



**AN BILLE IOMAÍOCHTA (LEASÚ), 1994
COMPETITION (AMENDMENT) BILL, 1994**

*Mar a leasaíodh sa Roghchoiste um Fhiontraíocht agus Straitéis
Eacnamaíochta
As amended in the Select Committee on Enterprise and Economic
Strategy*

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AN BILLE IOMAÍOCHTA (LEASÚ), 1994
COMPETITION (AMENDMENT) BILL, 1994

BILL

entitled

5 AN ACT TO AMEND AND EXTEND THE COMPETITION
ACT, 1991, AND THE MERGERS AND TAKE-OVERS
(CONTROL) ACTS, 1978 AND 1987, AND TO PROVIDE
FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 1.—(1) In this Act—

Interpretation.

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

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

15 (2) In this Act a reference to any other enactment shall be con-
strued 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.*

20 “agreement”, “decision” and “concerted practice” mean, respect-
ively, 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—

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

(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.

30 (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 5

(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— 10

(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— 15

(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, 20

(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, 25 30 35

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— 40

(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 45

(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, 50

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.

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10 (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
15 *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)*.

20 (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.

25 (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.

30 (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—
35

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

40 (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 been committed with the completion of any step remaining for those purposes.
45

(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.
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- (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 said act was done in compliance with the provisions of an order under section 14 of the said Act (“the first-mentioned order”), or
 - (ii) 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
- (iii) 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 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
- 5 (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
- 10 the completion of any step remaining for those purposes.

(8) The defence provided for by *subparagraph (ii) or (iii) 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

15 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 (ii) or (iii)* or the said *paragraph (c)*, as the case may be.

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

20 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
- 25 not exceeding 6 months or to both such fine and such imprisonment,

(b) on conviction on indictment—

- (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
- 30
- (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.
- 35
- 40

(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

45 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),

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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.

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(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 a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate 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.

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(b) 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.

20

(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.

25

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

30

(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.

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(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.

Certificates in respect of agreements, decisions or concerted practices.

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

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"(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,

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does not contravene subsection (1).

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.”

10 5.—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.

Amendment of section 6 of Principal Act.

15 TABLE

20 (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.

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

Conferral of right of action on Competition Authority.

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

30 (b) 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

35 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).

40 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.

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

Studies and analyses by Competition Authority.

50 “11.—(1) The Authority may and, at the request of the Minister, shall, study and analyse any practice or method of competition affecting the supply and distribution of goods or the provision 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).” 5

Amendment of
Schedule to
Principal Act.

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

“(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— 10

(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 suspects has occurred or may occur, 15
20

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

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

(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, 25

and 30

(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.

9.—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): 35

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

Miscellaneous
amendments.

10.—(1) The Act of 1978 is hereby amended by the deletion in section 1 (1) of the definition of “monopoly”. 40

(2) The Principal Act is hereby amended—

(a) 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 45

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

“(4) In this section ‘records’ includes, in addition to records in writing—

5 (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,

10 (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,

15 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 with 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.”

20 11.—(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,

25 (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.

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

12.—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.

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

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

15.—(1) This Act may be cited as the Competition (Amendment) Act, 1996. Short title, construction and collective citation.

(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.

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BILL

BILL

introduced in the Lok Sabha on 12th January, 1991

introduced in the Rajya Sabha on 12th January, 1991

entitled

as follows

to amend the Competition Act, 1987 and to provide for matters connected therewith or incidental thereto.

to amend the Competition Act, 1987 and to provide for matters connected therewith or incidental thereto.

presented by the Minister for Finance and Economic Affairs

presented by the Minister for Finance and Economic Affairs

discussed in the Lok Sabha on 12th January, 1991

discussed in the Rajya Sabha on 12th January, 1991

ENACTED BY THE PARLIAMENT OF INDIA IN THE 38th YEAR OF THE SOVEREIGN DEMOCRACY OF INDIA

IN pursuance of the authority conferred by the Constitution of India, the President has assented to the Bill as follows:

ENACTED BY THE PARLIAMENT OF INDIA IN THE 38th YEAR OF THE SOVEREIGN DEMOCRACY OF INDIA

IN pursuance of the authority conferred by the Constitution of India, the President has assented to the Bill as follows:



B I L L E

(mar a leasaíodh sa Roghchoiste um Fhiontraíocht agus Straitéis Eacnamaíochta)

dá ngairtear

Acht do leasú agus do leathnú an Achta Iomáíochta, 1991, agus na nAchtanna um Chumaisc agus Táthcheangail (Rialú), 1978 agus 1987, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An tAire Fiontar agus Fostaíochta a thíolaic

*Ordaíodh ag an Roghchoiste a chlóbhualadh,
18 Eanáir, 1996*

B I L L

(as amended in the Select Committee on Enterprise and Economic Strategy)

entitled

An Act to amend and extend the Competition Act, 1991, and the Mergers and Take-overs (Control) Acts, 1978 and 1987, and to provide for related matters.

Presented by the Minister for Enterprise and Employment

*Ordered by the Select Committee to be printed,
18th January, 1996*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath 2, nó trí aon díoltóir leabhar.

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