



## **EDITOR'S NOTES:**

### **Details of Section 43 of the Act: Power to accept Undertaking**

1. The Act allows an enterprise to make legally binding undertakings without the need for a finding of an infringement by the MyCC. The MyCC has discretion whether to accept such undertakings and will take a number of factors into consideration when determining whether to accept undertakings or not.

2. These factors include, but are not limited to, the gravity of the infringement; the level of genuine cooperation received from the enterprise in assisting the MyCC (also referred to as the Commission) with its investigation and whether accepting the undertakings will efficiently and effectively address the competition concerns.

The Commission's power to accept undertakings are stated in section 43 of the Act, as follows:

*43. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate.*

*(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.*

*(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.*

*(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 40.*

### **Details of Section 4 of the Act are as follows:**

3. Prohibited horizontal and vertical agreement:

*4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.*

*(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—*



*(a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;*

*(b) share market or sources of supply;*

*(c) limit or control—*

*(i) production;*

*(ii) market outlets or market access;*

*(iii) technical or technological development; or*

*(iv) investment; or*

*(d) perform an act of bid rigging, is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.*

*(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition*