

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, মার্চ ৮, ২০১৭

Government of the People's Republic of Bangladesh

Ministry of Commerce

NOTIFICATION

Dated : 02 March, 2017

S.R.O. No. 48-Law/2017—In exercise of the powers conferred by section 45 of the Competition Act, 2012, the Government is pleased to publish the following Authentic English Text of the Act, and it takes effect from the date on which the Act comes into force under sub-section (2) of section 1 of this Act :

**The Competition Act, 2012
(Act No. XXIII of 2012)**

[21 June, 2012/7 Ashar, 1419]

An Act to provide for the competition law

WHEREAS in the context of gradual economic development of the country, it is expedient and necessary to make provisions to promote, ensure and sustain congenial atmosphere for the competition in trade, and to prevent, control and eradicate collusion, monopoly and oligopoly, combination or abuse of dominant position or activities adverse to the competition;

(২৩৮১)
মূল্য : টাকা ২৪.০০

THEREFORE, it is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Competition Act, 2012.

(2) It shall come into force at once.

2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context—

- (a) “acquisition” means to acquire or to agree to acquire, directly or indirectly, any share, voting rights or assets of any enterprise or to take control over assets or management thereof;
- (b) “practice” means any existing practice relating to any trade carried on by a person or an enterprise;
- (c) “oligopoly” means a situation where some people or enterprises take control over the market of goods or services;
- (d) “Commission” means the Bangladesh Competition Commission established under sub-section (1) of section 5;
- (e) “cartel” means any person or association of persons who, by explicit or implicit agreement, limit or control or attempt to limit or control over the production, distribution, sale, price or transaction of goods or services in order to establish monopoly in trade;
- (f) “Chairperson” means the Chairperson of the Commission;
- (g) “contract” means—
 - (i) the contract as defined in section 2(h) of the Contract Act, 1872 (Act IX of 1872);
 - (ii) the understanding or consensus, formal or informal, written or unwritten, explicit or implicit, whatever it may be, and whether it may be enforceable by law or not, for purchase-sale, production, supply, distribution, control, or storage, as the case may be, of goods or services; and also includes the followings, namely :—
 - (1) tie-in-arrangement;
 - (2) exclusive supply agreement;
 - (3) exclusive distribution agreement;

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- (4) refusal to transaction;
 - (5) resale price maintenance;
 - (h) “combination” means acquisition or taking control or amalgamation or merger in trade;
 - (i) “goods” means the goods as defined in section 2(7) of the Sale of Goods Act, 1930 (Act No. III of 1930);
 - (j) “regulations” means regulations made under this act;
 - (k) “rules” means rules made under this Act;
 - (l) “person” means any person and also includes any institution, company, society, partnership business, firm or statutory body or any other organization or any agent thereof;
 - (m) “enterprise” means any person or financial entity or a department of the Government, who or which is, or has been, engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place, but does not include any activity relating to the currency or defence of the Government;
 - (n) “trade” means any transaction, business, industry, profession or occupation relating to production, supply, distribution, storage of any goods or control thereof, and also includes the provision of any service;
 - (o) “monopoly” means a situation where only one person or enterprise takes control over the market of goods or services;
 - (p) “price” means, in relation to the sale of any goods or providing any services, valuable exchange, whether direct or indirect or deferred, and also includes any exchange which actually relates to the sale of any goods or to the provision of any service through ostensibly relates to any other thing or matter;
 - (q) “collusion” means any written or unwritten agreement or understanding with malafide intention to control the market by destroying the environment of congenial and usual competition;

- (r) “Member” means the Member of the Commission;
- (s) “relevant market” means—
 - (i) a market of goods or services which are exchangeable or changeable by the consumer on the basis of characteristics, price and intended use of the goods or services;
 - (ii) a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are homogenous and are distinguished from the conditions prevailing in the neighboring areas;
- (t) “service” means service of any description which is made available to potential users; and also includes the provisions of services in connection with business of any industrial or commercial matter.

(2) Words and expressions used but not defined in this Act shall have the same meanings as defined in the Companies Act, 1994 (Act No. 18 of 1994).

3. **Application.**—This Act shall apply to all enterprises involved in purchase-sale, production, supply, distribution or storage, as the case may be, of goods or services for commercial purposes.

4. **Exemption from this Act.**—The goods or services which are controlled by the Government for the interest of the national security and not open for private sector shall be exempted from this Act.

CHAPTER II

ESTABLISHMENT OF THE BANGLADESH COMPETITION COMMISSION, ETC

5. **Establishment of the Bangladesh Competition Commission.**—(1) As soon as may be, after the commencement of this Act, the Government shall, by notification in the official Gazette, establish a Commission to be called the Bangladesh Competition Commission for carrying out the purposes of this Act.

(2) The Commission shall be a statutory body having perpetual succession and subject to the provisions of this Act, with power, to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

(3) The Commission shall have a common seal, which shall be in such size and with such description as may be determined by the Commission; it shall be in

the custody of the Chairperson and shall be used in such cases as may be determined by the Commission.

6. Office of the Commission.—The Head office of the Commission shall be in Dhaka and the Commission may, if necessary, with prior approval of the Government, establish its branch offices at any place in Bangladesh.

7. Composition of the Commission.—(1) The Commission shall consist of a Chairperson and not more than 4 (four) Members.

(2) The Chairperson and Members shall, subject to the fulfilment of the qualifications specified in sub-section (3), be appointed by the Government and the terms and conditions of their service shall be prescribed by rules.

(3) The person having practical experience of not less than 15 years in economics, matters relating to market, or public administration or similar subjects or legal profession or legal affairs activities in different public- private institutions or in any other subject, in the opinion of the Government, appropriate for the Commission, (fifteen) years, shall be deemed to be eligible for appointment as the Chairperson or the Member of the Commission:

Provided that more than one person experienced in same subject shall not be appointed as Member.

(4) The Chairperson and Members shall be the full-time Members of the Commission, and the Commission shall be accountable to the Government in discharging its duties.

(5) The Chairperson shall be the Chief Executive of the Commission.

(6) The Chairperson and the Members shall hold their respective offices for a term of 3 (three) years from the date on which they enter upon their offices and shall be eligible for re-appointment of another term:

Provided that the person who has attained the age of 65 (sixty five) years shall not be eligible for appointment or hold office as Chairperson or Member.

(7) The Chairperson or any other Member may, at any time before the completion of tenure under sub-section (6), resign his office by at least 3 (three) months prior notice, in writing under his hand addressed to the Government:

Provided that the Chairperson or any Member, as the case may be, shall continue to hold his office until the letter of resignation is accepted by the Government.

(8) If the office of the Chairperson is vacant or the Chairperson is unable to discharge the functions of his office on account of absence, illness or for any other cause, the most senior Member shall discharge the functions of the Chairperson until a newly appointed Chairperson holds his office or the Chairperson resumes the functions of his office.

(9) If the Chairperson or any Member dies or resigns under the provisions of sub-section (7) or is removed, the Government shall, within 60 (sixty) days of such vacancy, subject to the provisions of this Act, appoint an eligible person to fill the vacancy.

8. Duties, powers and functions of the Commission.—(1) The duties, powers and functions of the Commission are as follows, namely :—

- (a) to eliminate practices having adverse affect on competition in the market, to promote and to sustain competition and to ensure freedom of trade;
- (b) to inquire into, either on receipt of any complaint or on its own initiative. All anti-competition agreements, dominant position and practice of the enterprises;
- (c) without prejudice to section 18, to inquire into other offences specified under this Act and to sue and conduct them accordingly;
- (d) to determine the combination and matters relating to combination, to inquire into for combination and conditions of combination and approval or disapproval of combination;
- (e) to make rules, policy, instructions of notifications or administrative directions relating to competition, and to give advice and to assist the Government for implementation thereof;
- (f) to set up appropriate standards for the promotion of competitive activities and to provide training for the matters relating to competition;
- (g) to take necessary plan of actions for developing awareness among the people about the matters relating to competition by way of dissemination, publication and any other means;
- (h) to develop mass awareness by way of conducting research, seminar, symposium, workshop and other similar means about the anti-competition agreement and activities and to publish and disseminate the result of such research and to give recommendations to the Government for their effective implementation.

- (i) to implement, follow or consider any matter relating to competition sent by the Government;
- (j) to review the actions taken under any other law for the consumer rights protection and implementation;
- (k) in order to discharge the duties under this section or for efficient performance of its functions, to sign and execute any agreement or Memorandum of Understanding (MOU) with any foreign organization, with prior approval of the Government;
- (l) to fix fees, charges or any other expenses for carrying out the purposes of this Act; and
- (m) to do any other act prescribed by rules for carrying out the purposes of this Act.

(2) The Commission may, either on its own motion or on any allegation, inquire into any complaint made under this Act.

(3) The Commission or, as the case may be, the Chairperson or any Member may exercise the same power in respect of the following matters as a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) namely:—

- (a) summoning and ensuring the attendance of any person before the Commission;
- (b) discovery and production of any document;
- (c) examining and inspection of any information;
- (d) requisitioning any necessary document or its copy from any office;
- (e) issuing notice for examination of witness and document;
- (f) taking any action for the purpose of this sub-section.

(4) The Commission may direct any person to produce before the Commission or any officer authorized by it in the behalf, such books, accounts or other documents, in his custody or under his control, which are related with any trade and the examination of which is required for the purposes of this Act, and the person so directed shall be bound to produce such information.

(5) The Commission may call upon such experts from the fields of economics, commerce, accounting, or from any other fields as it deems necessary to assist the Commission in the conduct of any inquiry and such person shall take proper steps to assist the Commission in accordance with direction.

(6) All proceedings before the Commission shall be deemed to be judicial proceedings under sections 193 and 228 for the purposes of the section 196 of the Penal Code, 1860 (Act XLV of 1860), and the Commission shall be deemed to be a Civil Court for the purpose of section 35 and 195 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(7) If any person interferes the Chairperson or any person duly authorized by the Commission in exercising the powers under sub-section (3), or intentionally refuses to comply with the order made under the said sub-section, it shall be a punishable offence under this Act and, he shall be punished with imprisonment for a term not exceeding 03 (three) years, or with fine, or with both.

9. Removal of Chairperson and Members.—The Government may remove the Chairperson or any member from his office on any or more of the following grounds if he—

- (a) is declared by a competent court to be an insolvent;
- (b) is engaged in any post extraneous to his own duties in consideration of remuneration;
- (c) is declared by a competent court to be an unsound mind;
- (d) is convicted of an offence involving moral turpitude;
- (e) becomes physically or mentally incapable of discharging his duties; or
- (f) abuses his position as to render his continuance in office in the opinion of the Government prejudicial to the public interest.

(2) No action shall be taken against the Chairperson or any Member under sub-section (1), without giving reasonable opportunity of being heard.

10. Status, salary and privileges of Chairperson and Members.—The Chairperson and the Members shall be entitled to such status, salary, allowances and other privileges ancillary thereto as may be determined by the Government.

11. Meeting of the Commission.—(1) Subject to the provisions of this Act, the Commission shall determine the procedure of its meeting.

(2) The Commission shall meet at least once in every 4 (four) months and the date, time and place of the meeting shall be determined by the Chairperson:

Provided that the Chairperson may, for any special purpose, at any time convene its emergency meeting.

(3) The Chairperson shall preside over all the meetings and in his absence any Member nominated by the Members present at the meeting shall preside over the meeting.

(4) The quorum of the meeting shall be the constituted by the presence of the Chairperson and at least 2 (two) Members.

(5) Every member shall have one vote in making decision of the meeting of the Commission and, in the event of an equality of votes, the person presiding over the meeting shall have a second or casting vote.

(6) No act or proceeding of the Commission shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of, the Commission.

(7) The minutes of each meeting shall be signed by the President of the meeting and a copy of it shall be sent to the Government within 20 (twenty) days of the meeting.

12. Appointment of Secretary, officers and employees of Commission, etc.—(1) There shall be a Secretary to the Commission, who shall be appointed by the Government and the terms and conditions of his service shall be determined by the Government.

(2) The Commission may appoint necessary number of officers and employees for the efficient performance of its functions under theis Act.

(3) The salary, allowance and other terms and conditions of service of the officers and employees of the Commission shall be prescribed by rules:

Provided that the Government may on request of the Commission, appoint any officer or employee of the civil service to the Commission on deputation.

13. Restriction on certain empolment of Chairperson and other Members after ceassion of service.—The Chairperson and any members shall not, for a period of 1(one) year from the date on which he ceases to hold office, be employed, or connected with the administration or management of any enterprise which was or may be a party to a proceeding before the Commission under this Act.

14. Exchange of opinion between Commission and statutory body.—

(1) When any person raises any objection that any course of proceeding of any statutory body or any decision of such body is contrary or is likely to be contrary to any of the provisions of this Act, such statutory body may, on its own motion, refer the issue, suspending the continuation of the proceeding, to the Commission for taking proper action on it.

(2) On receipt of a reference from any statutory body specified in sub-section (1), the Commission shall give its opinion within 60 (sixty) days of receipt of such reference to such body and, considering the opinion, such body shall take necessary action or conduct the continuous proceeding in accordance with the opinion.

(3) During the course of a proceeding before the Commission, if any objection is raised by any person that any decision taken or proposed to be taken by the Commission is contrary or is likely to be contrary to any provision of this Act and the implementation thereof is entrusted to any statutory body, the Commission may, on its own motion, refer the issue, suspending the continuation of the proceeding, to the statutory body for taking proper action on it.

(4) On receipt of a reference from the Commission specified in sub-section (3), the statutory body shall give its opinion within 60 (sixty) days of receipt of such reference to the Commission and, considering the opinion, the Commission shall take necessary action or conduct the continuous proceeding in accordance with the opinion.

(5) In order to consider the opinion received under sub-section (2) or, as the case may be, under sub-section (4), the Commission or, as the case may be, the statutory body shall, if necessary, after taking necessary initiative in accordance with appropriate law dispose of the matter, upon the consensus of the Commission and the statutory body.

CHAPTER III

PROHIBITION OF ANTI-COMPETITION AGREEMENT, ABUSE OF DOMINANT POSITION, ETC.

15. Anti-competition agreement.—(1) No person shall, directly or indirectly, enter into any agreement or collusion, in respect of production, supply, distribution, storage or acquisition of any goods or services which causes or is likely to cause an adverse affect on competition or creates monopoly or oligopoly in the market.

(2) The practice or decision of any person or association of persons engaged in any agreement, any trade of identical or similar goods or in any provision of services shall be deemed to have adverse affect on competition in the market of goods or services if it—

(a) directly or indirectly—

- (i) determines abnormal purchase or sale prices; or
- (ii) determines the deceptive price in all process including bid rigging;

- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) divides the market on the basis of types of goods or services, source of production or provision of services, geographical area of market, or number of customers in the market or any other similar basis.

Explanation.—For the purposes of this section “bid rigging” means any agreement which creates favourable condition for the parties to the agreement or, as the case may be, beneficiaries, by reducing competition for bids or adversely affecting the process of bidding .

(3) For the purposes of this section the following arrangements and agreements shall be deemed to be an anti-competition agreement if they have adverse affect on competition, namely:—

- (a) “tie-in arrangement”, that is to say, an agreement or understanding requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods or to receive any benefit from the seller or any other person or enterprise engaged by him;
- (b) “exclusive supply agreement”, that is to say, an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller;
- (c) “exclusive distribution agreement”, that is to say, an agreement which limits, restricts or withholds the output or supply of any goods or allocates any area or market for the disposal or sale of the goods;
- (d) “refusal to deal”, that is to say, an agreement which restricts, by any manner the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) “resale price maintenance”, that is to say, an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(4) Nothing contained in sub-section (1) shall restrict—

- (i) the right of any person, to restrain any infringement of, or for protecting intellectual property rights conferred under the intellectual property law, to impose reasonable conditions; and

- (ii) the right of any person to export goods from Bangladesh to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

16. Abuse of dominant position.—(1) No enterprise shall abuse its dominant position.

(2) for the purposes of sub-section (1), it shall be deemed to be an abuse of dominant position, if an enterprise—

- (a) imposes directly or indirectly unfair or discriminatory condition in purchase or sale of goods or services or discriminatory price or predatory price in purchase or sale of goods or services;
- (b) limits or restricts production of goods or provision of services or market thereof or technical or scientific development relating to goods or services to the prejudice of consumers;
- (c) indulges in practice or continue to do practices which prevents others to access in the market;
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section,—

- (i) “dominant position” means a position of strength enjoyed by an enterprise in the relevant market which enables it to—
 - (1) operate independently of competitive forces prevailing in the relevant market; or
 - (2) affect its competitors or consumers or the relevant market in its favour;
- (ii) “predatory price” means the sale of goods or provision of services at a price which is below the cost of production of the goods or provision of services in order to reducing or eliminating competition.

CHAPTER IV

COMPLIANT, INQUIRY, ORDER ETC.

17. Pre-inquiry procedure.—In order to protect the interest of the consumers and competitors in the market if it appears to the Commission that it is necessary to prevent immediately any agreement, misuse of dominant position or collusion which causes or is likely to cause an adverse affect on the relevant market, the Commission may, after giving reasonable opportunity on being heard to the concerned parties, dispose of or settle the issue with necessary directions before conducting inquiry under this Act.

18. Inquiry, etc.—If the Commission has reason to believe that any enterprise has entered into any agreement or misused dominant position which is harmful to the relevant market, the Commission may, suo-moto or on receipt of complaint from any one, inquire into the matter.

(2) The Commission may make regulations regarding the procedures of inquiry under sub-section (1).

19. Power to issue interim order.—If the Commission, while conducting an inquiry, is satisfied that any person violates the provision of sub-section (1) of section 15 or sub-section (1) of section 16 or section 21 which is an offence under this Act, and, that such offence exists to continue or is likely to continue, the Commission may, by considering the importance of the activities and giving the parties reasonable opportunity of being heard, by issuing an interim order, restrain such person from carrying on such act, subject to such conditions as may not to cause irreparable loss to any one or more of the parties, including their daily works, until the conclusion of such inquiry or further orders.

(2) The time-limit of interim order shall not be extended more than the following time—

- (a) till the conclusion of hearing the allegation of violation under sub-section (1); or
- (b) not more than 60 (sixty) days from the date of order :

Provided that, in accordance with the opinion of the Commission, such time may be extended for further 60 (sixty) days.

(3) Any party may prefer an appeal within 30 (thirty) days from the date of interim order issued by the Commission.

(4) Notwithstanding the appeal or duration of appeal procedure, if there is no contrary instruction by the Commission such interim order shall be binding and effective on the parties.

20. Proceeding after inquire.—If appears to the Commission after conducting an inquiry under section 18 that any person has entered into an anti-competition agreement or misused his dominant position, the Commission may take any one or more than one of the following measures, namely:—

- (a) to direct any person involved in such agreement or abuse of dominant position—
 - (i) to discontinue his activities and not to re-enter into such agreement or to discontinue such abuse of dominant position; and
 - (ii) to impose such administrative financial penalty as it may deem fit which may not exceed 10% of the average of his turnover for the last 03 (three) preceding financial years ;
- (b) if any cartel occurs under the agreements specified in section 15, to impose upon every person included in that cartel an administrative financial penalty of up to 03 (three) times of its profit for each year of the continuance of such agreement or 10% of the average of his turnover for the last 03 (three) preceding financial years, whichever is higher;
- (c) if any person fails to pay the financial penalty under clause (a) and (b), to impose fine not more than 1 (one) lac for each day;
- (d) to pass any such order as it may deem fit for preservation of competition including division of an enterprise enjoying dominant position.

Explanation.—For the purposes of this section “turnover” means all sums receivable or received for the supply of manufactured or produced goods or for the provision of services by a person for a specified time.

21. Prohibition of combination.—(1) The combination which causes or is likely to cause an adverse affect on competition in the market of goods or services shall be prohibited :

Provided that the Commission may, on an application after conducting an inquiry, approve any combination which shall not cause or is likely to cause adverse affect on the competition, and the cause of combination for which approval of the Commission is required shall be prescribed by regulations.

(2) For the purposes of sub-section (1), in the case of a combination specified in that sub-section, the Commission may inquire into or investigate the matter on such application and in such procedure as may be prescribed by

regulations and if the Commission is satisfied after conducting such inquire or investigation, that any combination—

- (a) shall not cause or is likely to cause an adverse affect on competition, the Commission may approve such combination by an order; or
- (b) shall cause or is likely to cause an adverse affect on competition, the Commission shall not approve such combination.

22. Application of laws for inquire regarding acts committed outside of Bangladesh.—If an anti-competition act is committed outside of Bangladesh by any person or enterprise which causes an adverse affect on the relevant market, the Commission may inquire into the matter in accordance with laws, rules, etc. of the both countries.

23. Appearance before the Commission.—Any person may, by himself or by a representative, produce his statement, allegation or opposition before the Commission.

CHAPTER V REVIEW, PENALTY, APPEAL, ETC.

24. Contravention of orders of Commission, etc.—If any person, without reasonable cause, contravenes any order or direction made or any condition or restriction imposed or any approval given by the Commission, it shall be deemed to be an offence and for such offence, he shall be punished with imprisonment for a term not exceeding 1 (one) year or fine not exceeding 1 (one) lac Taka for each day of non-compliance.

25. Cognizance of offence and trial.—(1) No Court shall take Cognizance of an offence under this Act except on a complaint made by the Commission or any officer authorized by the Commission.

(2) The offence under this Act shall be tried by the Magistrate of First Class or, as the case may be, the Metropolitan Magistrate.

26. Application of Code of Criminal Procedure.—(1) Subject to this Act, rules and regulations made thereunder, the Code of Criminal Procedure shall be applicable to the inquiry, trial, appeal and all matters ancillary to an offence mentioned under this Act.

(2) Any case initiated on the basis of the report of an officer authorized by the Commission under this Act shall be deemed to be a case initiated on the basis of the report of a police officer under the Code of Criminal Procedure.

27. Bar to second trial.—If any person is convicted or found not guilty of administrative or of other offence under this Act, he shall not be tried again for the same offence under any other law.

28. Recovery of demand of the Commission.—(1) Any demand of the Commission from any person shall be recovered in accordance with the provisions of the Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

29. Review of orders of Commission, appeal, etc.—(1) Any person aggrieved by an order of the Commission may, within 30 (thirty) days from the date of such order, on payment of such fees and in such form as may be prescribed by regulations, make an application—

(a) to the Commission for review; or

(b) to the Government for appeal :

Provided that any person aggrieved by an order of administrative financial penalty under section 20 may make an application—

(a) to the Commission for review along with the deposit receipt of 10% of the fine imposed; or

(b) to the Government for appeal along with the deposit receipt of 25% of the fine imposed.

(2) If the Commission, or the Government, as the case may be, is satisfied that the applicant has failed to make an application within the time specified in sub-section (1) for reasonable cause, the Commission, or the Government, as the case may be, may extend further 30 (thirty) days on his application.

(3) In the case of a review the Commission, and in the case of an appeal the Government, without giving him an opportunity of being heard, may not amend, modify or cancel an order given in favour of any person :

Provided that the Commission or the Government shall dispose of the review or, appeal, as the case may be, within 60 (sixty) days from receipt of such application.

(4) The order passed by the Commission in review and the order passed by the Government in appeal, as the case may be, shall be deemed to be final.

30. Appeal.—(1) If any party is aggrieved by a judgment or order passed by any Magistrate, he may prefer an appeal to the Court of a Sessions Judge having local jurisdiction within 60 (sixty) days from the date of the judgement or order :

Provided that if any fine is imposed by a judgment or order of the Magistrate, and the person aggrieved by such judgment or order may, on payment of 25% of the fine specified in that judgment or order to the concerned Court of Magistrate, prefer an appeal to the Court of a Sessions Judge with the receipt of such payment.

(2) The order passed by the Court of a Sessions Judge shall be deemed to be final.

CHAPTER VI

FINANCIAL MATTER OF THE COMMISSION

31. Competition Fund.—(1) There shall be a fund of the Commission to be called the Competition Fund for carrying out the purposes of this Act.

(2) The direction and administration of the Competition Fund, hereinafter referred to as the Fund, shall, subject to the provisions of this section and rules, vest in the Commission.

(3) The following money shall be credited to the Fund, namely :—

- (a) annual grants made by the Government;
- (b) fees, charges, etc. deposited under this Act;
- (c) interests of the money deposited in the bank;
- (d) any other source not prohibited under the existing rules and regulations.

(4) The salary, allowances and other sums payable in accordance with the terms and conditions of the service of the Chairperson, Members, officers and employees shall be paid and other necessary expenses of the Commission shall be met from the Fund.

(5) The money of the Commission shall be spent only for the payment of implementation of its functions and the money for daily activities shall be kept in a Scheduled Bank specified by the Commission and the procedure of withdraw of money from the bank shall be prescribed by regulations.

Explanation.—In this section “Scheduled Bank” means the Scheduled Bank as defined in article 2 (j) of the Bangladesh Bank Order, 1972 (P. O. 127 of 1972).

(6) The surplus money of the fund shall be deposited to the Consolidated Fund of the Bangladesh Government.

32. Independence of the Commission in respect of expense of money.—The Government shall allocate a specific amount of money for expense to the Commission for every financial year; and it shall not be necessary to take prior approval from the Government to spend such allocated money in the approved and specified heads.

33. Annual statement of budget.—The Commission shall, by such date in each year as may be specified by the Government, submit to the Government for approval a budget for the next financial year showing the sums which are likely to be required from the Government for the financial year and the Government

shall approve the budget on the basis of the said statement of the budget before the commencement of that financial year.

34. Audits and accounts.—(1) The Commission shall maintain its accounts properly and prepare an annual statement thereof.

(2) The Comptroller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, shall audit the accounts of the Commission every year and shall submit a copy of audit report to the Government and the Commission.

(3) For the purposes of audit under sub-section (2), the Auditor-General or any person authorized by him in this behalf shall have access to all records, documents, cash or deposits in bank, securities, stores and other property of the Commission and may examine any Member or any officer or employee of the Commission.

CHAPTER VII

MISCELLANEOUS

35. Offences committed by companies, etc.—(1) If any offence under this Act is committed by any company, the owner, Director, Manager, Secretary or any other officer or employee or agent of the company having direct involvement in such offence shall be deemed to have committed the offence, unless he proves that the offence was committed beyond his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation.—In this section—

- (a) “company” includes any statutory body, commercial institution, partnership business, society or any association of individual or individuals; and
- (b) “director” includes any partner or member of the Board of Directors, whatever the name it is called.

36. Restriction on disclosure of information.—(1) For the purposes of this Act, no information relating to any enterprise which has been obtained by or on behalf of the Commission shall, without the prior permission in writing of the enterprise, be disclosed otherwise than for the purposes of this Act or any other law for the time being in force.

(2) If any officer or employee of the Commission violates the provisions of sub-section (1), departmental or legal proceedings shall be taken against him.

37. Power of Government to issue directions.—(1) Without prejudice to the provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by the directions of the Government on questions of policy relating to implementation, other than technical and administrative matters, of the Act:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its opinion before any direction is given under this sub-section.

(2) The decision of the Government, whether it is a question of policy or not, shall be final.

38. Delegation of powers.—(1) The Member of the Commission shall discharge their duties under the guidance and control of the Chairperson and the Members shall be accountable to the Chairperson for discharging their duties.

(2) The Commission may, subject to such conditions as may be specified by it, delegate any of its power to any of its officer.

39. Annual statement.—(1) The Commission shall, within 90 (ninety) days after the end of every financial year, submit to the President a report on the conduct of its affairs for that year.

(2) On receipt of the report under this section, the President shall cause the report to be laid before the Parliament.

40. Public servant.—The Chairperson, Members and other officers and employees of the Commission shall be deemed to be public servant within the meaning of section 21 of the Penal Code.

41. Protection of actions taken in good faith.—No suit or prosecution or other legal proceedings shall lie against the Commission, or any Member or officer or employee thereof or against any publication, report or activity made under the Authority of the Government or the Commission for anything which is, in good faith, done under this act or rules or regulations made thereunder which may cause or is likely to cause any damage to any person.

42. Provisions of this Act are additional.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force:

Provided that for implementing and fulfilling the specific objectives and purposes of this Act, the provisions of this Act shall prevail over the provisions of other laws for the time being in force.

43. Power to make rules.—The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

44. Power to make regulations.—(1) The Commission may, with prior approval of the Government and by notification in the official Gazette, make regulations not inconsistent with this Act and rules for carrying out the purposes of this Act.

45. Publication of Authentic English Text.—(1) The Government shall, after the commencement of this Act, by notification in the official Gazette, publish an Authentic English text of this Act.

(2) In the case of conflict between the Bangla and the English text the Bangla text shall prevail.

46. Repeal and savings.—(1) The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (Ord. V of 1970) is hereby repealed.

(2) Notwithstanding such repeal—

- (a) any act done or action taken under the repealed Ordinance shall be deemed to have been done, made or taken under this Act; and
- (b) any proceeding pending under the repealed Ordinance shall exist to continue as if it had been taken under this Act.

By order of the President

Hedayetullah Al Mamoon
Senior Secretary.