

ACT TO CREATE AND MAINTAIN COMPETITION IN THE BUSINESS SECTOR

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GENERAL PROVISIONS

Purpose of the Act

- To create and maintain a competitive culture and environment in the business sector
- To increase and maintain a high standard amongst businesses
- To support the implementation of new services, new ideas, and innovations
- To open up and ensure opportunities for SMEs in the Maldivian economy
- To increase options for consumers when buying goods and services
- To take the following steps to stop the negative impacts to the growth of the economy caused by businesses that attempt to narrow the competition:
 - Prohibiting acts and agreements that prevent competition in the business sector
 - Prohibiting businesses that have the power of influencing the market from abusing their power
 - Controlling any unusual prevention to competition caused by the merging of businesses

What the Act applies to

- Transactions, agreements, and other such acts carried out by businesses (companies, cooperative societies, partnerships and sole proprietorships operated under their respective laws) whose business is related to the sale of goods and services in the Maldives

- The Competition Act (hereinafter the/this “**Act**”) will also apply to transactions carried out outside Maldives if such transactions affect the competition within any of the markets in Maldives
- Government companies, if the business of such companies must be run in competition with the business of other companies in that field
- Exceptions:
 - This Act will not apply to the actions taken by the government or local councils under the independent powers given to the state, nor to the parties carrying out business in the special economic zones under the Special Economic Zones Act (Law No. 24/2014)

PROHIBITIONS, SANCTIONS, & EXCEPTIONS

Prohibitions

- General prohibitions - unless otherwise stated in this Act, any acts or agreements (including verbal, non-verbal, formal, and informal agreements) made between two or more businesses with the intention of eradicating, preventing, or negatively impacting competition within the goods and services market is prohibited. The following are considered as such acts:
 - Setting the price at which a good or service can be sold or bought in the market
 - Setting a sale term(s) or condition(s)
 - Allocating a set market or customers
 - Controlling the production amount of a good or setting a production limit on a good
 - Businesses banding together and refusing to sell goods to or buy goods from particular parties
 - Controlling the advancement of technology used for the sale of goods and services
 - Controlling and limiting investments
- Prohibitions on parties, either by itself or in collaboration with other businesses, abusing the position of power that they might have over the sale of goods and services in the market:
 - Selling goods and services at a price below value in an attempt to get rid of a competitor
 - Setting an unfair price in an attempt to get rid of a competitor
 - Refusing to sell goods to particular business in an attempt to get rid of a competitor
 - Controlling the production of goods of the advancement of technology in a manner that would be damaging to customers
 - Controlling the number of places from which a good or service is available in a manner that would be damaging to customers
 - Differentiating or setting conditions that would differentiate between businesses that are in same situation, over similar transactions, in an attempt to remove a competitor from the market, to prevent a business from entering a particular market, or to prevent a business from expanding
 - When entering into a business agreement with another party, placing a condition on the other party to fulfil additional requirements which have no relation to the main content of the agreement or even the business

Sanctions

- Sanctions that the Minister of Economic Development (hereinafter the “**Minister**”) may impose for violating the general prohibitions mentioned above (based on the degree of the violation):
 - Order such an agreement to be amended
 - Order to cease such actions

- Impose a fine between MVR 10,000 and MVR 100,000 along with one of the orders above
- Sanctions that the Minister may impose for violating the conditions with which he granted an exception (under s.7(3)):
 - Revoke the exception that the party had been granted
 - Impose a fine between MVR 5,000 and MVR 50,000
- Sanctions that the Minister may impose for violating the conditions with which he granted a blanket exception (under s.8(3)):
 - Order to cease all business activities that are in violation of the conditions with which the exemption was granted
 - Impose a fine between MVR 10,000 and MVR 100,000
- Sanctions that the Minister may impose against those who abuse their position of power:
 - Impose a fine between MVR 10,000 and MVR 100,000

Exceptions

- The above-mentioned general prohibitions do not extend to agreements entered between companies within a group (a group of companies which includes holding and subsidiary companies)
- The Minister has the discretionary power to exempt acts and agreements from the above-mentioned general prohibitions if the result of such acts or agreements are among the following:
 - Progress to productivity or the distribution of goods in a manner that significantly benefits the general population
 - Progress to technology or the economy in a manner that significantly benefits the general population
- Should any party wish to be exempted as above, they may make an application as per the regulation made under this Act
- The Minister has the discretionary power to grant exceptions with conditions
- Should the Minister believe that a particular type of agreement falls into any of the exemptions above, he has the power to grant a blanket exemption for all agreements of that type (with conditions, if he so desires)
- The Minister has the discretionary power to exempt particular types of businesses from all prohibitions, based on how they perform within a particular market and their deliverance of a service which is of general economic interest
- Agreements made for the purpose of creating a merger between companies are exempted from the prohibitions above

MERGERS

- General prohibition - unless otherwise stated in this Act, the formation of a merger which causes an unusual decrease in competition within any of the markets where goods and services are sold, or increases the chances of competition within such markets being influenced, is prohibited

What is considered a merger

- The union or merging of two or more businesses that functioned as separate legal entities
- When one or more people or parties who conduct business, directly or indirectly, gain control over some or all other parties or a party who conducts business

- When the result of one party obtaining the goods or a large portion of the goods of another party (while maintaining their goodwill) is such that the party that obtained the goods attains the power to run the business that was being run by the party from which the goods were obtained, in their stead

What is not considered a merger

- Transferring control of a business to a liquidator or such due to the business needing to be liquidated
- When the parties who are participating in a merger are directly or indirectly under the control of one party
- Gaining control of a business through natural inheritance, inheritance through a will, or through a gift

Exceptions

- The government is not prohibited from creating a merger between two or more state-owned enterprises under the general prohibition
- Two or more parties who have been exempted under the Minister's discretionary power to exempt particular types of businesses from all prohibitions, based on how they perform within a particular market and their deliverance of a service which is of general economic interest, are not prohibited under the general prohibition
- The Minister has the discretionary power to exempt mergers from the general prohibitions if the merger provides significant and greater benefits and ease to the economy in comparison to the unusual decrease in competition that it causes

Sanctions

- Sanctions for violating the general prohibition on mergers:
 - Order to amend the merger agreement
 - Impose a fine between MVR 10,000 and MVR 100,000

INVESTIGATIVE PROCEDURE FOR VIOLATIONS OF THE ACT

- Submission of a complaint by a citizen or business owner to the Ministry of Economic Development (hereinafter the "**Ministry**") concerning a violation under the Act
 - The Ministry may also commence investigations on its own initiative
- Informing the complainant, in writing, that the matter has been registered at the Ministry
- Giving the respondent the opportunity to respond to the complaint
- Once the matter has been investigated by the Ministry, informing the complainant and the respondent of the Ministry's decision, in writing

APPEALING A MATTER

- Should a complaint have been submitted to the Ministry under this Act and a decision made which was against this Act or the regulations made under this Act, or the decision was made using powers outside of those granted to the Ministry, the matter may be appealed by the complainant, the accused, or anyone who may be affected by the decision, by submitting the matter to the court

(Civil Court, if in Malé, and if in another island, the relevant Magistrate Court) within 30 days (excluding government holidays) of the decision being made

ENFORCEMENT

- The Minister is responsible for the enforcement of this Act, and the Act gives the Minister all the necessary powers to ensure such enforcement

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