

# Competition Act **Chapter 14:28**

*Act 7/1996, 22/2001 (s. 4), 29/2001; S.I 262/2006.*

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**AN ACT to promote and maintain competition in the economy of Zimbabwe; to establish an Industry and Trade Competition Commission and to provide for its functions; to provide for the prevention and control of restrictive practices, the regulation of mergers, the prevention and control of monopoly situations and the prohibition of unfair trade practices; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement :9th February, 1998.]

## PART I

### PRELIMINARY

# 1 Short title and date of commencement

This Act may be cited as the Competition Act [*Chapter 14:28*].

[Short title amended by s.i. 262 of 2006]

## 2 Interpretation

(1) In this Act—

“assistance or protection” bears the meaning assigned to it by section *thirty four B*;

[Definition inserted by Act 29 of 2001]

“authorised”, in relation to any agreement, arrangement, practice or conduct, means authorized by the Commission under Part V;

“Commission” means the Competition and Tariff Commission established by section *four*;

[Definition substituted by Act 29 of 2001]

“commodity” means anything, whether movable or immovable, corporeal or incorporeal, which is capable of being acquired or disposed of for value;

“controlling interest”, in relation to—

- any undertaking, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking;
- any asset, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

“Director” means the Director of the Commission appointed in terms of subsection (1) of section *seventeen*;

“distribute”, in relation to—

- any commodity, includes to supply, sell, let for hire, store or transport the commodity;
- any service, means to supply or provide the service, whether or not it is attended by the supply of a commodity;

“investigating officer” means a person appointed as an investigating officer in terms of section *forty-six*; “local industry” bears the meaning assigned to it by section *thirty-four B*;

[Definition inserted by Act 29 of 2001]

“member” means a member of the Commission, including the chairman and deputy chairman;

“merger” means the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of—

- the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;
- the amalgamation or combination with a competitor, supplier, customer or other person; or
- any means other than as specified in paragraph (a) or (b);

[Definition substituted by Act 29 of 2001]

“Minister” means the Minister of Industry and Commerce or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“monopoly situation” means a situation in which a single person exercises, or two or more persons with a substantial economic connection exercise, substantial market control over any commodity or service;

“order” means an order made by the Commission in terms of section *thirty-one*;

“prescribe” means prescribe by regulations made in terms of section *fifty*;

[Definition inserted by Act 29 of 2001]

“price” includes any consideration whatsoever in respect of the distribution of a commodity or service;

“restrictive practice” means—

- any agreement, arrangement or understanding, whether enforceable or not, between two or more persons, or
- any business practice or method of trading; or
- any deliberate act or omission on the part of any person, whether acting independently or in concert with any other person; or

- any situation arising out of the activities of any person or class of persons; which restricts competition directly or indirectly to a material degree, in that it has or is likely to have any one or more of the following effects—
- restricting the production or distribution of any commodity or service;
- limiting the facilities available for the production or distribution of any commodity or service;
- enhancing or maintaining the price of any commodity or service;
- preventing the production or distribution of any commodity or service by the most efficient or economical means;
- preventing or retarding the development or introduction of technical improvements in regard to any commodity or service;
- preventing or restricting the entry into any market of persons producing or distributing any commodity or service;
- preventing or retarding the expansion of the existing market for any commodity or service or the development of new markets therefor;
- limiting the commodity or service available due to tied or conditional selling;

[Paragraph inserted by Act 29 of 2001]

“service” includes any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service and any service provided in conjunction with the distribution of any commodity;

“substantial market control” has the meaning assigned to it in subsection (2); “tariff charge” bears the meaning assigned to it by section *thirty-four B*;

[Definition inserted by Act 29 of 2001]

“tied or conditional selling” means any situation where the sale of one commodity or service is conditional on the purchase of another commodity or service;

[Definition inserted by Act 29 of 2001]

“undertaking” means any person engaged for gain in the production or distribution of a commodity or service;

“unfair business practice” means a restrictive practice or conduct specified in the First Schedule;

[Definition inserted by Act 29 of 2001]

“unfair trade practice” bears the meaning assigned to it by section *thirty-four B*;

[Definition substituted by Act 29 of 2001]

(2) A person has substantial market control over a commodity or service if—

- being a producer or distributor of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection profitably to rise or maintain the price of the commodity or service above competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe,
- being a purchaser or user of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection, profitably to lower or maintain the price of the commodity or service below competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe.

(3) An agreement, arrangement or understanding to engage in a restrictive practice is presumed to exist between two or more persons if—

- any one of them owns a substantial shareholding, interest or similar right in the other or they have at least one director in common; and
- any combination of them is involved in such restrictive practice; unless the person concerned or the directors, as the case may be, can establish the absence of an agreement.

[Subsection inserted by Act 29 of 2001]