

Anti-competitive agreements, decisions and concerted practices.

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—

(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.

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Abuse of dominant position.

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)*.