

**FOR INTERNAL GOL PURPOSES ONLY
NOT FOR DISTRIBUTION EXTERNALLY**

COMPETITION LAW

PREAMBLE

WHEREAS it is necessary to maintain and encourage an active and efficient free market economy in Liberia in order to promote and facilitate Liberia's economic growth and development.

RECOGNIZING that it is necessary for the achievement of such growth and development that Liberia's economy be efficient and transparent; that it not be subject to unfair trade practices or anti-competitive behaviour; that free and open competition be effectively enforced for the benefit of Liberian citizens and for all business enterprises operating in Liberia, both domestic and foreign; that small and medium-sized business enterprises have an equitable opportunity to participate in the Liberian economy; that the Liberian economy promote the establishment of new businesses in a marketplace that is based on fair competition; and that Liberian consumers are provided with competitive prices and a reasonable range of product choices.

NOW THEREFORE it is hereby enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature assembled.

Section 1: Short Title

This Act shall be known as the *Competition Law*.

Section 2: Chapter 2 Monopolies and Restraint of Trade of the General Business Law of Title 15 of the Liberian Code of Law Revised is hereby repealed.

PART I – INTERPRETATION AND APPLICATION

Section 3: Definitions

In this Act, unless the context otherwise requires:

3.1 "Affected person" includes the Minister.

3.2 "Arrangement" includes any understanding, commitment or undertaking whether or not legally enforceable and whether or not in writing.

3.3 "Business" means the business of:

- (a) manufacturing, producing, transporting, acquiring, supplying, storing or otherwise dealing in goods; and
- (b) acquiring, supplying or otherwise dealing in services.

3.4 “Business organization” means any corporation, company, body corporate, partnership, joint venture, association, foundation, trust or other organization or entity, whether for profit or not for profit, incorporated, created, formed or established under the laws of any jurisdiction.

3.5 “Competitor” means any person who it is reasonable to believe is competing or would be likely to compete with respect to the supply of a product or service.

3.6 “Court” means the Commercial Court .

3.7 “Customer” means any person who it is reasonable to believe is seeking or would be likely to seek a product or service.

3.8 “Goods” means real and personal property of every kind and description, including any rights thereto or interests therein.

3.9 “Minister” means the Minister of Commerce and Industry.

3.10 “Person” includes an individual and a business organization.

3.11 “Product” includes a good and a service.

3.12 “Service” means a service of any description whether of a business, industrial, trade, professional, occupational or other similar nature.

3.13 “Supply” means:

- (c) in relation to goods, sell, lease or otherwise dispose of, or offer to sell, lease or otherwise dispose of, goods or an interest therein or a right thereto; and
- (d) in relation to services, sell, lease or otherwise provide, or offer to sell, lease or otherwise provide, services.

Section 4: Meaning of Affiliate and Control

4.1 For the purposes of this Act, a business organization is affiliated with another business organization if both are controlled, directly or indirectly, by the same person or persons.

4.2 For the purposes of this Act:

- (e) a corporation or body corporate is controlled by a person if
 - (i) securities of the corporation or body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the corporation or body corporate are held, directly or indirectly, whether through one or more subsidiaries or otherwise, other than by way of security only, by or for the benefit of that person; and
 - (ii) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation or body corporate; and

- (f) a business organization that is not a corporation or body corporate is controlled by a person if the person holds an interest in the organization that entitles the person to receive more than 50% of the profits of the organization or more than 50% of its assets on dissolution.

Section 5: Application of Act

5.1 This Act applies to all anti-competitive behaviour, unfair trade practices and other similar conduct or activities referred to herein which have direct, substantial and reasonably foreseeable effects on the Liberian economy or marketplace, whether occurring within or outside Liberia, and whether such effects are caused by or result from the conduct, practices or activities of Liberian or foreign persons.

5.2 This Act is binding on and applies to any agents, bodies or persons of or controlled by the Government of Liberia in respect of commercial activities engaged by such agents, bodies or persons in competition with other persons.

PART II – CONSPIRACIES IN RELATION TO TRADE

Section 6: Price Fixing and Market Allocation

6.1 No person shall conspire, agree or arrange with a competitor with respect to a product:

- (g) to fix, maintain, increase or control the price for the supply of the product;
- (h) to allocate sales, territories, customers or markets for the production or supply of the product; or
- (i) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

6.2 For purposes of the enforcement of section 0, a Court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication among the alleged parties to it.

6.3 A conspiracy, agreement or arrangement that would otherwise contravene section 0 is permissible if:

- (j) it is ancillary to a broader or separate agreement or arrangement that includes the same parties;
- (k) it is directly related to, and is reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and
- (l) the broader or separate agreement or arrangement does not itself contravene section 0.

6.4 Section 0 does not apply if the conspiracy, agreement or arrangement is entered into only by business organizations each of which is, in respect of every one of the others, an affiliate.

6.5 A requirement or authorization by or under another Act of the Legislature of Liberia is a defence to a contravention of section 0.

6.6 If a person contravenes section 0, the Court may make an order prohibiting the person from continuing to engage in any conduct that constituted or contributed to such contravention.

6.7 In addition to the powers in section 0, the Court may impose a monetary penalty on the person referred to in that section in an amount not exceeding [US\$5,000].

Section 7: Bid-Rigging

7.1 No person shall enter into an agreement or arrangement with one or more other persons pursuant to which:

- (m) one or more of them agrees or undertakes not to submit a bid, tender or proposal, or agrees or undertakes to withdraw a bid, tender or proposal, in response to a call or request for bids, tenders or proposals; or
- (n) the parties thereto agree to submit their respective bids, tenders or proposals on the terms agreed to in their agreement or arrangement.

7.2 If a person contravenes section 0, the Court may make an order prohibiting the person from continuing to engage in any conduct that constituted or contributed to such contravention.

7.3 In addition to the powers in section 0, the Court may impose a monetary penalty on the person referred to in that section in an amount not exceeding [US\$5,000].

7.4 Section 0 does not apply to an agreement or arrangement that is entered into only by business organizations each of which is, in respect of every one of the others, an affiliate.

7.5 A requirement or authorization by or under another Act of the Legislature of Liberia is a defence to a contravention under section 0.

PART III – UNFAIR TRADE PRACTICES

Section 8: Misrepresentations

8.1 No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or a business interest, by any means whatsoever, knowingly or recklessly make or permit to be made:

- (o) a representation to the public that is false or misleading in any material respect;
- (p) a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on adequate and proper testing; or

- (q) a representation to the public in a form that purports to be (i) a warranty or guarantee of a product, or (ii) a promise to replace, maintain or repair a good or any part thereof or to repeat or continue a service until it has achieved a specified result, if the form of purported warranty, guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

8.2 If a person contravenes section 0, the Court may make an order prohibiting the person from continuing to make the false, misleading or otherwise improper representation.

8.3 For the purpose of section 0, a representation includes any statement:

- (r) expressed on a good offered or displayed for sale, or on its wrapper or container;
- (s) expressed on anything attached to, inserted in or accompanying a good offered or displayed for sale, including its wrapper or container;
- (t) made in the course of in-store, door-to-door, telephone or any other direct selling to a person as ultimate user; or
- (u) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner in connection with the sale or offering for sale of a product;

and any such statement is deemed to be made to the public.

8.4 For purposes of determining whether a contravention of section 0 has occurred:

- (v) the general impression conveyed by a representation, as well as its literal meaning, shall be taken into account by the Court in determining whether the representation is false or misleading in any material respect; and
- (w) it is not necessary to establish that any particular person was deceived or misled.

Section 9: Price Maintenance

9.1 No person shall, by agreement, threat, promise or any like means:

- (x) refuse to supply a product to, or induce a supplier to refuse to supply a product to, as a condition of doing business with the supplier, or otherwise discriminate against, a particular person or a class of persons because of its or their low pricing policy; or
- (y) influence upward, or discourage the reduction of, the price at which a purchaser, or any other person who resells or intends to resell the first person's product, supplies or offers to supply a product,

if such conduct has had, is having or is likely to have the effect of preventing or lessening competition substantially.

9.2 If a person contravenes section (x) or (b), a Court may make an order prohibiting the person from continuing to engage in any such conduct.

9.3 For the purpose of section (y), a suggestion of a resale price or a minimum resale price by a producer or supplier of the product does not constitute a contravention of that section provided there is proof that the producer or supplier made it clear to the person to whom the suggestion was made that it was under no obligation to accept the suggestion and would not suffer adverse consequences if it failed to accept the suggestion.

9.4 No order shall be made under section 0 if the persons referred to in sections (x) or (b) are principal and agent or are affiliates of each other.

PART IV – ANTI-COMPETITIVE BEHAVIOUR

Section 10: Abuse of Dominant Position

10.1 Where, on the application of any affected person, the Court finds that:

- (z) one or more persons substantially or completely control, throughout Liberia or any portion thereof, a class or species of business;
- (aa) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts; and
- (bb) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market;

the Court may make an order prohibiting any person from engaging in such a practice, or any other order the Court considers necessary or reasonable to overcome the effects of such a practice.

10.2 For purposes of section (z), a person or persons substantially control a class or species of business in a market if it or they have the power to maintain prices above the competitive level, or to maintain other elements of competition such as quality, choice, service or innovation below the competitive level, for a significant period of time. For greater certainty, a person or persons does or do not substantially control a class or species of business in a market if it or they has or have less than a 35% share of the market.

10.3 For purposes of section(aa), the term “anti-competitive act” includes, without restricting the generality of that term, any of the following acts or practices:

- (cc) engaging in the practice of tied selling if such practice is likely to impede entry into or expansion of a competitor in a market or have any other exclusionary effect;
- (dd) engaging in any act or practice for the purpose of restricting, deterring or preventing, or which is likely to restrict, deter or prevent, any competitor from entry into, or expansion in, a market;

- (ee) engaging in any act or practice for the purpose of removing or eliminating, or which is likely to remove or eliminate, any competitor from a market;
- (ff) obtaining substantial or complete control of a class or species of business by acquiring, merging with or otherwise combining with other persons;
- (gg) limiting the production or supply of goods or services in a market for the purpose of adversely affecting, or which is likely to adversely affect, competition in a market;
- (hh) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
- (ii) requiring or inducing a supplier or customer to sell or buy exclusively or primarily to or from certain persons, or to refrain from selling to or buying from a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;
- (jj) selling products at a price lower than the acquisition or production cost of the products for the purpose of disciplining or eliminating a competitor.

10.4 For the purposes of section(cc), "tied selling" means any practice whereby a supplier of a product, as a condition of supplying the product (the "tied product") to a customer, requires or induces that customer to (i) acquire another product (the "tying product") from the supplier or its nominee, or (ii) refrain from using or distributing, in conjunction with the tied product, another product that is not of a brand or manufacture designated by the supplier or its nominee.

10.5 In making a determination regarding section (bb), the Court shall consider whether the anti-competitive practice at issue is a result of superior competitive performance or an increase in the efficiency of the person or persons engaging in the practice.

10.6 For the purposes of this section 9, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under any Act of the Legislature pertaining to intellectual or industrial property is not an anti-competitive act.

10.7 No action may be commenced under section 0 in respect of the practice of anti-competitive acts at any time after the practice has ceased.

Section 11: Mergers

11.1 For purposes of this section 10, the term "merger" means the acquisition or establishment, directly or indirectly, by one or more persons, whether by purchase of shares or assets, by amalgamation, by combination or otherwise, of control over or a significant interest in the whole or any part of a business of a competitor, supplier, customer or other person.

11.2 Where, on the application of any affected person, a Court finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially in a

trade, industry or profession, or among the sources from which, or the outlets through which, a trade, industry or profession obtains or disposes of a product, or otherwise, the Court may order any party to the merger to:

- (kk) dissolve the merger or dispose of assets or shares on such terms as the Court directs;
- (ll) not proceed with all or part of the merger if it has not then been completed;
- (mm) cease doing or refrain from taking any act to ensure that the merger or part thereof does not prevent or lessen competition substantially; or
- (nn) take any other action the Court considers necessary or advisable in the circumstances to prevent or lessen the anti-competitive effects of the merger.

11.3 In determining whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, the Court may have regard to the following factors:

- (oo) the extent to which foreign products or competitors provide or are likely to provide effective competition to the business of the parties to the merger or proposed merger;
- (pp) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail;
- (qq) the extent to which there are acceptable substitutes for products supplied by parties to the merger or proposed merger;
- (rr) any barriers to entry into a market, including tariff and regulatory barriers, and the effect of the merger or proposed merger on such barriers;
- (ss) the extent to which competition remains, or would remain, in a market following completion of the merger or proposed merger;
- (tt) the likelihood that the merger or proposed merger would result in the removal of a vigorous and effective competitor; and
- (uu) the nature and extent of change and innovation in a relevant market.

11.4 A Court shall not make an order under section 0 in respect of a merger where:

- (vv) all of the parties are, in relation to every one of the other parties, affiliates; or
- (ww) there is an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default, or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business; or

- (xx) the merger will bring or is likely to bring gains in efficiency that will be greater than, and will offset, the effects of any preventing or lessening of competition that will result or is likely to result from the merger or proposed merger, and that the gains in efficiency would not likely be attained if the order were made.

11.5 No action may be commenced under section 0 more than one year after a merger has been substantially completed.

PART V – NOTIFICATION OF A MERGER

Section 12: Application

12.1 This Part V applies to any proposed merger as defined in section 0.

Section 13: Notification

13.1 Any party to a merger may, in its sole discretion, notify the Minister in writing of the merger before the merger transaction is completed.

13.2 Any notification pursuant to section 0 shall be made in such form and in such manner and shall contain such information as the Minister may from time to time prescribe by rule or regulation. In the absence of any prescribed information, the notification shall contain any information the notifying party believes would be reasonably necessary to the Minister's assessment of the merger transaction.

13.3 The Minister may, in his or her sole discretion, require the parties to provide additional information at any time within 30 days of receipt of a notice pursuant to section 0.

Section 14: Completion of Proposed Merger

14.1 Subject to sections 0 and 0, if the parties to a merger provide notification to the Minister pursuant to section 12, they shall not complete the merger until the later of:

- (yy) 30 days after the day on which the information required under section 0 has been provided to the Minister, if the Minister has not requested additional information pursuant to section 0; or
- (zz) 30 days after the day on which additional information has been provided to the Minister pursuant to section 0, if the Minister has requested such additional information,

at which time the merger shall be deemed to have been approved by the Minister, absent any communication to the contrary from the Minister.

14.2 If the Minister considers, in his or her sole discretion, that a longer period of time is required to review a merger in respect of which notification has been given pursuant to section 12, the Minister may continue to review the merger by sending a notice to the merger parties that the review will continue after the expiry of the dates referred to in section (yy) and (b), as

the case may be. In such event, the parties to the merger may, in their sole discretion, complete the merger after the expiry of the dates referred to in section (yy) and (b), as the case may be.

14.3 A proposed merger may be completed before the end of the time periods referred to in sections 0 and 0 if the Minister notifies the parties thereto that he or she does not intend to make application to a Court in respect of the merger pursuant to section 0.

PART VI – ADMINISTRATION, INVESTIGATIONS AND ENFORCEMENT

Section 15: Administration

15.1 The Minister shall be responsible for the administration and enforcement of this Act.

15.2 The Minister may at any time and from time to time delegate his or her responsibilities under section 0 to any person or persons in, or any department, division or bureau of, the Ministry of Commerce and Industry, and any reference to the Minister in this Act shall, and shall be deemed to, include a reference to his or her delegate.

15.3 To assist in the administration and enforcement of this Act, the Minister may, at any time and from time to time, prescribe rules, regulations or guidelines for any purpose of this Act, including, without limitation, describing the circumstances in which enforcement of certain provisions of this Act may take place, the steps that parties may take with regard to compliance with the provisions of this Act, the manner in which the Minister may exercise his or her discretion under any provision of this Act, or regarding any other matter pertaining to the administration and enforcement of this Act.

Section 16: Investigation

16.1 The Minister may, on his or her own initiative, or upon receipt of information, a request to investigate or a complaint from any person or government agency or Ministry, carry out an investigation into any conduct or proposed conduct which is alleged to constitute or may constitute a contravention of any provision of this Act.

16.2 A request to investigate or a complaint which is delivered or provided to the Minister pursuant to section 0 shall set forth the nature of the alleged contravention and shall contain a concise statement of the evidence which the person making the request or complaint believes supports the allegation that a contravention has occurred.

16.3 For the purposes of section 0, the Minister has the power to:

- (aaa) require the production from any person of documents or records that are considered relevant to the investigation;
- (bbb) require persons with knowledge of matters relevant to a possible contravention of this Act to appear in person to be examined orally or to provide an affidavit in writing with respect to matters within his or her knowledge, which persons are entitled to be represented by counsel;

- (ccc) apply to a Court for an order to compel the production of documents or records, the appearance of persons or the provision of affidavits in accordance with paragraphs (a) and (b) of this section, or for any other order the Minister considers would facilitate the conduct of the investigation, including an order issuing a search warrant; and
- (ddd) take any other action that is considered necessary or advisable in furtherance of the investigation.

16.4 Any person who is required by the Minister or is ordered by a Court to produce documents or records pursuant to section 0 is entitled to claim solicitor-client privilege in respect of any document or record so produced, and any such claim shall be adjudicated upon by a Court within 30 days of an application to the Court by the person asserting the claim, or, in default of any such application, within 30 days of an application to the Court by the Minister.

16.5 If the Minister, having received information, a request to investigate or a complaint from any person, determines not to conduct an investigation, the Minister shall inform the person providing such information, request or complaint in writing of the reasons for the decision.

16.6 If the Minister decides to conduct an investigation, the Minister shall give notice in writing of the investigation to every person whose conduct is to be investigated, and shall indicate the subject-matter and the purpose of the investigation.

16.7 The Minister may, at any stage of an investigation, in his or her sole discretion, discontinue it if he or she considers that further actions, steps or inquiries are not justified in the circumstances. In such event, the Minister shall give the person who provided the information, request or complaint pursuant to section 0, and every person who was given notice pursuant to section 0, notice that the investigation is being discontinued and the reasons therefor.

16.8 The Minister may, at any stage of an investigation, refer the matter to the Minister of Justice for consideration as to whether judicial proceedings are warranted in the circumstances, and shall, at the same time, transmit all documents, records, materials and information pertaining to the investigation to the Minister of Justice.

16.9 Following the referral of an investigation pursuant to section 0, the Minister of Justice may take any action in respect of the investigation that he or she, in his or her sole discretion, considers advisable, including commencing proceedings in a Court.

16.10 Any person who in any manner or by any means, whether directly or indirectly, impedes or prevents, or attempts to impede or prevent, an investigation conducted under this section 15 is guilty of an offence and upon conviction shall be liable to a fine not exceeding US\$■ or to imprisonment for a term not exceeding ■ years, or to both.

Section 17: Enforcement

17.1 Any action to enforce any provision of this Act shall be commenced in a Court.

17.2 A Court may order any form of relief it considers necessary or appropriate in the circumstances, in addition to any relief specified in any provision of this Act, including, without limitation, injunctive relief, both interim and permanent, on such terms and for such time periods as the Court considers advisable and sufficient to meet the circumstances of the case.

17.3 Any person who, without good and sufficient cause, fails to comply with any order made under this Act, including an order made by the Minister or by a Court, shall be liable to a monetary penalty not exceeding US\$■.

17.4 Any person who destroys or alters, or causes to be destroyed or altered, any document or record that is required to be produced under this Act, whether by the Minister or by an order of Court or in respect of which a warrant has been issued, is guilty of an offence and upon conviction is liable to a fine not exceeding US\$■ or to imprisonment for a term not exceeding ■ years, to both.

17.5 Any person who has suffered loss or damage as a result of conduct that has been adjudged to constitute a contravention of any provision of this Act or as a result of the failure of a person to comply with the terms of any order made under this Act, other than in respect of a merger referred to in section 10 of this Act, may commence proceedings in a Court to recover from the person who engaged in such conduct or failed to comply with such order an amount equal to the loss or damage that is proven to have been incurred or suffered.

17.6 No proceedings may be commenced pursuant to section 0 by way of a class action, and in respect of any proceedings under that section, a Court may not award punitive or exemplary damages.

17.7 In any proceedings commenced under section 0, the record of proceedings in the Court in which the person was adjudged to have contravened a provision of this Act or to have failed to comply with an order made under this Act is, in the absence of any evidence to the contrary, proof that the person contravened this Act or failed to comply with an order hereunder, and any evidence in those proceedings as to the effect of such contravention or failure on the person who has commenced proceedings under section 0 is evidence thereof in those proceedings.

17.8 No proceedings may be commenced under section 0 at any time after two years from the day on which the person was adjudged to have contravened a provision of this Act or to have failed to comply with an order hereunder.

Section 18: Settlement

18.1 The Minister and any person in respect of whom the Minister has conducted an investigation or in respect of whom the Minister has referred an investigation to the Minister of Justice, in each case pursuant to section 15, may enter into a settlement agreement upon such terms and conditions as they may agree to.

18.2 The settlement agreement referred to in section 0 may be filed or registered in a Court, in which event the settlement agreement has the same force and effect as if it were an order of the Court.

Section 19: Confidentiality

19.1 No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or permit to be communicated to any other person, except to a law enforcement agency in Liberia or for purposes of the administration or enforcement of this Act:

- (eee) the identity of any person from whom information was obtained pursuant to this Act;
- (fff) any information obtained pursuant to sections 12 or 15 of this Act;
- (ggg) whether notice has been given or information provided in respect of a merger under section 12 of this Act; or
- (hhh) any information provided voluntarily pursuant to this Act.

19.2 Section 0 does not apply to any information that has been made public or to any information the communication of which was authorized by the person who provided the information.