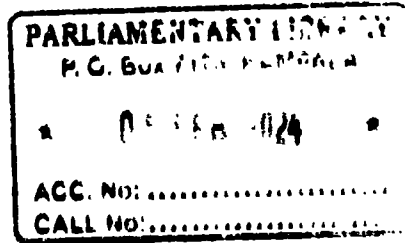




THE REPUBLIC OF UGANDA

THE COMPETITION ACT, 2023





THE REPUBLIC OF UGANDA

I SIGNIFY my assent to the bill.

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President

Date of assent: *2/2/2024*

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THE COMPETITION ACT, 2023

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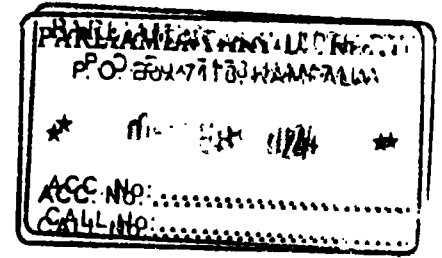
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SCHEDULE

SCHEDULE 1 — CURRENCY POINT



THE REPUBLIC OF UGANDA

THE COMPETITION ACT, 2023

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

DATE OF ASSENT:

Date of Commencement:

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Application

This Act applies to anti-competitive practices, anti-competitive agreements, abuse of dominant position and effects of mergers, acquisitions and joint ventures on competition.

2. Object of Act

The object of this Act is—

- (a) to promote the efficiency, adaptability and development of the Ugandan economy;

- (b) to provide consumers and producers with competitive prices and product choices;
- (c) to promote employment and advance the socio-economic welfare of Ugandans;
- (d) to provide opportunities for the participation of Ugandans in the world market and recognise the role of foreign competition in Uganda; and
- (e) to guarantee that all persons have an equitable opportunity to participate in the economy.

3. Interpretation

In this Act, unless the context otherwise requires—

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

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

“anti-competitive practice or anti-competitive agreement” includes a practice or agreement which involves the taking of a decision or engaging in any concerted action or concerted practice in respect of production, distribution, supply, or control of goods or the provision of services which causes or is likely to cause an adverse effect on competition;

“competition” means the striving or potential striving of two or more persons engaged in the production, distribution, supply, purchase or consumption of goods or services in

each market in Uganda against one another which results in greater efficiency, high economic growth, increased employment opportunities, lower prices and improved choices for consumers;

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

“concerted action or concerted practice” means an action or practice which involves communication or coordination between competitors, which replaces the competitor’s independent action and restricts or lessens competition between the competitors;

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

“countervailing market power” means the bargaining power of a purchaser in the economy;

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

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

“dominant position” means a position of economic strength enjoyed by a person, individually or collectively, which gives the person the power to behave independently of the person’s competitors, customers and consumers and in particular to foreclose another person from competing in the relevant market;

“exclusive distribution agreement” means an agreement between a distributor and a supplier which grants the distributor exclusive rights to sell the supplier’s goods or services;

“exclusive supply agreement” means an agreement between two parties in which one party to the agreement imposes restrictions on the other party’s freedom to make a choice where or with whom to do business;

“horizontal agreement” means an agreement between persons each of which operates, for the purpose of the agreement, at the same level of the market and would normally be actual or potential competitors in that market;

“joint venture” means a person who is subject to joint control by two or more undertakings which are economically independent of each other;

“market” means a range of reasonable possibilities for substitution in supply or demand between kinds of goods or services and between suppliers or customers, or potential suppliers or customers, of the goods or services in Uganda or a substantial part of Uganda;

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

“Minister” means the Minister responsible for trade;

“Ministry” means the Ministry responsible for trade;

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

“predatory pricing” means a strategy where a person sells a product below cost to drive a competitor out of the market;

“price squeezing” means a pricing practice by a person operating in an upstream market or a downstream market, and charges the consumer the upstream price, which does not allow the consumer to compete in the downstream market;

“producer” means a person involved in the production of goods or services;

“refusal to deal” means an arrangement in which a person denies supplying another person with the product or service and includes not only blatant refusal, but also subtle refusal which conditions the supply on unreasonable conditions, such as unacceptably high prices;

“resale price maintenance” means an agreement between a supplier and a distributor with the object or effect of directly or indirectly, fixing a minimum selling price to be used by the distributor when re-selling goods to a customer;

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

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

“turnover” means the latest audited gross sales of a person;

“tying arrangement” means an agreement between a seller and a buyer in which the seller agrees to sell a product or provide a service on condition that the buyer—

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- (a) purchases another different product or service;
- (b) does not purchase the product or service from any other supplier or seller; or
- (c) adheres to some other restriction;

“vertical agreement” means an agreement between persons each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or resale certain goods or services.

PART II—ADMINISTRATION

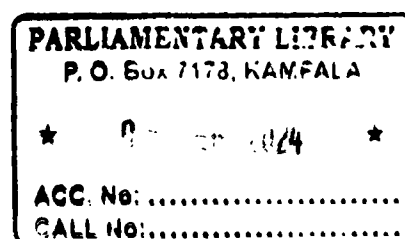
4. Administration of Act

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

5. Functions of Ministry

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

- (a) to promote and sustain fair competition in the market;
- (b) to protect the interests of consumers in the market;
- (c) to monitor the market for anti-competitive practices, anti-competitive agreements and unfair practices;
- (d) to investigate anti-competitive practices, anti-competitive agreements and unfair practices in the market;
- (e) to approve mergers, acquisitions and joint ventures which have no adverse effect on competition in the market;
- (f) to hear and determine complaints in respect of competition and consumer protection matters;
- (g) to protect consumers and implement the law relating to consumer protection;



- (h) to develop appropriate procedures for consultation and public sensitisation on competition and consumer protection matters;
- (i) to collect data, undertake studies and publish reports relating to competition and consumer protection;
- (j) to liaise with other authorities responsible for competition and consumer protection at regional and international level; and
- (k) to perform such other duties as are necessary for the discharge of its functions under this Act.

6. Reference of competition matters to Ministry in certain cases

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

(2) On receipt of a reference under subsection (1) the Ministry shall, after hearing the parties to the proceedings, give its opinion to the statutory authority or body, which shall decide the matter after taking into account the opinion of the Ministry.

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

7. Technical committee on competition and consumer protection

(1) There is established, in the Ministry, a technical committee on competition and consumer protection.

- (2) The technical committee shall—
- (a) assist the Ministry to perform the functions specified in section 5;
 - (b) provide technical guidance and advice to the Ministry on the implementation of the policy and laws relating to competition and consumer protection.

(3) The Minister shall, by statutory instrument, make regulations for the composition, appointment, functions, meetings and remuneration of the technical committee established by subsection (1).

(4) The technical committee shall comprise persons knowledgeable in competition and consumer protection matters from Ministries, departments and agencies of Government, the private sector and academia.

8. Powers of Ministry

In the performance of its functions specified in section 5, the Ministry—

- (a) may, after consultation with the technical committee—
 - (i) direct an enterprise to cease and desist from any anti-competitive practice; or
 - (ii) order the termination or nullification, as the case may require, of any agreement, conduct, activity, practice or decision prohibited by this Act;
- (b) may take any reasonable action necessary in furtherance of its functions;
- (c) shall, so far as practicable, cooperate with a body established under the Treaty for the Establishment of the East African Community, the Treaty Establishing the Common Market for Eastern and Southern Africa or any other law, to promote and regulate competition.

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

9. Prohibition of anti-competitive practices and anti-competitive agreements

(1) A person shall not engage in an anti-competitive practice or enter into an anti-competitive agreement.

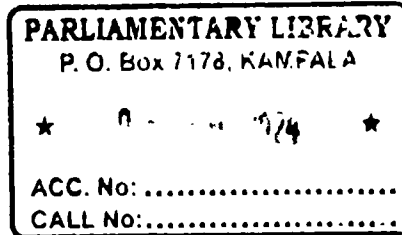
(2) An agreement, decision, concerted action or concerted practice that contravenes subsection (1) is void.

(3) For the purposes of subsection (1), a horizontal agreement is anti-competitive where the agreement—

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

(4) For the purposes of subsection (1), a vertical agreement is anti-competitive where the agreement involves—

- (a) a tying arrangement;
- (b) an exclusive supply agreement;
- (c) an exclusive distribution agreement;
- (d) a refusal to deal; or
- (e) a resale price maintenance.



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

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

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

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

(8) A person who contravenes this section commits an offence under this Act.

10. Inquiry into anti-competitive practices and anti-competitive agreements

(1) The Ministry shall inquire into every practice and agreement alleged to contravene section 9(1).

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

PART IV—PROHIBITION OF ABUSE OF DOMINANT POSITION

11. Abuse of dominant position

(1) Subject to this Act, a person shall not abuse its dominant position.

(2) For the purposes of determining whether a person enjoys dominant position, the Ministry shall take into account the following—

- (a) whether the person supplies or acquires thirty percent or more of particular goods or services, or where three or more persons supply or acquire sixty percent or more of particular goods or services, or such other percentage as the Minister may, by statutory instrument, prescribe;
- (b) the size and resources of the person;
- (c) the size and importance of the competitors of the person;
- (d) the economic power of the person, including commercial advantages over a competitor which may be measured by reference to product range, established trademarks, customer loyalty, vertical integration of the person, sales or service network;
- (e) the technical advantages enjoyed by the person, which may be judged with reference to patents, know-how and copyright owned;
- (f) the dependence of consumers on the goods or services of the person;
- (g) the monopoly status or dominance acquired by the person as a result of any Act of Parliament, or by virtue of being an undertaking of the Government, a Government company or a public-sector undertaking;
- (h) entry barriers, if any, which may be judged by reference to regulatory barriers, financial risk, high capital cost of

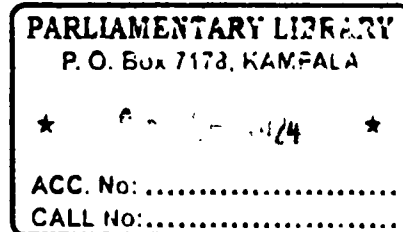
entry in the market, marketing entry barriers, technical entry barriers, economies of scale or high switching costs for customers;

- (i) the countervailing market power of the person;
- (j) the ability of the person to independently determine price, quality, quantity and time of supply of products or services;
- (k) the market structure and size of the market of the person;
or
- (l) any other factor which the Ministry considers relevant.

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

(4) In subsection (3)—

- (a) “relevant product market” means a market comprising the products or services which are regarded as interchangeable or substitutable by the consumer including—
 - (i) the characteristics of the physical product;
 - (ii) the price of the products or services;
 - (iii) the intended use or end-use of the product or service;
 - (iv) consumer preference;
 - (v) the exclusion of in-house production;
 - (vi) the existence of specialised producers; and
 - (vii) the industry product classifications;
- (b) “relevant geographic market” means a market comprising the area in which the person concerned is involved in the



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supply and demand of products or services, and in which the conditions of competition are distinctly homogenous and can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas and determined after taking into account—

- (i) regulatory trade barriers;
- (ii) local specification requirements or differing national standards;
- (iii) national procurement policies;
- (iv) adequate distribution facilities or differing national standards;
- (v) transport costs;
- (vi) language;
- (vii) consumer preferences; or
- (viii) the need for secure or regular supplies or rapid after-sales services.

(5) For the purposes of subsection (1), a person abuses a dominant position where that person—

- (a) directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions;
- (b) limits production, markets or technical development to the prejudice of consumers;
- (c) indulges in actions resulting in denial of market access;
- (d) makes the conclusion of contracts subject to acceptance

by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts; or

- (e) uses dominance in one market to move into or protect another market.
- (6) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years, or both.

12. Prohibition of exploitation of consumers by dominant person

A person holding a dominant position in the relevant market shall not—

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

13. Prohibition of exclusion of competitors by dominant person

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

- (2) The practices referred to in subsection (1) include—
 - (a) predatory pricing;
 - (b) price squeezing;

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

14. Inquiry into abuse of dominant position

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

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

PART V—MERGERS, ACQUISITIONS AND JOINT VENTURES**15. Notice of merger, acquisition and joint venture**

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

(2) The Minister shall, by statutory instrument, prescribe the threshold to be applied for the purposes of subsection (1).

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

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

- (a) a proposed merger or amalgamation, be given after the board of directors or similar body of the respective persons have accepted the proposal to merge or amalgamate;

- (b) a proposed acquisition of control of another person, be given after the conclusion of negotiations of the agreement of acquisition of control;
- (c) a joint venture, be given after the execution of the joint venture agreement by the parties.

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

(6) The Ministry shall, on receipt of the notice under subsection (1), within one hundred and twenty days, inquire into the merger, acquisition or joint venture with a view to satisfying itself whether the merger, acquisition or joint venture causes or is likely to cause an adverse effect on competition within the market.

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

(8) A person who is required to give notice of a merger, acquisition or joint venture to the Ministry under subsection (1) but fails to do so commits an offence and is liable, on conviction, to a fine not exceeding ten percent of the annual turnover of the person.

(9) Where the Ministry fails, neglects or does not communicate the decision regarding the merger, acquisition or joint venture within the period prescribed under subsection (6), the Ministry shall be taken to have approved the merger, acquisition or joint venture.

(10) For the purposes of this section, “control” means the right by a person to exercise restraint or direction over another person and includes—

- (a) the ability to exercise forty-nine percent or more of the voting rights of the other person;

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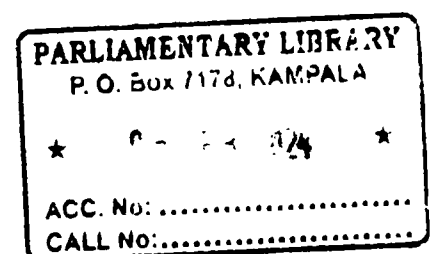
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- (b) the ability to appoint more than half of the members of the board of directors or similar body of the other person; or
- (c) the ability to control the affairs of the other person.

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

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



- (k) the possibility of a rise in failing businesses;
- (l) the nature and extent of innovation in the market;
- (m) whether the benefits of the merger, acquisition or joint venture outweigh the adverse impact of the merger, acquisition or joint venture.

(12) A person who, being a party to a merger, acquisition or joint venture—

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

commits an offence and is liable, on conviction, to a fine not exceeding one thousand two hundred and fifty currency points or imprisonment not exceeding ten years, or both.

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

(1) The Ministry shall, upon receipt of notice of a merger, acquisition or joint venture under section 15, inquire into the merger, acquisition or joint venture.

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

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

(4) Where the Ministry receives written comments or objections under subsection (3), the Ministry shall take the comments or objections into account while considering the request to approve a merger, acquisition or joint venture.

17. Findings and orders of Ministry upon inquiry

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

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

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

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

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

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

(7) Where the parties fail to indicate their consent at the end of the time prescribed under subsection (6), the merger, acquisition or joint venture shall be taken to have been rejected by the Ministry.

(8) Where the Ministry is of the opinion that a merger, acquisition or joint venture, has or is likely to have an appreciable adverse effect on competition, it shall direct that the merger, acquisition or joint venture shall not take effect.

PART VI— INQUIRIES AND RELATED MATTERS

18. Application of this Part

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

19. Procedure for making inquiries

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

- (a) receipt of a complaint from any person;
- (b) a reference being made to the Ministry by any person; or
- (c) knowledge or information acquired by the Ministry from any source.

(2) Upon receipt of a complaint or reference under subsection (1), the Ministry shall inquire into the complaint or reference and if, in the opinion of the Ministry, the complaint or reference discloses a *prima facie case*, the Ministry shall investigate the matter.

(3) The Ministry shall, within one hundred and twenty days, make a report on the findings of the investigation.

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

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

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

- (a) directing the person involved in the agreement, decision, concerted practice or abuse of dominant position, to discontinue and not repeat any such agreement, decision, concerted practice or abuse;
- (b) directing each person involved in the agreement, decision, concerted practice or abuse of dominant position, as the case may be, to pay a fine not exceeding ten percent of the average of the person's turnover for the last three years;
- (c) awarding compensation to an aggrieved party as may be determined in accordance with regulations made under this Act;
- (d) directing that the agreement be modified in respect of the person in such manner as may be specified by the Ministry;
or
- (e) directing the person concerned to pay costs of the aggrieved party.

(2) The Ministry may, notwithstanding any other law, order the division of an entity with dominant position, to ensure that the entity does not continue to abuse its dominant position.

(3) Notwithstanding any other law, the order referred to in subsection (2), may provide for matters as may be necessary to give effect to the division of an entity including—

- (a) the transfer or vesting of property, rights, liabilities or obligations;

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- (b) the adjustment of contracts, either by discharge or reduction of any liability or obligation or otherwise;
- (c) the creation, allotment, surrender or cancellation of any shares, stock or securities;
- (d) the payment of compensation to persons who suffer loss as a consequence of the division of the dominant person;
- (e) the formation or winding up of a person or the amendment of the memorandum and articles of association or any other instruments regulating the business of the person; or
- (f) the continuation, with such changes of the parties to any legal proceedings, as may be necessary.

PART VII—MISCELLANEOUS

21. Offences in relation to furnishing of information

A person who, in respect of any matter under this Act—

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

commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding three years, or both.

22. Offences by individuals

(1) Where a person contravenes a provision of this Act, the person, and an individual who, at the time of the contravention was

