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**AN BILLE UM CHLEACHTAIS SRIANTA TRADALA, 1952.**  
**RESTRICTIVE TRADE PRACTICES BILL, 1952.**

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*Mar a ritheadh ag dhá Thigh an Oireachtais.*  
*As passed by both Houses of the Oireachtas.*

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AN BILLE UM CHLEACHTAIS SRIANTA TRADALA, 1952.  
RESTRICTIVE TRADE PRACTICES BILL, 1952.

# BILL

*entitled*

AN ACT CONCERNING RESTRICTIVE TRADE PRACTICES 5  
IN REGARD TO THE SUPPLY AND DISTRIBUTION OF  
GOODS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :—

Definitions.

1.—In this Act—

“the Commission” means the Fair Trade Commission established 10  
by *section 2*;

“the Minister” means the Minister for Industry and Commerce.

Fair Trade  
Commission.

2.—(1) There shall be a body to be known as the Fair Trade  
Commission.

(2) The provisions of the *First Schedule* shall apply to the 15  
Commission.

Unfair  
trade  
practices.

3.—For the guidance of the Commission a list of unfair trade  
practices is set out in the *Second Schedule*. The Schedule shall  
not be regarded as exhaustive and shall not limit the Commission  
in the exercise of their functions. 20

Fair trading  
rules.

4.—(1) As respects any kind of goods the Commission may, on  
their own initiative or at the request of an association representing  
persons engaged in the supply and distribution of such goods, pre-  
pare and publish rules representing, in the opinion of the Commis-  
sion, fair trading conditions with regard to the supply and 25  
distribution of such goods and, on their own initiative or at the  
request of an association representing persons rendering, in the  
course of carrying on any trade or business, any services affecting  
such supply or distribution, may also prepare and publish rules  
representing, in the opinion of the Commission, fair trading con- 30  
ditions with regard to the rendering of such services.

(2) Rules under this section are referred to in this Act as fair  
trading rules.

Procedure.

5.—(1) Before making fair trading rules the Commission shall  
cause to be published in such manner as they think fit notice of 35  
their intention to do so and shall give to any person desiring to make  
representations in relation to the making of the proposed rules an  
opportunity to do so; and the notice shall specify the time and  
manner in which representations are to be made.

(2) The Commission may prescribe the manner in which requests 40  
for the making of fair trading rules are to be made.

Review of  
operation  
of rules.

6.—The Commission shall keep under review the operation of fair  
trading rules and, if it appears to them that those rules are not  
being observed, report accordingly to the Minister.



- 7.—(1) The Commission may, on their own initiative, and shall, Enquiries.  
at the request of the Minister, cause an enquiry to be held into the  
conditions which obtain in regard to the supply and distribution of  
any kind of goods.
- 5 (2) Subject to *subsections* (3) and (4), an enquiry may be held  
by one or more of the members of the Commission delegated by the  
Commission for the purpose.
- (3) An enquiry shall not, without the consent of the Minister, be  
held by a temporary member acting alone.
- 10 (4) Not more than one temporary member may act for the  
purpose of a particular enquiry.
- (5) The Commission may, in the course of an enquiry in relation  
to the supply or distribution of any kind of goods, enquire into  
the conditions which obtain in regard to the rendering, in the  
15 course of carrying on any trade or business, of any services  
affecting such supply or distribution.
- (6) An enquiry shall be held in public save in so far as, in the  
opinion of the member or members holding it, private sittings may  
be necessary to avoid any disclosure of confidential information  
20 which might materially injure the legitimate business interests of  
any person.
- (7) The Commission shall submit to the Minister a report of  
every enquiry.
- (8) Where the Commission, having received a request from  
25 any person to hold an enquiry, decide not to hold such enquiry,  
they shall inform that person of the reasons for their decision.

- 8.—(1) A report made by the Commission under *section 6* or *7* Report of  
enquiry.  
shall—
- 30 (a) describe the conditions which obtain in regard to the  
supply or distribution of the goods concerned and,  
where appropriate, the conditions in regard to the  
rendering, in the course of carrying on any trade or  
business, of any services affecting such supply or  
distribution;
- 35 (b) state whether and, if so, how these conditions prevent or  
restrict competition or restrain trade or involve resale  
price maintenance;
- (c) state whether, in the opinion of the Commission, any such  
interference with competition or trade is unfair or  
40 operates against the public interest;
- (d) give the reasons for their conclusions.
- (2) If the Commission are of opinion that the Minister should  
make an order under *section 9*, they shall in their report recommend  
accordingly and indicate the form of order that they recommend.
- 45 (3) (a) The Minister shall lay a copy of the report before each  
House of the Oireachtas.
- (b) It shall be lawful for the Minister after consultation  
with the Commission to omit from the copy any  
50 information contained in the report the publication  
of which would, in his opinion, materially injure the  
legitimate business interests of any person, if such infor-  
mation is not essential to the full understanding of the  
report.
- 55 (c) The Minister shall lay before each House of the  
Oireachtas, together with the copy of the report, a state-  
ment indicating the general character of any informa-  
tion so omitted.

- 9.—(1) The Minister, having considered a report of the Com- Orders  
relating to  
restrictive  
practices.  
mission under *section 6* or *7*, may, if he so thinks proper, after  
consultation with any other Minister concerned, by order do, in



relation to goods to which the report relates, or any class or classes of such goods, all or any of the following :—

- (a) prohibit specified arrangements or agreements;
- (b) prohibit the withholding from any specified class of persons of supplies of goods or of services rendered in the course of carrying on any trade or business and affecting the supply or distribution of such goods; 5
- (c) prohibit the giving of specified preferences in regard to the provision of, or the placing of orders for the supply of, goods or the rendering of any such services; 10
- (d) prohibit the imposition of specified conditions in regard to the supply or distribution of goods or the rendering of any such services;
- (e) make such provision as the Minister thinks necessary to ensure the equitable treatment of all persons in regard to the supply or distribution of the goods concerned or the rendering of any such services and the avoidance of unfair practices; 15
- (f) make such other provision in regard to restrictive practices affecting the supply and distribution of goods or the rendering of any such services as he thinks fit. 20

(2) The Minister may by order revoke or amend an order under subsection (1).

(3) An order under this section shall not have effect unless it is confirmed by Act of the Oireachtas but, upon being so confirmed, it shall have the force of law in accordance with its terms. 25

(4) If the Commission, in a report to the Minister, recommend the making of an order and the Minister decides not to make any order, he shall lay before each House of the Oireachtas a statement giving the reasons for his decision. 30

(5) The Minister shall comply with subsection (4) within three months after he has received the report.

General  
duties of  
Commission.

10.—The Commission shall keep under review the general effect on the public interest of restrictive practices in connection with the supply and distribution of goods and the rendering, in the course of any trade or business, of any services affecting such supply or distribution and the operation of orders under section 9 and may (and, if so requested by the Minister, shall) submit to the Minister a report on any such matter and their recommendations as to what action should be taken thereon. 35 40

Jurisdiction  
of Court to  
grant  
injunction.

11.—It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Minister or of any other person to enforce compliance with the terms of an order under section 9 for the time being in force notwithstanding that any other proceedings, civil or criminal, may lie for that purpose. 45

Contravention  
of Order.

12.—(1) A person who contravenes (whether by act or omission) any provision of an order under section 9 for the time being in force shall be guilty of an offence.

(2) Every person who aids, abets, or assists another person, or conspires with another person, to do any thing (whether by way of act or of omission) the doing of which is declared by subsection (1) to be an offence shall himself be guilty of an offence. 50

Offences in  
relation to  
bodies  
corporate and  
unincorporated  
bodies.

13.—(1) Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons, and is proved to have been so committed with the consent or approval of, or to have been facilitated by any default on the part of any person being, in the case of a body corporate, a director thereof, or, in the case of an unincorporated body, a member of the committee of management or other controlling authority thereof, that person shall also be guilty of the offence. 55 60



(2) (a) A body corporate may be sent forward for trial on indictment for an offence under this Act with or without recognisances.

5 (b) On arraignment before the Central Criminal Court or the Circuit Court, the body corporate may enter in writing by its representative a plea of guilty or not guilty and if it does not appear by a representative appointed by it for the purpose, or, though it does so appear, fails to enter any plea, the court shall order a  
10 plea of not guilty to be entered and the trial shall proceed as though the body corporate had duly entered that plea.

15 (c) A statement in writing purporting to be signed by the secretary of the body corporate to the effect that the person named in the statement has been appointed as the representative of the body for the purpose of this subsection shall be admissible without further proof as evidence that that person has been so appointed.

(3) Any summons or other document required to be served for  
20 the purpose or in the course of proceedings under this section on a body corporate may be served by leaving it at or sending it by post to the registered office of that body or, if there be no such office in the State, by leaving it at, or sending it by post to, the body at any place in the State at which it conducts its business.

25 14.—(1) Every person who commits an offence under this Act Penalties.  
for which no special penalty is provided shall—

(a) on summary conviction thereof, be liable to a fine not exceeding five hundred pounds (together with, in the case of a continuing offence, a fine not exceeding fifty  
30 pounds for every day on which the offence is continued) or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or both such fine and imprisonment, or

35 (b) on conviction thereof on indictment, be liable to a fine not exceeding five thousand pounds (together with, in the case of a continuing offence, a further fine not exceeding five hundred pounds for every day on which the offence is continued) or, at the discretion of the Court, to penal servitude for a term not exceeding ten  
40 years or to imprisonment for a term not exceeding two years or to such fine and such penal servitude or imprisonment.

(2) (a) Where—

45 (i) a person is convicted of an offence under this Act by reason of his failure, neglect or refusal to comply with a provision in an order requiring him to perform a specified act within a specified period or before a specified date, and

50 (ii) the said act remains, after the date of such conviction, unperformed by him, such person shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds for each day, after the date of such first-mentioned conviction, on which the act remains unperformed by him or, at the discretion  
55 of the Court, to imprisonment for a term not exceeding twelve months.

60 (b) An offence under this subsection shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time.

15.—(1) Proceedings in the District Court in relation to an offence under this Act may be brought and prosecuted by the Minister. Summary Proceedings.



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

Saver for  
exercise of  
statutory duty.

16.—This Act shall not apply to anything done in the exercise 5  
of statutory duty.

Expenses.

17.—The expenses incurred by the Minister or the Commission 10  
in the administration of this Act shall, to such extent as may be  
sanctioned by the Minister for Finance, be paid out of moneys  
provided by the Oireachtas.

Short title.

18.—This Act may be cited as the Restrictive Trade Practices  
Act, 1953.

Section 2.

## FIRST SCHEDULE.

### THE FAIR TRADE COMMISSION.

Constitution.

1.—(1) The permanent members of the Commission shall consist 15  
of a chairman and not less than two and not more than four other  
members. They shall be appointed by the Minister.

(2) Whenever it appears to the Minister that a permanent 20  
member is temporarily unable to discharge his duties, the Minister  
may appoint a temporary member to act in his place during such  
inability or for such shorter period as the Minister thinks proper.

(3) The Minister may also appoint additional temporary  
members.

Members.

2.—(1) The term of office of a permanent member shall be fixed 25  
by the Minister when appointing him and shall not exceed five  
years.

(2) An outgoing permanent member shall be eligible for re-  
appointment.

(3) Each member shall hold office on such conditions as may be 30  
fixed by the Minister after consultation with the Minister for  
Finance.

(4) A member may be paid such remuneration as the Minister,  
with the consent of the Minister for Finance, determines.

(5) The Civil Service Regulation Acts, 1924 and 1926, shall not 35  
apply to the office of member.

Restriction  
on interested  
person acting  
as member.

3.—If a member is personally interested in a particular matter 40  
with which the Commission is dealing, he shall inform the Minister  
accordingly and shall not act as a member during the consideration  
of the matter, unless the Minister, being of opinion that his interest  
is not such as to interfere with the impartial performance of his  
duties, authorises him to act.

Removals,  
resignation  
and  
disqualification.

4.—(1) The Minister may remove from office a member who has 45  
become incapable through ill-health of performing efficiently his  
duties as such member or whose removal appears to the Minister  
to be necessary in the interests of the effective and economical per-  
formance of the functions of the Commission.

(2) Where the Minister removes a member from office he shall 50  
lay before each House of the Oireachtas a statement in writing of  
the reasons for such removal.



(3) A member may resign his office.

(4) Where a member of the Commission becomes a member of either House of the Oireachtas, he shall, upon his becoming entitled under the Standing Orders of that House to sit therein, cease to be  
5 a member of the Commission.

(5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being a member of the Commission.

(6) A member shall be disqualified for holding and shall cease to  
10 hold office if he is adjudged bankrupt, or makes a composition or arrangement with his creditors, or is sentenced by a court of competent jurisdiction to suffer imprisonment or penal servitude or ceases to be ordinarily resident in the State.

5.—(1) The quorum for a meeting of the Commission shall be  
15 two permanent members unless the Minister otherwise directs. Procedure.

(2) The Commission may act notwithstanding vacancies in their membership.

(3) The Commission may regulate their own procedure.

6.—(1) The Commission may for the purposes of their functions  
20 do all or any of the following things :— Power of Commission to summon witnesses, etc.

(a) summon witnesses to attend before them,

(b) examine on oath (which any member is hereby authorised to administer) the witnesses attending before them,

(c) require any such witness to produce to the Commission any  
25 document in his power or control.

(2) A witness before the Commission shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(3) A summons shall be signed by at least one member.

30 (4) If any person—

(a) on being duly summoned as a witness before the Commission makes default in attending, or

(b) being in attendance as a witness refuses to take an oath legally required by the Commission to be taken, or to produce any document in his power or control legally required by the Commission to be produced by him, or to answer any question to which the Commission may legally require an answer, or  
35

(c) does any other thing which would, if the Commission were a court of justice, having power to commit for contempt of court, be contempt of such court,  
40

the Commission may certify the offence of that person under their hands to the High Court and the court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of that court.  
45

(5) In this paragraph references to the Commission shall be construed as including references to a member or members holding an enquiry under section 7.

50 7.—(1) The Commission shall cause to be published in such manner as they think fit notice of their intention to hold an enquiry. Notice of enquiry and submissions by interested persons.  
(2) Any person may make a submission to the Commission in the manner prescribed by their rules in relation to the subject matter of an enquiry.



Inspection of premises and obtaining of information.

8.—(1) In this paragraph, "authorised officer" means a person authorised in writing by the Commission for the purposes of this paragraph.

(2) The authorisation of an authorised officer shall indicate the matters in respect of which he may act under this paragraph. 5

(3) For the purpose of obtaining the information necessary for the exercise by the Minister or the Commission of any function under this Act, an authorised officer is hereby authorised, on production of his authorisation, if so required—

(a) at all reasonable times to enter premises at which any activity in connection with the business of supplying or distributing goods or in connection with the organisation or assistance of persons engaged in any such business is carried on and to inspect the premises; 10

(b) to require the person who carries on such activity and any person employed in connection therewith to produce to the officer any books, documents or records relating to such activity which are in that person's power or control and to give him such information as he may reasonably require in regard to any entries in such books, documents and records; 15 20

(c) to inspect and copy or take extracts from such books, documents and records;

(d) to require such a person to give to the officer any information he may require in regard to the persons carrying on such activity (including, in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith; 25 30

(e) to require such a person to give to the officer any information which the officer may reasonably require in regard to such activity.

(4) A person who obstructs or impedes an authorised officer in the exercise of a power or does not comply with a requirement under this section shall be guilty of an offence. 35

Prohibition of disclosure of confidential information.

9.—(1) No person shall disclose information available to him by virtue of the powers of obtaining information conferred by this Act or through being present at a meeting of the Commission held in private. 40

(2) *Subparagraph (1) of this paragraph does not apply to—*

(a) a communication made by a member of the Commission or authorised officer in the execution of his duties under this Act, or

(b) the disclosure of information in a report of the Commission or for the purpose of legal proceedings under this Act. 45

(3) If any person contravenes this paragraph he shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding six months or, at the discretion of the Court, to both such fine and imprisonment. 50

Officers and servants.

10.—(1) The Minister, with the consent of the Minister for Finance, may appoint such officers and servants as he thinks necessary to assist the Commission in the performance of their functions.

(2) The officers and servants so appointed shall hold office on such terms and receive such remuneration as the Minister for Finance determines. 55



11.—The Commission shall, as soon as may be after the end of each year, make to the Minister a report of their proceedings during the year and the Minister shall lay the report before each House of the Oireachtas. Annual Report.

5

## SECOND SCHEDULE.

Section 3.

### UNFAIR TRADE PRACTICES.

Any measures, rules, agreements or acts whether put into effect or intended to be put into effect by a person alone or in combination or agreement, express or implied, with others or through a  
10 merger, trust, cartel, monopoly or other means or device whatsoever which—

- (a) have or are likely to have the effect of unreasonably limiting or restraining free and fair competition, or
- (b) are in unreasonable restraint of trade, or
- 15 (c) have or are likely to have the effect of unjustly eliminating a trade competitor, or
- (d) unjustly enhance the price of goods or promote unfairly the advantage of suppliers or distributors of goods at the expense of the public, or
- 20 (e) secure or are likely to secure a substantial or complete control of the supply or distribution of goods or any class of goods unfairly or contrary to the public interest, or
- (f) without just cause prohibit or restrict the supply of goods to any person or class of persons or give preference in  
25 regard to the provision of, or the placing of orders for the supply of, goods, or
- (g) restrict or are likely to restrict unjustly the exercise by any person of his freedom of choice as to what goods he will supply or distribute or the area in which he will  
30 supply or distribute his goods, or
- (h) impose unjust or unreasonable conditions in regard to the supply or distribution of goods, or
- (i) exclude or are likely to exclude without good reason new entrants to any trade or industry, or
- 35 (j) secure or are likely to secure unjustly the territorial division of markets between particular persons or classes of persons to the exclusion of others, or
- (k) in any other respect operate against the public interest or are not in accordance with the principles of social  
40 justice.



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## BILLE

*dá ngairmtear*

Acht i dtaobh cleachtas srianta trádála maidir le  
soláthar agus imdháil earraí.

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*Rite ag dhá Thigh an Oireachtais,  
1ú Bealtaine, 1953.*

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BAILE ATHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR.

Le ceannach díreach ón Oifig Díolta Foilseachán Rialtais  
An Stuara, Árd Oifig an Phoist, Baile Átha Cliath, nó trí  
aon díoltóir leabhar.

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Cló-bhuailte ag CAHILL & Co., LTD.

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## BILL

*entitled*

An Act concerning restrictive trade practices in  
regard to the supply and distribution of  
goods.

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*Passed by both Houses of the Oireachtas,  
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