

ETHIOPIA

**FEDERAL NEGARIT GAZETTE
OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**

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PROCLAMATION No. 813/2013

A PROCLAMATION ON TRADE COMPETITION

AND CONSUMERS PROTECTION

WHEREAS, commercial activities must be conducted in accordance with the appropriate practice based on the free market economy policy of the country;

WHEREAS, it has been found necessary to have a system, that enables to protect the business community from anti-competitive and unfair market practices, and also consumers from misleading market conducts, and which is conducive for the promotion of competitive free market;

WHEREAS, it is necessary to prevent the proliferation of goods and services that endanger the health and well being of consumers, following the expansion of commercial activities, and to ensure their safeness and suitability to human health in a sustainable manner, and to create conducive environment by which consumers get goods and services equivalent to the price they pay;

WHEREAS, in order to ensure the implementation of the system of trade competition and consumers protection it has been found necessary to determine the powers and duties of the concerned organs particularly, the organs in charge of investigation, prosecution and judicial responsibilities;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the “Trade Competition and Consumers Protection Proclamation No. 813/2013”.

2. Definitions

In this Proclamation unless the context otherwise requires:

1/ “goods” means movable commodities that are being purchased or sold or leased or by which any commercial activity is conducted between persons except monies in any form and securities;

2/ “service” means any commercial dispensing of service for consideration other than salary or wages;

3/ “basic goods or services” means goods or services related to the daily needs of consumers, the shortage of which in the market may lead to unfair trade practice;

4/ “consumer” means a natural person who buys goods and services for his personal or family consumption, whether the price is being paid by him or another person and not for manufacturing activity or resale;

5/ “business person” means any person who professionally and for gain carries on any of the activities specified under Article 5 of the Commercial Code, or who dispenses services, or who carries on those commercial activities designated as such by law;

6/ “commercial activity” means any activity carried on by a business person as defined under sub-article (5) of this Article;

7/ “manufacturing activity” includes any formulation, alteration, assembling and prefabrication activity carried on by an industry;

8/ “essential facility” means an infrastructure or resource that cannot be easily found or not much often available, and which is very important to competitors in order to supply their goods and services to their customers;

9/ “unfair trade practice” means any act in violation of provisions of trade related laws;

10/ “wholesaler” means any person who sells goods to a retailer after buying them from a manufacturer or an importer; when a manufacturer or an importer sells goods to a retailer or to a wholesaler, he shall be considered to have been engaged in wholesale business;

11/ “retailer” means any person who sells goods to consumers or users after buying them from a wholesaler or a manufacturer or an importer; when a wholesaler or a manufacturer or an importer sells goods to consumers or users, he shall be considered to have been engaged in retail business;

12/ “Ministry” or “Minister” means the Ministry or Minister of Trade, respectively;

13/ “annual turnover” means the total annual income derived from the sell of goods or services before the year the decision is rendered; in case of beginner traders with less than one budget year of existence it is the total income with in that period;

14/ “region” means any state referred to in Article 47(1) of the Constitution of the Federal Democratic Republic of Ethiopia;

15/ “bureau” means the trade and industry bureau or another appropriate organ of a region or the Addis Ababa or the Dire Dawa city administration;

16/ “person” means any natural or juridical person;

17/ any expression in the masculine gender includes the feminine.

3. Objective

This Proclamation shall have the following objectives:

1/ to protect the business community from anti-competitive and unfair market practices, and also consumers from misleading market conducts, and to establish a system that is conducive for the promotion of competitive free market;

2/ to ensure that consumers get goods and services safe and suitable to their health and equivalent to the price they pay; and

3/ to accelerate economic development.

4. Scope of Application

1/ This Proclamation shall apply to any commercial activity or transaction in goods or services conducted or having effect within the Federal Democratic Republic of Ethiopia.

2/ Notwithstanding the provision of sub-article (1) of this Article the Council of Ministers may specify by regulation those trade activities it deems vital in facilitating economic development to be exempted from the application of the provisions of Part Two of this Proclamation.

3/ The provisions of this Proclamation may not affect the applicability of regulatory functions and administrative measures to be undertaken in accordance with other laws.

PART TWO

PROHIBITION OF ANTI-COMPETITIVE TRADE PRACTICES AND REGULATION

OF MERGER

SECTION ONE

PROHIBITION OF ANTI-COMPETITIVE TRADE PRACTICES

5. Abuse of Market Dominance

1/ No business person, either by himself or acting together with others, may carry on commercial activity by openly or dubiously abusing the dominant position he has in the market.

2/ For the purpose of sub-article (1) of this Article the following shall be deemed acts of abuse of market dominance:

a) limiting production, hoarding or diverting, preventing or withholding goods from being sold in the regular channels of trade;

b) doing directly or indirectly such harmful acts, aimed at a competitor, as selling at a price below cost of production, causing the escalation of the costs of a competitor or preempting inputs or distribution channels;

- c) directly or indirectly imposing unfair selling price or unfair purchase price;
- d) refusing, contrary to the clearly prevalent trade practice, to deal with others on terms the dominant business person customarily or possibly could employ as though the terms are not economically feasible to him;
- e) without justifiable economic reasons, denying access by a competitor or a potential competitor to an essential facility controlled by the dominant business person;
- f) without justifiable economic reasons, discriminating customers in prices and other conditions in the supply and purchase of goods and services;
- g) without justifiable economic reasons making the supply of particular goods or services dependent on the acceptance of competitive or non-competitive goods or services or imposing restrictions on the distribution or manufacture of competing goods or services or making the supply dependent on the purchase of other goods or services having no connection with the goods or services sought by the customer;
- h) without justifiable economic reasons and in connection with the supply of goods or services, imposing such restrictions as to where or to whom or in what conditions or quantities or at what prices the goods or services shall be resold or exported;
- i) other similar acts specified by regulation to be issued for the implementation of this Proclamation.

3/ The following shall be deemed justifiable economic reasons for the purpose of applying the provisions of paragraphs (e), (f), (g) and (h) of sub-article (2) of this Article:

- a) maintenance of quality and safety of goods and services;
- b) leveling with prices or benefits offered by a competitor;
- c) achieving efficiency and competitiveness;
- d) other similar reasons specified by regulation to be issued for the implementation of this Proclamation.

6. Assessment of Dominance

1/ A business person either by himself or acting together with others in a relevant market, is deemed to have a dominant market position, if he has the actual capacity to control prices or other conditions of commercial negotiations or eliminate or utterly restrain competition in the relevant market.

2/ A dominant position in a certain market may be assessed by taking into account the business person's share in the market or his capacity to set barriers against the entry of others into the market or other factors as may be appropriate or a combination of these factors.

3/ The market relevant for the assessment of a dominant position is the market that comprises goods or services that actually compete with each other or goods or services that can be replaced by one another.

4/ The geographic area of such market is the area in which the conditions of competition are sufficiently homogeneous and can be distinguished from the conditions of competition in neighboring markets.

5/ The Council of Ministers may determine by regulation the numerical expression of the degree of market dominance.

7. Anti-Competitive Agreements, Concerted Practices and Decisions

1/ An agreement between, or concerted practice by, business persons or a decision by association of business persons in a horizontal relationship shall be prohibited if:

a) it has the effect of preventing or significantly lessening competition, unless a party to the agreement, concerted practice or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect; or

b) it involves, directly or indirectly, fixing a purchase or selling price or any other trading condition, collusive tendering, or dividing markets by allocating customers, suppliers, territories or specific types of goods or services.

2/ An agreement between business persons in a vertical relationship shall be prohibited if:

a) it has the effect of preventing or significantly lessening competition, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect; or

b) it involves the setting of minimum resale price.

3/ For the purpose of applying sub-article (1) and (2) of this Article:

- a) the term “agreement” includes mutual understanding, written or oral contract and operational procedures, whether or not legally enforceable;
- b) “concerted practice” means a unified or cooperative conduct of business persons depicted in a way that does not look like an agreement and done to substitute individual activity;
- c) horizontal relationship is deemed to exist between competing business persons in a certain market, whereas vertical relationship is deemed to exist between business persons and their customers or suppliers or both.

8. Unfair Competition

1/ No business person may, in the course of trade, carry out any act which is dishonest, misleading or deceptive, and harms or is likely to harm the business interest of a competitor.

2/ The following shall be deemed acts of unfair competition:

- a) any act that causes or is likely to cause confusion with respect to another business person or its activities, in particular, the goods or services offered by such business person;
- b) any act of disclosure, possession or use of information of another business person, without the consent of the rightful owner, in a manner contrary to honest commercial practice;
- c) any false or unjustifiable allegation that discredits, or is likely to discredit another business person or its activities, in particular the goods or services offered by such business person;
- d) comparing goods or services falsely or equivocally in the course of commercial advertisement;
- e) disseminating to consumers or users, false or equivocal information including information the source of which is not known, in connection with the price or nature or system of manufacturing or manufacturing place or content or suitability for use or quality of goods or services;

- f) obtaining or attempting to obtain confidential business information of another business person through his current or former employees or obtaining the information to pirate his customers or to use for purposes that minimize his competitiveness;
- g) other similar acts specified by regulation to be issued for the implementation of this Proclamation.

SECTION TWO

REGULATION OF MERGER

9. Prohibitions

- 1/ No business person may enter into an agreement or arrangement of merger that causes or is likely to cause a significant adverse effect on trade competition.
- 2/ No agreement or arrangement of merger may come into effect before obtaining approval from the Authority pursuant to Article 11 of this Proclamation.
- 3/ For the purpose of applying the provisions of this Article merger shall be deemed to have occurred:
 - a) when two or more business organizations previously having independent existence amalgamate or when such business organizations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity; or
 - b) by directly or indirectly acquiring shares, securities or assets of a business organization or taking control of the management of the business of another person by a person or group of persons through purchase or any other means.

10. Notification of Merger

- 1/ Any business person who proposes to enter into an agreement or arrangement of merger shall give notice to the Authority by disclosing the details of the proposed merger.
- 2/ The Authority shall, upon receipt of the notification of merger pursuant to sub-article (1) of this Article, investigate the possible adverse effect of the proposed merger on trade competition.
- 3/ In the course of investigating the possible effect of a proposed merger, the Authority may:

- a) where deemed necessary, require the parties to the merger to submit additional information or document within a specified period of time; and
- b) invite, by a notice published on a newspaper having wide circulation, any business person who is likely to be affected by the said merger, to submit his written objections, if any, within 15 days from the date of publication of the notice.

11. Approval of Merger

1/ The Authority, after having investigated the proposed merger, shall:

- a) approve the merger, if it is of the opinion that the merger is not likely to have any significant adverse effect on trade competition;
- b) prohibit the merger, if it is of the opinion that the merger is likely to have a significant adverse effect on trade competition; or
- c) approve the merger subject to certain conditions, if it is of the opinion that the likely significant adverse effect of the merger on trade competition can be eliminated by complying with the conditions attached thereto.

2/ Notwithstanding the provision of paragraph (b) of sub-article (1) of this Article, the Authority may approve a merger proposal where the merger is likely to result in technological, efficiency or other pro-competitive gain that outweigh the significant adverse effects of the merger on competition, and such gain may not otherwise be obtained if the merger is prohibited.

12. Registration of Merger

The concerned government office shall require the presentation of approval of the Authority issued in accordance with Article 11 of this Proclamation before registering a merger in the commercial register.

13. Revocation of Merger Approval

1/ The Authority may revoke a merger approval where:

- a) it discovers that the approval was obtained based on the presentation of false or fraudulent evidence; or
- b) the conditions on the basis of which the approval has been obtained are not fulfilled.

2/ The Authority shall, following the revocation of a merger approval pursuant to sub-article (1) of this Article, inform the concerned government office to cancel the merger from the commercial register.

PART THREE

PROTECTION OF CONSUMERS AND DISTRIBUTION OF GOODS AND SERVICES

SECTION ONE

PROTECTION OF CONSUMERS

14. Rights of Consumers

Every consumer shall have the right to:

1/ get sufficient and accurate information or explanation as to the quality and type of goods or services he purchases;

2/ buy goods and services on the basis of his own choice;

3/ not to be obliged to buy for the reasons that he looked into quality or options of goods and services or he made price bargain;

4/ be received humbly and respectfully by any business person and to be protected from such acts of the business person as insult, threat, frustration and defamation; and

5/ claim compensation or related either jointly or severally from persons who have participated in the supply of goods or services as manufacturer, importer, wholesaler, retailer or in any other way for damages he has suffered because of purchase or use of the goods or services.

15. Display of Price of Goods and Services

- 1/ Any business person shall, display price of his goods and services by posting such list in a conspicuous place in his business premises or by affixing price tags on the goods.
- 2/ The price of goods and services shall be inclusive of taxes and other lawful fees.

16. Labels of Goods

- 1/ Any business person shall, affix labels on the goods he sells or provide them to the consumer on a separate paper.
- 2/ Labels affixed on goods shall indicate the following particulars as may be appropriate:
 - a) the name of the goods;
 - b) country of manufacturing or export of the goods;
 - c) the gross and net weight, volume, and quantity of the goods;
 - d) quality of the goods;
 - e) description of materials used to manufacture the goods;
 - f) technical specification of the goods and their operational or utilization methods;
 - g) safety measures to be considered during the use of the goods;
 - h) a warranty of the service of the goods to be provided by the business person;
 - i) the names and addresses of the manufacturer, packer and importer;
 - j) expiry date of the goods;
 - k) manufacturing date of the goods;
 - l) indication that the goods have fulfilled requirements set in the Ethiopian standards; and
 - m) other details published in a public notice by the Ministry when deemed necessary to safeguard public interest.

3/ Labels to be posted on goods shall be posted or printed on the goods or the package, not be easily detachable and be written at least in the Amharic or English language.

17. Issuing Receipts and Keeping their Pads

1/ Any business person shall have the obligation to issue receipts immediately to the consumer in respect of goods or services sold.

2/ The business person shall keep pads of receipts issued in respects of goods and services sold pursuant to sub article (1) of this Article or receipts obtained in respect goods and services he bought for re-sale, for 10 years.

18. Self Disclosure

1/ Any business person shall display his trade name at an overt place.

2/ Any business person shall, upon request by a consumer relating to goods or services he sells, satisfactorily disclose himself and let the consumer take the information he wants.

19. Commercial Advertisements

Commercial advertisements about goods and services announced by any means may not be false or misleading in any manner particularly on:

1/ the nature, components and quantity of the goods;

2/ the source, weight, volume, method of manufacturing, date of manufacturing and expiry date of the goods and how it is used;

3/ the manufacturer of the goods or the supplier of the service;

4/ the place of delivery of the service, its basic nature and use and how to use it;

5/ conditions of purchase of the goods or the service, after sales services, warranty, price and conditions of payment;

6/ quality marks;

7/ trade mark and emblem; and

8/ results expected by using the goods or services.

20. Defects in Goods and Services

1/ Any consumer may report defects in goods and services purchased and the damage the defects may cause, to the Ministry or the relevant bureau.

2/ A consumer may, without prejudice to warranties or legal or contractual provisions more advantageous to him, demand the seller, within 15 days from the date of purchase:

- a) in the case of defective goods, to replace the goods or refund the price paid; or
- b) in the case of defective service, to re-deliver the service free of charge or to refund the fee paid.

3/ Any consumer shall have the right to claim, in accordance with the relevant laws, payment of compensation for any damage resulting from the use of the defective goods or service or from the failure of the seller to meet his demand presented pursuant to sub article (2) of this Article.

21. Contractual Waiver of Rights

The provisions of a contract made between a consumer and a business person that provide for the waiver of rights vested in the consumer under this Proclamation shall be of no effect.

22. Prohibited Acts

It shall be prohibited for any business person to commit the following acts:

- 1/ furnishing false information on the quality, quantity, volume, acceptance, source, nature, component or use of goods and services;
- 2/ failing to disclose correctly the model of goods, whether they are brand new, modified, rebuilt as new or second hand or they are recalled by the manufacturer;
- 3/ describing the goods and services of another business person in a misleading way;
- 4/ failing to sell goods and services as advertised or in the quantity consumers demand, unless the advertisement discloses a limitation of quantity;
- 5/ making false or misleading statements of price reduction;
- 6/ applying or attempting to apply a pyramid scheme of sale, based on the numbers of consumers, by announcing the granting of a reward, in cash or in kind, to a consumer who

purchases goods or service or makes financial contribution and where other consumers through his salesmanship purchase the goods or the service or make financial contribution or enter into the sales scheme;

- 7/ failing to meet a warranty obligation entered in connection with the sale of goods or service;
- 8/ misrepresenting the need for repair or replacement of parts of goods as though not needed;
- 9/ delivering a service below the standard recognized in the business or with deficiency;
- 10/ making available for sale or selling goods which is dangerous to human health and safety, the source of which is not known, or which is substandard, poisoned, expired or adulterated;
- 11/ committing any fraudulent or confusing act in any transaction of goods or service;
- 12/ refusing to sell goods or service unless for the purpose of protecting the rights of the consumer;
- 13/ making available for sale or selling goods or services without using standard marks while the use of such standard marks is a requirement;
- 14/ selling goods or service at a price above the price affixed to the goods or the price posted in the business premises;
- 15/ falsifying the country of origin of goods;
- 16/ unduly favoring one consumer over the other;
- 17/ subjecting a consumer to purchase goods or service not desired in order to sell another goods or service; 18/ using any unlawful instrument of measurement.

SECTION TWO

DISTRIBUTION OF GOODS AND SERVICES

23. Regulating the Distribution of Goods and Services

- 1/ The Ministry and bureaus in collaboration with other appropriate bodies shall ban the distribution of goods and services that do not fulfill the standards of health and safety.
- 2/ The Ministry in collaboration with other appropriate bodies may conduct quality inspection of locally manufactured or imported goods.
- 3/ The Ministry and the bureaus shall inspect any acts of hoarding or diverting of goods.

4/ The Ministry or the bureaus shall in consultation with other appropriate bodies cause the disposal of goods that are spoiled and are dangerous to human health and safety.

5/ The Ministry and the bureaus shall have the powers to implement the provisions of this Part other than those falling under the jurisdiction of the Authority.

24. Hoarding and Diverting of Goods

1/ The hoarding or diverting of goods that have been declared by a public notice issued by the Ministry as scarce in the market shall be prohibited:

- a) in the case of a business person, contrary to regular commercial practices; or
- b) in the case of a person other than a business person, in the quantity beyond that of personal or family consumption.

2/ Goods are presumed to have been hoarded or diverted contrary to regular commercial practices, where the value of the goods is not less than twenty five per cent of the capital of the business person and where:

- a) in the case of imported goods, other than those being used as raw materials or inputs for further processing by the importer himself, the goods have not been made available for sale within three months from the date of completion of customs formalities;
- b) in the case of locally produced goods, other than those being used as raw materials or inputs for further processing by the producer himself, have not been made available for sale within two months from the date of production; or
- c) in the case of goods bought by a wholesaler or a retailer, the goods have not been made available for sale within one month from the date of purchase.

3/ Notwithstanding the non fulfillment of the conditions stipulated under sub-article (2) of this Article, goods found while being transported by any means of transportation outside the authorized distribution route shall be presumed to have been hoarded or diverted.

4/ Any person other than a business person may not transport or cause the transportation of goods, declared by a public notice issued by the Ministry as scarce in the market and the quantity of which is beyond that of personal or family consumption, outside the authorized distribution route.

5/ For the application of this Article, an acceptable amount of personal or family consumption of goods and allowable storage time shall be determined by a public notice to be issued by the Ministry.

6/ The provisions of this Article may not be applicable with respect to the storage of agricultural products by peasant farmers.

25. Regulating Prices of Basic Goods and Services

1/ The Ministry, when deemed necessary, shall submit to the Council of Ministers its study on basic goods and services that shall be subject to price regulation and upon approval announce their list and prices by a public notice.

2/ It shall be prohibited to sell or attempt to sell basic goods or services beyond the price fixed by the government and announced by a public notice.

26. Distribution of Basic Goods

The Ministry in consultation with other concerned government organs may determine the conditions of distribution, sale and movement of basic goods and services and, as may be necessary, order business persons to replenish stocks of same.

PART FOUR

TRADE COMPETITION AND CONSUMERS PROTECTION AUTHORITY, FEDERAL TRADE COMPETITION AND CONSUMERS PROTECTION APPELLATE

TRIBUNAL AND REGIONAL CONSUMERS PROTECTION JUDICIAL ORGANS AND APPELLATE TRIBUNALS

27. Establishment of the Authority

1/ Trade Competition and Consumers Protection Authority (hereinafter referred to the “Authority”) is hereby established as an autonomous federal government body having its own legal personality.

2/ The Authority shall be accountable to the Ministry.

3/ The Authority shall be governed by this Proclamation.

28. Organization of the Authority

The Authority shall have:

1/ a Director General and, as may be necessary, Deputy Director Generals to be appointed by the Prime Minister up on the recommendation of the Minister;

- 2/ judges to be appointed in accordance with Article 35(1) of this Proclamation;
- 3/ investigative officers conducting investigation and prosecutors instituting an action in accordance with this Proclamation; and
- 4/ the necessary staff.

29. Head Office

The Authority shall have its head office in Addis Ababa and may have branch offices elsewhere, as may be necessary.

30. Powers and Duties of the Authority

Without prejudice to other provisions of this Proclamation, the Authority shall have the powers and duties to:

- 1/ take appropriate measures to increase market transparency;
- 2/ take appropriate measures to develop public awareness on the provisions of this Proclamation and its implementation;
- 3/ receive, and decide on, merger notifications in accordance with the provisions of this Proclamation;
- 4/ undertake study and research in connection with trade competition and consumer protection, and initiate policy proposals;
- 5/ regularly announce to consumers goods banned by the government or at the international level from being consumed or sold;
- 6/ organize various education and training forums and provide education and training in order to enhance the awareness of consumers;
- 7/ ban advertisements of goods and services which are inconsistent with health and safety requirements or with this Proclamation when it is aware of them by itself or when it is reported to it by any person, and order the issuance of announcements of corrections for such advertisements, in the methods the advertisements were made at the expense of the person in whose interest they were made;
- 8/ protect consumers from unfair practices of business persons;

- 9/ organize judicial organs with jurisdiction on issues of trade competition and consumers protection in accordance with the provisions of this Proclamation;
- 10/ establish procedure enable to resolve disputes arised between traders or consumers and traders by mutual agreement and negotiation;
- 11/ provide support to industrial self-regulation in order to enable various industrial sectors regulate anti-competitive and unfair trade practices;
- 12/ provide secretarial and other services to the Federal Trade Competition and Consumers Protection Appellate Tribunal established under Article 33 of this Proclamation;
- 13/ give necessary advice and support to the concerned regional organs with respect to consumer protection;
- 14/ establish relationship and cooperation with domestic and foreign institutions having similar objectives,
- 15/ own property, enter into contracts, sue and be sued in its own name;
- 16/ perform such other related activities conducive for the attainment of its objectives.

31. Powers and Duties of the Director General

- 1/ The Director General of the Authority shall be the chief executive officer of the Authority and shall direct and administer the activities of the Authority.
- 2/ Without prejudice to the generality of sub-article (1) of this Article the Director General shall have the powers and duties to:
 - a) ascertain the proper implementation of the powers and duties of the Authority provided under Article 30 and Article 32 of this Proclamation;
 - b) employ and administer employees of the Authority based on the principles of the federal civil service laws;
 - c) represent the Authority in its dealings with third parties.
- 3/ The Director General may delegate part of his powers and duties to other officers and employees of the Authority to the extent necessary for the efficient performance of the activities of the Authority.

32. Powers and Duties of the Adjudicative Benches of the Authority

1/ The adjudicative benches of the Authority shall have judicial power:

- a) to take administrative measures and impose fines in accordance with Article 42 of this Proclamation on a business person or any person other than a business person who violates prohibitions provided under Part Two of this Proclamation;
- b) to order payment of compensation in accordance with the relevant laws to business persons victimized by acts of unfair competition committed in violation of the provisions of Part Two of this Proclamation; and
- c) to order compensation in accordance with the relevant laws to consumers victimized by transactions conducted in the Addis Ababa or the Dire Dawa city administrations in violation of consumers protection provisions stipulated under Part Three of this Proclamation.

2/ The administrative measures to be taken pursuant to sub-article (1) (a) of this Article may include ordering:

- a) the discontinuation of the act pronounced unfair;
- b) the taking of any other appropriate measure that enables to reinstate the victims competitive position; or
- c) the suspension or revocation of the business license of the offender.

33. Federal Trade Competition and Consumer Protection Appellate Tribunal

1/ The Federal Trade Competition and Consumer Protection Appellate Tribunal (hereinafter the “Federal Appellate Tribunal”) is hereby established.

2/ The Federal Appellate Tribunal shall have the power to hear and decide on appeals against:

- a) decisions of the Authority to prohibit and revoke merger approvals and to ban commercial advertisements; and
- b) decisions of the adjudicative benches of the Authority.

3/ The Federal Appellate Tribunal may, upon examining an appeal submitted to it pursuant to sub-article (2) of this Article, confirm, reverse or vary the decision, or remand the case, with necessary instructions, to the Authority or the adjudicative bench of the Authority, as the case may be.

34. Regional Consumers Protection Judicial Organs

Each region may, when necessary, establish consumers protection judicial organ and appellate tribunal.

35. Appointment and Independent of Judges

1/ Each adjudicative bench of the Authority as well as the Federal Appellate Tribunal shall have one presiding judge and two judges to be appointed by the Prime Minister.

2/ Judges to be appointed pursuant to sub-article (1) of this Article shall have the necessary professional qualification, educational background and experience needed for the post.

3/ Judges appointed pursuant to sub-article (1) of this Article shall be independent of any interference or instructions by any person with regard to cases they adjudicate.

PART FIVE

CONDUCTING INVESTIGATION, INSTITUTION OF ACTION AND ADJUDICATION

36. Conducting Investigation

1/ The Authority shall conduct investigations where there is sufficient ground to suspect, based on its own information or information given to it by any person, that an offence has been committed:

a) anywhere, entailing administrative measures and administrative penalty pursuant to Article 32 and Article 42 or criminal penalty pursuant to sub-article (1) or (7) of Article 43 of this Proclamation; or

b) in the Addis Ababa or the Dire Dawa city administrations, entailing criminal penalty pursuant to sub-article (2),(3), (4),(5) or (6) of Article 43 of this Proclamation.

2/ If the Authority finds it necessary, in conducting its investigation activities, it may order the police forces under the Federal Police Commission, the Addis Ababa City Administration Police Commission or the Dire Dawa City Administration Police Commission.

3/ A search or seizure order requested by an investigation officer of the Authority shall be granted by an adjudicative bench of the Authority in accordance with the relevant provisions of the Criminal Procedure Code.

4/ An investigation officer of the Authority may, while conducting investigation:

- a) enter into the business premises of the suspect or any other place where goods are stored or stop a vehicle loaded with goods and conduct search;
- b) take samples of goods necessary for the investigation;
- c) examine and take copies of records and documents kept in any form;
- d) seize goods illegally stored or being transported or seal their storage or container.

5/ Any investigation officer of the Authority shall show the authorization issued to him to conduct investigation to the owner or representative of the business establishment, storage or vehicle subjected to the investigation.

6/ The owners, officials and employees of business establishments shall have the obligation to cooperate in the conduct of investigations in accordance with this Article.

37. Institution of Action

1/ An action:

- a) for taking administrative measures and imposing administrative penalty by the adjudicative bench of the Authority; or
- b) for imposing criminal penalty by the competent federal court;

shall be instituted by a prosecutor of the Authority based on the findings of an investigation conducted pursuant to Article 36 of this Proclamation.

2/ Any business person who has sustained damages arising from an act of unfair competition and claims payment of compensation may institute an action before the adjudicative bench of the Authority.

3/ Any consumer who claims payment of compensation pursuant to Article 14 of this Proclamation may institute an action before an adjudicative bench of the Authority in the case of a transaction conducted in the Addis Ababa or the Dire Dawa city administrations or before the regional consumer protection judicial organ in the case of a transaction conducted in a region.

4/ The provisions of the Criminal Code on discontinuance and extinction of prosecution and penalty shall also apply to the institution of an action pursuant to sub-article (1) (a) of this Article.

38. Adjudication

1/ The adjudicative benches of the Authority, the Federal Appellate Tribunal, regional consumers protection judicial organs and regional appellate tribunals shall have the powers, in discharging their judicial functions:

- a) to order any person to furnish information and submit documents that may be required;
- b) to summon any witness to appear and testify;
- c) to execute their decisions and orders;
- d) to order the police or any other appropriate organ; and
- e) to order the attachment, seizure and sale of goods.

2/ An adjudicative bench of the Authority shall consider the following factors in determining administrative penalty or administrative measure:

- a) the nature, duration, gravity and extent of the offence;
- b) the damage suffered as a result of the offence;
- c) the market circumstances in which commission of the offence took place;
- d) the benefit derived from the offence;
- e) the economic status of the offender;
- f) the degree to which the offender cooperated with the Authority during the investigation;
and
- g) the previous behavior and criminal records of the offender.

39. Appeal

1/ Any person aggrieved by the decision of the Authority to prohibit merger or to revoke merger approval or to ban a commercial advertisement or by any decision of an adjudicative bench of the Authority may appeal to the Federal Appellate Tribunal within 30 days from the date of the decision.

2/ The decision of the Federal Appellate Tribunal on an appeal submitted to it pursuant to sub-article (1) of this Article shall be final; provided, however, that a party that claims the existence of mistake on question of law regarding a decision passed pursuant to Article 33(3) of this Proclamation may lodge his appeal to the Federal Supreme Court within 30 days from the date of the decision.

40. Adjudication Fees

1/ Any person other than government organ shall pay adjudication fee to institute an action before the adjudicative bench of the Authority or to lodge an appeal before the Federal Appellate Tribunal.

2/ The adjudication tariff shall be determined by the Council of Ministers.

41. Applicability of Procedural Laws

The provisions of the Civil Procedure or the Criminal Procedure Codes shall, as may be appropriate, be applicable in conducting adjudication pursuant to this Proclamation.

PART SIX

MISCELLANEOUS PROVISIONS

42. Administrative Penalties

1/ Any business person who violates the provision of Article 5 of this Proclamation shall be punished with a fine from 5% up to 10% of his annual turnover.

2/ Any business person who violates the provisions of sub-article (1) or (2) of Article 7 of this Proclamation shall be punished with a fine of 10% of his annual turnover.

3/ Any business person who violates the provisions of Article 8 of this Proclamation shall be punished with a fine from 5% up to 10% of his annual turnover.

4/ Any business person who participates in a merger in violation of the provisions from Article 9 to Article 13 of this Proclamation shall be punished with a fine from 5% up to 10% of his annual turnover.

5/ Where the direct or indirect participation of a person other than a business person in the offences mentioned from sub-article (1) to (4) of this Article has been ascertained, he shall be punished with a fine from Birr 10,000 to Birr 100,000.

6/ If a person who participated in the commission of an offence provided for under sub-article (2) of this Article gives adequate information, that may not otherwise be obtained, on the commission of the offence and the role of the major participants, the Authority may exempt the person from prosecution pursuant to this Proclamation.

43. Criminal Penalties

1/ Any business person or any person other than a business person who fails to observe, administrative measure ordered by the adjudicative bench of the Authority pursuant to Article 32(1)(a) of this Proclamation or, penalty imposed by the Federal Appellate Tribunal pursuant to Article 33(3) of this Proclamation or, decision or order of the Federal Supreme Court in its appellate jurisdiction pursuant to Article 39(2) of this Proclamation, shall be guilty of a criminal offence and punishable with rigorous imprisonment from 1 year to 5 years.

2/ Any business person who violates Article 22(6) or (10) of this Proclamation shall be punished with a fine from 7% up to 10% of his annual turnover and with rigorous imprisonment from 3 years to 7 years.

3/ Any business person who violates any of the provisions of Article 22 of this Proclamation other than sub-article (6) and (10) shall be punished with a fine from 5% up to 10% of his annual turnover and with rigorous imprisonment from 1 year to 5 years.

4) Any business person who has been found hoarding or diverting or transporting goods in violation of Article 24 of this Proclamation shall, in addition to confiscation of the goods, be punished with a fine from 5% up to 10% of his annual turnover and with rigorous imprisonment from 1 year to 5 years.

5) Any driver of a vehicle who participated in hoarding or diverting or illegally transporting goods in violation of Article 24 of this Proclamation shall be punished with a fine from Birr 10,000 to Birr 50,000. The vehicle shall be confiscated with the goods if it is constructed, adopted or fitted with a compartment to conceal goods or the owner of the means of transport, being aware of the illegal transportation, fails to take appropriate measure to prevent or stop the commission of the act.

6) Any business person or any person other than a business person who violates the provisions of this Proclamation other than those provided from sub-article (1) to (5) of this Article or the provisions of regulations, directives or public notice issued to implement this Proclamation shall be punished with a fine from Birr 5,000 to Birr 50,000 and with simple imprisonment.

7/ Any person who opposes, obstructs or unduly influences an investigation process of the Authority shall be guilty of a criminal offence and be punished with simple imprisonment.

8/ The federal court hearing a criminal action regarding an offence committed in violation of sub-article (1) of this Article may not have the power to examine the merit of the decision of the adjudicative bench of the Authority other than examining the observance or non-observance of the administrative measure or penalty imposed by the bench.

9/ The criminal penalty imposed pursuant to sub-article (1) and (8) of this Article may not affect the execution of the administrative measures taken, and the penalty imposed, by the adjudicative bench of the Authority.

44. Budget

The budget of the Authority shall be allocated by the government.

45. Books of Accounts

1/ The Authority shall be keep complete and accurate books of accounts.

2/ The books of accounts and financial documents of the Authority shall be audited annually by the Federal Auditor General or by an auditor designated by him.

46. Power to Issue Regulations and Directives

1/ The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.

2/ The Ministry may issue directives and public notices necessary for the implementation of this Proclamation and regulations issued pursuant to sub-article (1) of this Article.

47. Repealed Laws

1/ The Trade Practice and Consumers Protection Proclamation No. 685/2010 is hereby repealed.

2/ No law or customary practice may, in so far as it is inconsistent with this Proclamation, be applicable with respect to matters provided for by this Proclamation.

48. Transitory Provisions

1/ Directives and public notices issued pursuant to the Trade Practice Proclamation No. 329/2003 and the Trade Practice and Consumers Protection Proclamation No. 685/2010 shall remain in force until they are replaced by directives and public notices to be issued pursuant to this Proclamation.

2/ Cases pending before the Trade Practice and Consumers Protection Authority pursuant to the Trade Practice Proclamation No.329/2003 and the Trade Practice and Consumers Protection Proclamation No.685/2010 shall be handled by the Authority in accordance with this Proclamation.

49. Effective Date

This Proclamation shall enter into force on the date of publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 21 st day of March , 2014.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL

DEMOCRATIC REPUBLIC OF ETHIOPIA