



Awareness on Restrictive Trade Practices

Introduction

The Independent Consumer and Competition Commission ("ICCC") wishes to inform business houses and consumers of their rights and responsibilities under Part VI, Division 2-Market Conduct Rules of the *Independent Consumer and Competition Commission Act, 2002* ("ICCC Act"). The Market Conduct Rules ("MCRs") play a key role in the promotion of a fair and competitive environment for economic efficiency, resulting in lower prices, wide consumer choice and business innovation.

The following MCRs are prohibited by the ICCC Act:

- Agreements that substantially lessen competition (Section 50)
- Covenants that substantially lessen competition (Section 51)
- Exclusionary provisions (Primary Boycott) (Section 52)
- Price Fixing agreements that are deemed to lessen competition (Section 53)
- Taking advantage of market power (Section 58)
- Resale price maintenance (Sections 59 and Section 60)

Each of these MCRs are discussed below:

Agreements that substantially lessen competition (Section 50)

Section 50 prohibits a person or business from entering into and/or giving effect to a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has, or is likely to have the effect of substantially lessening competition in a market.

Such anti-competitive agreements include agreements that:

- are exclusive in nature and promote exclusivity;
- limit production;
- allocate markets and customers;
- are collusive (tendering and bid-rigging);
- fix prices; and
- fix resale prices

Covenants that substantially lessen competition (Section 51)

Section 51 prohibits a person or business from either on his own or on behalf of an associated person or business from: (a) requiring the giving of a covenant; or (b) give a covenant, that has the purpose or has or is likely to have the effect of substantially lessening competition in a market.

A Covenant is an agreement by lease, deed or other legal contract in regards to land and/or building properties.

Such covenants include agreements that:

- give exclusivity or protection from competition. For example, leases that prevents the landlord from letting other premises to competitors of the tenant, which is a business.
- restrict the commercial freedom of a tangible trading partner.
- raise barriers to entry for potential competitors in the relevant market.

Exclusionary provisions (Primary Boycott) (Section 52)

Section 52 prohibits cartel-like conduct between competitors in the supply or acquisition of goods and services. This includes contracts, arrangements or understandings between competitors where they agree not to supply to or acquire from another person or business, who is also a competitor to one of the parties to the agreement.

It is a defence to prove that an exclusionary provision in such agreements will not result in substantial lessening of competition in the relevant market.

Price fixing agreement that are deemed to lessen competition (Section 53)

Section 53 prohibits provisions of a contract, arrangement or understanding which have the purpose or effect of fixing, maintaining or controlling the prices of goods and services. Price fixing among competitors is seen as a worst form of the anti-competitive prohibitions. It is therefore a per se offence.

Taking Advantage of Market Power (Section 58)

Section 58 prohibits a person or business that has a substantial degree of power in a market from taking advantage of that power for the purpose of restricting the entry, preventing or deterring or eliminating a person or business from that or any other market.

Such conducts used to take advantage of market power include:

- Agreements that substantially lessen competition (Section 50)
- Covenants that substantially lessen competition (Section 51)
- Exclusionary provisions (Primary Boycott) (Section 52)
- Price fixing agreements that are deemed to lessen competition (Section 53)
- Resale Price Maintenance (Section 59 and Section 60)
- Margin Squeeze
- Excessive, predatory or discriminatory pricing;
- Refusal to supply or provide access to essential facilities; and
- Tying (i.e. stipulating that a buyer wishing to purchase one product must also purchase all or some of his requirements for a second product).

Resale price maintenance (Section 59 and Section 60)

These sections prohibit agreements or concerted practises between a supplier and a dealer with the objective of directly or indirectly establishing a fixed or minimum price level to be observed by the dealer when reselling a product or service to its customers.

This Public Notice has been specifically written by the *Independent Consumer and Competition Commission* for businesses and companies i.e.those who own, operate or manage them,including their advisers. This also includes all relevant stakeholders and consumers.

The ICCC encourages you to report any anti-competitive conduct once you become aware of them. You are also welcome to contact us if you have any further queries.

You can report your complaint or raise your query with the ICCC by:

1. Calling our landline number on **325 2144** and ask to speak with a Competitive Market and Fair Trade ("CMFTD") Officer;
2. register your complaint and or query in our Facebook page; and
3. write to or visit our office at:

First Floor, Garden City
Angau Drive
P.O. Box 6394
BOROKO, 111
National Capital District

For more information visit the ICCC website: www.iccc.gov.pg. Click on the Competition tab, and then click the 'Restrictive Trade Practice' tab on the left. Or contact **Ms. Grace Misina, RTP Manager** on email gmisina@iccc.gov.pg

Authorized by:

MR. PAULUS AIN

Commissioner and Chief Executive Officer