

[HB. 15.12.325] NIGERIAN ANTITRUST (PROHIBITIONS,
ENFORCEMENT, ETC.) BILL, 2015

ARRANGEMENT OF SECTIONS

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SCHEDULE

ANTITRUST ENFORCING UNITS

COMPOSITION, FUNCTIONS AND POWERS.

A BILL**FOR**

AN ACT TO REGULATE AND PROHIBIT UNFAIR COMPETITION AND UNREASONABLE COMBINATIONS IN RESTRAINT OF COMMERCE, INDUSTRY AND TRADE, INCLUDING MONOPOLIES, TRUSTS AND INTERLOCKING DIRECTORATES, FOR THE PURPOSES OF MAINTAINING AND STRENGTHENING THE FREE ENTERPRISES SYSTEM, ENSURING UNRESTRAINED COMPETITION, AND ESTABLISHING A LEVEL PLAYING FIELD, IN BUSINESS IN THE FEDERATION, AND TO MAKE PROVISION FOR OTHER MATTERS RELATING THERETO

Sponsored by HON. LYNDIA CHUBA IKPEAZU

Commerce-
ment.

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows—

CHAPTER I

REGULATIONS, PROHIBITIONS, OFFENCES, CRIMINAL AND CIVIL ACTION

PART I—PROHIBITION OF BUSINESS PRACTICES WHICH LESSEN COMPETITION, CREATE A MONOPOLY, CAUSE RESTRAINT TO TRADE, COMMERCE, ETC.

1.—(1) As from the commencement of this Act, it shall be an illegal, unlawful and a forbidden business practice, and a contravention of the provisions of this Act for any person or persons, combine, trust, etc. engaged in trade or commerce, in the course of such trade or commerce to—

(a) lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within Nigeria, or fix a price (an act otherwise known as price-fixing) charged therefore, or discount from, or rebate upon such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a

Prohibition of business practices which tend to lessen competition, create monopoly, etc. to trade, commerce, etc.

1 competitor or competitors of the lessor or seller, where the effect
2 of such lease, sale or contract for sale or such condition, agreement
3 or understanding may be to substantially lessen competition or tend
4 to create a monopoly in any line of trade or commerce;

5 (b) causes any restraint in the practice, flow or flourishing of
6 trade and commerce, through any agreement or agreements between
7 two or more competitors or providers of goods, commodities or
8 services in the free marketplace, to wit, carrying on or conducting
9 a bid-rigging practice at a stock market, public or private tenders
10 board (including competitive bid contracts), sales or auction of any
11 property, industrial complex, concern, firms, etc.:

12 (c) discriminate, either directly or indirectly, in price between
13 different purchasers of commodities, which commodities are sold
14 for consumption or resale within Nigeria or any part thereof, where
15 the effect of such discrimination may be to substantially lessen
16 competition or tend to create a monopoly to any line of commerce:

17 Provided that—

18 (i) nothing herein contained shall prevent discrimination in
19 price between purchasers of commodities on account of
20 differences in the grade, quality, or quantity of the commodity
21 sold, or that makes only due allowance for difference in the
22 cost of selling or transportation, or discriminates in price in
23 the same or different communities made in good faith to meet
24 competition,

25 (ii) nothing herein contained shall prevent persons engaged
26 in selling goods, wares, or merchandise in trade and commerce
27 from selecting their own customers in bona fide transactions
28 and not in restraint of trade;

29 (d) affect, hamper, eliminate or minimise normal market place
30 competition through the application of—

31 (i) unfair trade practices, such as improper labeling of products,

- 1 false and misleading advertising and misbranding,
2 (ii) exclusive dealing arrangements, which preclude a purchaser
3 from handling the goods of competitor of the supplier,
4 (iii) deceptive practices, in trade and commerce in order to
5 mislead the customer or to yield or cause undesirable price
6 controls of goods and commodities; and
7 (e) limit the supply of any particular product, goods or commodities
8 to the extent that it deprives customers and consumers the benefit of
9 choice, and eliminates marketplace competition;
10 (f) bundle or tie any brand of product with another for the purposes
11 of protecting or shielding that other product from a fair competition
12 with other like products, or in order to deprive customers and
13 consumers the benefit of choice, or for any other reason that results
14 in the restraint of trade or commerce.

15 (2) Without prejudice to Subsection (1) of this section, it shall be
16 an illegal and forbidden business practice, and a breach of the provisions
17 of this Act, for any combine or trust to hold a monopoly or attempt to
18 hold a monopoly, corporation, company on any aspect of trade,
19 commerce or industry in the Federation or with foreign nations in such
20 a manner which is calculated, intended or prearranged to—

21 (a) secure the sole control of a particular line of goods,
22 commodities, contracts or services in the Nigerian marketplace; or

23 (b) acquire the means to control the distribution and prices of
24 goods, commodities or services through mergers, holding companies,
25 interlocking directorates, conspiracies in restraint of trade or
26 collusive bidding; or

27 (c) acquire any firm or firms, or carry on their merger, or procure
28 the stocks of any number of competing firms in order to hamper,
29 lessen or eliminate normal marketplace competition in trade,
30 commerce and industry; or

31 (d) build interlocking directorates in firms or companies engaged

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1 in interstate or foreign commerce, and in which anyone of the
2 members of the boards of directors has a capitalisation exceeding
3 an amount specified, from time to time, by the Securities and
4 Exchange Commission (with regard to the relevant provisions of the
5 Nigerian Enterprises Promotion Act, including, where applicable,
6 the Companies and Allied Matters Act as amended), in order to
7 establish uniform pricing policies or to take actions of a monopolistic
8 nature that reduces or eliminates competition between business
9 enterprises and companies that are supposedly in competition with
10 each other.

Interpretation,
etc. of
certain
terminologies
and phrases.

11 2. In this part of this chapter, unless the context otherwise requires,
12 the following words and expressions have the meanings respectively
13 assigned to them—

14 (a) “bid-rigging” refers to an unfair business practice in which
15 two or more key competitors in the marketplace agree or concur
16 not to bid against each other or agree or concur on the level of their
17 individual bid contract or public auction or any similar bidding
18 exercise;

19 (b) “commerce” means a business activity characterised by the
20 buying and selling of goods and commodities, transportation and
21 commercial intercourse, and includes such other business activities
22 as transmission of radio, television, telephone and telegraphic
23 messages, and manufacturing, which are subject to Federal
24 regulations and control where they affect more than one of the States
25 of the Federation and as provided by the Constitution;

26 (c) “holding company” means a corporation engaged in interstate
27 and foreign commerce whose assets consist of stocks in operating
28 companies, and which has controlling shares in each of several
29 allegedly competing companies (subsidiaries);

30 (d) “interlocking directorates” refers to any syndicate or
31 conspiracy between any number of competing companies carrying

1 on interstate or foreign commerce whereby the same individuals of
2 the competing companies are members of the boards of directors of
3 their companies, and in which any one of the directors has a
4 capitalisation not exceeding 200 million Naira;

5 (e) "merger" refers to the pooling of the assets of two or more
6 companies to form a single company, and includes those between
7 competing companies (horizontal), those aimed at gaining control
8 over raw material suppliers (vertical-backward) and those involving
9 retail outlets (vertical-forward), designed or conspired to reduce
10 competition or to foster the growth of monopoly conditions;

11 (f) "monopoly" means a market condition characterised by the
12 absence of competition and the artificial fixing of prices (by any
13 cartel, syndicate, association or body of persons, howsoever formed
14 or constituted) for services or commodities (unaffected by the supply-
15 demand forces of the market economy), and which market condition
16 holds exclusive control over any line of goods, commodities or
17 services in terms of supply to a particular market; or that which
18 results when business firms establish conditions in which prices of
19 goods, commodities and services are controlled through mergers,
20 holding companies, interlocking directorates, conspiracies to restrain
21 trade and collusive bidding; but does not include or apply to any
22 franchise granted by the Government of the Federation to public
23 utilities, patent and copyright privileges conferred by law, and those
24 conferred for the purposes of promoting export trade in the
25 Federation;

26 (g) "price fixing" refers to a conspiracy or connivance between
27 two or more key providers of products and services in a market
28 place to agree on any particular level of price increases or minimum
29 pricing for any particular product or services;

30 (h) "restraint of trade; refers to the application in any business
31 practice of trusts, monopolies, price-fixing, collusion, conspiracy.

1 or other practices to hamper or eliminate free competition in the
2 market economy, which application in that regard is prohibited and
3 forbidden under this Act;

4 (i) “trust” or “combine” as a business combination, refers to any
5 large corporation or group of corporations or an association of trading
6 companies that pursues monopolistic policies in the production or
7 supplying of goods or services, and includes any trust formed for
8 the purposes of reducing or eliminating competition among previously
9 competing companies; and

10 (j) “unfair trade practice” means any business activity that
11 deceives or misleads the customer, and which results in the consumer
12 being sold shoddy, dangerous or overpriced goods or services, and
13 includes—

14 (i) false and misleading advertising of foods, drugs, cosmetics
15 and other commodities;

16 (ii) misbranding and improper labeling of products;

17 (iii) unfair and deceptive practices, and conspiracies to fix
18 prices of goods, commodities or services;

19 (iv) collusive bidding practices at a stock market;

20 (v) discriminating against buyers of goods or commodities;

21 (vi) price-cutting of goods or commodities in order to eliminate
22 competition; and

23 (vii) other practices in restraint of trade.

24 PART I—OFFENCES, CRIMINAL PENALTIES AND CIVIL ACTION

Offences.

25 3.—(1) Any person who does or attempts to do any act prohibited
26 and declared illegal and forbidden by Section 1 of this Act shall be
27 guilty of an offence and liable to be proceeded against in accordance
28 with the provisions of this Act.

29 (2) Where an offence under this Act is committed by a body of
30 persons—

31 (a) in the case of a body corporate, every director or officer of

1 that body shall be deemed to be guilty of the offence:

2 (b) in the case of a partnership, trust, combine or interlocking
3 directorate, every partner or officer of that body shall be deemed to
4 be guilty of the offence.

5 (3) No person shall, however, be deemed to be guilty of an offence
6 under Subsection (2) of this section, if he proves to the satisfaction of
7 the court that the offence was committed without his consent and that
8 he exercised all due diligence to prevent the commission of the offence
9 having regard to all the circumstances.

10 4.—(1) Any allegation that a violation or contravention of the Prosecution.
11 provisions of Section 1 of this Act has occurred or is about to take
12 place may be made by any person or body corporate to the Antitrust
13 Department of the Ministry of Justice, established under this Act which
14 is charged with the responsibility for any matter relating thereto.

15 (2) Subject to Section 174 of the Constitution, any Antitrust
16 Investigator or officer of the Antitrust Department may in a court of
17 competent jurisdiction prosecute an offender or an offence under this
18 Act.

19 5. For the avoidance of any doubt, the Federal High Court shall Jurisdiction.
20 have and exercise jurisdictional authority to the exclusion of any other
21 court in civil and criminal matters relating to the provisions of this
22 Act.

23 6.—(1) Where it is established in a criminal proceeding before a Criminal
24 court of competent jurisdiction that any of the category of offenders Penalties.
25 described in Section 3 of this Act is guilty of an offence under this Act,
26 the court shall impose any of the penalties, as appropriate, specified in
27 the following subsections of this section.

28 (2) In the case of a violation or contravention of any of the prohibitions
29 contained in Section 1 (1) (a) and (b) of this Act, an offender shall be
30 liable

31 (a) on summary conviction, to—

- 1 (i) a fine of an amount not exceeding ten million Naira; or
2 (ii) a revocation or cancellation, as the case may be, of the
3 certificate of incorporation, business permit or licence issued to
4 a combine or trust which committed the offence; or
5 (iii) a seizure or forfeiture to the Government of the Federation
6 of any moneys, gains, etc. obtained or derived by the offender
7 during and after the period of a continuation of that offence; or
8 (iv) all or any number of the foregoing penalties under this
9 paragraph, in the discretion of the court;
- 10 (b) on conviction on indictment, to—
11 (i) a fine of an amount not exceeding twenty million Naira,
12 (ii) a revocation or cancellation, as the case may be, of the
13 certificate of incorporation, business permit or licence as the
14 case may be, issued to a combine or trust which committed the
15 offence; or
16 (iii) a suspension or ban from participation in that business
17 venture or any business related thereto, of any combine or trust
18 or any of its directors or officers or partners which committed
19 the offence; or
20 (iv) a seizure or forfeiture to the Government of the Federation
21 of any moneys, gains, etc. obtained or derived by the offender
22 during and after the period of a continuation of that offence;
23 (v) imprisonment for a term not exceeding five years of a person
24 or director or officer of a combine or trust found guilty of
25 complicity in the violation; or
26 (vi) all or any number of the foregoing penalties under this
27 paragraph, in the discretion of the court.
- 28 (3) In the case of a violation or contravention of any of the
29 prohibitions contained in Section 1 (1) (c) and (d), an offender shall be
30 liable
31 (a) on summary conviction, to

1 (i) a fine of an amount not exceeding three million Naira; or
2 (ii) suspension, for a period not exceeding six months from
3 participation in that business venture or any business venture
4 related thereto, of any combine or trust, or any of its directors,
5 or officers, or partners found guilty of complicity in the violation
6 or contravention; or

7 (iii) seizure or forfeiture to the Government of the Federation
8 of any particular product, goods or commodities applied in
9 perpetrating the violation or contravention;

10 (vii) all or any number of the foregoing penalties under this
11 paragraph, in the discretion of the court;

12 (b) on conviction on indictment, to—

13 (i) a fine of an amount not exceeding five million Naira; or

14 (ii) suspension, for a period not exceeding 18 months, from
15 participation in that business venture or any business venture
16 related thereto, of a combine or trust or any of its directors or
17 officers or partners found guilty of complicity in the violation or
18 contravention; or

19 (iii) seizure or forfeiture of the Government of the Federation
20 of any particular product, goods or commodities applied in
21 perpetrating the offence;

22 (iv) imprisonment for a term not exceeding two years of a
23 person found guilty of complicity in the offence; or

24 (viii) all or any number of the foregoing penalties under this
25 paragraph, in the discretion of the court.

26 (4) In the case of a violation or contravention of any of the
27 prohibitions contained in Section 1 (1) (e) and (f) of this Act, an offender
28 shall be liable—

29 (a) on summary conviction, to—

30 (i) a fine of an amount not exceeding six million Naira; or

31 (ii) a revocation or cancellation, as the case may be, of the

1 certificate of incorporation or business permit or licence as the
2 case may be, issued to a combine or trust which committed the
3 offence; or

4 (iii) a seizure or forfeiture to the Government of the Federation
5 of any moneys, gains, etc. obtained or derived by the offending
6 combine or trust during that period of perpetrating that offence;

7 (iv) all or any number of the foregoing penalties under this
8 paragraph, in the discretion of the court;

9 (b) on conviction on indictment, to—

10 (i) a fine of an amount not exceeding twelve million Naira; or

11 (ii) a revocation or cancellation, as the case may be, of the
12 certificate of incorporation or business permit or licence as the
13 case may be, issued to a combine or trust which committed the
14 offence; or

15 (iii) a suspension, for a period not exceeding two years, from
16 participation in that business venture or any business venture
17 related thereto, of the combine or trust of any of its directors or
18 officers or partners found guilty of complicity in that offence;

19 (iv) seizure or forfeiture to the Government of the Federation
20 of any assets, stocks, moneys, gains, etc. obtained or derived by
21 the offender during that period of perpetrating that offence; or

22 (v) imprisonment for a term not exceeding four years of a
23 person or director or officer of a combine or trust found guilty of
24 complicity in the violation; or

25 (vi) all or any number of the foregoing penalties under this
26 paragraph, in the discretion of the court.

27 (5) In the case of violation or contravention of any of the prohibitions
28 contained in Subsection (2) of Section 1 of this Act, an offender shall
29 be liable—

30 (a) on summary conviction, to—

31 (i) a fine of an amount not exceeding ten million Naira; or

1 (ii) a revocation or cancellation, as the case may be, of the
2 certificate of incorporation or business permit or licence, as the
3 case may be, issued to a combine or trust which committed the
4 offence; or

5 (iii) a ban, from further participation in that business venture
6 or any business venture related thereto, of the combine or trust
7 or any of its directors or officers or partners found guilty of
8 complicity in that offence;

9 (iv) seizure and forfeiture to the Government of the Federation
10 of any monies, assets, stocks and shares, gains or property
11 obtained or derived by the combine or trust during and after that
12 period of perpetrating that offence; or

13 (v) all or any number of the foregoing penalties under this
14 paragraph, in the discretion of the court;

15 (b) on conviction on indictment, to—

16 (i) a fine of an amount not exceeding twenty million Naira; or

17 (ii) a revocation or cancellation, as the case may be, of the
18 certificate of incorporation or business permit or licence, as the
19 case may be, issued to a combine or trust which committed the
20 offence, or

21 (iii) a ban from further participation in that business venture or
22 any business venture related thereto, in Nigeria or any part thereof,
23 of the combine or trust and any other person, agent or representative
24 of the combine or trust found guilty of complicity in the violation or
25 contravention thereof; or

26 (iv) seizure and forfeiture to the Government of the Federation
27 of any monies, assets, stocks and shares, gains or property obtained
28 or derived by the combine or trust during and after that period of
29 perpetrating that offence, or

30 (v) imprisonment for a term not exceeding five years of a person
31 found guilty of complicity in the violation or contravention; or

1 (vi) all or any number of the foregoing penalties under this
2 paragraph, in the discretion of the court.

Civil action.

3 7.—(1) In any civil suit instituted by the Antitrust Department, or
4 as the case may be on behalf of an affected or injured party seeking a
5 compensation or restitution in respect of any of the prohibitions contained
6 in Section 1 of this Act, the court may in its decision in favour of any
7 such matter before it issue any of the following rulings or injunctions.

8 (2) In the case of a civil suit in respect of any matter contained in
9 Subsection (1) of Section 1 of this Act, the court may order—

10 (a) the payment of the claims made for damages incurred or
11 compensation or restitution, as the case may be, sought by the injured
12 party or parties, to an aggregate not exceeding 200 *per centum* of
13 the fine imposable by the court with respect to a summary conviction
14 on the same offence prescribed under this Act, whichever is the
15 greater; or

16 (b) payment of an amount (not exceeding the limit set in paragraph
17 (b) of this subsection) which the court deems reasonable or
18 appropriate as redress for the injured party or parties, and for
19 satisfying all other costs incurred during the civil action; or

20 (c) the commencement of negotiations (which shall be at the
21 instance of the plaintiff) between the parties involved or joined in
22 the civil action, for the purposes of reaching an agreement or
23 settlement on the claims, redress or damages sought by the plaintiff
24 in the civil action, or

25 (d) a suspension, for a period not exceeding two years, or a ban
26 from further participation in that business venture or any business
27 venture related thereto, of any combine or trust complained about;
28 or

29 (e) any number of the foregoing injunctions or rulings in this
30 subsection of this section as the injured party or parties may request
31 in their prayer to the court.

1 (3) In the case of a civil suit with respect to any matter contained
2 in Subsection (2) of Section 1 of this Act, the court may order—

3 (a) the payment of the claims made for damages incurred or
4 compensation or restitution sought by the injured party or parties, to
5 an aggregate not exceeding 200 *per centum* of the fine imposable by
6 the court with respect to a summary conviction on the same offence,
7 whichever is greater; or

8 (b) payment of any amount (not exceeding the limit set in paragraph
9 (a) of this subsection) which the court deems reasonable or
10 appropriate as redress for the injured party or parties, and for all
11 other costs incurred during the civil action; or

12 (c) the breakup or split of any merger or business trusts,
13 interlocking directorates or combines or holding companies involved
14 in monopolistic practices in commerce, as the suit may pray the
15 court to do; or

16 (d) a halt to the pyramiding of stocks in any holding company or
17 corporation engaged in interstate and foreign commerce, and order
18 the sale or disposal to the public of any number of shares in each of
19 several allegedly competing companies (subsidiaries) of the holding
20 company or corporation, in accordance with the regulations set by
21 the Securities and Exchange Commission; or

22 (e) dissolve the holding structure of any corporation (holding
23 company) consisting of allegedly competing companies (subsidiaries)
24 to not more than two companies (subsidiaries) in the corporation
25 (holding company), and as the civil suit may pray the court to do
26 within the limits of this contemplated order; or

27 (f) the seizure and forfeiture, to the Government of the Federation,
28 of any capitalisation of an amount exceeding 200 million Naira
29 applied for the purposes of building interlocking directorates; or

30 (g) any number of the foregoing injunctions or rulings in this
31 subsection of this section, and as the injured parties or plaintiff may

1 pray the court to do.

2 CHAPTER II

3 ESTABLISHMENT, COMPOSITION, FUNCTIONS, ETC. OF
4 THE ANTITRUST DEPARTMENT

5 PART I—ESTABLISHMENT, COMPOSITION, ETC. OF THE ANTITRUST
6 DEPARTMENT

Establishment
and
composition
of the
Antitrust
Department.

7 8.—(1) There shall be in the Federal Ministry of Justice a
8 Department to be known as the Antitrust Department, which shall be
9 under the direct supervision and control of the Minister, and shall,
10 subject to this Act, have responsibility for the enforcement of the
11 provisions of this Act.

12 (2) The members of the management of the Antitrust Department
13 established in Subsection (1) of this section shall be appointed by the
14 President on the recommendation of the Minister, and shall consist
15 of—

16 (a) a Director-General, who shall be—

17 (i) the head of the Antitrust Department and chief prosecutor
18 of any offence committed under this Act;

19 (ii) qualified to practice as a legal practitioner in Nigeria, and
20 shall have been so qualified for a period of not less than fifteen
21 years; and

22 (iii) a person of unquestionable integrity and sound political
23 judgement;

24 (b) four Directors; and

25 (c) eight Deputy Directors.

26 (3) The persons appointed pursuant to Subsection (2) (b) and (c)
27 of this section shall be persons appearing to the President to be suitably
28 qualified by reason of their professional or academic or administrative
29 qualifications or by their attainments in the civil service of the
30 Federation or of a State.

31 (4) Subject to Subsection (7) of this section, a person appointed

1 pursuant to Subsection (2), of this section shall, at the time of his
2 appointment, not be less than forty years of age and shall vacate his
3 office on attaining the age of sixty-five years.

4 (5) The Minister may, if he considers it necessary for the due
5 and proper execution of the functions of the Antitrust Department under
6 this Act, appoint—

7 (a) a Secretary for the Antitrust Department; and

8 (b) such other number of officers and servants for the Antitrust
9 Department as may expressly be required by the Director-General
10 of the Department, on such terms and conditions of service (and in
11 appropriate cases, pensions and other terminal benefits) which shall
12 be the same as those provided for public officers in the civil service
13 of the Federation.

14 (6) The composition of the members and staff of the Antitrust
15 Department shall, at any time—

16 (a) reflect the federal character of Nigeria; and

17 (b) consist of not less than 80 per cent of persons who are qualified
18 as legal practitioners, economists, accountants and auditors.

19 (7) The President may, on the recommendation of the Minister,
20 terminate the appointment of a person appointed pursuant to Subsection
21 (2) of this section on the grounds of misbehaviour or inability to discharge
22 the functions of his office (whether arising from infirmity of mind or
23 body or any other cause) or for misconduct.

24 (8) Subject to Subsection (5) of this section, any member of the
25 public service of the Federation or of a State may elect to transfer to
26 the Antitrust Department, in which case any previous service in the
27 public service of the Federation or of a State shall count as service for
28 the purposes of the Pensions Act.

29 9.—(1) The Director-General appointed pursuant to Section 8 (2)
30 (a) of this Act shall, subject to this Act, have the following general
31 duties, that is —

Duties of the
Director
General.

1 (a) organising and managing the affairs of the Antitrust
2 Department;

3 (b) enforcing the provisions of this Act, and, in particular, directing
4 the activities of the members, officers and servants of the Antitrust
5 Department;

6 (c) exercising disciplinary control over the officers and staff of
7 the Antitrust Department, with the approval of the Minister; and

8 (d) managing the funds allocated from time to time, to the Antitrust
9 Department.

10 (2) Without prejudice to Subsection (1) of this section, the Director-
11 General shall be free to manage the affairs and operations of the
12 Antitrust Department as he thinks fit in accordance with the provisions
13 of this Act, and in this regard other members of the management of
14 the Antitrust Department shall not interfere with his methods or with
15 the manner in which he deploys the material and human resources of
16 the Department in order to obtain results in accordance with this Act.

17 PART II—FUNCTIONS AND POWERS OF THE ANTITRUST DEPARTMENT

Functions
and powers.

18 10.—(1) Subject to this Act, the Antitrust Department shall, to
19 the extent possible, ensure compliance with and where appropriate
20 enforce the provisions of Part I of Chapter I of this Act, and shall
21 without prejudice to the foregoing functions—

22 (a) initiate, on its own, or conduct at the behest or request of any
23 interested, affected or injured person or body corporate, an inquiry
24 or investigation into any matter appertaining to any act, omission or
25 neglect done or calculated or intended to be done in violation or
26 contravention of the provisions of Section 1 of this Act;

27 (b) bring charges of an offence against any person or body
28 corporate who violates or contravenes any of the provisions of Section
29 1 of this Act, and conduct the prosecution of any such person or
30 body corporate in a court of competent jurisdiction;

31 (c) conduct the prosecutorial duties specified in paragraph (b) of

1 this subsection through participation in court proceedings and
2 engaging in any litigation appropriate with this Act, including civil
3 and criminal actions which the Department considers necessary:

4 (d) perform such arbitration duties, between the parties involved
5 in any civil action in terms of this Act, brought before a court of
6 competent jurisdiction, as the court may, in its ruling or decision,
7 direct the Antitrust Department to do, as an arbiter between any
8 such parties with respect to any claims, disputes or other matters
9 arising in relation thereto its functions under this Act:

10 (e) seek an appeal of any decision of a court in any case or
11 proceeding with regard to the performance of its functions under
12 this Act:

13 (f) make applications to any court of competent jurisdiction for
14 grant of immunity to a witness or for warrants, subpoenas or other
15 court orders consistent with applicable statutory requirements and
16 in accordance with the provisions of this Act:

17 (g) review all documentary evidence obtained from any source,
18 including the inspection of any such document obtained, and using
19 the original or certified copies of the said documents, in accordance
20 with the applicable statutes and regulations;

21 (h) carry on a synchronised and professional study, survey and
22 analysis of the competitive conditions of trade and commerce in the
23 nation's economy, and, in particular, focus its attention in that regard,
24 on the conduct of any illegal and forbidden hindrances or restraints
25 to trade and commerce being perpetrated by any combine or trust in
26 the Federation, and issue quarterly reports on its findings and
27 recommendations, in that regard, to the President and the National
28 Assembly, through the Minister; and

29 (i) carry out the enforcement of the final judgements, rulings or
30 injunctions issued by any court of competent jurisdiction on any matter
31 relating to the provisions of this Act.

1 (2) In order to achieve its objectives and to perform the functions
2 specified and directed under Subsection (1) of this section, the Antitrust
3 Department shall have powers to—

4 (a) establish such number of Antitrust Enforcing Units in the
5 Department as it may deem necessary to exercise, carry out or
6 perform any of the powers, duties and functions assigned to it under
7 this Act;

8 (b) refer specific or general matters to give guidance and
9 instructions to, or review recommendations of any Antitrust
10 Enforcing Unit continued in existence under it with regard to the
11 exercise of its functions and the carrying out of its duties, and the
12 working procedure which should be followed in order to deal
13 effectively with the responsibilities expressly conferred on the
14 Antitrust Enforcing Units under this Act;

15 (c) carry on the administrative and incidental work connected
16 with the exercise of its powers, the execution of its duties and the
17 performance of its functions through persons employed or appointed
18 to the Department or seconded to its service; and

19 (d) do anything which in its opinion is calculated to facilitate the
20 discharge, implementation or performance of its duties under this
21 Act.

22 (3) For the avoidance of any doubt, the powers conferred on the
23 Antitrust Department in Subsection (2) of this section shall be exercised
24 in consultation with the Minister

25 (4) The provisions of section 8 of the Interpretation Act shall
26 apply to any civil or criminal proceeding commenced by the Antitrust
27 Department in a court of competent jurisdiction, in the performance of
28 its functions under this section.

Establishment
of Antitrust
Enforcing
Units.

29 11.—(1) In acquiescence with the functions and powers
30 conferred in terms of Section 10 (1) and (2) of this Act, there is
31 continued in existence in the Antitrust Department, the following

1 Antitrust Enforcing Units, namely—

2 (a) the Antitrust Investigating and Prosecuting Unit;

3 (b) the Antitrust Court Judgement Enforcing Unit;

4 (c) the Antitrust Unit for Research Studies and Analysis on
5 Competitive Trade and Commerce; and

6 (d) the Antitrust Accounting Unit.

7 (2) The composition, duties and powers of each of the Antitrust
8 Enforcing Units established pursuant to subsection (1) of this section
9 are as contained in the Schedule to this Act.

10 PART III—GENERAL FINANCIAL PROVISIONS

11 12.—(1) The Minister shall, on behalf of the Antitrust
12 Department—

13 (a) receive all funds which may, from time to time, be granted to
14 the Antitrust Department by the Government of the Federation; and

15 (b) receive all other moneys approved and accruing to the Antitrust
16 Department in furtherance of the purposes of this Act.

17 (2) The receipts of the Antitrust Department on revenue account
18 in any financial year shall be applied and administered by the Director-
19 General of the Department in accordance with such terms and conditions
20 as may be attached to it, to the payment of the following charges, that
21 is—

22 (a) the cost of administration and maintenance of any property
23 of, the Department;

24 (b) the salaries, fees or other remuneration or allowances and
25 pensions, superannuation allowances and gratuities payable to the
26 members, officers and servants of the Department;

27 (c) expenditure incurred by the staff of the Department in respect
28 of the investigative and prosecutorial duties, court judgment enforcing
29 duties, research analysis and studies, and publication of reports and
30 recommendations on the economy of the Federation with regard to
31 the competitive conditions of trade and commerce mileage allowance

Funds and
expenditure
of the
Antitrust
Department.

1 for witnesses, and other like responsibilities authorised and reposed
2 on the Department by this Act:

3 (d) the training and education of members of staff of the
4 Department for efficiency, within and outside Nigeria, on matters
5 relating to the functions of the Antitrust Department:

6 (e) for and in connection with all or any of the functions of the
7 Antitrust Department and such other charges as may be reasonably
8 incurred in the exercise of the responsibilities of the Department
9 under this Act.

Annual
estimates,
account and
audit.

10 **13.—**(1) The Director-General shall submit to the Minister not
11 later than the last day of June in each financial year, an estimate of its
12 expenditure and income during the next succeeding financial year: and
13 it shall be the duty of the Director-General to prepare for the
14 consideration of the Antitrust Department the estimate which in his
15 opinion it would be proper for the Department to submit to the Minister
16 in pursuance of this subsection.

17 (2) The Antitrust Department shall keep proper accounts and
18 proper records in relation thereto and shall prepare in respect of each
19 financial year a statement of accounts in such form as the Minister
20 may direct.

21 (3) The Director-General shall as soon as may be after the end of
22 the financial year (but not later than April of each year) to which the
23 accounts relate, cause its account to be audited by qualified auditors
24 appointed from the list of auditors in accordance with the guidelines
25 laid down by the Auditor-General of the Federation.

26 (4) The auditors shall on completion of the audit of the accounts
27 of the Antitrust Department for each financial year prepare and submit
28 to the Department the following reports, that is to say—

29 (a) a general report setting out the observations and
30 recommendations of the auditors on the financial affairs of the
31 Antitrust Department for that year and on any important matters

1 which the auditors may consider necessary to bring to the notice of
2 the Department: and

3 (b) a detailed report containing the observations and
4 recommendations of the auditors on all aspects of the operations of
5 the Antitrust Department for that year.

6 14. The Antitrust Department shall prepare and submit to the
7 President and the National Assembly, through the Minister, not later
8 than the last day of June in each financial year, a report in such form
9 as the Minister may direct on the activities of the Department during
10 the immediately preceding financial year, and shall include in such
11 report a copy of the audited accounts of the Department for that year
12 and the auditors report thereon.

Annual
reports.

13 CHAPTER III

14 GENERAL PROVISIONS.

15 PART I—EXEMPTIONS, SUPPLEMENTARY POWERS, ETC.

16 15. Subject to this Act, labour unions and agricultural organisations
17 not carrying on business for profit shall be exempted from, and not
18 answerable to, the prohibitions contained in Section 1 of this Act.

Exemptions,
and
protection
from
answerability.
Power to
obtain
written
assurance.

19 16.—(1) Where it appears to the Antitrust Department or the
20 Antitrust Investigating Unit that an enterprise, combine or trust, etc.
21 carrying on business in trade or commerce in the Federation has in the
22 course of carrying on that trade or commerce persisted in a course of
23 conduct which violates or contravenes the provisions of Section 1 of
24 this Act, and which violation or contravention is detrimental to the
25 practice and flourishing of normal marketplace competition, the
26 Antitrust Department or the Antitrust Investigating Unit shall apply its
27 best endeavours to require and obtain from any such enterprise, combine
28 or trust in question a satisfactory written assurance that it will refrain
29 from a continuation of that course of conduct.

30 (2) If in the circumstances specified in Subsection (1) of this
31 section—

1 (a) the Antitrust Department or the Antitrust Investigating Unit is
2 unable to obtain from an enterprise, combine or trust in question
3 such an assurance as is mentioned in Subsection (1) of this section;
4 or

5 (b) that the assurance required under this section has been given
6 and it appears to the Antitrust Department or the Antitrust
7 Investigating Unit, that the enterprise, combine or trust in question
8 has failed to observe it, the Antitrust Department or the Antitrust
9 Investigating Unit shall cause proceedings to be commenced against
10 the offending enterprise, combine or trust in a court of competent
11 jurisdiction for violation or contravention of the provisions of this
12 Act, and if found guilty of the violation or contravention, be punished
13 in accordance with the punishment provided thereof.

Limited
witness
protection
programme.

14 17.—(1) The Director-General shall, in consultation with the
15 Minister, promote the establishment of a witness protection programme
16 in order to provide for the protection and safety of witnesses in any
17 manner when necessary.

18 (2) The witness protection programme contemplated in Subsection
19 (1) of this section, shall be as may be prescribed by the Minister soon
20 after the commencement of this Act.

21 (3) The regulations providing for a witness protection programme
22 shall—

23 (a) provide for, among others, the secondment of an official or
24 employee of the State Security Service or the Nigeria Police Force,
25 to act as the witness protector; and

26 (b) be approved by the President.

27 (4) In this section “witness” means a person who wishes to give
28 evidence, gives evidence or gave evidence for the purposes of this
29 Act, and includes any member of his family or household whose safety
30 is being threatened by any person or group of persons, whether known
31 to him or not, as a result thereof.

1 PART II—ETHICS OF ANTITRUST DEPARTMENT AND CONFIDENTIALITY

2 ON CERTAIN MATTERS

3 18.—(1) No member of staff of the Antitrust Department shall—

Ethics of the
Antitrust
Department.

4 (a) by his membership of the Antitrust Department, conduct or in
5 any other manner jeopardise his duties or in any other manner harm
6 the credibility impartiality or integrity of the Antitrust Department;

7 (b) make private use of profit from any confidential information
8 gained as a result of his membership of the Antitrust Department or
9 the Antitrust Enforcing Unit; or

10 (c) divulge any information to any other person except in the course
11 of the performance of his functions as such a member of staff of the
12 Antitrust Department or an Antitrust Enforcing Unit.

13 (2) Any member of staff of the Antitrust Department who
14 contravenes the provisions of Subsection (1) of this section, commits
15 an offence and is liable on conviction to a fine of not less than 50,000
16 Naira or imprisonment to a term not exceeding two years or both.

17 19.—(1) Every member, officer and staff of the Antitrust
18 Department shall, with regard to any matter dealt with by him or
19 information which comes to his knowledge in the exercise, performance
20 or carrying out of his powers, functions or duties as such a member,
21 officer and staff, preserve and assist in the preservation of those matters
22 which are confidential in terms of the provisions of this Act or which
23 have been declared confidential by the Antitrust Department.

Confidentiality
on matters
and
information.

24 (2) No member of the Antitrust Department shall, except for the
25 purpose of the exercise of his power, the performance of his functions
26 or the carrying out of his duties or when required by a court of law to
27 do so, or under any law, disclose to any person any information acquired
28 by him as such a member.

29 (3) Subject to the provisions of Subsection (2) of this section, no
30 person shall disclose or make known any information, which is
31 confidential by virtue of any provision of this Act.

1 (4) No person who is not authorised thereto by the Antitrust
2 Department shall have access to any information which is confidential
3 by virtue of any provision of this Act.

4 PART III—OTHER OFFENCES AND PENALTIES

Offences and
penalties.

5 20. Any person who—

6 (a) anticipates any finding of the Antitrust Department regarding
7 an investigation in a manner calculated to influence its duties or the
8 proceedings of a court or such finding;

9 (b) does anything to improperly influence the Antitrust Department
10 or any member thereof in respect of any matter being or to be
11 considered by the Antitrust Department in connection with an
12 investigation;

13 (c) hinders the Antitrust Department, an Antitrust Investigator or
14 Prosecutor or member of staff of the Antitrust Department in the
15 exercise, performance or carrying out of its or his powers, functions
16 or duties under this Act;

17 (d) wilfully furnishes the Antitrust Department, the Antitrust
18 Investigator or Prosecutor or any member of staff of the Antitrust
19 Department with any information which is false or misleading in
20 every material particular;

21 (e) having been subpoenaed in terms of this Act, without sufficient
22 or satisfactory cause fails to attend at the time and place specified in
23 the *subpoena*, or fails to remain in attendance until the conclusion of
24 the hearing or meeting in question or until excused from further
25 attendance by the person presiding at the hearing or meeting, or
26 fails to produce any article in his possession or custody or under his
27 control;

28 (f) having been subpoenaed pursuant to this Act, without sufficient
29 or satisfactory cause refuses to be sworn in or to make affirmation
30 as a witness or fails or refuses to answer fully and satisfactorily to
31 the best of his knowledge and belief any question lawfully put to

1 him;

2 (g) discloses any confidential information in contravention of the
3 provisions of Section 19 of this Act; or

4 (h) destroys any article or thing relating to or in anticipation of
5 any investigation or proceedings in terms of this Act, shall be guilty
6 of an offence and liable on conviction to a fine of an amount not
7 exceeding 250,000 Naira, or imprisonment for a period not exceeding
8 three years or to both such fine and imprisonment, in the discretion
9 of the court.

10 21.—(1) For the avoidance of any doubt, offences committed in
11 relation to the bundling of products by a combine corporate, company
12 or trust in this Act, shall be decided by a court of competent jurisdiction
13 on a case-by-case basis.

Special provisions as regards offences relating to bundling of products.

14 (2) Without prejudice to subsection (1) of this section, the legal
15 rule relating to per se analysis shall be applicable by a court of competent
16 jurisdiction in its determination of any case relating to the bundling of a
17 product by a combine or trust, and the court may take into account any
18 possible benefits of any such practice to the consumer.

19 PART IV—MISCELLANEOUS PROVISIONS

20 22. A witness summoned before the Antitrust Department or the
21 Antitrust Investigation Unit shall be paid such fees and mileage
22 allowance as are normally paid to witnesses summoned by a court.

Mileage allowance.

23 23. Any person or body corporate or unincorporated aggrieved
24 by any decision of the Antitrust Department or by the exercise of any
25 power under this Act shall have the right to forward a petition on such
26 grievance to the President who may, notwithstanding anything to the
27 contrary under this Act, confirm or reverse a decision or take such
28 further measures in relation to the petition as he may think just and
29 reasonable

Right to petition.

30 24.—(1) A court of competent jurisdiction by or before which a
31 combine or trust or an individual is convicted of an offence committed

Compensation order.

1 in relation to the prohibitions contained in Section 1 of this Act may, in
2 addition to dealing with such combine or trust or individual in any other
3 way, within the confines of this Act, make an order requiring the
4 combine or trust or individual to pay compensation (in this Act referred
5 to as “compensation order”) for any injury, loss or damages resulting
6 from that offence of such amount as it may deem fit or as assessed by
7 an actuary or other competent professional authority.

8 (2) In determining whether to make a compensation order against
9 any combine or trust or individual, and in determining the amount to be
10 paid by any combine or trust or individual under such an order, the
11 court shall have regard to the means of the respondent in so far as they
12 appear or are known to the court.

Liability of
advertising
medium.

13 25. A publisher or any advertiser shall not be liable under this
14 Act by reason of the dissemination by him of any false and misleading
15 advertising of foods, drugs, cosmetics and other commodities, which
16 dissemination is found to have affected, hampered, eliminated or
17 minimised normal marketplace competition, unless he refuses at the
18 request of the Antitrust Department or the Antitrust Investigating Unit
19 to furnish the Antitrust Department or the Antitrust Investigating Unit
20 with the name and address of the manufacturer, combine or trust, or
21 the advertising agency requiring the publisher to disseminate or cause
22 such advertising to be made.

Regulations.

23 26.—(1) The Minister may, by regulations of a general nature,
24 prescribe anything falling to be prescribed for the purpose of giving
25 effect to the provisions of this Act.

26 (2) Without prejudice to the foregoing provision under this section,
27 the Minister may make regulations for—

28 (a) prescribing the detailed powers and functions of the Antitrust
29 Department and the Antitrust Enforcing Units and the detailed
30 procedure for obtaining information required under this Act;

31 (b) requiring returns in respect of obtaining satisfactory notices

1 of assurance to be made within the period specified under this Act,
2 by any enterprise, combine or trust to which this Act applies;

3 (c) providing for the payment or reimbursement of expenses
4 incurred in respect of travel and accommodation of persons invited
5 to attend any investigation meeting with the Antitrust Department or
6 a court of competent jurisdiction in compliance with a *subpoena*
7 issued in terms of this Act;

8 (d) prescribing the Form for use by credible persons or bodies
9 corporate providing information to the Antitrust Department on
10 matters relating to the practice of trade and commerce in Nigeria,
11 or requesting the Antitrust Department to conduct an inquiry or
12 investigation into any matter relating to a violation or contemplated
13 violation of the provisions of Section 1 of this Act; and

14 (e) prescribing anything required to be prescribed for the proper
15 application of this Act.

16 27.—(1) In this Act, unless the context otherwise requires, the
17 following words and expressions have meanings respectively assigned
18 to them—

19 “Antitrust” refers to any measure or action applied and directed
20 against the adverse effect of monopolies on trade, commerce or
21 industry by any combine, trust, holding company, interlocking
22 directorate, etc., and as described under this Act;

23 “Antitrust Department” means the Antitrust Department
24 established in the Federal Ministry of Justice pursuant to Section 8
25 (1) of this Act, and the word “Department” shall be construed,
26 accordingly;

27 “Antitrust Enforcing Units” means the Antitrust Enforcing Units
28 established by Section 11 (1) of this Act;

29 “company” means any company registered under the Companies
30 and Allied Matters Act as amended, or under any enactment replaced
31 by the Act;

Interpretation,
etc.

1999 No. 1,
1991 No.
32, 1992
No. 40

1 “Constitution” means the Constitution of the Federal Republic of
2 Nigeria;

3 “court of competent jurisdiction” means the Federal High Court;

4 “Director-General” means the Director-General of the Antitrust
5 Department appointed pursuant to Section 8 (2) (a) of this Act;

6 “enterprise” includes any industrial or commercial undertaking;

7 “free market” refers to the economic system which generally
8 allows economic priorities to be established by the law of supply
9 and demand;

10 “function” includes power and duty;

11 “member” means a member of the management of the Antitrust
12 Department appointed pursuant to Section 8 (2) of this Act, and
13 includes the Director-General;

14 “Minister” means the Attorney-General of the Federation and
15 Minister responsible for matters relating to justice in the Federation,
16 and “Ministry” shall be construed, accordingly;

17 “power” includes function and duty;

18 “prescribed” means prescribed by this Act or by regulations;
19 and

20 “President” means the President of the Federal Republic of
21 Nigeria.

22 (2) The Interpretation Act shall apply for the purposes of
23 interpreting the provisions of this Act.

24 **28.** If any provision of this Act or the application thereof to any
25 person, body corporate or circumstances is held invalid, such invalidity
26 shall not affect other provisions or applications of this Act which can
27 be given effect without that invalid provision or application, and to this
28 end, the provisions of this Act are severable.

29 **29.** This Act may be cited as the Nigerian Antitrust (Prohibitions,
30 Enforcement, etc.) Bill, 2015.

Cap. 192
LFN

Provisions
of this Act
severable.

Citation.

SCHEDULE

Section 11 (2)

ANTITRUST ENFORCING UNITS: COMPOSITION, DUTIES AND POWERS

ITEM A—ANTITRUST INVESTIGATING AND PROSECUTING UNIT

Composition

1. The Antitrust Investigating and Prosecuting Unit (in this Schedule referred to as “the Investigating Unit”) shall comprise—

(a) a Director, who shall be the head of the Investigating unit;

(b) three Deputy Directors, who shall assist the head of the Investigating Unit; and

(c) such other number of officers of the Antitrust Department who are experienced and suitably qualified by way of their academic or administrative qualification in legal matters, and as the Director-General may, from time to time, deploy to the Unit.

2. Every person appointed and deployed to the Investigating Unit in terms of paragraph 1 of this Schedule shall be—

(a) designated as Antitrust Investigator; and

(b) furnished with a certificate of designation or identification card for use in the exercise of his function under this Schedule.

Powers and Functions

3. Without prejudice to the operation of any enactment, an Antitrust Investigator shall subject to this Act, have such powers and carry out such functions as the Antitrust Department or the Minister may confer on him or the Investigating Unit.

4. Notwithstanding paragraph 3 of this Schedule, for the purposes of carrying out any of its functions under this Act, the Antitrust Investigator or any member of staff of the Antitrust Department authorized thereto by the Director-General or the Minister may carry on an investigation on any matter to which Section 1 of this Act relates, and may on the authority of an entry warrant issued in terms of paragraph 5 of this Schedule, enter upon any building or business premises in or upon which any article or thing—

(a) which is concerned with or is upon reasonable grounds suspected to be concerned with any matter which is the subject of any investigation pursuant to this Act;

(b) which contains, or is upon reasonable grounds suspected to contain, information with regard to any such matter, is or is upon reasonable grounds suspected to be, and may on the authority of a search warrant, issued in terms of paragraph 5 of this Schedule—

(i) inspect and search such premises and make such inquiries as the person authorized thereto may deem necessary;

(ii) examine any article or thing found in or upon such premises;

(iii) request from the director or officer or person who is in control of such premises or in whose possession or under whose direction or control any article or thing is when it is found, or who is upon reasonable grounds believed to have information with regard to any article or thing, an explanation or information;

(iv) make copies of or extracts from any such article found upon or in such premises;

(v) seize any article or thing found upon or in such premises which the person authorized thereof suspects upon reasonable grounds to be an article or thing mentioned in subparagraph (a) or (b) of this paragraph;

(vi) after having issued a receipt in respect thereof, remove any article or thing found in such premises and suspected upon reasonable grounds to be an article or thing mentioned in subparagraph (a) or (b) of this paragraph, and retain such article or thing for a reasonable period for the purpose of further examination or, in the case of such article, the making of copies thereof or extracts therefrom—

Provided that any article or thing that has been so removed, shall be returned as soon as possible after the purpose of such removal has been accomplished.

5. Any entry or search warrant referred to in paragraph 4 of this Schedule shall be issued by a Judge of a Federal or State High Court or by a Magistrate who has jurisdiction in the area where the premises in question is situated, and shall only be issued if it appears to the Judge or Magistrate from information on oath that there are reasonable grounds for believing that an article or thing mentioned in subparagraph (a) or (b) of paragraph 4 of this Schedule is upon or in such premises, and shall specify which of the acts in subparagraph (b) (i) to (vi) of that paragraph of this Schedule that may be performed thereunder by the person to whom it is issued.

6. A warrant issued in terms of paragraph 4 or 5 of this Schedule shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night

at times which shall be reasonable; and any entry upon or search of any premises pursuant to a warrant issued thereof shall have regard for—

(a) the right of any person encountered in any such premises to respect and protection of his dignity;

(b) the right of a person to freedom and security; and

(c) the right of a person to his personal privacy.

7. Any Antitrust Investigator executing a warrant in the company of any other person authorized for the same purpose under this Schedule shall immediately before commencing with the execution—

(a) identify himself by displaying his certificate of designation or identification card to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, affix such copy to a prominent place on the premises; and

(b) supply such person at his request with particulars regarding his authority to execute such a warrant.

8. Any Antitrust Investigator or any member of the staff of the Antitrust Department or a police officer, at the request of the Director-General or the Minister may, without a warrant enter upon any premises, other than a private dwelling, and search for, seize and remove any article or thing referred to in paragraph 4 (a) or (b) of this Schedule if—

(a) the person who is competent to do so consents to such entry, search, seizure and removal;

(b) he upon reasonable grounds believes that the—

(i) required warrant will be issued to him in terms of paragraph 5 of this Schedule if he were to apply for such warrant; and

(ii) delay caused by the procedure for obtaining any such warrant would defeat the object of the entry, search, seizure and removal.

9. Any entry and search made pursuant to paragraph 8 of this Schedule shall be executed by day, unless the execution thereof by night is justifiable and necessary.

10. Any Antitrust Investigator and any person accompanying him may, on the authority of a warrant issued pursuant to, or under the provisions of, as the case may be, paragraph

5 or paragraph 8 of this Schedule, enter upon and search any building or business premises, and may use such force as may be reasonably necessary to overcome any resistance to such entry or search.

11. No Antitrust Investigator or any person authorized thereto for the purposes of this Act may enter upon or search any building or business premises unless he has audibly demanded admission to the premises and has notified the purpose of his entry, except where the Antitrust Investigator or any person authorized to enter the premises thereof is of the opinion upon reasonable grounds that any article or thing may be destroyed if such admission is first demanded and such purpose is first notified.

12. If during the execution of a warrant or the conduct of a search in terms of the last two foregoing paragraphs of this Schedule, a person claims that an article found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article, the Antitrust Investigator or any person authorized thereto shall, if he is of the opinion that the article contains information which is relevant to the investigation and a subsequent prosecution or hearing in a court of law, request the registrar of a court of competent jurisdiction or his delegate, to seize and remove that article for safe custody until that court of competent jurisdiction has made a ruling on the question whether the information contained in the said article is privileged or not.

13. A warrant issued pursuant to the foregoing provisions of this Schedule may be issued on any day and shall be in force until—

(a) it is executed; or

(b) if it is canceled by the person who issued it, or if such person is not available, by any person with like authority; or

(c) the expiry of one month from the day of its issue; or

(d) the purpose for the issuing of the warrant has lapsed, which ever may occur first.

14. An Antitrust Investigator or the Antitrust Investigating Unit shall have powers to file a criminal charge, or civil suit as the case may be, in a court of competent jurisdiction for the purposes of prosecuting an offender under this Act or for the holding of a hearing in a civil action, or seek an appeal of any decision of a court as the Director-General may direct, and may for the purpose of or in connection with the conduct of an investigation or prosecution or the holding of a hearing, as the case may be—

(a) at any time before the commencement or in the course of such investigation or

hearing conduct an inspection in loco:

(b) by notice in writing call upon any director of an enterprise or combine or trust or person who is in possession of or has the custody of or control over any article or other thing which in the opinion of the Antitrust Investigator or the Director of the Antitrust Investigating Unit is relevant to the subject matter of the prosecution or hearing to produce such article or thing to a court, and the court may upon receipt of the article or thing inspect it, and subject to paragraph 16 of this Schedule, retain any article or other thing so produced for a reasonable time;

(c) by notice in writing call upon any director of an enterprise or person to appear before the Antitrust Investigating Unit or the Antitrust Department or a court of competent jurisdiction and to answer questions and, as the case may be, give evidence relevant to the subject matter of a contemplated prosecution or hearing in a court; and

(d) in accordance with this Act, seize any article or thing referred to in sub-paragraph (b) of this paragraph which is relevant to the subject matter of the investigation or prosecution or hearing in a court of competent jurisdiction.

15. A notice referred to in paragraph 14 (b) of this Schedule shall—

(a) specify the time when and the place where the director or person to whom it is addressed to shall appear;

(b) be signed by the Director-General of the Antitrust Department;

(c) be served by an Antitrust Investigator by delivering a copy thereof to the director or person concerned, or by having it at such persons last known place of residence or business; and

(d) specify the reason why the article is to be produced or the evidence which is to be given.

16. If the court or the Antitrust Investigating Unit is of the opinion that the production of any article in the possession or custody or under the control of government, and department of government may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the court or the Antitrust Investigating Unit shall take steps to prevent any undue delay in or the disruption of any such investigation or proceedings.

17. Subject to this Act, no article or information obtained by the Antitrust Investigating Unit shall be made public and no person except a member of staff of the Antitrust

Department or the Minister shall have access to such article or information until such time as the Director-General or the Minister determines that it may be made public, or until the commencement of any prosecution or hearing in a court of competent jurisdiction in terms of this Act, which is not held behind closed doors.

ITEM B—ANTITRUST COURT JUDGMENT ENFORCING UNIT

Composition

18. The Antitrust Court Judgment Enforcing Unit (in this Schedule referred to as “the Judgment Enforcing Unit”) shall comprise—

(a) a Director, who shall be the head of the Judgment Enforcing Unit;

(b) two Deputy Directors, who shall assist the head of the Judgment Enforcing Unit, one of whom shall be qualified to practice as an Accountant or economist; and

(c) such number of officers of the Antitrust Department who are suitably qualified by way of their academic or administrative qualifications as may be required and prescribed, and as the Director-General may from time to time deploy to the Unit.

19. Every person appointed and deployed to the Judgment Enforcing Unit, shall be—

(a) designated as an Antitrust Judgment Enforcer; and

(b) furnished with a certificate of designation or identification card for his use in the exercise of his function under this Schedule.

Powers and Functions

20. Without prejudice to the operation of any enactment with regard to enforcing the judgment of a court, the Judgment Enforcing Unit of the Antitrust Department shall have exclusive powers and duties to carry on the enforcement of any judgment passed by a court of competent jurisdiction in respect of any matter with which this Act is connected.

21. In acquiescence with paragraph 20 of this Schedule, the Judgment Enforcing Unit shall—

(a) enforce the payment of fines imposed by the court on any person, enterprise, combine or trust in respect of its judgment on a case relating to the provisions of this Act and effect the payment of any such fine imposed thereof to the Minister of the Government of the Federation responsible for matters relating to finance.

(b) be responsible for overseeing and ensuring the carrying out of any sentence by the court of a person convicted on indictment for any term of imprisonment on matters

relating to a contravention of the provisions of this Act;

(c) enforce the court order of suspension or ban on any person or body corporate from further participation or practice in any business venture in the Federation, by issuing a public notice or caveat to the general public (in at least three national dailies) to cease or suspend further business dealings or transaction with any such person or body corporate within the period specified by the court in its order;

(d) in the case of a court order for the revocation or cancellation of the certificate of registration, business permit or licence of an individual, enterprise, combine or trust, or an association, as the case may be, issue a notice to and cause a copy of the order to be served on the relevant bodies corporate responsible for issuing the said certificate of registration, business permit or licence, directing them to effect the revocation or cancellation order issued by the court in respect of any particular individual, enterprise, combine or trust, or association concerned thereof;

(e) carry out the enforcement of a court order for the seizure or forfeiture of any property, assets, goods, moneys, etc. of any combine or trust in the manner, prescribed by Section 7 of the Interpretation Act;

(f) in the case of a court order requesting the forfeiture or disposal of any number of shares of an individual, enterprise, combine or trust, issue a copy of the court order to, and seek the cooperation and assistance of the Securities and Exchange Commission in carrying out any such forfeiture or disposal of any number of stocks and shares ordered by the court thereof;

(g) in the case of a court judgment authorizing the breakup or split of any merger of business trusts, interlocking directorates, combines or trusts or holding companies, issue a notice to, and cause a copy of the court judgment to be served on the Corporate Affairs Commission and the Minister responsible for matters relating to commerce, urging them in the notice issued thereof to take necessary steps to effect the judgment of the court, immediately;

(h) perform arbitration duties between parties involved in any civil action as the court may direct it to do in its ruling on any matter relating to the provisions of this Act;

(i) in the case of a court judgment ordering a halt to the pyramiding of stocks and shares in any holding company or corporation and authorizing the sale to the public of any number of shares and stocks of the holding company or corporation, the Judgment Enforcing Unit shall—

(a) do anything within the confines of its powers under this Schedule to ensure the halting of any such pyramiding of stocks and shares of any such holding company; and

(b) cause a copy of the court's judgment to be served on the Securities and Exchange Commission to proceed with the sale or disposal of any number of shares and stocks of the holding company or corporation in question to the public and effect the transfer of the proceeds from the sale or disposal thereof to the Minister of the Government of the Federation in accordance with Section 7 of the Interpretation Act.

22. In paragraph 21, the expression "certificate of registration" means any certificate of registration issued by the Corporate Affairs Commission 1990 established by the Companies and Allied Matters Act, as amended, and the term "relevant authority" ascribed thereof shall be construed, accordingly; the words "business permit" means any business permit issued pursuant to Section 8 of the Immigration Act or Section 3 of the Industrial Development Coordination Act; and the word "licence" refers to any licence issued by a registered professional body, association, etc. operating in the Federation.

23. An Antitrust Judgment Enforcer authorized by the Judgment Enforcing Unit or the Antitrust Department shall, in carrying out the foregoing duties, have power to—

(a) seal up any building, office or premises in which the convicted enterprise, combine or trust, etc. carries on any business to which a conviction relates, in order to obtain or secure the payment of a fine imposed by the court, or to carry out the full execution of any court order issued in terms of this Act;

(b) seek the assistance of any number of police officers, to effect the sealing up of any building, office or premises mentioned in subparagraph (a) of this paragraph, and to prevent unauthorized persons from having access to or interfering with the building, office or premises thereof, or any goods, products or commodities contained therein;

(c) issue an order (which shall be accompanied by a certified copy of the court judgment) to any commercial or merchant bank in the Federation to freeze the accounts of any convicted individual, enterprise, combine or trust in order to ensure the full execution of any court judgment issued in terms of this Act;

(d) sell or otherwise dispose of the assets of any enterprise, combine or trust, where a fine imposed by a court remains unpaid after the period of payment specified by the court in its judgment, and pay the proceeds accruing therefrom to the Minister of the Government of the Federation responsible for matters relating to finance in accordance with section 7 of the Interpretation Act;

(e) charge and defray the expenses incurred from the proceeds of any sale or disposal made with regard to the performance of the foregoing functions; and

(f) carry out such other activities which are supplementary or incidental to the foregoing functions, subject to the direction and control of the Director General.

24. The Director-General of the Antitrust Department may make regulations generally for the purpose of

(a) requiring returns to be made by the Judgment Enforcing Unit, within any specified period, in respect of its enforcing duties under this Schedule;

(b) prescribing any charges to be made in respect of the performance of any enforcing duties carried out by the Judgment Enforcing Unit; and

(c) prescribing any other matter as may be referred to him by the Judgment Enforcing Unit.

25. Any regulation made in terms of paragraph 24 of this Schedule, shall be presented to the Minister for his approval.

26. Subject to this Item of this Schedule, the Judgment Enforcing Unit shall, through the Director-General, submit a monthly return and report to each respective court in respect of its implementation of particular judgments, rulings or injunctions issued by that court in respect of matters relating to the provisions of this Act, and shall include in its report thereof the extent of its implementation of the judgment, ruling or injunction issued by the said court.

ITEMS C—ANTITRUST UNIT FOR RESEARCH STUDIES AND ANALYSIS
ON COMPETITIVE TRADE AND COMMERCE

Composition

27. The Antitrust Unit for Research Studies and Analysis on Competitive Trade and Commerce (in this Schedule referred to as "the Antitrust Research Unit shall comprise—

(a) a Director, who shall be the head of the Antitrust Research Unit, and who shall be suitably qualified to carry on the functions contemplated under this item of this Schedule;

(b) two Deputy Directors, who shall assist the head of the Antitrust Research Unit; and

(c) such other number of officers of the Antitrust Department as the Director-General may, from time to time, deploy to the unit.

28. Every person appointed and deployed to the Antitrust Research Unit shall be—

(a) designated as an Antitrust Research Officer; and

(b) furnished with a certificate of designation or identification card for his use in the exercise of his functions under this item of this Schedule.

Powers and Functions

29. Subject to this Act, the Antitrust Research Unit shall have and exercise such powers and carry out such duties as the Director-General may confer on the Unit and the

Antitrust Research Officer.

30. Without prejudice to the powers and duties conferred pursuant to paragraph 29 of this Schedule, the Antitrust Research Unit shall--

(a) collect and collate, from time to time, data and information on the economic conditions of the Federation with regard to trade, commerce and industry, for the purposes of analyzing the level of free and open market competition in the Federation;

(b) carry on detailed and professional analysis on the competitive conditions of commerce and trade in the economy of the Federation, and in that regard, focus its attention on all aspects of business practices declared illegal and forbidden by Section 1 of this Act, which practices are calculated or intended to deprive consumers of the benefits of competition or to yield or cause undesirable price controls and restraint to trade and commerce;

(c) carry on a statistical analysis of economic data obtained on the practice of free market competition in the Federation and its interrelationship to the Federation's level of gross domestic product and national product;

(d) monitor and carry on the analysis of the operations of any stock exchange and trading concerns in the Federation for the purposes of making recommendations to the relevant authorities on plausible ways and means of maintaining and strengthening the free enterprise system and competition in business practices;

(e) carry on a regular and detailed survey and analysis of the Nigerian market economy in respect of trade and commerce, and compare same with the market economy of other developed countries and submit its findings, observations and recommendations, in a quarterly report to the Director- General;

(f) compile and maintain a record of the statistics of reported offences, criminal charges, civil actions and convictions on all matters relating to the provisions of this Act, for the purposes of analyzing the frequency and trend of violations against the provisions of Section 1 of this Act;

(g) carry on liaison with other bodies corporate and unincorporate engaged in matters relating to the practice of the free and open market system of competition within and outside Nigeria; and

(h) issue a quarterly publication of its observations, findings and recommendations on all or any of the foregoing duties.

31. The Antitrust Research Unit may carry on any of the functions specified in paragraph 30 of this Schedule through the compilation and distribution of questionnaires or any other recognized and credible method of research and survey analysis in order to obtain or secure the desired results in accordance with the duties specified therein.

ITEM D—ANTITRUST ACCOUNTING UNIT

Composition

32. Subject to this Act, the Antitrust Accounting Unit shall comprise—

(a) a Director, who shall be the head of the Antitrust Accounting Unit, and be qualified to practice as an Accountant;

(b) a Deputy Director, who shall assist the head of the Antitrust Accounting Unit, and suitably qualified to carry on the functions contemplated under this item of this Schedule; and

(c) such other number of officers of the Antitrust Department as the Director-General may, from time to time, assign to the Unit.

33. Subject to the general direction and control of the Director-General of the Antitrust Department, the Antitrust Accounting Unit shall—

(a) prepare and present to the Antitrust Department, not later than the last day of April of each year, an estimate of the expenditure and income of the Antitrust Department during the next succeeding year;

(b) keep and maintain proper accounts and records in respect of amounts approved by the Director-General and paid out of the Funds of the Antitrust Department as costs for the general administration and maintenance of the properties of the Department;

(c) effect the payment of expenses incurred by members and staff of the Antitrust Enforcing Units in respect of—

(i) the investigative and prosecutorial duties of the Antitrust Investigating Unit;

(ii) the duties of the Judgment Enforcing Unit

(iii) research analysis, studies and surveys, and the publication of quarterly reports on the economic conditions of the Federation by the Antitrust Research Unit;

(iv) mileage allowance for witnesses;

(v) other like expenses incurred in the exercise of the foregoing duties of the Antitrust Enforcing Units, and as may be authorized by the Director-General of the Antitrust Department;

(d) make payments for the training and education of members of staff of the Antitrust Department for efficiency, within and outside Nigeria, on matters relating to the exercise of the functions of the Department under this Act;

(e) be accountable to the Antitrust Department for all monies received for the purposes of the Antitrust Department;

(f) effect the payment of amounts realized by the Judgment Enforcing Unit, from the sale of any seized or forfeited property, goods, products, stocks and shares, assets of any enterprise, etc. in accordance with a court judgment, ruling or injunction, to the Minister of the Government of the Federation responsible for matters relating to finance, after making all necessary deductions from any such amount of the expenses incurred by the Judgment Enforcing Unit in the performance of its duties under this Schedule, and any other amounts which the Director-General, with the approval of the Minister, may authorize; and

(g) be generally responsible for the preparation and payment of all moneys approved by the Director-General for the purposes of the Antitrust Department.

EXPLANATORY NOTE

This Bill seeks to ensure the maintenance of competition among business enterprises operating in the Federation, to protect economic freedom and opportunity and promote free market competition, which provides consumers with the benefits of lower prices, greater choice and better quality products and service, and affords varied businesses with an opportunity to compete on price and quality on a level-playing field, in an environment unhampered by anti-competitive restraints, monopolies, cartels, conspiracies, etc.

Furthermore, this proposed Act seeks to attain the foregoing objectives through the establishment of a semi-autonomous Antitrust Department in the Ministry of Justice, which Department shall have responsibility for enforcing the antitrust provisions contained therein through conducting investigations on alleged contravention, bringing charges against offenders, prosecuting violators, carrying on negotiations and generally enforcing the final judgments issued by a court of competent jurisdiction.