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COMPETITION ACT, 2002

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Organisation of Working Time Act, 1997	1997, No. 20
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Public Offices Fees Act, 1879	1879, c. 58
Radio and Television Act, 1988	1988, No. 20
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COMPETITION ACT, 2002

AN ACT TO MAKE NEW PROVISION, BY ANALOGY WITH ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, AND IN THE INTERESTS OF THE COMMON GOOD, FOR THE PROHIBITION OF ACTIVITIES WHICH PREVENT, RESTRICT OR DISTORT COMPETITION IN TRADE IN THE STATE OR WHICH CONSTITUTE AN ABUSE OF A DOMINANT POSITION IN SUCH TRADE, TO COMPLEMENT THE POWERS AVAILABLE TO THE COMMISSION OF THE EUROPEAN COMMUNITIES WITH REGARD TO THE ENFORCEMENT OF THE SAID ARTICLES 81 AND 82, TO MAKE NEW PROVISION, IN THE INTERESTS OF THE COMMON GOOD, FOR THE CONTROL OF CERTAIN MERGERS OR ACQUISITIONS, TO CONTINUE IN BEING THE COMPETITION AUTHORITY AND MAKE NEW PROVISION ABOUT ITS FUNCTIONS, TO REPEAL THE COMPETITION ACTS, 1991 AND 1996, THE MERGERS AND TAKEOVERS (CONTROL) ACTS, 1978 TO 1996, AND CERTAIN OTHER ENACTMENTS, TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893, WITH RESPECT TO THE REQUIREMENTS FOR CERTAIN SPECIAL RESOLUTIONS THEREUNDER, AND TO PROVIDE FOR RELATED MATTERS. [10th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

- 1.**—This Act may be cited as the Competition Act, 2002. Short title.
- 2.**—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. Commencement.
- 3.**—(1) In this Act, unless the context otherwise requires— Interpretation.
- “authorised officer” means a person appointed under *section 45*;

“Authority” means the Competition Authority continued in being by *section 29*;

“Commission” means the Commission of the European Communities;

“conditional determination” shall be construed in accordance with *section 22*;

“contravention” includes, in relation to any provision, a failure to comply with that provision and “contravene” shall be construed accordingly;

“Council” means the Council of the European Communities;

“court”, where used without qualification, means the District Court, the Circuit Court or the High Court as appropriate, or, in the case of an appeal, the Circuit Court, the High Court or the Supreme Court as appropriate;

“director” includes a person in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act but does not include such a person if the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity;

“functions” includes powers and duties and a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of the powers and the carrying out of the duties;

“Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“publish”, in relation to a matter, includes to place a notice in relation to it in a national newspaper and to post a notice in relation to it on a website maintained by the Authority, any Minister of the Government or a statutory body;

“statutory body” means a person specified in *column (1) of Schedule 1*;

“Treaty” means the Treaty establishing the European Community;

“undertaking” means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service.

(2) In this Act references, however expressed, to an agreement being concluded in respect of a merger or acquisition shall be construed as including references to an agreement (of whatever kind and whether expressed to be in respect of a merger or acquisition or not) being entered into the result of which will, if the agreement is implemented, be that a merger or acquisition occurs.

(3) Where—

(a) proof of any matter is, by any provision of this Act, placed on the defendant in the proceedings concerned it shall be sufficient, for the purposes of that provision, for the

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defendant to prove the matter on the balance of probabilities, Pr.1 S.3

(b) any provision of this Act provides that any specified matter or matters is or are presumed to be fact unless the contrary is shown (as distinct from being presumed to be fact unless or until the contrary is proved) the provision shall be construed as placing on the defendant in the proceedings concerned an evidential burden only with respect to the matter or matters.

(4) In this Act references, however expressed, to an act that is done with the consent of a person shall be construed as including references to an act that is done with the connivance of a person.

(5) In this Act a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act, unless it is indicated that a reference to some other provision is intended.

(6) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to another provision is intended.

(7) In this Act a reference to any other enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment (including this Act).

PART 2

COMPETITION RULES AND ENFORCEMENT

4.—(1) Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which—

Anti-competitive agreements, decisions and concerted practices.

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

(2) An agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5)* or falls within a category of agreements, decisions, or concerted practices the subject of a declaration for the time being in force under *subsection (3)*.

(3) The Authority may declare in writing that in its opinion a specified category of agreements, decisions or concerted practices complies with the conditions referred to in *subsection (5)*; such a declaration may be revoked by the Authority if it becomes of the opinion that the category no longer complies with those conditions.

(4) The Authority shall publish, in such manner as it thinks fit, notice of the making of a declaration under *subsection (3)*, and of any revocation by it of such a declaration.

(5) The conditions mentioned in *subsections (2) and (3)* are that the agreement, decision or concerted practice or category of agreement, decision or concerted practice, having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not—

- (a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,
- (b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(6) The prohibition in *subsection (1)* shall not prevent the court, in exercising any jurisdiction conferred on it by this Act concerning an agreement, decision or concerted practice which contravenes that prohibition and which creates or, but for this Act, would have created legal relations between the parties thereto, from applying, where appropriate, any relevant rules of law as to the severance of those terms of that agreement, decision or concerted practice which contravene that prohibition from those which do not.

(7) In respect of an agreement, decision or concerted practice such as is referred to in *subsection (6)* a court of competent jurisdiction may make such order as to recovery, restitution or otherwise between the parties to such agreement, decision or concerted practice as may in all the circumstances seem just, having regard in particular to any consideration or benefit given or received by such parties on foot thereof.

(8) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1) or (3) of section 18*, shall not be prohibited under *subsection (1)*.

(9) For the avoidance of doubt, references in this Part of this Act to the parties to an agreement, decision or concerted practice of a kind referred to in *subsection (1)* include references to one or more of the parties to such an agreement, decision or concerted practice.

(10) *Subsection (9)* is without prejudice to section 11(a) of the Interpretation Act, 1937.

5.—(1) Any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in any part of the State is prohibited.

(2) Without prejudice to the generality of *subsection (1)*, such abuse may, in particular, consist in—

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- (b) limiting production, markets or technical development to the prejudice of consumers,
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
- (d) making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

(3) The putting into effect of a merger or acquisition in accordance with the provisions of *Part 3* of this Act, together with any arrangements constituting restrictions which are directly related and necessary to the implementation of the merger or acquisition and are referred to in the notification of the merger or acquisition under *subsection (1)* or (3) of *section 18*, shall not be prohibited under *subsection (1)*.

6.—(1) An undertaking which—

- (a) enters into, or implements, an agreement, or
- (b) makes or implements a decision, or
- (c) engages in a concerted practice,

Offence in respect of breach of *section 4(1)* or Article 81(1) of the Treaty.

that is prohibited by *section 4(1)* or by Article 81(1) of the Treaty shall be guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall be presumed that an agreement between competing undertakings, a decision made by an association of competing undertakings or a concerted practice engaged in by competing undertakings the purpose of which is to—

- (a) directly or indirectly fix prices with respect to the provision of goods or services to persons not party to the agreement, decision or concerted practice,
- (b) limit output or sales, or
- (c) share markets or customers,

has as its object the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State or within the common market, as the case may be, unless the defendant proves otherwise.

(3) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in *section 4(1)*, it shall be a good defence to prove that the agreement, decision or concerted practice in question did not contravene that prohibition by virtue of *section 4(2)*.

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(4) In proceedings for an offence under *subsection (1)* in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in Article 81(1) of the Treaty, it shall be a good defence to prove that—

- (a) there was in force, at the material time, in respect of the particular agreement, decision or concerted practice an exemption granted by the Commission pursuant to Article 81(3) of the Treaty,
- (b) at the material time the agreement, decision or concerted practice benefited from the terms of an exemption provided for by, or granted under, a regulation made by the Council or the Commission pursuant to that Article 81(3), or
- (c) the agreement, decision or concerted practice did not contravene that prohibition by virtue of that Article 81(3).

(5) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(6) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

(7) In this section “competing undertakings” means undertakings that provide or are capable of providing goods or services to the same applicable market and, for the purposes of this definition, “applicable market” means a market comprising the provision of goods or services that are regarded by those to whom they are provided as interchangeable with, or substitutable for, each other by reason of the goods’ or services’ characteristics, prices and intended use or purpose.

Offence in respect of breach of *section 5(1)* or Article 82 of the Treaty.

7.—(1) An undertaking that acts in a manner prohibited by *section 5(1)* or by Article 82 of the Treaty shall be guilty of an offence.

(2) In proceedings for an offence under *subsection (1)*, it shall be a good defence to prove that the act or acts concerned was or were done pursuant to a determination made or a direction given by a statutory body.

(3) For the purpose of determining liability for an offence under *subsection (1)*, any act done by an officer or an employee of an undertaking for the purposes of, or in connection with, the business or affairs of the undertaking shall be regarded as an act done by the undertaking.

Penalties and proceedings in relation to offences under *sections 6* and *7*.

8.—(1) An undertaking guilty of an offence under *section 6* (being an offence involving an agreement, decision or concerted practice to which *subsection (2)* of that section applies) shall be liable—

- (a) on summary conviction—
 - (i) in the case of an undertaking that is not an individual, to a fine not exceeding €3,000, or

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- (ii) in the case of an individual, to such a fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, Pr.2 S.8

(b) on conviction on indictment—

- (i) in the case of an undertaking that is not an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction, or
- (ii) in the case of an individual, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or to imprisonment for a term not exceeding 5 years or to both such fine (that is to say a fine not exceeding the greater of the foregoing monetary amounts) and such imprisonment.

(2) An undertaking guilty of an offence under *section 6* (other than one to which *subsection (1)* applies) or *section 7* shall, whether the undertaking is an individual or otherwise, be liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction.

(3) *Sections 6* and *7* operate so that if the contravention concerned continues one or more days after the date of its first occurrence the undertaking referred to in *section 6* or *7*, as the case may be, is guilty of a separate offence under that section for each day that the contravention occurs; but in respect of the second or subsequent offence of which the undertaking is guilty by reason of that continued contravention, *subsections (1)* and *(2)* shall have effect as if—

(a) in the case of *subsection (1)*—

(i) in *paragraph (a)*, “€300” were substituted for “€3,000” and references to imprisonment were disregarded, and

(ii) in *paragraph (b)*—

(I) references to a fine not exceeding €40,000 were substituted for the references to a fine not exceeding the greater of the monetary amounts mentioned therein, and

(II) references to imprisonment were disregarded,

and

(b) in the case of *subsection (2)*—

- (i) in *paragraph (a)*, “€300” were substituted for “€3,000”, and
- (ii) in *paragraph (b)*, a reference to a fine not exceeding €40,000 were substituted for the reference to a fine not exceeding the greater of the monetary amounts mentioned therein.

(4) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under *section 6* or *7* in proceedings brought by the Authority, it shall, on the application of the Authority (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Authority and such payment may be enforced by the Authority as if the payment were due to the Authority on foot of a decree or order made by the court in civil proceedings.

(5) The amount of any fine paid to, or recovered by, the Authority under *subsection (4)* shall be disposed of by it in such manner as the Minister for Finance directs.

(6) Where an offence under *section 6* or *7* has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to, by a person, being a director, manager, or other similar officer of the undertaking, or a person who purports to act in any such capacity, that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(7) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the undertaking concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that that person consented to the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under *section 6* or *7*.

(8) Where the affairs of a body corporate are managed by its members, *subsections (6)* and *(7)* shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(9) Summary proceedings in relation to an offence under *section 6* or *7* may be brought by the Authority.

(10) An action under *section 14* may be brought whether or not there has been a prosecution for an offence under *section 6* or *7* in relation to the matter concerned and such an action shall not prejudice the initiation of a prosecution for any such offence.

(11) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *section 6* or *7* may be instituted within 2 years after the day on which the offence was committed.

(12) In this section “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise.

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9.—(1) In proceedings under this Act, the opinion of any witness who appears to the court to possess the appropriate qualifications or experience as respects the matter to which his or her evidence relates shall, subject to *subsection (2)*, be admissible in evidence as regards any matter calling for expertise or special knowledge that is relevant to the proceedings and, in particular and without prejudice to the generality of the foregoing, the following matters, namely—

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Provisions as respects expert evidence.

- (a) the effects that types of agreements, decisions or concerted practices may have, or that specific agreements, decisions or concerted practices have had, on competition in trade,
- (b) an explanation to the court of any relevant economic principles or the application of such principles in practice, where such an explanation would be of assistance to the judge or, as the case may be, jury.

(2) Notwithstanding anything contained in *subsection (1)*, a court may, where in its opinion the interests of justice require it to so direct in the proceedings concerned, direct that evidence of a general or specific kind referred to in the said subsection shall not be admissible in proceedings for an offence under *section 6* or *7* or shall be admissible in such proceedings for specified purposes only.

10.—In a trial on indictment of an offence under *section 6* or *7*, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

Provision of information to juries.

- (a) any document admitted in evidence at the trial,
- (b) the transcript of the opening speeches of counsel,
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- (d) the transcript of the whole or any part of the evidence given at the trial,
- (e) the transcript of the closing speeches of counsel,
- (f) the transcript of the trial judge's charge to the jury.

11.—A person indicted (whether as a principal or an accessory) for an offence under *section 6* or *7* or the offence of attempting to commit such an offence or the offence of conspiracy to commit such an offence shall be tried by the Central Criminal Court.

Trial of persons for certain offences by Central Criminal Court.

12.—(1) The presumptions specified in this section shall apply in any proceedings, whether civil or criminal, under this Act.

Presumptions.

(2) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

(3) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document was created and sent

by the first person and received by the second person, and that any statement contained therein—

(a) unless the document expressly attributes its making to some other person, was made by the first person, and

(b) came to the notice of the second person.

(4) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed, unless the contrary is shown, that the author of the document is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business.

(5) Where an authorised officer who, in the exercise of his or her powers under *section 45*, has removed one or more documents from any place, gives evidence in any proceedings under this Act that, to the best of the authorised officer's knowledge and belief, the material is the property of any person, then the material shall be presumed, unless the contrary is shown, to be the property of that person.

(6) Where, in accordance with *subsection (5)*, material is presumed in proceedings under this Act to be the property of a person and the authorised officer concerned gives evidence that, to the best of the authorised officer's knowledge and belief, the material is material which relates to any trade, profession, or, as the case may be, other activity, carried on by that person, the material shall be presumed, unless the contrary is proved, to be material which relates to that trade, profession, or, as the case may be, other activity, carried on by that person.

(7) References in this section to a document are references to a document in written, mechanical or electronic form and, for this purpose, "written" includes any form of notation or code whether by hand or otherwise and regardless of the method by which, or medium in or on which, the document concerned is recorded.

Admissibility of statements contained in certain documents.

13.—(1) If a document contains a statement by a person referred to in *subsection (2)* asserting that an act has been done, or is or was proposed to be done, by another person, being an act (the "relevant act") that relates to—

(a) the entry into or the making or implementation of an agreement or decision, or the engaging in of a concerted practice, the subject of proceedings under this Act, or

(b) the doing of the act or acts that constitute an abuse of a dominant position, the subject of proceedings under this Act,

then, subject to the conditions specified in *subsection (3)* being satisfied, that statement shall be admissible as evidence in the proceedings referred to in *paragraph (a)* or *(b)* that the relevant act was done by that other person or was proposed (at the time the statement was made or, as the case may be, at a previous time) to be done by him or her.

(2) The person mentioned in *subsection (1)* is a person who has done an act of the kind referred to in that subsection in relation to the agreement, decision, concerted practice or abuse of dominant position concerned (whether or not the same act which the other

person referred to in that subsection is alleged to have done or proposed to do). Pr.2 S.13

(3) The conditions mentioned in *subsection (1)* are that the document referred to in that subsection—

- (a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and
- (b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of the Authority, a member of the Garda Síochána, an officer of the Commission or an authorised officer relative to any matter the subject of those proceedings.

(4) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(5) Where a statement is admitted in evidence by virtue of this section—

- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself.

(6) Nothing in this section shall prejudice the admissibility in any proceedings under this Act of any document, as evidence of any matters stated in it, that is so admissible by virtue of any rule of law or other enactment.

14.—(1) Any person who is aggrieved in consequence of any agreement, decision, concerted practice or abuse which is prohibited under *section 4* or *5* shall have a right of action under this subsection for relief against either or both of the following, namely—

Right of action for breaches of competition rules.

- (a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse,
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it of, the agreement or decision, the engaging

by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) The Authority shall have a right of action under this subsection in respect of an agreement, decision or concerted practice or an abuse which is prohibited under *section 4* or *5* or by Article 81 or 82 of the Treaty.

(3) Subject to *subsection (4)*, an action under *subsection (1)* or *(2)* may be brought in the Circuit Court or in the High Court.

(4) Where an action under *subsection (1)* is brought in the Circuit Court any relief by way of damages, including exemplary damages, shall not, except by consent of the necessary parties in such form as may be provided for by rules of court, be in excess of the limit of the jurisdiction of the Circuit Court in an action founded on tort.

(5) Without prejudice to *subsection (7)*, the following reliefs, or any of them, may be granted to the plaintiff in an action under *subsection (1)*:

- (a) relief by way of injunction or declaration,
- (b) damages, including exemplary damages.

(6) Without prejudice to *subsection (7)*, relief by way of injunction or declaration may be granted to the Authority in an action under *subsection (2)*.

(7) Where in an action under *subsection (1)* or *(2)* it is finally decided by the Court that an undertaking has, contrary to *section 5*, abused a dominant position, the Court may, either at its own instance or on the application of the Authority, by order either—

- (a) require the dominant position to be discontinued unless conditions specified in the order are complied with, or
- (b) require the adjustment of the dominant position, in a manner and within a period specified in the order, by a sale of assets or otherwise as the Court may specify.

(8) Where in an action under *subsection (1)* or *(2)* it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

(9) In an action under *subsection (1)* for damages, it shall be a good defence to prove that the act complained of was done pursuant to a determination made or a direction given by a statutory body.

Appeal to High Court against declaration under *section 4(3)*.

15.—(1) Any undertaking or association of undertakings concerned or any other person aggrieved by the making of the particular declaration may appeal to the High Court against the making of a declaration under *section 4(3)*.

(2) Such an appeal shall be made to the High Court within 28 days after the date of the publication of the notice under *section 4(4)* in relation to the declaration or such greater period as the High Court

may, on application being made to it, specify for the purposes of this subsection in relation to the particular appeal. Pr.2 S.15

(3) On the hearing of an appeal under this section, the High Court may confirm, amend or annul the declaration concerned.

(4) The High Court, on application being made to it, may by order provide that, pending the hearing and determination of an appeal under this section in relation to a declaration, the declaration shall not have effect for the purposes of *section 4(2)*.

PART 3

MERGERS AND ACQUISITIONS

16.—(1) For the purposes of this Act, a merger or acquisition occurs if— Mergers and acquisitions for the purposes of Act.

- (a) 2 or more undertakings, previously independent of one another, merge, or
- (b) one or more individuals or other undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings, or
- (c) the result of an acquisition by one undertaking (the “first undertaking”) of the assets, including goodwill, (or a substantial part of the assets) of another undertaking (the “second undertaking”) is to place the first undertaking in a position to replace (or substantially to replace) the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

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

- (a) ownership of, or the right to use all or part of, the assets of an undertaking, or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(3) For the purposes of this Act, control is acquired by an individual or other undertaking if he or she or it—

- (a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in *subsection (2)*, or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(4) The creation of a joint venture to perform, on an indefinite basis, all the functions of an autonomous economic entity shall constitute a merger falling within *subsection (1)(b)*.

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(5) In determining whether influence of the kind referred to in *subsection (2)* is capable of being exercised regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(6) For the purposes of this Act, a merger or acquisition shall not be deemed to occur if—

- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter or jobber acting as such, or
- (b) all of the undertakings involved in the merger or acquisition are, directly or indirectly, under the control of the same undertaking, or
- (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy, or
- (d) control is acquired by an undertaking referred to in *subsection (7)* in the circumstances specified in *subsection (8)*.

(7) The undertaking mentioned in *subsection (6)(d)* is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(8) The circumstances mentioned in *subsection (6)(d)* are that the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking and any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists, is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities and not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in the State, are carried on.

(9) In *subsection (8)* “specified period” means—

- (a) the period of 1 year from the date on which control of the other undertaking was acquired, or
- (b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in *paragraph (a)*, within such longer period as the Authority determines and specifies with respect to that case.

Application of *sections 18 to 22.*

17.—*Sections 18 to 22* are subject to *section 23* (which provides for additional procedures in the case of a media merger).

Obligation to notify certain mergers and acquisitions.

18.—(1) Where a merger or acquisition is agreed or will occur if a public bid that is made is accepted and—

- (a) in the most recent financial year—
 - (i) the world-wide turnover of each of 2 or more of the undertakings involved in the merger or acquisition is not less than €40,000,000,

[2002.]

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(ii) each of 2 or more of the undertakings involved in the merger or acquisition carries on business in any part of the island of Ireland, and

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(iii) the turnover in the State of any one of the undertakings involved in the merger or acquisition is not less than €40,000,000,

or

(b) the merger or acquisition falls within a class of merger or acquisition specified in an order under *subsection (5)*,

each of the undertakings involved in the merger or acquisition shall notify the Authority in writing of the proposal to put the merger or acquisition into effect, and provide full details thereof, within 1 month after the conclusion of the agreement or the making of the public bid.

(2) For the purpose of *subsection (1)*—

(a) “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise,

(b) subject to *paragraph (c)* an undertaking shall not be deemed to be involved in a merger or acquisition by virtue only of its being the vendor of any securities or other property involved in the merger or acquisition, and

(c) in relation to a merger or acquisition that will occur by reason of the acquisition concerned being an acquisition referred to in *section 16(1)(c)*—

(i) *subparagraphs (i) and (iii) of paragraph (a) of subsection (1)*, in their application to the second-mentioned undertaking in *section 16(1)(c)*, shall apply as if the references in them to the world-wide turnover and turnover in the State were, in relation to that undertaking, references, respectively, to the world-wide turnover and turnover in the State generated from the assets of that undertaking that are the subject of the acquisition mentioned in *section 16(1)(c)*, and

(ii) notwithstanding *paragraph (b)*, that second-mentioned undertaking shall, for the purposes of *paragraph (a) or (b) of subsection (1)* but not so as to place on it an obligation to notify the Authority of the proposal to put the merger or acquisition into effect, be deemed to be involved in the merger or acquisition.

(3) If—

(a) 2 or more undertakings agree to a merger or acquisition, or

(b) a merger or acquisition will occur if a public bid that is made is accepted,

being in either case a merger or acquisition to which *subsection (1)* does not apply, any of the undertakings which have agreed to or are involved in the merger or acquisition may notify the Authority in writing of the proposal to put the merger or acquisition into effect,

and provide full details thereof, within 1 month after the conclusion of the agreement or the making of the public bid.

(4) Nothing in this section or any other provision of this Act prejudices the operation of Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings.

(5) Where he or she is of opinion that the exigencies of the common good so warrant, the Minister may, after consultation with the Authority, by order specify a class or classes of merger or acquisition for the purposes of *subsection (1)(b)*.

(6) The Minister may by order amend or revoke an order under *subsection (5)* or a previous order under this subsection.

(7) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

(8) A notification in accordance with this section shall be accompanied by such fee as may be prescribed and different fees may be prescribed for different classes of notification; if the notification is not accompanied by that fee the notification shall be invalid.

(9) Where there is a contravention of *subsection (1)* or *section 20(2)* the person in control of an undertaking which has failed to notify the Authority within the specified period or failed to supply the information required within the period specified by the Authority, as the case may be, shall be guilty of an offence and shall, subject to *subsection (10)*, be liable—

(a) on summary conviction, to a fine not exceeding €3,000,

(b) on conviction on indictment, to a fine not exceeding €250,000.

(10) *Subsection (9)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (9)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”,

(b) in *paragraph (b)*, “€25,000” were substituted for “€250,000”.

(11) For the purposes of *subsection (9)* the person in control of an undertaking is—

(a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,

(b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,

- (c) in the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention. Pr.3 S.18

(12) A notification for the purposes of *subsection (1)* or *(3)* shall not be valid where any information provided or statement made under *subsection (1)* or *(3)* or *section 20(2)* is false or misleading in a material respect, and any determination under this Part made on foot of such notification is void.

(13) The transmission to the Authority by the Commission of a copy of a notification made to the Commission under Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings shall constitute a notification under *subsection (1)* in relation to the merger or acquisition concerned.

(14) Irrespective of the date on which the Commission transmits a copy of the notification referred to in *subsection (13)*, the date of receipt by the Authority of the Commission's decision under Council Regulation No. 4064/89 in relation to the merger or acquisition, the subject of the notification, shall be deemed to be the date of the notification for the purposes of this Act.

19.—(1) A merger or acquisition to which *paragraph (a)* or *(b)* of *section 18(1)* applies, or which is referred to in *subsection (3)* of *section 18* and has been notified to the Authority in accordance with that subsection, shall not be put into effect until—

Limitation on merger or acquisition being put into effect.

- (a) subject to *subsection (3)*, the Authority, in pursuance of *section 21* or *22*, has determined that the merger or acquisition may be put into effect, or
- (b) the Authority has made a conditional determination in relation to the merger or acquisition, or
- (c) subject to *subsection (4)*, the period specified in *subsection (2)* of *section 21* has elapsed without the Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under *paragraph (a)* or *(b)* of that *subsection (2)*, or
- (d) subject to *subsection (5)*, 4 months after the appropriate date have elapsed without the Authority having made a determination under *section 22* in relation to the merger or acquisition,

whichever first occurs.

(2) Any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes *subsection (1)*, is void.

(3) Notwithstanding *subsection (1)(a)*, the determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months after the date on which the determination is made.

(4) Notwithstanding *subsection (1)(c)*, the failure by the Authority to inform the undertakings concerned of the matter referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put

into effect before the expiry of the period of 13 months after the appropriate date.

(5) Notwithstanding *subsection (1)(d)*, the absence of a determination by the Authority in the circumstances referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 16 months after the appropriate date.

(6) In this section “appropriate date” means—

(a) unless *paragraph (b)* applies, the date of receipt by the Authority of the notification of the merger or acquisition concerned under *section 18*,

(b) if the Authority has, under *section 20(2)*, made, within 1 month from the date of receipt by it of the notification of the merger or acquisition concerned under *section 18*, a requirement or requirements of one or more of the undertakings concerned—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) *subparagraph (i)* to the requirement or requirements complied with, and

(II) *subparagraph (ii)* to the requirement or requirements not complied with.

(7) The reference in the definition of “appropriate date” in *subsection (6)* to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.

(8) For the purpose of the reference in *subsection (6)*, and in any other provision of this Act, to the date on which the Authority receives a notification under *section 18*, if a single notification is not made by all the undertakings concerned, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition concerned under *section 18* is received by the Authority.

(9) *Subsection (8)* is without prejudice to *section 18(14)*.

20.—(1) In respect of a notification received by it, the Authority—

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notification.

- (a) shall, unless the circumstances involving the merger or acquisition are such that the Authority considers it would not be in the public interest to comply with this paragraph—
 - (i) cause a notice of the notification to be published within 7 days after the date of receipt of it,
 - (ii) consider all submissions made, whether in writing or orally, by the undertakings involved in the merger or acquisition or by any individual or any other undertaking,
- (b) may enter into discussions with the undertakings involved in the merger or acquisition or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the merger or acquisition on competition in markets for goods or services, and
- (c) shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.

(2) Where the Authority is of the opinion that, in order to consider for the purposes of this Part a merger or acquisition, it requires further information it may, by notice in writing served on the undertaking, require any one or more of the undertakings concerned to supply to it within a specified period specified information, and an undertaking of whom such a requirement is made shall comply with it.

(3) In the course of the Authority’s activities under *subsection (1)(b)*, any of the undertakings involved in the merger or acquisition concerned may submit to the Authority proposals of the kind mentioned in *subsection (4)* with a view to the proposals becoming binding on it or them if the Authority takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under *section 21* or *22* in relation to the merger or acquisition.

(4) The proposals referred to in *subsection (3)* are proposals with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures referred to in *subsection (1)(b)*.

21.—(1) In this section “appropriate date” has the same meaning as it has in *section 19*.

Determination of
issues concerned
without full
investigation, etc.

(2) In respect of a notification received by it, the Authority shall, within 1 month after the appropriate date, inform the undertakings which made the notification and any individual or any other undertaking from whom a submission concerning the notification was received of whichever of the following determinations it has made, namely—

- (a) that, in its opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the merger or acquisition may be put into effect, or

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(b) that it intends to carry out an investigation under *section 22* in relation to the merger or acquisition.

(3) Where the Authority makes a determination referred to in *paragraph (a)* or *(b)* of *subsection (2)*, it shall publish that determination, with due regard for commercial confidentiality, within 2 months after the making of the determination.

(4) If any of the undertakings which have made the notification concerned submits to the Authority proposals to which *section 20(3)* applies, then *subsection (2)* shall have effect as if “45 days” were substituted for “1 month” in that subsection.

Determination of issues concerned on foot of full investigation.

22.—(1) In this section “appropriate date” has the same meaning as it has in *section 19*.

(2) Having considered a notification made to it, the Authority may decide that it shall carry out an investigation (in this section referred to as a “full investigation”) in relation to the merger or acquisition concerned.

(3) On completion of a full investigation in relation to the merger or acquisition concerned, the Authority shall make whichever of the following determinations it considers appropriate, namely that the merger or acquisition—

- (a) may be put into effect,
- (b) may not be put into effect, or
- (c) may be put into effect subject to conditions specified by it being complied with,

on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with.

(4) Where the Authority makes a determination under *subsection (3)*, it shall reduce the determination to writing (and the determination in that form is referred to in *paragraph (a)* and *subsection (7)* as a “written determination”) and—

- (a) furnish to the undertakings which made the notification a copy of the written determination within 4 months after the appropriate date, and
- (b) publish the determination, with due regard for commercial confidentiality, within 1 month after the making of the determination.

(5) A determination under *subsection (3)(c)* that the merger or acquisition may be put into effect subject to specified conditions being complied with is referred to in this section as a “conditional determination”.

(6) A conditional determination shall include a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

(7) A written determination under *subsection (3)* shall state the reasons for its making and shall include a report in relation to the full investigation. Pr.3 S.22

(8) Before making a determination under *subsection (3)*, the Authority shall have regard to any relevant international obligations of the State.

23.—(1) Within 5 days after the receipt by it of a notification in relation to a media merger, the Authority shall— Provisions with regard to media mergers.

- (a) forward a copy of the notification to the Minister, and
- (b) notify the undertakings involved in the merger that it considers the merger to be a media merger.

(2) If the Authority makes a determination referred to in *section 21(2)(a)* in relation to a media merger it shall, immediately after doing so, inform the Minister of that fact and the Minister may, notwithstanding that determination, within 10 days after the date on which that determination is made, direct the Authority to carry out an investigation under *section 22* in relation to the merger.

(3) Upon such a direction being given—

- (a) the determination referred to in *section 21(2)(a)* shall not operate to permit the media merger to be put into effect, and
- (b) the Authority shall notify the undertakings involved in the merger that an investigation under *section 22* in relation to the merger will be carried out pursuant to the direction.

(4) Where the Authority makes a determination under *paragraph (a)* or *(c)* of *subsection (3)* of *section 22* in relation to a media merger it shall, immediately after doing so, inform the Minister of the determination and the Minister may within 30 days after the date of the making of that determination, notwithstanding that determination, having regard to, and only to, the relevant criteria, by order provide—

- (a) that the merger may be put into effect,
- (b) that the merger may be put into effect subject to specified conditions being complied with, or
- (c) that the merger may not be put into effect.

(5) The Minister shall publish, with due regard for commercial confidentiality, a statement of the reasons for his or her making such an order within 2 weeks after the date on which the order is made.

(6) For the purpose of the exercise of the power under *subsection (4)*, the Minister may consider such submissions or observations from persons claiming to be interested in the matter as the Minister thinks proper.

(7) In addition to the functions conferred on it by *section 22* in relation to a merger or acquisition, the Authority shall, in dealing with a merger or acquisition under that section that is a media merger, form an opinion as to how the application of the relevant

criteria should affect the exercise by the Minister of his or her powers under *subsection (4)* in relation to the merger.

(8) The Authority shall inform the Minister of the opinion it has so formed on request being made by the Minister of it to do so.

(9) The following provisions shall have effect on account of the additional procedures provided by the foregoing provisions in relation to media mergers:

- (a) a media merger which could otherwise be put into effect upon a determination referred to in *section 21(2)(a)* being made in relation to it may not be put into effect until the expiry of 10 days after the date on which that determination is made,
- (b) a determination under *section 22* in relation to a media merger shall not have effect until the expiry of 30 days after the date on which that determination is made and then only if, within that period, the Minister has not made an order under *subsection (4)* in relation to the merger or has stated in writing that he or she does not propose making such an order in relation to the merger.

(10) In this section—

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable system or a multipoint microwave distribution system, a satellite device or any other transmission system, directly or indirectly for reception by the general public, whether that material is actually received or not, and includes a sound broadcasting service within the meaning of the Radio and Television Act, 1988, but does not include any such service (whether involving audio-visual material or audio material) that is provided by means of the system commonly known as the Internet;

“cable system” has the same meaning as it has in the Broadcasting Act, 2001;

“media business” means—

- (a) a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs,
- (b) a business of providing a broadcasting service, or
- (c) a business of providing a broadcasting services platform;

“media merger” means a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State;

“programme material” has the same meaning as it has in the Broadcasting Act, 2001;

“providing a broadcasting service” shall be construed in accordance with *subsection (11)*;

“providing a broadcasting services platform” shall be construed in accordance with *subsection (12)*;

“relevant criteria” means the following matters—

- (a) the strength and competitiveness of media businesses indigenous to the State, Pr.3 S.23
- (b) the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings,
- (c) the extent to which ownership and control of particular types of media business in the State is spread amongst individuals and other undertakings,
- (d) the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State, and
- (e) the share in the market in the State of one or more of the types of business activity falling within the definition of “media business” in this subsection that is held by any of the undertakings involved in the media merger concerned, or by any individual or other undertaking who or which has an interest in such an undertaking.

(11) A reference in this section to providing a broadcasting service shall be construed as a reference to the doing of either or both of the following:

- (a) supplying a compilation of programme material for the purpose of its being transmitted or relayed as a broadcasting service,
- (b) transmitting or relaying as a broadcasting service programme material.

(12) A reference in this section to providing a broadcasting services platform shall be construed as a reference to the transmitting or re-transmitting of programme material by means of wireless telegraphy, a cable system or a multipoint microwave distribution system, a satellite device or any other transmission system.

24.—(1) An appeal may be made to the High Court against a determination of the Authority under *paragraph (b) or (c) of section 22(3)*. Appeal to the High Court against determination of the Authority.

(2) *Subsection (1)* does not apply to a determination made in relation to a media merger unless it is a determination that has effect by virtue of *section 23(9) or 25(2)*.

(3) An appeal under this section—

- (a) may be made by any of the undertakings which made the notification in relation to the merger or acquisition concerned, and
- (b) shall be made within 1 month after the date on which the undertaking is informed by the Authority of the determination concerned or, in case the determination is one in relation to a media merger, after the expiry of the period specified in *section 23(9)*.

(4) Any issue of fact or law concerning the determination concerned may be the subject of an appeal under this section but, with respect to an issue of fact, the High Court, on the hearing of the

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appeal, may not receive evidence by way of testimony of any witness and shall presume, unless it considers it unreasonable to do so, that any matters accepted or found to be fact by the Authority in exercising the relevant powers under *section 22* were correctly so accepted or found.

(5) Notwithstanding *subsection (4)*, the High Court, on the hearing of an appeal under this section, may receive evidence by way of the testimony of one or more witnesses if it considers it was unreasonable for the Authority to have accepted or found as a fact any matter concerned.

(6) Without limiting the exercise of the judicial function with respect to a particular case, it shall be the duty of the High Court, in so far as it is practicable, to hear and determine an appeal under this section within 2 months after the date on which the appeal is made to it.

(7) On the hearing of an appeal under this section, the High Court may, as it thinks fit—

- (a) annul the determination concerned,
- (b) confirm the determination concerned, or
- (c) confirm the determination concerned subject to such modifications of it as the court determines and specifies in its decision.

(8) The High Court may, where it appears to the court that the circumstances so warrant, or shall, where the operation of *section 25(1)* results in an order under *section 23(4)* being annulled after the expiry of the period hereafter mentioned, extend the period mentioned in *subsection (3)(b)* in which an appeal under this section may be made to it.

(9) An appeal to the Supreme Court against a decision of the High Court under any of the foregoing provisions of this section shall lie only on a question of law.

Laying of order under *section 23(4)* before Houses of the Oireachtas.

25.—(1) An order under *section 23(4)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly.

(2) If an order under *section 23(4)* is annulled pursuant to *subsection (1)* the determination made by the Authority under *section 22(3)* in relation to the media merger concerned shall, notwithstanding *section 23(9)* but without prejudice to the right of appeal under *section 24*, have effect.

Enforcement of certain commitments, determinations and orders.

26.—(1) In this section—
“commitment” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being the subject of a statement in writing by the Authority such as is mentioned in *section 20(3)*;

“determination” means a determination of the Authority made under *section 21* or *22*;

(2) It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Authority or of any other person to enforce compliance with the terms of a commitment, a determination or an order, for the time being in force.

(3) *Subsection (2)* shall not affect any other right of the Authority or other person to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of a commitment, a determination or an order.

(4) A person who contravenes (whether by act or omission) a provision of a commitment, a determination or an order for the time being in force shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(5) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of *subsection (4)* shall himself or herself be guilty of an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where an offence under *subsection (4)* or *(5)* which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

(7) *Subsections (4), (5) and (6)* operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (4)* shall have effect as if—

(a) in *paragraph (a)*, “€300” were substituted for “€3,000”, and

(b) in *paragraph (b)*, “€1,000” were substituted for “€10,000”.

(8) Summary proceedings in relation to an offence under this section may be brought by the Authority.

(9) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within 12 months after the day on which the offence was committed.

PT.3
Alteration of
certain monetary
amounts.

27.—(1) The Minister may make an order once, and once only, in each year, beginning with the year following the year in which this section is commenced, amending *subsection (1)(a)* of *section 18* by substituting for the monetary amount standing specified in *subparagraph (i)* or *(iii)* of that provision for the time being a monetary amount that is greater than that amount.

(2) In making an order under *subsection (1)*, the Minister shall have regard to, and only to, such economic data as the Minister considers to be relevant to the purpose.

(3) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

Relationship
between this Part
and other
enactments.

28.—(1) Nothing in an enactment specified in *subsection (2)* prejudices the operation of this Part.

(2) The enactment mentioned in *subsection (1)* is an enactment (other than an enactment contained in this Part) that requires, in respect of the doing of the act or acts that comprise a merger or acquisition to which *paragraph (a)* or *(b)* of *section 18(1)* applies, the doing of that act or those acts to be either—

(a) sanctioned, whether such sanctioning takes the form of the making by a court of an order or the granting by a person of any other form of consent, or

(b) the subject of any form of registration of a resolution passed by one or more undertakings.

(3) Neither the giving of a sanction such as is referred to in *subsection (2)(a)* nor the carrying out of a registration such as is referred to in *subsection (2)(b)* shall be done or completed in relation to a merger or acquisition to which *paragraph (a)* or *(b)* of *section 18(1)* applies unless and until no step remains to be taken, or power of any person or court or of either House of the Oireachtas remains to be exercised, under this Part, being a step or power the taking or exercising of which would, by virtue of this Part, prevent the merger or acquisition from being put into effect.

PART 4

THE COMPETITION AUTHORITY

The Competition
Authority.

29.—(1) Notwithstanding the repeals effected by *section 48*, the Authority shall continue in being.

(2) The Authority shall be a body corporate with perpetual succession and power to sue and be sued in its own name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in or rights over or in respect of land or any other property.

(3) The Authority shall be independent in the performance of its functions.

[2002.]

Competition Act, 2002.

[No. 14.]

30.—(1) The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or of any other enactment, the following functions:

Pt.4
Functions of the
Authority.

- (a) to study and analyse any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition (which may consist of, or include, a study or analysis of any development outside the State);
- (b) to carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any breach of this Act that may be occurring or has occurred;
- (c) to advise the Government, Ministers of the Government and Ministers of State concerning the implications for competition in markets for goods and services of proposals for legislation (including any instruments to be made under any enactment);
- (d) to publish notices containing practical guidance as to how the provisions of this Act may be complied with;
- (e) to advise public authorities generally on issues concerning competition which may arise in the performance of their functions;
- (f) to identify and comment on constraints imposed by any enactment or administrative practice on the operation of competition in the economy;
- (g) to carry on such activities as it considers appropriate so as to inform the public about issues concerning competition.

(2) The Minister may request the Authority to carry out a study or analysis of any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition and submit a report to the Minister in relation to the study or analysis; the Authority shall comply with such a request within such period as the Minister may specify in the request.

(3) The Authority may delegate the performance of any of the functions assigned to it by this Act or any other enactment to any member of the Authority or to any member of its staff.

(4) Notwithstanding *subsection (3)*, the Authority may not delegate the performance of the following functions—

- (a) functions under *section 4(3)*,
- (b) the power to initiate proceedings for an offence under *section 6* or *7*, for relief under *section 14* or for an offence under *section 26*,
- (c) the power to make determinations under *section 22*,
- (d) functions under *sections 33, 39, 42* and *43*.

PT.4
Investigations of the
Authority —
general provisions.

31.—(1) The Authority may, for the purposes of its functions under this Act, do all or any of the following things:

- (a) summon witnesses to attend before it,
- (b) examine on oath (which the Authority, or any member of staff of the Authority duly authorised by the Authority, is by this section authorised to administer) the witnesses attending before it,
- (c) require any such witness to produce to the Authority any document in his or her power or control.

(2) A witness before the Authority pursuant to *subsection (1)(a)*, shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(3) A summons to be issued for the purposes of *subsection (1)(a)* shall be signed by a member of the Authority.

(4) Any person who—

- (a) on being duly summoned as a witness before the Authority makes default in attending, or
- (b) being in attendance as a witness refuses to take an oath legally required by the Authority to be taken, or to produce any document in his or her power or control legally required by the Authority to be produced by him or her, or to answer any question to which the Authority may legally require an answer, or
- (c) does any other thing which, if the Authority were a court having power to commit for contempt of court, would be contempt of such court,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

Prohibition on
unauthorised
disclosure of
information.

32.—(1) A person shall not disclose information that—

- (a) comes into the possession of the Authority by virtue of the exercise by it of its powers under this Act to obtain information, or
- (b) comes into the possession of the Authority in the course of a meeting of the Authority held in private at which he or she is present.

(2) *Subsection (1)* shall not apply to—

- (a) a communication made by a member of the Authority, a member of staff of the Authority or an authorised officer in the performance of any of his or her functions under this Act, being a communication the making of which was necessary for the performance by the member or officer of any such function, or
- (b) the disclosure of information in a report of the Authority or for the purpose of legal proceedings under this Act or

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pursuant to an order of a court of competent jurisdiction Pr.4 S.32
for the purposes of any proceedings in that court, or

- (c) the disclosure by a member of the Authority, a member of staff of the Authority or an authorised officer to any member of the Garda Síochána of information which, in the opinion of the member or member of staff of the Authority or authorised officer, may relate to the commission of an offence (whether an offence under this Act or not).

(3) If any person contravenes *subsection (1)* he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(4) A person who suffers loss or harm as a result of a contravention of *subsection (1)* shall be entitled to bring proceedings against the person referred to in *subsection (5)* in any court of competent jurisdiction seeking one, or more than one as appropriate, of the following reliefs in respect of that loss or harm:

- (a) relief by way of injunction or declaration,
- (b) damages.

(5) The person mentioned in *subsection (4)* is—

- (a) if the person who contravened *subsection (1)* is other than a member or a member of staff of the Authority or an authorised officer, that person,
- (b) if the person who contravened *subsection (1)* is a member or a member of staff of the Authority or an authorised officer and the relief sought, or to the extent that the relief sought, in the proceedings is—
 - (i) relief referred to in *subsection (4)(a)*, that person,
 - (ii) relief referred to in *subsection (4)(b)*, the Authority.

(6) An action under *subsection (4)* shall be regarded as an action founded on tort.

(7) The Authority shall be entitled, in any proceedings, to the same privilege in respect of a communication to or by the Authority, any member of the Authority or any member of staff of the Authority as any Minister of the Government.

33.—(1) As soon as practicable after the commencement of this section, and thereafter within 6 months before each third anniversary of such commencement, the Authority shall prepare and submit to the Minister a plan (in this section referred to as a “strategic plan”) for the ensuing 3 year period. Strategic plans and work programmes.

(2) A strategic plan shall—

- (a) comprise the key objectives, outputs and related strategies, including use of resources, of the Authority,
- (b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and

(c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Authority.

(3) The Minister shall, as soon as practicable after a strategic plan has been submitted to him or her under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.

(4) The Authority shall prepare and submit to the Minister by the end of each year a programme of the activities it proposes to carry on in the following year.

(5) Such a programme shall be prepared in such form and manner as may be directed by the Minister.

Provisions for co-operation between the Authority and statutory bodies.

34.—(1) There shall, as soon as practicable after the commencement of this section, be entered into between the Authority and every one of the statutory bodies one or more agreements for the purposes of—

- (a) facilitating co-operation between the Authority and the statutory bodies in the performance of their respective functions in so far as they relate to issues of competition between undertakings,
- (b) avoiding duplication of activities by the Authority and any of the statutory bodies, being activities involving the determination of the effects on competition of any act done, or proposed to be done, and
- (c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Authority and the statutory bodies in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings,

and each such agreement that is entered into is referred to in this section as a “co-operation agreement”.

(2) It shall not be necessary, for the purposes of *subsection (1)*, that the same statutory bodies be party to each agreement entered into with the Authority in pursuance of that subsection.

(3) A co-operation agreement shall include—

- (a) a provision enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions,
- (b) a provision enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter, and
- (c) a provision requiring each party to consult with any other party before performing any functions in circumstances where the respective exercise by each party of the functions concerned involves the determination of issues of competition between undertakings that are identical to one another or fall within the same category of such an issue, being a category specified in the agreement.

(4) A co-operation agreement may be varied by the parties concerned. Pr.4 S.34

(5) The Minister and the relevant Minister or Ministers shall, within 6 months after the commencement of this section, each be furnished by one of the parties concerned with a copy of every co-operation agreement that has been entered into.

(6) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as practicable after the making of the agreement or variation, notice of its making shall be published by the parties in such manner as they think fit.

(7) Such a notice shall state that a copy of the agreement concerned (including the agreement as varied) may be inspected at such place, or by such means as is specified in the notice and that a copy of the agreement may be purchased from the parties in such manner as is so specified (and a copy of the agreement shall, accordingly, be made available for such inspection and be made available for such purchase (at a cost not exceeding the reasonable cost of making a copy or, where appropriate, such cost and the amount of any postage involved)).

(8) Without prejudice to *subsection (9)*, nothing in any enactment shall be construed as preventing the provisions of a co-operation agreement from having effect in accordance with their terms.

(9) If information is furnished by one party to another party pursuant to a provision of a co-operation agreement of the kind referred to in *subsection (3)(a)*, the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.

(10) A failure by the Authority or a statutory body to comply with a provision of a co-operation agreement shall not invalidate the exercise by it of any power.

(11) The Minister may, after consultation with the other Minister of the Government concerned, by order—

(a) amend *column (1) of Schedule 1* by adding to, or deleting from, that column any person, and

(b) in consequence of that amendment, amend *column (2) of that Schedule* by adding to, or deleting from, that column the title of a Minister of the Government, being the Minister of the Government who has responsibility for the first-mentioned person.

(12) In this section—

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

“party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate;

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“relevant Minister” means the Minister of the Government specified in *column (2)* of *Schedule 1* opposite the mention in *column (1)* of that Schedule of a person who is a party to a co-operation agreement proposed to be notified under *subsection (5)*.

Membership.

35.—(1) The membership of the Authority shall consist of—

- (a) a chairperson and such number of other whole-time members, not being less than 2 nor more than 4, as the Minister determines and appoints (but that limitation on numbers does not affect an appointment under *paragraph (b)*),
- (b) in any case where it appears to the Minister that a member referred to in *paragraph (a)* is temporarily unable to discharge his or her duties, a whole-time member appointed by the Minister, for all or part of that period of inability, to act in that member’s place, and
- (c) such number of part-time members as the Minister may determine and appoint.

(2) Without prejudice to *subsection (1)(b)*, where it appears to the Minister that the chairperson of the Authority is temporarily unable to discharge his or her duties, the Minister may authorise another whole-time member to act, for all or part of that period of inability, in the chairperson’s place and for so long as such a member is so authorised references in this Act to the chairperson of the Authority shall be construed as including references to that member.

(3) Subject to *subsection (4)*, sections 15 and 17 of the Civil Service Commissioners Act, 1956, shall apply, with any necessary modifications, in relation to appointments of members of the Authority as they apply in relation to appointments to positions in the civil service and, accordingly, the Minister shall not appoint a person to be such a member unless the Civil Service Commissioners, after holding a competition under that section 15, have, under that section 17, selected the person for appointment and advised the Minister accordingly.

(4) *Subsection (3)* does not apply to an appointment under *paragraph (b)* or *(c)* of *subsection (1)* or the reappointment under that subsection of a person as a member of the Authority (including a person who was such a member immediately before the commencement of this section).

(5) An appointment under *paragraph (b)* or *(c)* of *subsection (1)* shall not be made unless the proposed appointee possesses, in the opinion of the Minister, sufficient expertise in or experience of one or more of the following areas, namely — law, economics, public administration, consumer affairs, or business generally.

(6) The term of office of a member of the Authority shall be fixed by the Minister when appointing him or her and shall not exceed 5 years.

(7) An outgoing member of the Authority shall be eligible for reappointment.

(8) Each member of the Authority shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for Finance.

(9) A member of the Authority may be paid such remuneration, Pt.4 S.35
if any, as the Minister with the consent of the Minister for Finance determines.

(10) Subject to *subsection (3)*, the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, shall not apply to the office of a member.

(11) If a member of the Authority is personally interested in a particular matter with which the Authority is dealing, he or she shall inform the Minister accordingly and shall not act as a member during the consideration of the matter.

(12) The Minister may remove from office a member of the Authority who has become incapable through ill-health of performing efficiently his or her duties as such member or whose removal appears to the Minister to be necessary in the interests of the effective and economical performance of the functions of the Authority.

(13) Where the Minister removes a member of the Authority from office, he or she shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.

(14) A member of the Authority may resign his or her office.

36.—(1) Where a member of the Authority is— Disqualification.

- (a) nominated as a member of Seanad Éireann, or
- (b) elected as a member of either House of the Oireachtas or of the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament,

he or she shall thereupon cease to be a member of the Authority.

(2) A person who is for the time being entitled—

- (a) under the Standing Orders of either House of the Oireachtas to sit therein, or
- (b) under the rules of procedures of the European Parliament to sit therein,

shall, while so entitled, be disqualified from being a member of the Authority.

(3) A member of the Authority shall be disqualified from holding and shall cease to hold office if he or she is adjudicated bankrupt or makes a composition or arrangement with his or her creditors, or is sentenced by a court of competent jurisdiction to suffer any term of imprisonment.

37.—(1) The quorum for a meeting of the Authority shall be 3 Meetings and
business.
members unless the Minister otherwise authorises.

(2) At a meeting of the Authority—

(a) the chairperson of the Authority shall, if present, be chairperson of the meeting,

(b) if and so long as the chairperson of the Authority is not present or if the office of chairperson is vacant, the members of the Authority who are present shall choose one of their number to be chairperson of the meeting.

(3) Every question at a meeting of the Authority shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) The Authority may act notwithstanding vacancies in its membership.

(5) Subject to this Act, the Authority may regulate its own procedures.

38.—(1) The chairperson of the Authority shall manage and control generally the staff, administration and business of the Authority.

(2) The chairperson of the Authority shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that committee on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the chairperson or the Authority is required by or under statute to prepare,

(b) the economy and efficiency of the Authority in the use of its resources,

(c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(3) In the performance of duties under *subsection (2)*, the chairperson of the Authority shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

(4) The chairperson of the Authority shall, whenever required to do so by—

(a) a committee appointed by either House of the Oireachtas, the business of which committee includes examination of policy relating to competition, or

- (b) a committee appointed jointly by both Houses of the Oireachtas, the business of which committee includes examination of such policy, Pr.4 S.38

attend before such committee to discuss the general activities of the Authority.

39.—(1) The Authority may appoint such, and such number of, persons to be members of the staff of the Authority as it may determine with the consent of the Minister and the Minister for Finance. Staff.

(2) A member of staff of the Authority shall be paid out of moneys at its disposal such remuneration and allowances for expenses incurred by him or her as the Authority, with the consent of the Minister and the Minister for Finance, may determine.

(3) A member of staff of the Authority shall hold his or her office or employment on such other terms and conditions, as the Authority, with the consent of the Minister and the Minister for Finance, may determine.

(4) The grades of the staff of the Authority, and the numbers of staff in each grade, shall be determined by the Authority with the consent of the Minister and the Minister for Finance.

40.—(1) The Authority shall provide itself with a seal which shall be authenticated by the chairperson or some other member of the Authority authorised by it to act on its behalf and by the signature of an officer of the Authority authorised by it to act in that behalf. Seal of the Authority.

(2) Judicial notice shall be taken of the seal of the Authority and any document sealed with the seal shall be admissible in evidence.

41.—(1) The Authority shall— Accounts and audits.

(a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister, and

(b) furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Authority of its functions over a period of years.

(2) The Authority shall cause to be kept all proper and usual books or other records of account of—

(a) all income and expenditure of the Authority,

(b) the sources of such income and the subject matter of such expenditure, and

(c) the property, assets and liabilities of the Authority,

and shall keep such other special accounts as the Minister may from time to time direct to be kept.

(3) The financial year of the Authority shall be the period of 12 months ending on the 31st day of December in any year.

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(4) The Authority shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay such fee therefor as may be fixed by the Minister.

- (5) The accounts of the Authority for each financial year shall—
- (a) be prepared in such form and manner as may be specified by the Minister, and
 - (b) be prepared by the Authority as soon as practicable, but not later than 3 months, after the end of the financial year to which they relate for submission to the Comptroller and Auditor General for audit,

and a copy of the accounts and the auditor's report thereon shall be presented, as soon as practicable, to the Minister.

(6) The Minister shall cause a copy of the accounts and auditor's report referred to in *subsection (5)* to be laid before each House of the Oireachtas.

Annual report.

42.—(1) Within 2 months after the end of each financial year, the Authority shall publish a report of its activities during that year.

(2) Each report under *subsection (1)* shall contain information in such form and regarding such matters as the Minister may direct.

(3) Prior to the publication of each report under *subsection (1)*, the Authority shall—

- (a) furnish to the Minister a copy of the report, and
- (b) arrange for a copy of the report to be laid before each House of the Oireachtas.

Grants and borrowing powers.

43.—(1) In each financial year there may be paid to the Authority out of moneys provided by the Oireachtas a grant of such amount as the Minister, with the consent of the Minister for Finance, may sanction towards the expenses of the Authority in the performance of its functions.

(2) The Authority may, with the consent of the Minister given with the concurrence of the Minister for Finance, borrow temporarily such sums of money as the Authority may require for the purpose of providing for current expenditure by it.

Superannuation.

44.—(1) The Minister shall, with the consent of the Minister for Finance, make and carry out such a scheme or schemes for the granting of superannuation benefits to or in respect of the members of the Authority and the members of staff of the Authority as he or she may think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section. Pr.4 S.44

(4) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of any member of the Authority or any member of the staff of the Authority otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

(5) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(7) A scheme made under paragraph 5 of the Schedule to the Competition Act, 1991, and in force immediately before the commencement of this section shall continue in force as if it were a scheme made under this section and may be amended or revoked accordingly.

(8) In this section “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

45.—(1) The Authority may appoint persons to be authorised officers for the purposes of this Act. Authorised officers and their powers.

(2) For the purpose of obtaining any information necessary for the performance by the Authority of any of its functions under this Act, an authorised officer may, on production of a warrant issued under *subsection (4)* authorising him or her to exercise one or more specified powers under *subsection (3)*, exercise that power or those powers.

(3) The powers mentioned in *subsection (2)* are the following:

(a) to enter, if necessary by force, and search premises at, or vehicles in or by means of, which any activity in connection with the business of supplying or distributing goods or providing a service, or in connection with the organisation or assistance of persons engaged in any such business, is carried on,

(b) to enter, if necessary by force, and search any dwelling occupied by a director, manager or any member of staff of an undertaking that carries on an activity referred to in *paragraph (a)* or of an association of undertakings that carry on activities of the kind referred to in that paragraph, being, in either case, a dwelling as respects which there are reasonable grounds to believe records relating to the carrying on of that activity or those activities are being kept in it,

- (c) to seize and retain any books, documents and records relating to an activity referred to in *paragraph (a)* found on any premises, vehicles or dwelling referred to in that paragraph or *paragraph (b)* and take any other steps which appear to the officer to be necessary for preserving, or preventing interference with, such books, documents and records,
- (d) to require the person who carries on an activity referred to in *paragraph (a)* and any person employed in connection therewith to—
 - (i) give to the officer his or her name, home address and occupation, and
 - (ii) provide to the officer any books, documents or records relating to that activity which are in that person's power or control, and to give to the officer such information as he or she may reasonably require in regard to any entries in such books, documents or records,
- (e) to inspect and copy or take extracts from any such books, documents and records,
- (f) to require a person mentioned in *paragraph (d)* to give to the authorised officer any information he or she may require in regard to the persons carrying on the activity referred to in *paragraph (a)* (including in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and its committee of management or other controlling authority) or employed in connection therewith,
- (g) to require a person mentioned in *paragraph (d)* to give to the authorised officer any other information which the officer may reasonably require in regard to the activity referred to in *paragraph (a)*.

(4) A judge of the District Court may issue a warrant to an authorised officer for the purposes of *subsection (2)* if the judge is satisfied from information on oath that it is appropriate to do so.

(5) The powers specified in a warrant issued under *subsection (4)* may be exercised within 1 month after the date of issue of the warrant or such greater or lesser period as is specified in it.

(6) Any books, documents or records which are seized or obtained under *subsection (3)* may be retained for a period of 6 months, or such longer period as may be permitted by a judge of the District Court, or if within that period there are commenced any proceedings to which those books, documents or records are relevant, until the conclusion of those proceedings.

(7) Where the Authority or an authorised officer proposes to retain, pursuant to *subsection (6)*, books, documents or records for a period longer than 14 days after the date on which they were seized or obtained by the authorised officer, the Authority or that officer shall, before the expiry of that period of 14 days, or such longer period with the consent of the person hereafter mentioned, furnish, on request, a copy of the books, documents or records to the person who it appears to the Authority or officer is, but for the exercise of the powers under this section, entitled to possession of them.

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(8) A warrant issued under *subsection (4)* which authorises the exercise of the powers referred to in *paragraph (a)* or *(b)* of *subsection (3)* shall, unless it states that this subsection is not to apply, operate to authorise one or more members of the Garda Síochána to accompany the authorised officer concerned in his or her entry into any premises or dwelling concerned and to assist the officer in the exercise of any of his or her powers thereon. Pr.4 S.45

(9) For the avoidance of doubt, nothing in *subsection (8)* affects the exercise by an authorised officer who is a member of the Garda Síochána of any power, which apart from that subsection, he or she could exercise by virtue of *subsection (2)* or otherwise.

(10) A person who obstructs or impedes an authorised officer in the exercise of a power conferred by this section or does not comply with a requirement under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(11) In this section “records” includes, in addition to records in writing—

- (a) discs, tapes, sound-tracks or other devices in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) films, tapes or other devices in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) photographs,

and a reference to a copy of records includes, in the case of records falling within *paragraph (a)* only, a transcript of the sounds or signals embodied therein, in the case of records falling within *paragraph (b)*, a still reproduction of the images embodied therein and, in the case of records falling within both of those paragraphs, such a transcript and such a still reproduction.

(12) The reference in *subsection (2)* to the functions of the Authority shall, for the purposes of this section, be deemed to include a reference to the investigation by the Authority of, and the taking by it of proceedings (whether civil or criminal) in relation to, any contravention of an enactment repealed by *section 48* that it suspects has occurred.

(13) In—

- (a) an action under *section 14*, or
- (b) proceedings for an offence under this Act,

the production to the court of a document purporting to be a warrant or other document whereby the Authority appointed, on a specified date, a person under this section to be an authorised officer for the purposes of this Act shall, without proof of any signature on it or that the signatory was the proper person to sign it, be sufficient evidence, until the contrary is proved, that the first-mentioned person is or, as the case may be, was at all material times (but not earlier

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than the date aforesaid) a person appointed under this section to be an authorised officer for the purposes of this Act.

Relationship of Authority with foreign competition bodies.

46.—(1) In this section “foreign competition body” means a person in whom there are vested functions under the law of another state with respect to the enforcement or the administration of provisions of that state’s law concerning competition between undertakings (whether in a particular sector of that state’s economy or throughout that economy generally).

(2) The Authority may, with the consent of the Minister, enter into arrangements with a foreign competition body whereby each party to the arrangements may—

- (a) furnish to the other party information in its possession if the information is required by that other party for the purpose of performance by it of any of its functions, and
- (b) provide such other assistance to the other party as will facilitate the performance by that other party of any of its functions.

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

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

- (a) those terms correspond to the provisions of any law in force in the state in which the body is established, being provisions which concern the disclosure by the body of the information referred to in *paragraph (b)*, and
- (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Authority pursuant to the arrangements referred to in *subsection (2)*.

Information relating to offences under this Act may be disclosed to Authority.

47.—Notwithstanding any other law, information which, in the opinion of—

- (a) the Director of Corporate Enforcement,
- (b) a member of the Garda Síochána, or
- (c) such other person as may be prescribed after consultation by the Minister with any other Minister of the Government appearing to him or her to be concerned,

may relate to the commission of an offence under this Act may be disclosed by that Director, member or other person to the Authority, a member or a member of staff of the Authority or an authorised officer.

PART 5

MISCELLANEOUS

48.—The following are repealed: Repeals.

- (a) the Industrial and Provident Societies (Amendment) Act, 1971,
- (b) the Mergers, Take-overs and Monopolies (Control) Act, 1978,
- (c) sections 24, 25 and 26 of the Restrictive Practices (Amendment) Act, 1987,
- (d) the Competition Act, 1991, and
- (e) the Competition (Amendment) Act, 1996.

49.—The Minister may, by order, amend or revoke the Restrictive Practices (Groceries) Order, 1987 (S.I. No. 142 of 1987). Restrictive Practices (Groceries) Order, 1987.

50.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by him or her to the Authority of his or her opinion that— Protections for person reporting breaches of Act.

- (a) an offence under *section 6* or *7* has been or is being committed, or
- (b) any other provision of this Act that prohibits an undertaking from doing a particular thing or things has not been or is not being complied with,

unless it is proved that he or she has not acted reasonably and in good faith in forming that opinion and communicating it to the Authority.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief.

(3) An employer shall not penalise an employee for having formed an opinion of the kind referred to in *subsection (1)* and communicated it, whether in writing or otherwise, to the Authority if the employee has acted reasonably and in good faith in forming that opinion and communicating it to the Authority.

(4) *Schedule 3* shall have effect for the purposes of *subsection (3)*.

(5) A person who states to the Authority that an undertaking has committed or is committing an offence under *section 6* or *7* or has failed or is failing to comply with a provision of this Act referred to in *subsection (1)(b)* knowing that statement to be false shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(6) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *subsection (5)* may be instituted within 2 years after the day on which the offence was committed or, if later, 2 years after the day on which evidence that, in the opinion of the person by whom the proceedings are

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brought, is sufficient to justify the bringing of the proceedings comes to that person's knowledge.

(7) For the purposes of *subsection (6)*, a certificate signed by or on behalf of the person bringing the proceedings as to the day on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate.

(8) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is the Authority or not) of an opinion of the kind referred to in *paragraph (a)* or *(b)* of *subsection (1)*.

Amendment of Industrial and Provident Societies Act, 1893.

51.—The Industrial and Provident Societies Act, 1893, is amended—

(a) in section 51, by the substitution for “For the purposes of this Act” of “Subject to section 51A of this Act, for the purposes of this Act”, and

(b) by the insertion of the following section after section 51:

“51A. In relation to special resolutions for the purposes of sections 52 and 53 of this Act, section 51 of this Act shall have effect as if—

(a) in paragraph (a) ‘of not less than three fourths’ were deleted, and

(b) in paragraph (b), ‘where such special resolution is passed by a majority of less than three fourths of such members,’ were inserted before ‘confirmed’.”.

Regulations and orders.

52.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Every regulation under this Act and every order under this Act (other than an order under *section 2, subsection (4)* or *(5)* of *section 18, section 23(4)* or *section 27(1)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

53.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

54.—The Public Offices Fees Act, 1879, shall not apply to fees payable under this Act.

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Provision with respect to fees payable under this Act. Saving and transitional provisions.

55.—*Schedule 2* shall have effect for the purposes of this Act.

SCHEDULE 1

Section 3.

STATUTORY BODIES AND THEIR RESPONSIBLE MINISTERS OF THE GOVERNMENT

Statutory body (1)	Minister of the Government responsible (2)
Broadcasting Commission of Ireland	Minister for Arts, Heritage, Gaeltacht and the Islands
Commission for Electricity Regulation	Minister for Public Enterprise
Commission for Aviation Regulation	Minister for Public Enterprise
Director of Telecommunications Regulation	Minister for Public Enterprise

SCHEDULE 2

Section 55.

SAVING AND TRANSITIONAL PROVISIONS

Continuance in office of members of the Authority

1. A person who was a member of the Authority immediately before the commencement of *section 35* shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies or resigns from office or otherwise ceases to hold office.

Transfer of certain staff

2. (1) Every officer of the Minister who has been designated by the Minister at any time before such day as may be appointed by the Minister by order for the purposes of this paragraph shall, on the day of such designation, be transferred to, and become a member of, the staff of the Authority.

(2) The Minister shall not make an order under *subparagraph (1)* without having notified in writing any recognised trade unions or staff associations concerned and the Authority of his or her intention to do so and considering any representations made by them or any of them in relation to the matter within such time as may be specified in the notification.

(3) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, an officer of the Minister designated by the Minister under *subparagraph (1)*, who is transferred by that subparagraph to the staff of the Authority shall not, while in the service of the Authority, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (other than those relating to tenure of office) than the scale of pay to which he or she was entitled and terms and

conditions of service (other than those relating to tenure of office) to which he or she was subject immediately before the day on which he or she was so transferred.

(4) Until such time as the scales of pay and the terms and conditions of service (other than those relating to tenure of office) of staff so transferred are varied by the Authority, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which they were entitled and the terms and conditions of service (other than those relating to tenure of office), restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be applied or imposed by the Authority while they are in the service of the Authority. No such variation shall operate to worsen the scales of pay or the terms or conditions of service applicable to a member of such staff immediately before the day on which he or she was transferred save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

(5) The terms and conditions relating to tenure of office which are granted by the Authority to a member of the staff of the Authority who was designated by the Minister and under *subparagraph (1)* transferred to its staff shall not, while he or she is in the service of the Authority, be less favourable to him or her than those prevailing for the time being in the civil service; any alteration in the conditions in regard to tenure of office of any such member shall not be such as to render those conditions less favourable to him or her than those prevailing in the civil service at the time of such alteration save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned. If a dispute arises between the Authority and any such member as to conditions prevailing in the civil service, the matter shall be determined by the Minister for Finance after consultation with the Minister.

(6) In relation to staff transferred by *subparagraph (1)* to the staff of the Authority, previous service in the civil service shall be reckonable for the purposes of, but subject to any other exemptions or exclusions in, the Redundancy Payments Acts, 1967 to 1990, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 and 1984, and the Unfair Dismissals Acts, 1977 to 1993.

(7) In this paragraph “recognised trade union or staff association” means a trade union or staff association recognised by the Authority for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions, of employees.

Certificates, licences and notifications

3. (1) On the commencement of *section 48(d)*—

- (a) every certificate issued under section 4(4) of the Competition Act, 1991, and in force immediately before that commencement shall stand revoked;
- (b) every licence granted under section 4(2) of the Competition Act, 1991, and in force immediately before that commencement (other than a licence to which *subparagraph (2)* applies) shall stand revoked, and

(c) every notification made under section 7 of the Competition Act, 1991, shall cease to have effect. SCH.2

(2) Every licence granted under section 4(2) of the Competition Act, 1991, in respect of a category of agreements, decisions or concerted practices and in force immediately before the commencement of *section 4* shall continue in being as if it were a declaration made under *subsection (3)* of the latter section and may be revoked by the Authority accordingly.

Mergers or take-overs notified before commencement of section 18, etc.

4. (1) In this paragraph “Act of 1978” means the Mergers, Take-overs and Monopolies (Control) Act, 1978.

(2) Notwithstanding the repeals effected by *section 48*, the provisions of the Act of 1978, and of every instrument thereunder in force immediately before the commencement of *section 18*, shall continue in force for the purposes mentioned in *subparagraphs (3)* and *(4)*.

(3) A merger or take-over (within the meaning of the Act of 1978) notified to the Minister in accordance with section 5 of that Act before the commencement of *section 18* shall continue to be dealt with under that Act after that commencement and the provisions of that Act and of every instrument thereunder shall, accordingly, apply for that purpose.

(4) A proposed merger or take-over prohibited either absolutely or except on conditions by virtue of section 9 of the Act of 1978 (whether such prohibition took effect before the commencement of *section 18* or, in the case of a merger or take-over referred to in *subparagraph (3)*, after that commencement) shall continue to be so prohibited indefinitely save where the Minister, by virtue of the exercise by him or her of the powers under *subsection (4)* of that section 9, otherwise determines.

Section 21 of Interpretation Act, 1937

5. The provisions of this Schedule are without prejudice to the generality of section 21 of the Interpretation Act, 1937, (which, amongst other things, enables the prosecution of offences committed under repealed enactments).

SCHEDULE 3

Section 50.

Redress for Contravention of Section 50(3)

1. In this Schedule—

“Act of 1994” means the Terms of Employment (Information) Act, 1994;

“employee” and “employer” have the same meaning as they have in the Act of 1994.

2. In proceedings under this Schedule before a rights commissioner or the Employment Appeals Tribunal in relation to a complaint that *section 50(3)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

3. If a penalisation of an employee, in contravention of *section 50(3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to the employee in respect of that penalisation both under this Schedule and under those Acts.

4. An employee may present a complaint to a rights commissioner that his or her employer has contravened *section 50(3)* in relation to him or her and, if he or she does so, the commissioner shall give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties.

5. A decision of a rights commissioner under *paragraph 4* shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with *section 50(3)* and, for that purpose, require the employer to take specified steps,
- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under *section 17* of the Unfair Dismissals Act, 1977,

and the references in the foregoing subparagraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

6. For the purposes of this Schedule—

- (a) subsections (3) to (6) and subsection (7)(a) of *section 7* of the Act of 1994 shall apply in relation to a complaint presented under this Schedule as they apply in relation to a complaint presented under subsection (1) of that *section 7*, with the following modifications, namely—
 - (i) the deletion in that subsection (3) of all the words from “if it is presented” to the end of that subsection and the substitution of “unless it is presented to him within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable”,
 - (ii) the substitution in that subsection (6) of a reference to a decision for the reference to a recommendation,
 and any other necessary modifications,

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(b) sections 8 to 10 of the Act of 1994 shall apply as they apply SCH.3
for the purposes of that Act, with the following modifications, namely—

(i) the substitution in those provisions of references to a
decision for references to a recommendation,

(ii) the addition to section 8 of the following subsection:

“(7) Proceedings under this section before the
Tribunal shall be heard otherwise than in public.”,

(iii) the substitution in section 9 of the Act of 1994 of—

(I) references to the Circuit Court for references to
the District Court, and

(II) the following subsection for subsection (3):

“(3) An application under this section to the
Circuit Court shall be made to the judge of the
Circuit Court for the circuit in which the
employer concerned ordinarily resides or carries
on any profession, trade or business.”,

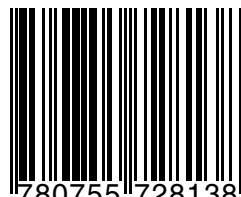
and any other necessary modifications.

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