person or organisation deemed by the Commission to represent the
15 person or persons primarily concerned.

(2) The provisions of subsection (1) of this section shall apply with all necessary modifications to any notice or special approval given by the Secretary under this Part of this Act.

Cf. 1947, No. 51, s. 52; 1974, No. 131, s. 26

20

PART V

Miscellaneous Provisions

120. Delegation by officers appointed under this Act—
(1) The Examiner may from time to time, by writing under his hand, delegate to any person any of his powers under this
25 Act or any regulations made thereunder or any powers conferred on him under any other enactment, except this power of delegation.

(2) The Secretary may from time to time delegate to any person any of the powers or functions conferred on him by
30 this Act or by regulations made under this Act, except this present power of delegation.

(3) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder for the time being of a specified office
35 or appointment or to the holders of offices or appointments of a specified class.

(4) Any delegation may be made subject to such conditions and restrictions as the Examiner or, as the case may require the Secretary thinks fit, and may be made either generally or
40 in relation to any particular matter or class of matters.

(5) Subject to any general or special directions given or conditions or restrictions imposed by the Examiner or, as the case may require, the Secretary, any person to whom any powers or functions are delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred directly by this Act or regulations made thereunder or, as the case may require by any other enactment, and not by delegation. 5

(6) Every person purporting to act pursuant to any delegation shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary. 10

(7) The delegation of any power or function shall not prevent the exercise of that power or function by the Examiner, or as the case may require, the Secretary.

(8) Any delegation may be revoked or amended at any time. 15

(9) Until it is revoked or amended every delegation shall continue in force according to its tenor, notwithstanding the fact that the Examiner, the Secretary, or other person by or to whom it was made may have ceased to hold office; and in any such case the delegation shall continue in force as if made by or to the successor in office of the Examiner, the Secretary, or any such other person, as the case may be. 20

Cf. 1947, No. 51, s. 39 (1)–(4); 1953, No. 117, s. 4 (1); 1958, No. 110, s. 37; 1961, No. 124, s. 9 (1); 1972, No. 107, s. 2 (7) 25

121. Service of notices—(1) Any notice or other document required or authorised to be served on or given to any person for the purposes of this Act may be served or given by delivering it to that person, or by leaving it at his usual or last known place of residence or business or at the address specified by him in any application or other document under this Act, or by posting it by letter addressed to him at that place of residence or business or at that address. 30

(2) If any such notice or other document is sent to any person by registered letter, then, unless the contrary is shown, it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted. 35 40

(3) Where for any purpose under this Act a notice or document is required to be served on a trade association, the notice or document may be served on the secretary, manager,

or other similar officer of the association; and for the purposes of this Act service on the association shall, unless otherwise directed by the Commission, be deemed to be service on all persons who are members of the association or who are
5 represented on the association by those members.

(4) Notwithstanding anything in the foregoing provisions of this section, the Commission may in any case direct the manner in which any notice or other document is to be served or given, or dispense with the service or giving thereof.

10 (5) Nothing in this section shall limit the provisions of section 119 of this Act.

Cf. 1947, No. 51, s. 52; 1958, No. 110, s. 37A; 1961, No. 124, s. 10; 1974, No. 131, s. 27

15 **122. Case may be stated for Administrative Division of Supreme Court**—The Chairman of the Commission may on the application of any party to any proceedings before the Commission, or of its own motion, state a case for the opinion of the Supreme Court on any question of law arising in any matter before the Commission. Every such case stated shall
20 be heard and determined by the Administrative Division of the Court.

Cf. 1958, No. 110, s. 38; 1971, No. 23, s. 17; 1974, No. 131, s. 28

25 **123. Act to apply to services as well as to goods**—All the provisions of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to the performance of services (otherwise than pursuant to a contract of service between master and servant) and the rates or fees charged therefor and the costs of providing the
30 services in the same manner as they apply in respect of the sale of goods and the prices charged for goods and the costs of the production, manufacture, transport, storage, and distribution of goods.

Cf. 1958, No. 110, s. 39 (1); 1971, No. 23, s. 18

35 **124. Keeping of books and accounts**—(1) Subject to sub-section (3) of this section, every person carrying on any trade which includes the production, manufacture, sale, or supply of any goods or services shall keep proper books and accounts and costing records (including any that may be specifically
40 required by regulations issued under this Act) relating thereto.

(2) This section shall not require the retention of any books or accounts or costing records—

- (a) Where 7 years have elapsed since the completion of the transactions, acts, or operations to which they relate:
- (b) Of a body corporate that has been dissolved: 5
- (c) Where it is provided by regulations under this Act that the retention of those books or accounts or records is not required for the purposes of this Act:
- (d) In respect of which the Examiner or the Secretary has notified the person or persons that retention is no longer required. 10

(3) Every person commits an offence who contravenes subsection (1) of this section.

125. Failure to give evidence—Every person commits an offence against this Act who having been summoned to appear before the Commission for the purposes of any inquiry, refuses or wilfully neglects to appear before the Commission in pursuance of the summons, or to take an oath or make an affirmation as a witness, or to answer any question put to him concerning the subject-matter of the inquiry, or to produce to the Commission any book or document or other written information that he is required to produce or deceives or attempts to deceive or knowingly misleads the Commission on any evidence given or otherwise proffered. 15 20

Cf. 1958, No. 110, s. 40 (a)–(b); 1974, No. 131 s. 29 25

126. Offences—Every person commits an offence against this Act who—

- (a) Wilfully obstructs, hinders, or deceives, or wilfully causes to be obstructed, hindered, or deceived, any person authorised to exercise any power or perform any function or duty under this Act, in the exercise or performance of any such power, function, or duty: 30
- (b) Threatens or assaults any person so authorised while that person is engaged in the exercise or performance of any such power, function, or duty: 35
- (c) Refuses or wilfully neglects to furnish to the Secretary or to the Examiner, or to any other person authorised in that behalf by either of those officers, any information or particulars that he is required to furnish, or to produce to the Secretary or to the Examiner or to any such person, any books or documents that he is required to produce: 40

(d) Makes any statement or furnishes any document, return, or other information which he knows to be false or misleading in a material particular:

5 (e) Wilfully alters, suppresses, destroys, or makes any material omission in, any document, return, copy, extract, or information required to be furnished under this Act.

Cf. 1958, No. 110, s. 40 (b)–(c); 1974, No. 131, s. 30

10 **127. General penalty**—Every person who commits an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this section is liable, in the case of an individual, to a fine not exceeding \$1,000, and, in the case of a company or other corporation, to a fine not exceeding \$5,000.

15 Cf. 1947, No. 51, s. 38; 1948, No. 77, s. 5 (b); 1958, No. 110, s. 42; 1974, No. 131, s. 31

20 **128. Legal proceedings**—(1) Except where this Act otherwise provides, every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information for an offence against this Act may be laid at any time within 2 years from the time when the matter of the information arose.

25 (3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of an offence if it is proved that the act or omission which constituted the offence took place with his authority, permission, or consent.

30 (4) For the purpose of this section, the continued existence of anything in a state contrary to any provision of this Act or of any regulations or notices for the time being in force under this Act shall be deemed to be a continuing offence.

35 Cf. 1947, No. 51, s. 35; 1958, No. 110, s. 42A; 1971, No. 23, s. 19; 1974, No. 131, s. 32

129. Evidence in prosecutions relating to profiteering or prices—(1) If in any proceedings for an offence against section 54, section 56, section 57, or Part IV of this Act it is

proved against the defendant that the goods to which the proceedings relate were goods of the same kind or class as goods which he admits or is proved to have acquired for a certain price, the goods sold by him shall, in the absence of proof to the contrary, be deemed to be identical with or to be part of the goods acquired by him at that price. 5

(2) In any proceedings for an offence against section 54, section 56, section 57 or Part IV of this Act in respect of the sale of any goods, the production by or on behalf of the informant of a verified copy of any entry in any accounts or records kept by or on behalf of the defendant, or of any invoice, receipt, sales docket, or other document issued by or on behalf of the defendant, and purporting to disclose the price at which such goods have been sold, shall, in the absence of proof to the contrary, be sufficient evidence of the sale of the goods and of the price charged therefor. 10 15

Cf. 1947, No. 51, s. 36

130. Publication of information—(1) The Commission may publish or cause to be published an account of proceedings or any information by way of explanation of the nature or purpose of any proceedings conducted or to be conducted by the Commission, and may publish any findings or decisions made by the Commission pursuant to this Act (other than findings made by it under Part III of this Act). 20

(2) For the purpose of carrying this Act into effect, the Secretary may, with the concurrence of the Minister, publish from time to time any information which relates to the prices of any goods or services determined by him and which is obtained by him in the course of any investigation conducted for the purposes of Part IV of this Act. 25 30

(3) The publication of any matter by the Secretary or the Commission pursuant to this section shall be privileged unless the publication is proved to be made with malice.

131. Annual report—(1) As soon as practicable after the end of each year ending with the 31st day of March the Commission shall furnish to the Minister a report of its proceedings and operations during that year. 35

(2) A copy of the report shall be laid before Parliament as soon as practicable after its receipt by the Minister.

Cf. 1974, No. 131, s. 33

132. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes—

- 5 (a) Prescribing the procedure to be followed under this Act in respect of applications to and proceedings before the Commission, the Secretary, or the Examiner:
- 10 (b) Providing for accounts and records to be kept; and for returns to be made to the Examiner, for the purposes of Parts II and III of this Act, and to the Secretary, for the purposes of Part IV of this Act:
- 15 (c) Prescribing forms of applications and other documents required for the purposes of this Act, or authorising the Commission, the Secretary, or the Examiner to prescribe or approve such forms, and requiring the use of such forms:
- 20 (d) Providing the procedure for the service of notices and documents under this Act:
- 25 (e) Prescribing considerations and guidelines to be observed by the Secretary and the Commission, and the manner in which they are to be applied, in determining prices or margins for goods or services, or any class or group of goods or services, which are subject to price control under Part IV of this Act:
- 30 (f) Providing for maximum retail selling prices to be shown on goods offered for retail sale on the packages containing those goods, or on the fixtures in which those goods are displayed:
- 35 (g) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$200 and, where the offence is a continuing one, a further amount not exceeding \$10 for every day or part of a day during which the offence has continued:
- 40 (h) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Cf. 1974, No. 131, s. 34

133. Repeals, savings, and consequential amendments—

(1) The enactments specified in the Fourth Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) The enactments specified in the Fifth Schedule to this Act are hereby repealed. 5

(3) All orders, approvals, regulations, notices or other acts of authority that originated under or for the purposes of any enactment repealed by this section, and are subsisting or in force at the commencement of this Act, shall enure 10 for the purposes of this Act as if they had originated under this Act and accordingly shall, where necessary, be deemed to have so originated:

Provided that for the purposes of this subsection the term acts of authority shall not include any appointment made 15 under section 3 of the Trade Practices Act 1958 or section 3 or section 6 of the Control of Prices Act 1947.

(4) Unless in any case the context otherwise requires, in any other enactment or in any other regulation, order, notice, agreement, instrument, or other document,— 20

(a) Every reference to the Trade Practices and Prices Commission or to the Price Tribunal, shall be read as reference to the Commerce Commission:

(b) Every reference to the Examiner of Trade Practices and Prices shall be read as a reference to the 25 Examiner of Commercial Practices:

(c) Every reference to the Director of Price Control shall be read as a reference to the Secretary.

(5) All matters and proceedings that have been commenced under any such enactment, except matters or 30 proceedings in respect of offences under any such enactment, and are pending or in progress at the commencement of this Act, may be continued and completed under this Act.

(6) The repeal of the said enactments shall not affect the liability of any person for any offence which was committed 35 before the commencement of this Act, and any proceedings for any such offence may be taken as if this Act had not been passed.

SCHEDULES

FIRST SCHEDULE

Sections 2, 118

ACTS NOT AFFECTED

The Air Services Licensing Act 1951.
The Dairy Board Act 1961.
The Economic Stabilisation Act 1948.
The International Air Services Licensing Act 1947.
The Marketing Act 1936.
The Meat Act 1964.
The Milk Act 1967.
The Motor Spirits (Regulation of Prices) Act 1933.
The Rent Appeal Act 1973.
The Tenancy Act 1955.
The Tobacco Growing Industry Act 1974.
The Tourist Hotel Corporation Act 1974.
The Transport Act 1962.
The Wheat Board Act 1965.
The Wool Marketing Corporation Act 1972.

SECOND SCHEDULE

Section 27 (3) (a)

FEEES AND CHARGES EXCLUDED FROM THE PROVISIONS RELATING TO
COLLECTIVE PRICING AGREEMENTS

1. Any scale of fees or charges where under the provisions of any Act that scale has been fixed or approved by the Governor-General or the Governor-General in Council or any Minister of the Crown.
2. Any scale of fees or charges for personal professional services where that scale has been fixed by any body established by name by any Act.
3. Any scale of fees or charges for personal professional services where that scale has been fixed by any body the membership of which is restricted to members of a specified profession who—
 - (a) Are registered under the provisions of any Act; and
 - (b) Except in the case of persons who hold a degree, diploma, or certificate granted by an examining body outside New Zealand, are not entitled to be so registered unless they hold a degree, diploma, or certificate granted by a university in New Zealand.
4. Fees or charges for personal professional services performed by Patent Attorneys.

Section 67 (1)

THIRD SCHEDULE

CLASSES OF AGGREGATION PROPOSALS REQUIRING
NOTIFICATION TO MINISTER*Class A*

Aggregation proposals in which a participant carrying on one of the activities specified in column 1 hereof effects a proposal with one or more participants carrying on any of the activities specified, in relation to the first mentioned activity, in column 2 hereof and, if specified, in which the aggregate value of the assets of all the participants is that specified or more than that specified in column 3 hereof.

Column 1	Column 2	Column 3
The brewing of beer	Any kind of commercial activity	
The canning or processing of fruit and vegetables	Any kind of commercial activity	
The transportation of goods by land (not including freight forwarding)	The transportation of goods by land (not including freight forwarding)	\$500,000
The publishing of daily or Sunday newspapers	Printing or publishing	
The milling of flour	The milling of flour or the baking of bread or both	\$2,000,000
The baking of bread	The baking of bread or the milling of flour or both	\$2,000,000
Paint and wallpaper manufacture	The manufacturing or wholesaling or retailing of paint or wallpapers or both	

Class B

Aggregation proposals (other than those coming within Class A of this Schedule) in which the aggregate value of the assets of all the participants involved is \$5,000,000 or more and, in the case of an aggregation proposal involving not more than two participants, the value of the assets of the smaller participant is \$250,000 or more.

FOURTH SCHEDULE
ENACTMENTS AMENDED

Section 133 (1)

Title of Act	Amendment
1957, No. 87—The Summary Proceedings Act 1957 (Reprinted 1966, Vol. 4, p. 3101)	By inserting in Part II of the First Schedule, after the reference to the Chattels Transfer Act 1924, the following words: “The Commerce Act 1975/64 Contravention of Order in Council/77 Participation in illegal aggregation proposal”.
1966, No. 19—The Customs Act 1966	By inserting in subsection (3) of section 48, after paragraph (a), the following paragraph: “(ab) For the purpose of implementing any recommendation of the Commerce Commission contained in a report delivered to the Minister of Trade and Industry pursuant to <u>section 61 (7) of the Commerce Act 1975</u> ; or”.
1969, No. 12—The Consumer Information Act 1969	By repealing section 11, and substituting the following section: “ 11. Minister may refer matters to Commerce Commission —(1) The Minister may from time to time refer to the Commerce Commission constituted under the Commerce Act 1975, for investigation and report to the Minister, any matter relating to this Act or to its administration. “(2) For the purposes of making any investigation under this section, the Commerce Commission shall have all the powers conferred on it under the Commerce Act 1975 for the purposes of conducting an inquiry under that Act.”
1973, No. 14—The Overseas Investment Act 1973	By inserting, after section 15, the following section: “ 15A. Joint decisions in relation to aggregation proposals —(1) Where notice is required to be given under <u>section 67 (1) of the Commerce Act 1975</u> in respect of any aggregation proposal which also requires the consent of the Minister under this Act or any regulations made under it, the Minister shall not give that consent unless he has first consulted with the Minister of Trade and Industry about whether that Minister is to require the

FOURTH SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1973, No. 14—The Overseas Investment Act 1973— <i>continued</i>	<p>Commerce Commission to conduct an inquiry into the aggregation proposal. If such an inquiry is to be required then—</p> <p>“(a) Further action under this Act or any such regulations shall be postponed until after the report of the Commerce Commission is available; and</p> <p>“(b) The Commerce Commission shall consult with the Commission before making its report; and</p> <p>“(c) The Minister and the Minister of Trade and Industry shall, following the receipt of that report, act jointly in making any decision in respect of the aggregation proposal which either Minister is required to make under this Act or any such regulations or the Commerce Act 1975.”</p>

FIFTH SCHEDULE

Section 133 (2)

ENACTMENTS REPEALED

- 1908, No. 122—The Monopoly Prevention Act 1908 (including Part I of that Act). (1957 Reprint, Vol. 10, p. 331.)
- 1910, No. 32—The Commercial Trusts Act 1910. (1957 Reprint, Vol. 2, p. 337.)
- 1922, No. 51—The Finance Act 1922: Section 44. (1957 Reprint, Vol. 10, pp. 335, 339.)
- 1915, No. 69—The Cost of Living Act 1915: Section 12. (1957 Reprint, Vol. 2, p. 342.)
- 1933, No. 41—The Finance Act 1933 (No. 2): Section 65. (1957 Reprint, Vol. 2, p. 342.)
- 1947, No. 51—The Control of Prices Act 1947. (1957 Reprint, Vol. 2, p. 761.)
- 1948, No. 77—The Statutes Amendment Act 1948: Section 5. (1957 Reprint, Vol. 2, p. 789.)
- 1952, No. 81—The Finance Act (No. 2) 1952: Section 30. (1952 Reprint, Vol. 2, p. 789.)
- 1953, No. 117—The Control of Prices Amendment Act 1953. (1957 Reprint, Vol. 2, p. 790.)
- 1956, No. 105—The Control of Prices Amendment Act 1956. (1957 Reprint, Vol. 2, p. 790.)
- 1958, No. 59—The Control of Prices Amendment Act 1958.
- 1958, No. 110—The Trade Practices Act 1958. (Reprinted 1971, Vol. 4, p. 2591.)
- 1961, No. 124—The Trade Practices Amendment Act 1961. (Reprinted 1971, Vol. 4, p. 2624.)
- 1964, No. 115—The Trade Practices Amendment Act 1964. (Reprinted 1971, Vol. 4, p. 2626.)
- 1965, No. 133—The Trade Practices Amendment Act 1965. (Reprinted 1971, Vol. 4, p. 2626.)
- 1965, No. 137—The News Media Ownership Act 1965.
- 1969, No. 124—The Control of Prices Amendment Act 1969.
- 1970, No. 55—The Control of Prices Amendment Act 1970.
- 1971, No. 16—The Control of Prices Amendment Act 1971.
- 1971, No. 23—The Trade Practices Amendment Act 1971. (Reprinted 1971, Vol. 4, p. 2627.)
- 1974, No. 131—The Trade Practices (Commerce Commission and Pyramid Selling Act) 1974.