



AN ACT TO ENACT THE COMPETITION LAW OF LIBERIA TO PROVIDE  
FOR AN EFFICIENT FREE MARKET SYSTEM

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**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 behavior; 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 enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature assembled.

**PART I: PRELIMINARIES**

**Section 1. Short Title:** This Act shall be known as the *Competition Law*.

**Section 2. Repeal:** Chapter 2 Monopolies and Restraint of Trade of the General Business Law, Title 14 of the Liberian Code of Laws Revised is hereby repealed and a new Chapter 2 is hereby created.

**Section 3. Definitions:** In this Act, unless the context otherwise requires:

3.1 "Affected person" includes the Minister.

3.2 "Affiliate and Control":

(a) 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.

(b) For the purposes of this Act, 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

(c) 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.

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

3.4 "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.

3.5 "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.

3.6 "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.

3.7 "Court" means the Commercial Court of Liberia.

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

3.9 "Goods" means real and personal property of every kind and description, including any rights thereto or interests therein.

3.10 "Minister" means the Minister of Commerce and Industry.

3.11 "Person" includes an individual and a business organization.

3.12 "Product" includes a good and a service.

3.13 "Service" means a service of any description whether of a business, industrial, trade, professional, occupational or other similar nature.

3.14 "Supply" means:

- (a) in relation to goods, to 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
- (b) in relation to services, to sell, lease or otherwise provide, or offer to sell, lease or otherwise provide, services.

#### **Section 4: Application of Act**

4.1 This Act applies to all anti-competitive behavior, 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.

4.2 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 5: Price Fixing and Market Allocation**

5.1 It is unlawful for any person to conspire, agree or arrange with a competitor with respect to a product regardless of the effect on competition or consumers, to:

- (a) fix, maintain, increase or control the price for the supply of the product;
- (b) allocate sales, territories, customers or markets for the production or supply of the product;  
or
- (c) fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

or purposes of the enforcement of section 5.1, a court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication among the related parties to it.

A conspiracy, agreement or arrangement that would otherwise contravene section 5.1 is permissible if:

- (a) it is ancillary to a broader or separate agreement or arrangement that includes the same parties;
- (b) it is directly related to, and is reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and
- (c) the broader or separate agreement or arrangement does not itself contravene section 5.1.

Section 5.1 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.

A requirement or authorization by or under another Act of the Legislature of Liberia is a defence to a contravention of section 5.1.

If a person contravenes section 5.1, the court may make an order prohibiting the person from continuing to engage in any conduct that constituted or contributed to such contravention.

In addition to the powers in section 5.6, the court may impose a monetary penalty on the person referred to in that section in an amount not exceeding US\$100,000.

#### **Section 6: Bid-Rigging**

1 No person shall enter into an agreement or arrangement with any other persons whether or not such agreement affects competition or consumers, pursuant to which:

- (a) 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
- (b) the parties thereto agree to submit their respective bids, tenders or proposals on the terms agreed to in their agreement or arrangement.

2 If a person contravenes section 6.1, the court shall make an order prohibiting the person from continuing to engage in any conduct that constituted or contributed to such contravention.

3 In addition to the powers in section 6.2, the court may impose a monetary penalty on the person referred to in that section in an amount not exceeding US\$10,000.

4 Section 6.1 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.

5 A requirement or authorization by or under another Act of the Legislature of Liberia is a defence to a contravention under section 6.1.

### PART III – UNFAIR TRADE PRACTICES

#### Section 7: Misrepresentations

7.1 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:

- (a) a representation to the public that is false or misleading in any material respect;
- (b) 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
- (c) 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 the purported warranty, guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

7.2 If a person contravenes section 7.1, the court shall make an order prohibiting the person from continuing to make the false, misleading or otherwise improper representation.

7.3 For the purpose of section 7.1, a representation includes any statement:

- (a) expressed on a good offered or displayed for sale, or on its wrapper or container;
- (b) expressed on anything attached to, inserted in or accompanying a good offered or displayed for sale, including its wrapper or container;
- (c) made in the course of in-store, door-to-door, telephone or any other direct selling to a person as ultimate user; or
- (d) 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,
- (e) any such statement is deemed to be made to the public.

7.4 For purposes of determining whether a contravention of section 7.1 has occurred:

- (a) 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
- (b) it is not necessary to establish that any particular person was deceived or misled.

#### Section 8: Price Maintenance

8.1 if a conduct has had, is having or is likely to have the effect of preventing or lessening competition substantially, it shall be unlawful for a person, by agreement, threat, promise or any like means:

- (a) refuse to supply a product to, or induce a supplier to refuse to supply a product to a person as a condition for doing business with the supplier, or otherwise discriminate against a particular person or a class of persons because of their low pricing policy; or
- (b) 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.

8.2 If a person contravenes s u b section (a) or (b) of this section, a c o u r t s h a l l make an order prohibiting the person from continuing to engage in any such conduct.

\* 8.3 For the purpose of section (a), 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.

8.4 No order shall be made under section 8.2 if the persons referred to in sections (a) or (b) are principal and agent or are affiliates of each other.

#### **PART IV – ANTI-COMPETITIVE BEHAVIOUR**

##### **Section 9: Abuse of Dominant Position**

9.1 Where, on the application of any affected person, the court finds that:

- (a) one or more persons substantially control, throughout Liberia or any portion thereof, a class or species of business;
- (b) that person or those persons have engaged in or are engaging in a practice of anti- competitive acts; and
- © 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 that person or those persons from engaging in such a practice, or any other order within the jurisdiction and power of the court which the court considers necessary or reasonable to overcome the effects of such a practice.

9.2 For purposes of subsection (a) of this section, a person or persons substantially control a class or species of business in a market if 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.

9.3 Notwithstanding subsection 9.2, a person or persons do not substantially control a class or species of business in a market if they have less than thirty-five percent share of the market.

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

- (a) 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;
- (b) 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;
- (c) 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;
- (d) obtaining substantial or complete control of a class or species of business by acquiring, merging with or otherwise combining with other persons;
- (e) 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;
- (f) 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;

(g) 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;

(h) selling products at a price lower than the acquisition or production cost of the products for the purpose of disciplining or eliminating a competitor.

9.5 For the purposes of subsection (a) of this section, "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.

9.6 In making a determination regarding subsection (b) of this section, 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.

9.6 For the purposes of this section, 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 9.1 in respect of the practice of anti-competitive acts at any time after the practice has ceased.

#### **Section 10: Mergers**

10.1 For purposes of this section, 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.

10.2 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:

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

10.3 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:

- (a) the extent to which products or competitors including those not based in Liberia provide or are likely to provide effective competition to the business of the parties to the merger or proposed merger;
- (b) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail;
- (c) the extent to which there are acceptable substitutes for products supplied by parties to the merger or proposed merger;