



Number 19 of 1996

COMPETITION (AMENDMENT) ACT, 1996

AN ACT TO AMEND AND EXTEND THE COMPETITION ACT, 1991, AND THE MERGERS, TAKE-OVERS AND MONOPOLIES (CONTROL) ACTS, 1978 AND 1987, AND TO PROVIDE FOR RELATED MATTERS. [3rd July, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“the Act of 1978” means the Mergers, Take-overs and Monopolies (Control) Act, 1978;

“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;

“the Principal Act” means the Competition Act, 1991.

(2) 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.

(3) 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).

2.—(1) In this section—

Offences in respect of breaches of rules of competition.

“agreement”, “decision” and “concerted practice” mean, respectively, an agreement, decision and concerted practice of a kind described in section 4 (1) of the Principal Act;

“certificate” means a certificate under section 4 (4) of the Principal Act;

“licence” means a licence under section 4 (2) of the Principal Act.

(2) (a) An undertaking shall not—

(i) enter into, or implement, an agreement, or

S.2

- (ii) make or implement a decision, or
- (iii) engage in a concerted practice.

(b) An undertaking that contravenes this subsection shall be guilty of an offence.

(c) In proceedings for an offence under this subsection, it shall be a good defence to prove that—

(i) the defendant did not know, nor, in all the circumstances of the case, could the defendant be reasonably expected to have known, that the effect of the agreement, decision or concerted practice concerned would be the prevention, restriction or distortion of competition in trade alleged in the proceedings, or

(ii) at all material times a licence or certificate was in force in respect of the agreement, decision or concerted practice concerned and, in the case of a licence—

(I) the terms and conditions of the licence were at all material times being complied with by the defendant, or

(II) subject to *subsection (3)* of this section, in case any terms or conditions of the licence were not being so complied with—

(A) those terms or conditions are terms or conditions that had been amended, or inserted in the licence, under section 8 of the Principal Act,

(B) the defendant was complying with the terms and conditions of the licence immediately before the making of such amendments or insertions, and

(C) the defendant began to take, within 14 days after the date of publication, in accordance with the said section 8, of notice of the amendment or insertion of terms or conditions aforesaid, all reasonable steps for the purposes of complying with those terms or conditions and was proceeding with due expedition on the date on which the offence is alleged to have been committed with the completion of any step remaining for those purposes,

or

(iii) subject to *subsections (3) and (4)* of this section, in the case of an agreement, decision or concerted practice in respect of which a licence or certificate has been granted and such a licence has been revoked or suspended or, as the case may be, such a certificate has been revoked, the defendant began to take, within 14 days after—

(I) in the case of the revocation of a licence or certificate, the date of publication, in accordance with section 8 of the Principal Act, of notice of such revocation, or

S.2

(II) in the case of the suspension of a licence, the date of the order of the High Court or, as may be appropriate, the Supreme Court providing for such suspension,

all reasonable steps for the purposes of ensuring that any arrangements that had been made and which were necessary for the implementation of the agreement or decision or, as the case may be, which constituted the concerted practice were discontinued and was proceeding with due expedition on the date on which the offence is alleged to have been committed with the completion of any step remaining for those purposes.

(3) The defence provided for by *subparagraph (ii) (II)* or, as the case may be, *subparagraph (iii)* of *subsection (2) (c)* of this section shall not be available to a defendant if the date on which the offence concerned is alleged to have been committed is more than 2 months after the date of publication of the notice concerned referred to in *subclause (C)* of the said *subparagraph (ii) (II)* or, as the case may be, *clause (I)* of the said *subparagraph (iii)* or, where appropriate, the date of the order concerned referred to in *clause (II)* of the said *subparagraph (iii)*.

(4) The defence provided for by *subsection (2) (c) (iii)* of this section shall not be available to a defendant the doing of any act or the making of any omission by whom constituted the grounds for the revocation of the licence or certificate concerned.

(5) (a) An undertaking that is a party to an agreement, decision or concerted practice in respect of which a licence is in force shall comply with the terms and conditions of the licence.

(b) An undertaking that contravenes this subsection shall be guilty of an offence.

(c) Subject to *subsection (6)* of this section, where, in proceedings for an offence under this subsection, the terms or conditions of the licence which it is alleged were not complied with are terms or conditions that had been amended, or inserted in the licence, under section 8 of the Principal Act, it shall be a good defence to prove that—

(i) the defendant was complying with the terms and conditions of the licence immediately before the making of such amendments or insertions, and

(ii) the defendant began to take within 14 days after the date of publication, in accordance with the said section 8, of notice of the amendment or insertion of terms or conditions aforesaid, all reasonable steps for the purposes of complying with those terms or conditions and was proceeding with due expedition on the date on which the offence is alleged to have

S.2

been committed with the completion of any step remaining for those purposes.

(6) The defence provided for by *subsection (5)* of this section shall not be available to a defendant if the date on which the offence concerned is alleged to have been committed is more than 2 months after the date of publication of the notice concerned referred to in *paragraph (c) (ii)* of that subsection.

(7) (a) An undertaking that acts in a manner prohibited by section 5 (1) of the Principal Act or which contravenes an order under section 14 of that Act shall be guilty of an offence.

(b) In proceedings for an offence under this subsection (being an offence which consists of the doing of an act in a manner prohibited by section 5 (1) of the Principal Act), it shall be a good defence to prove that—

(i) the defendant did not know, nor, in all the circumstances of the case, could the defendant be reasonably expected to have known, that the act or acts concerned done by the defendant would constitute the abuse of the dominant position in trade for goods or services alleged in the proceedings, or

(ii) the said act was done in compliance with the provisions of an order under section 14 of the said Act (“the first-mentioned order”), or

(iii) subject to *subsection (8)* of this section, in case any of those provisions were not being complied with—

(I) those provisions are provisions that had been amended, or inserted in the first-mentioned order, by another order under the said section 14 (“the second-mentioned order”),

(II) the defendant was complying with the provisions of the first-mentioned order immediately before the commencement of the second-mentioned order, and

(III) the defendant began to take, within 14 days after the commencement of the second-mentioned order, all reasonable steps for the purposes of complying with the provisions so amended or inserted and was proceeding with due expedition on the date on which the offence is alleged to have been committed with the completion of any step remaining for those purposes,

or

(iv) subject to *subsection (8)* of this section, in case an order under section 14 of the said Act prohibited the continuance of the act concerned except on conditions specified in that order and that order has been revoked by another order under the said section 14 (“the second-mentioned order”), the defendant began to take, within 14 days after the commencement of the second-mentioned order, all

reasonable steps for the purposes of discontinuing S.2
the act concerned and was proceeding with due
expedition on the date on which the offence is
alleged to have been committed with the completion
of any step remaining for those purposes.

(c) Subject to *subsection (8)* of this section, where, in proceedings for an offence under this subsection (being an offence which consists of the contravention of an order under section 14 of the Principal Act (“the first-mentioned order”)), the provisions of that order which it is alleged were not complied with are provisions that had been amended, or inserted in that order, by another order under the said section 14 (“the second-mentioned order”), it shall be a good defence to prove that—

(i) the defendant was complying with the provisions of the first-mentioned order immediately before the commencement of the second-mentioned order, and

(ii) the defendant began to take, within 14 days after the commencement of the second-mentioned order, all reasonable steps for the purposes of complying with the provisions so amended or inserted and was proceeding with due expedition on the date on which the offence is alleged to have been committed with the completion of any step remaining for those purposes.

(8) The defence provided for by *subparagraph (iii)* or *(iv)* of *paragraph (b)*, or, as the case may be, by *paragraph (c)*, of *subsection (7)* of this section shall not be available to a defendant if the date on which the offence concerned is alleged to have been committed is more than 2 months after the commencement of the order concerned secondly referred to in the said *subparagraph (iii)* or *(iv)* or the said *paragraph (c)*, as the case may be.

(9) For the purpose of determining liability for an offence under this section, 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.

(10) References in this section to an order under section 14 of the Principal Act shall, where the context admits, be construed as including references to an order under subsection (2) of section 12 (as adapted by the Principal Act) of the Act of 1978.

3.—(1) An undertaking guilty of an offence under *section 2* of this Act shall be liable—

Penalties,
proceedings, etc., in
relation to offences
under *section 2*.

(a) on summary conviction—

(i) to a fine not exceeding £1,500, or

(ii) in the case of an individual, to such a fine or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment,

(b) on conviction on indictment—

S.3

- (i) to a fine not exceeding whichever of the following amounts is the greater, namely, £3,000,000 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, £3,000,000 or 10 per cent. of the turnover of the individual in the financial year ending in the 12 months prior to the conviction or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(2) If the contravention in respect of which an undertaking is convicted in summary proceedings of an offence under *section 2* of this Act is continued after the conviction, the undertaking shall be guilty of a further offence on every day on which the contravention continues and for each such offence the undertaking shall be liable, on summary conviction, to a fine not exceeding £1,500.

(3) (a) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under *section 2* of this Act 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 it on foot of a decree or order made by the court in civil proceedings.

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

(4) (a) Where an offence under *section 2* of this Act 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.

(b) 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, manager or other similar officer of the undertaking concerned, 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 2* of this Act.

(c) Where the affairs of a body corporate are managed by its members, this subsection 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.

[1996.] *Competition (Amendment) Act, [No. 19.]*
1996.

(5) The Authority or an authorised officer appointed under section 20 of the Principal Act may carry out an investigation into any contravention of *subsection (2), (5) or (7) of section 2* of this Act that the Authority or the authorised officer suspects has occurred or is occurring. S.3

(6) (a) Summary proceedings for an offence under *section 2* of this Act may be brought by the Minister or the Authority.

(b) An action under section 6 of the Principal Act may be brought whether or not there has been a prosecution for an offence under *section 2* of this Act in relation to the matter concerned and such an action shall not prejudice the initiation of a prosecution for any such offence.

(c) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *section 2* of this Act may be instituted within 2 years from the date of the offence.

(7) 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.

4.—(1) In proceedings for an offence under *section 2* of 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)* of this section, 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—

Provision 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)* of this section, 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 2* of this Act or shall be admissible in such proceedings for specified purposes only.

5.—Section 4 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (4):

Certificates in respect of agreements, decisions or concerted practices.

“(4) (a) The Authority may certify that in its opinion, on the basis of the facts in its possession—

(i) an agreement, decision or concerted practice, or

(ii) a category of agreements, decisions or concerted practices,

does not contravene subsection (1).

[No. 19.] *Competition (Amendment) Act,* [1996.]
1996.

S.5

- (b) Where a certificate under this subsection covers a category of agreements, decisions or concerted practices, any agreements, decisions or concerted practices (as the case may be) within that category need not be notified under section 7 to benefit from the certificate.”.

Amendment of section 6 of Principal Act.

6.—Section 6 (7) of the Principal Act is hereby amended by the insertion after “has been concluded” of “; in respect of such an agreement, decision or concerted practice that has been so notified, no relief may be granted under this section in respect of the period beginning on the commencement of section 4 and ending on the date that the Authority makes a decision as aforesaid or, as the case may be, an appeal as aforesaid is concluded”, and the said subsection (7), as so amended, is set out in the Table to this section.

TABLE

(7) This section shall not apply to any agreement, decision or concerted practice to which section 7 (2) applies which has been duly notified to the Authority until the Authority has decided to grant or refuse to grant a licence under section 4 (2), or to issue a certificate or not to issue a certificate under section 4 (4), in relation thereto and any appeal to the Court under section 9 in relation to the licence or the certificate has been concluded; in respect of such an agreement, decision or concerted practice that has been so notified, no relief may be granted under this section in respect of the period beginning on the commencement of section 4 and ending on the date that the Authority makes a decision as aforesaid or, as the case may be, an appeal as aforesaid is concluded.

Conferral of right of action on Competition Authority.

7.—Section 6 of the Principal Act is hereby amended—

- (a) by the substitution of the following subsection for subsection (1):

“(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 for relief under this section against either or both of the following, namely—

(a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has been guilty of 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.”,

- (b) in subsection (4), by the substitution for “The Minister” of “Each of the following, namely, the Minister and the Authority,”,

- (c) by the insertion after subsection (4) of the following subsection:

“(4A) Where in an action under this section it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that

[1996.] *Competition (Amendment) Act, [No. 19.]*
1996.

each (if any) director, manager and similar officer of the S.7
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.”, and

(d) in subsection (5) (a), by the insertion after “the Court shall”
of “(unless the Authority is a party to the proceedings)”,

and the said subsections (4) and (5) (a), as so amended, are set out
in *paragraphs 1* and *2*, respectively, of the Table to this section.

TABLE

1. (4) Each of the following, namely, the Minister and the Authority, shall
have a right of action, in respect of an agreement, decision or concerted practice
or an abuse which is prohibited under section 4 or 5, for the reliefs specified in
subsection (3) (a).

2. (5) (a) Where in proceedings under this section it is finally decided by the
Court that an agreement, decision or concerted practice which is
in question infringes the prohibition in section 4 (1), any certificate
in force under section 4 (4) in relation to that agreement,
decision or concerted practice shall thereupon cease to have force
and effect as from the date of the order of the Court and the
Court shall (unless the Authority is a party to the proceedings)
cause a certified copy of the said order to be served on the
Authority.

8.—The following section is hereby substituted for section 11 of
the Principal Act:

Studies and
analyses by
Competition
Authority.

“11.—(1) The Authority may and, at the request of the Mini-
ster, shall, study and analyse any practice or method of compe-
tition affecting the supply and distribution of goods or the pro-
vision of services and which, in the case of a request by the
Minister, is specified in the request. Such a study or analysis may
consist of, or include, a study or analysis of any development
outside the State.

(2) The Authority shall, at the request of the Minister, report
to the Minister the results of a study or analysis referred to in
subsection (1).”.

9.—Paragraph 1 of the Schedule to the Principal Act is hereby
amended by the insertion after subparagraph (1) of the following
subparagraph:

Amendment of
Schedule to
Principal Act.

“(1A) The Minister may assign to one permanent member of
the Authority the title, ‘Director of Competition Enforcement’,
and such a member to whom the Minister assigns the said title
shall, without prejudice to his membership of the Authority,
have the following functions, namely—

(a) to carry out an investigation, whether on his own
initiative or as a result of a complaint to him from
any person, into any contravention of section 4 or
5, or *subsection (2), (5) or (7) of section 2* of the
Competition (Amendment) Act, 1996, that he sus-
pects has occurred or may occur,

(b) to make recommendations and give advice to the
Authority as respects the institution by the Auth-
ority of proceedings under—

(i) section 6 in relation to any matter, or

[No. 19.] *Competition (Amendment) Act, [1996.]*
1996.

S.9

(ii) *section 3 (6) of the Competition (Amendment) Act, 1996, in relation to an offence under subsection (2), (5) or (7) of section 2 of that Act, and the enforcement generally of the provisions of this Act,*

and

(c) subject to the provisions of this Act, to carry out such other duties as the Authority may from time to time assign to him.”.

Amendment of section 5 of Act of 1978.

10.—Section 5 (inserted by the Principal Act) of the Act of 1978 is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) A notification in accordance with this section shall be accompanied by such fee as the Minister may prescribe by regulations.”.

Miscellaneous amendments.

11.—(1) The Act of 1978 is hereby amended by the deletion in section 1 (1) of the definition of “monopoly”.

(2) The Principal Act is hereby amended—

(a) in section 14, by the substitution of the following subsection for subsection (7):

“(7) References in—

(a) sections 12 and 13 (1) of the Act of 1978 to section 11 of that Act shall be construed as references to this section, and

(b) the said section 12 to subsections (1) and (5) of the said section 11 shall be construed as references to subsections (3) and (6), respectively, of this section.”,

(b) by the insertion in sections 20 and 21 after “this Act”, in each place where those words occur, of “the *Competition (Amendment) Act, 1996, or the Act of 1978*”, and

(c) in section 21, by the addition of the following subsections after subsection (3):

“(4) 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,

[1996.] *Competition (Amendment) Act, 1996.* [No. 19.]

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.

(5) In—

(a) an action under section 6, or

(b) proceedings for an offence under the *Competition Acts, 1991 and 1996*, or the Act of 1978,

the production to the court of a document purporting to be a warrant or other document whereby the Minister or the Authority appointed, on a specified date, a person under section 20 to be an authorised officer for the purposes of an enactment specified in that section 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 than the date aforesaid) a person appointed under section 20 to be an authorised officer for the purposes of the said enactment.”.

12.—(1) For the avoidance of doubt, it is hereby declared that— Provision for avoidance of doubt: Part II of Principal Act.

(a) references in Part II of the Principal Act to the parties to an agreement, decision or concerted practice of a kind described in section 4 (1) of that Act include, and shall be deemed always to have included, references to one or more of the parties to such an agreement, decision or concerted practice,

(b) an agreement or decision as aforesaid which a person proposes to conclude or make with one or more other persons may be notified to the Authority under section 7 of the said Act and shall be deemed always to have been capable of being so notified.

(2) *Subsection (1) (a)* of this section is without prejudice to section 11 (a) of the Interpretation Act, 1937.

13.—The Public Offices Fees Act, 1879, shall not apply to fees payable under the Principal Act or the Act of 1978. Provision with respect to fees payable under Principal Act or Act of 1978.

14.—Nothing in this Act shall prejudice any legal proceedings instituted before the date of its passing. Saving.

15.—The following provisions of the Act of 1978 are hereby repealed, namely — sections 2 (2), 6 (2) and 8 (3). Repeals.

[No. 19.] *Competition (Amendment) Act, 1996.* [1996.]

Short title,
construction and
collective citation.

16.—(1) This Act may be cited as the Competition (Amendment) Act, 1996.

(2) The Principal Act and, in so far as it amends the said Act, this Act shall be construed together as one and may be cited together as the Competition Acts, 1991 and 1996.

(3) The Mergers, Take-overs and Monopolies (Control) Acts, 1978 and 1987, and, in so far as they amend the said Acts, the Principal Act and this Act shall be construed together as one and may be cited together as the Mergers and Takeovers (Control) Acts, 1978 to 1996.

ACTS REFERRED TO

Competition Act, 1991	1991, No. 24
Interpretation Act, 1937	1937, No. 38
Mergers, Take-overs and Monopolies (Control) Act, 1978	1978, No. 17
Mergers, Take-overs and Monopolies (Control) Acts, 1978 and 1987	
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Public Offices Fees Act, 1879	1879, c. 58