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1999, No. 20

An Act to promote fair dealing and to safeguard competition in Cook Islands international shipping services, and to maintain national control of Cook Islands international shipping services by encouraging the ownership and operation of Cook Islands owned and operated ships

(22 December 1999)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

PART I
PRELIMINARY

1. Short Title and commencement - (1) This Act may be cited as the International Shipping Act 1999.

(2) This Act shall come into force on the date that it is assented to by the Queen's Representative.

(3) Notwithstanding any provision to the contrary contained in this Act, nothing in this Act shall impose liability (whether civil or criminal) on any person for any act done or omission of that or any other person done or omitted prior to the coming into force of this Act.

2. Interpretation - (1) In this Act, unless the context otherwise requires -

"Agreement" includes any contract, arrangement, or understanding, whether formal or informal and whether express or implied and also includes -

- (a) an agreement or other such contract arrangement or understanding made outside the Cook Islands; and
- (b) an agreement or other such contract arrangement or understanding made before the commencement of this Act; and
- (c) an agreement or such other contract arrangement or understanding that is not enforceable by legal proceedings, whether or not it was intended by any party to it, to be so enforceable;

"Carrier" means a person, (whether an owner or operator of vessels or not), who contracts with any shipper to carry or arrange for the carriage of goods wholly or partly by sea, whether or not as an incidence of the carriage of passengers;

"Competition" means workable or effective competition which is sustainable on a long term basis, and which secures the service of Cook Islands ships for the operation of Cook Islands international shipping service, and which is neither likely nor intended by the competing parties to give rise to any monopoly or cartel control over Cook Islands international shipping service;

"Cook Islands international shipping service" means the carriage of goods wholly or partly by sea between any place outside the Cook Islands and any place in the Cook Islands;

"Cook Islands ship" means a ship designated as such by the Minister under the provisions of this Act;

"Direction" means a direction given by the Minister under this Act, and, where a direction has been amended, means the direction as so amended;

"Financed" includes any method or means of financial assistance whether given directly or indirectly and includes the giving of any guarantee or indemnity and the provision of security of any sort;

"Minister" means the Minister Responsible for Shipping;

"Shipper" means a person who is either the consignor or the consignee or the owner of goods to whom or by whom or in whose name goods are consigned or to be consigned wholly or partly by sea between any place outside the Cook Islands to any place in the Cook Islands; and includes any class, group, or association of shippers;

"Unfair Practice" has the meaning assigned to it in Part III of this Act.

PART II

INTERNATIONAL SHIPPING POLICY

3. Shipping Policy objectives - (1) For the purposes of this Act, the objectives of the Cook Islands shipping policy relating to Cook Islands international shipping service are as follows -

- (a) to promote, preserve and safeguard fair competition in Cook Islands international shipping service to the benefit of the public of the Cook Islands, shippers and carriers, having regard to -
 - (i) the Cook Islands' reliance on stable, long term, efficient, reliable, and competitive shipping service, whether provided by individual carriers or by members of a conference;
 - (ii) the need and desirability of maintaining national control of Cook Islands international shipping service by encouraging the utilisation of Cook Islands ships in preference to foreign owned and operated ships;

- (b) to safeguard against the abuse of a dominant position by any carrier or association of carriers and to ensure that any person that has a dominant position in shipping in the Australasian and/or South Pacific region shall be precluded, with reference to Cook Islands international shipping service, from using that dominant position for the purposes of -
 - (i) restricting the entry of any person or any Cook Islands ship into that or any other service; or
 - (ii) preventing or deterring any person or any Cook Islands ship from engaging in competitive conduct in that or any other service; or
 - (iii) eliminating any person or Cook Islands ship from that or any other service;
- (c) to discourage and prevent wherever possible, practices by carriers that have the effect of limiting, preventing, or reducing competition among carriers or which may give rise to any monopoly or cartel in the provision of Cook Islands international shipping service;
- (d) to take whatever steps may be necessary to foster, promote and maintain the use of Cook Islands ships in respect of Cook Islands international shipping service;
- (e) to encourage carriers to give reasonable notice to shippers who will be affected of impending changes to the terms and conditions upon which the carrier carries goods;
- (f) to encourage consultation and negotiation between shippers and carriers relating to the terms and conditions of the carriage of goods by carriers, particularly in relation to the following matters -
 - (i) changes in general tariff conditions and in the policies on which such conditions are based;
 - (ii) changes in the general level of tariff rates for major commodities;
 - (iii) promotional freight rates;
 - (iv) special freight rates;
 - (v) the imposition of and changes to surcharges;
 - (vi) procedures for the supply of information by shippers in respect of cargo availability and the nature and volume of cargo to be shipped;
 - (vii) the introduction of new technology;
 - (viii) changes in the pattern of service.

(2) The Minister may, for the purposes of this Act by notice in the Gazette designate any ship at the time engaged in Cook Islands international shipping service to be a Cook Islands ship for the purposes of this Act.

(3) No ship shall be designated as a Cook Islands ship unless the Minister shall have first made enquiry of the circumstances of that ship and is satisfied, in his reasonable opinion, that the ship is and will remain for so long as it is engaged in Cook Islands international shipping service, wholly owned, operated, and controlled, both in law and as a matter of commercial common sense, by a natural person or persons ordinarily resident in the Cook Islands or by a company which is wholly owned and controlled by such persons and, further, that the ship is financed by such persons, or if not, that the effective risk and reward of ownership, as a matter of commercial substance, is that of such persons.

(4) Such designation shall be deemed to lapse from the date upon which that ship is withdrawn (other than for repair, maintenance or survey) from Cook Islands international shipping service.

PART III

ANTI-COMPETITIVE AND UNFAIR PRACTICES

4. Covenants, substantially lessening competition prohibited - (1) No person, either on his own or on behalf of an associated person, shall in the Cook Islands or elsewhere

- (a) require the giving of a covenant; or
- (b) give a consent,

that has the purpose, or has or is likely to have, the effect of substantially lessening competition in Cook Islands international shipping service.

(2) No person, either on his own or on behalf of an associated person, shall in the Cook Islands or elsewhere carry out or enforce the terms of a covenant that has the purpose, or has or is likely to have the effect, of substantially lessening competition in Cook Islands international shipping service.

(3) Subsection (2) of this section applies to a covenant whether given before or after the commencement of this Act.

(4) No covenant, whether given before or after the commencement of this Act, that has the purpose or has or is likely to have the effect of substantially lessening competition in Cook Islands international shipping service is enforceable.

(5) No person shall in the Cook Islands or elsewhere -

- (a) threaten to engage in particular conduct if a person who, but for subsection (4) of this section, would be bound by a covenant, does not comply with the terms of the covenant; or
- (b) engage in particular conduct because a person who, but for subsection (4) of this section, would be bound by a covenant, has failed to comply, or proposes or threatens to fail to comply, with the terms of the covenant;

(6) Where a person in the Cook Islands or elsewhere -

- (a) issues an invitation to another person to enter into an agreement containing a covenant; or
- (b) makes an offer to another person to enter into an agreement containing a covenant; or
- (c) makes it known that the person will not enter into an agreement of a particular kind unless the agreement contains a covenant of a particular kind or in particular terms,

that person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant for the purposes of this section.

(7) For the purposes of this section, 2 persons shall be taken to be associated with each other in relation to a covenant or proposed covenant if, but only if -

- (a) one person is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with the directions, instructions, or wishes of the other person in relation to the covenant or proposed covenant; and
- (b) the persons are interconnected bodies corporate.

5. Agreements containing exclusionary provisions prohibited - (1) For the purposes of this Act, a provision of an agreement is an exclusionary provision if -

- (a) it is a provision of an agreement made between persons of whom any 2 or more are in competition with each other in Cook Islands international shipping service; and
- (b) it has the purpose of preventing, restricting, or limiting the supply of goods or services to, or the acquisition of goods or services, from, any particular person or class of persons, either generally or in particular circumstances or on particular conditions, by all or any of the parties to the agreement, or if a party is a body corporate, by a body corporate that is interconnected with that party; and
- (c) the particular person or the class of persons to which the provision relates is in competition with one or more of the parties to the agreement in relation to the supply or acquisition of those goods or services.

(2) For the purposes of subsection (1)(a) of this section, a person is in competition with another person if that person is any interconnected body corporate and is, or is likely to be, or, but for the relevant provision, would be or would be likely to be, in competition with the other person, or with an interconnected body corporate, in relation to the supply or acquisition of all or any of the goods or services to which that relevant provision relates.

(3) No person shall enter into an agreement, in respect of or affecting Cook Islands international shipping service that contains an exclusionary provision.

(4) No person shall give effect to an exclusionary provision of an agreement relating to Cook Islands international shipping service, whether that agreement was made before or after the commencement of this Act and whether in the Cook Islands or elsewhere and no such exclusionary provision is enforceable.

6. Certain provisions of agreements with respect to prices deemed to substantially lessen competition - (1) Without limiting the generality of section 7 of this Act, a provision of an agreement shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect of substantially lessening competition in Cook Islands international shipping service if that provision is not contained in a written agreement to which the Minister is a party and if that provision has the purpose, or has or is likely to have the effect of fixing, controlling, or maintaining or providing for the fixing, controlling or maintaining, of -

- (a) freight rates, tariffs and pecuniary conditions of carriage, or any discount, allowance, rebate, or credit in relation thereto on any basis other than the publicly notified and available freight rates, tariffs and pecuniary conditions of carriage of a carrier engaged in Cook Islands international shipping service; or
- (b) the share of any shipping service held or maintained by any carrier or ship (whether a Cook Islands ship or not) engaged in Cook Islands international shipping service.

(2) Nothing in this section shall affect any agreement in respect of the isolated carriage of goods of any special or unusual nature where such agreement is not one of a number of similar agreements entered into between the parties.

7. Contracts, arrangements, or understandings substantially lessening competition prohibited - (1) No person shall, in the Cook Islands or elsewhere -

- (a) enter into any agreement containing a provision; or
- (b) give effect to a provision of an agreement,

that has the purpose, or has or is likely to have the effect, of substantially lessening competition in Cook Islands international shipping service.

(2) No provision of an agreement, whether made before or after the commencement of this Act, that has the purpose, or has or is likely to have the effect, of substantially lessening competition in Cook Islands international shipping service is enforceable.

(3) The provision of an agreement which, in the reasonable opinion of the Minister, operates to ensure the continued operation of any Cook Islands ship in Cook Islands international service in competition with any other shall be deemed not, of itself, to substantially lessen competition in Cook Islands international shipping service and the Minister, without further authority than this subsection, shall have the power to enter into agreements with interested parties for this purpose and for the purpose of negating the effect of anti-competitive measures as contemplated by section 10 of this Act.

(4) Any agreement made between carriers for any partnership or joint venture or for the joint chartering of a ship and any agreement made between those carriers for the manner in which the freight capacity of that ship shall be allocated between those carriers shall be deemed not, of itself, to substantially lessen competition in Cook Islands international shipping service, provided all terms of all relevant agreements have been disclosed in writing to the Minister.

8. Unfair practices - (1) For the purposes of this Act "unfair practice" means any practice or conduct engaged in, or any agreement entered into or arrived at, that has the purpose or has or is likely to have the effect of limiting, preventing, or reducing competition in Cook Islands international shipping service or of eliminating from Cook Islands international shipping service any Cook Islands ship: and includes, in relation to Cook Islands international shipping service, the following -

- (a) in respect of such service (or any other service where the practice, conduct or agreement is likely to have the effect of limiting, preventing or reducing competition in Cook Islands international shipping service or to eliminate from Cook Islands international shipping service any Cook Islands ship) -
 - (i) the abuse of a dominant position by any carrier or association of carriers;

- (ii) restricting the entry of any person into the relevant service;
- (iii) preventing or deterring any person from engaging in competitive conduct in the relevant service;
- (iv) eliminating any person from the relevant service;
- (b) any substantial failure on the part of a carrier to give reasonable notice (whether individually or to a representative body or by way of circular or notice appearing in any relevant trade journal or other appropriate publication) to any Cook Islands shipper who will or is likely to be affected by impending changes to the terms and conditions upon which the carrier carries goods;
- (c) any unreasonable refusal or failure on the part of a carrier to enter into negotiations or consultations requested by any Cook Islands shipper relating to the terms and conditions upon which the carrier carries goods;
- (d) the tendering by a carrier for the supply of international shipping service at prices, or on terms, agreed or arranged with any other carrier without the knowledge of the person inviting the tender, or the entering into or arriving at of any agreement with any other carrier or carriers that one or more of them will abstain from tendering for the supply of such service, where tenders for the supply of such service have been invited;
- (e) the pricing of Cook Islands international shipping service at rates or upon terms and conditions which, in the reasonable opinion of the Minister, are not reasonably sustainable on a long term basis by Cook Islands ships generally or which, in the reasonable opinion of the Minister, represent an attempt by one operator of Cook Islands international shipping service to eliminate one or more other such operators from Cook Islands international shipping service.

(2) No person, either on his own or on behalf of an associated person, shall in the Cook Islands or elsewhere engage in, enter into or arrive at any practice, conduct or agreement which is unfair practice.

9. Queen's Representative may impose price control in circumstances of restricted competition - (1) The Queen's Representative may, from time to time, on the recommendation of the Minister, by Order in Executive Council, declare that the Cook Islands international shipping service freight rates, tariffs and pecuniary conditions of carriage shall be controlled by way of either maximum or minimum prices or both, in accordance with this Act and may, by that declaration specify such prices.

(2) The Minister shall not make a recommendation under subsection (1) of this section unless the Minister is satisfied that -

- (a) in the absence of making the order, competition is limited or is likely to be lessened whether by the elimination of a Cook Islands ship or otherwise or that market conditions may lead to monopoly or cartel control of Cook Islands international shipping service; or

- (b) it is necessary or desirable for those prices to be controlled in accordance with this Act in the interests of shippers, or the public of the Cook Islands generally.

(3) Every Order in Council made under this section shall specify the date on which it shall expire.

10. Liability of Carrier for acts of associated persons - (1) Where -

- (a) any carrier providing Cook Islands international shipping service (in this provision referred to as "the Carrier"); or
- (b) a ship utilised by the Carrier for the purpose of providing any service,

is, whether as a matter of law or as a matter of commercial common sense, owned, managed, controlled or financed by any other person; and in either case that other person owns, operates or controls or has a financial interest (either directly or indirectly) in any ship or shipping service in any market served by a ship which provides a Cook Islands international shipping service, then any practice or conduct engaged in, or any agreement entered into or arrived at by that other person (whether directly or indirectly) that has the purpose or has or is likely to have the effect of limiting, preventing, or reducing competition in Cook Islands international shipping service or of eliminating from Cook Islands international shipping service any Cook Islands ship shall, for the purposes of this Act, be deemed to be engaged in, entered into or arrived at by the Carrier.

(2) Where the Carrier has entered into a written agreement to which both the Minister and those parties affected by the conduct deemed to be that of the Carrier are party, then provided -

- (a) the Minister shall have certified to the Carrier that the terms of that agreement are considered sufficient by the Minister to negate any anti-competitive action for which the Carrier is deemed liable under this section; and
- (b) the Carrier shall remain in full compliance with the terms of that agreement at all material times,

the terms of that agreement and the Carrier's compliance with its terms shall be a complete defence to any liability which the Carrier may otherwise have under this Act, by reason of the provisions of this section.

PART IV **INVESTIGATION AND REMEDY OF ANTI-COMPETITIVE AND UNFAIR PRACTICES**

11. Minister may investigate suspected anti-competitive or unfair practices - (1)

Where the Minister believes on reasonable grounds that any unfair practice is being or has been engaged in by a carrier or carriers that has or is likely to have a detrimental effect on the interests of any Cook Islands ship or Cook Islands shipper, or that any person has committed a breach of any of the provisions of Part III of this Act, the Minister may investigate the matter or arrange for it to be investigated by some other person whom the Minister considers to be qualified to conduct such an investigation by reason of that person's experience in or knowledge of the shipping industry.

(2) Any person to whom any such matter is referred by the Minister under subsection (1) of this section shall have the same powers as the Minister has under subsection (3) of this section.

(3) The Minister, shall for the purposes of an investigation under this section, have the same powers as are conferred on Commissions of Inquiry by the Commissions of Inquiry Act 1966. The provisions of that Act shall apply to all persons involved in any capacity in an investigation under this section as if it were an inquiry conducted by a Commission under that Act.

(4) Any person who satisfies the Minister, or the person conducting the investigation where that person is not the Minister, that any evidence given in the investigation may adversely affect that persons interest, shall be given an opportunity during the investigation to be heard in respect of the matter to which the evidence relates.

(5) Where in the course of an investigation under this section it appears to the Minister, or to the person conducting the investigation where that person is not the Minister, that any adverse finding or comment is likely to be made in the report on the investigation relating to the conduct of any person, that person shall be given an opportunity to be heard in respect of that finding or comment.

(6) Every person entitled or given an opportunity to be heard in an investigation under this section may appear in person or be represented by counsel or an agent.

(7) Nothing in this section shall require the Minister to conduct an investigation before he or any other person may rely on the provisions of Part IV of this Act.

12. Report on investigation - (1) The person conducting an investigation under section 11 of this Act shall prepare a written report on the results of the investigation, and, where that person is not the Minister, shall submit the report to the Minister.

(2) Not later than 7 days after the completion of the report on an investigation conducted under section 11 of this Act or, where the person conducting the investigation is not the Minister, not later than 7 days after the submission of the report to the Minister, the Minister shall -

- (a) subject to subsection (3) of this section, send a copy of the report to every person whose conduct has been the subject of investigation by the inquiry; and
- (b) where the report reveals conduct on the part of any person that appears to be in breach of any of the provisions of Part III of this Act, notify that person accordingly and specify a date, being not earlier than 14 days after the date of the notification, before which the person may make representations to the Minister on the matter.

(3) The Minister -

- (a) may delete or omit from any copy of a report to be sent out under subsection (2)(a) of this section any part of the report that does not bear directly on the conduct of the person to whom the report is to be sent;
- (b) shall delete or omit from such a copy any part of the report that contains confidential or sensitive commercial information supplied by any person other than the person to whom the report is to be sent.

(4) Subject to subsection (5) of this section, the Minister may cause the whole or any part of a report on an investigation under section 11 of this Act to be published.

(5) The Minister shall not publish any part of the report that contains confidential or sensitive commercial information unless the Minister is satisfied that in all the circumstances it is in the public interest to do so.

13. Minister may issue directions to carriers engaging in unfair practices - (1) Where, as a result of an investigation carried out under section 11 of this Act, and following consideration by the Minister of any representations made by the person within the time allowed under section 12 of this Act, the Minister is satisfied that a person is engaging or has engaged in any unfair practice, and that the effect of the unfair practice has been or is likely to disadvantage in any substantial way the interests of any Cook Islands shipper or any Cook Islands ship or that the person has otherwise breached any of the provisions of Part III of this Act, the Minister may direct that person in writing to do all or any of the following -

- (a) furnish to the Secretary for the Ministry of Tourism and Transport particulars of all the terms and conditions of, and the names of all other parties to, each agreement relating to shipping to which that person (if a carrier) is or has been a party and which includes or included provision for any or all of the following matters -
 - (i) the fixing or regulation of freight rates;
 - (ii) the giving to or withholding from any Cook Islands shipper special rates or other special privileges or advantages, or the imposition of any detriment or disadvantage on any such shipper;
 - (iii) the allocation of ports to any particular vessel or carrier, or the restriction or other regulation of the number or character of sailings between ports;
 - (iv) the restriction or other regulation of the volume or character of goods to be carried;
 - (v) any other matter relating to the suppression or control of competition in Cook Islands international shipping;
- (b) give reasonable notice, in such manner as may be specified in the direction, to any Cook Islands shipper who will or is likely to be affected of impending changes to the terms and conditions upon which that person (if a carrier) supplies Cook Islands international shipping service;
- (c) provide such evidence as the Minister may require that, following a written request from any owner or operator of a Cook Islands ship or a Cook Islands shipper, that the person has entered into reasonable consultations or negotiations or both with that owner, operator or shipper as the case may be on such matters as may have been specified by the owner, operator or shipper in the request, being matters relating to the terms and conditions upon which the person (if a carrier) supplies Cook Islands international shipping service, or to any proposed or possible changes to such terms and conditions and has reached an agreement with that owner, operator or shipper as the case may be and it has been confirmed by both parties to that agreement that its terms are satisfactory to each and its

terms having been notified to the Secretary of the Ministry of Tourism and Transport, the Secretary has certified to the Minister that he is satisfied the agreement reached is not in breach of any provision of this Act.

- (2) Any direction issued under this section may -
- (a) require the furnishing of particulars of any agreement entered into by the carrier after the date on which the direction was given;
 - (b) exempt from the ambit of the direction, in whole or in part, any agreement or class of agreements of which particulars are required to be furnished, whether by reference to -
 - (i) the identity or class of identity of any other party to the agreement or agreements; or
 - (ii) the subject-matter of the agreement or agreements; or
 - (iii) the nature of any of the terms or conditions of the agreement or agreements; or
 - (iv) the period within which any such agreement is or was entered into or in existence;
 - (c) specify the period within which particulars of any agreement to which the direction relates must be furnished to the Secretary of Tourism and Transport, and different periods may be specified in respect of agreements entered into or subsisting at different times;
 - (d) specify any minimum period of notice that may be appropriate to a requirement imposed under subsection (1)(b) of this section.

(3) The Minister may at any time, by notice in writing to the carrier concerned, amend or cancel a direction issued under this section.

(4) No direction shall be issued to a carrier later than 10 months after the date which the carrier is entitled to make representations under section 12(2)(b) of this Act.

14. Period for which direction is in force - Every direction issued under section 13 of this Act shall remain in force until -

- (a) it is cancelled by the Minister; or
- (b) the date 2 years after the date before which the carrier is entitled to make representations under section 12(2)(b) of this Act,

whichever is the sooner, and shall then lapse.

PART V

ENFORCEMENT

15. Offences - (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$50,000 who -

- (a) refuses or fails without reasonable excuse to comply with any direction given under section 13 of this Act; or
- (b) furnishes any particulars of any agreement to which a direction made under section 13 of this Act applies, knowing that the particulars are false or misleading; or

- (c) fails without reasonable excuse to supply information requested by a person carrying out an investigation under section 11 of this Act for the purposes of that investigation.

(2) For the purposes of paragraphs (a) and (c) of subsection (1) of this section, it shall constitute a reasonable excuse if the person charged can show that compliance with the direction or the supply of the information, as the case may be, would render that person liable to prosecution under the law of another country.

16. Law relating to restraint of trade and breaches of confidence not affected -

(1) Nothing in this Act limits or affects any rule of law relating to restraint of trade not inconsistent with any of the provisions of this Act.

(2) Nothing in this Act limits or affects any rule of law relating to breaches of confidence.

(3) No rule of law referred to in subsection (1) or subsection (2) of this section affects the interpretation of any of the provisions of this Act.

(4) The provisions of the Illegal Contracts Act 1987 shall have no application to any agreement made in contravention of this Act.

17. Jurisdiction of High Court to impose penalties for breach - (1) If the Court is satisfied on the application of the Minister that a person -

- (a) has contravened any of the provisions of Part III of this Act; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counseled, or procured any other person to contravene such a provision; or
- (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) has conspired with any other person to contravene such a provision,

the Court may order the person to pay to the Crown such pecuniary penalty as the Court determines to be appropriate, not exceeding \$50,000 in the case of a person not being a body corporate, or \$500,000 in the case of a body corporate, in respect of each act or omission.

(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including -

- (a) the nature and extent of the act or omission;
- (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission;
- (c) the circumstances in which the act or omission took place;
- (d) whether or not the person has previously been found by the Court in proceedings under this Part of this Act to have engaged in any similar conduct.

(3) The standard of proof in proceedings under this section shall be the standard of proof applying in civil proceedings.

(4) In any proceeding under this section, the Minister, upon the order of the Court, may obtain discovery and administer interrogatories.

(5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.

(6) Where conduct by any person constitutes a contravention of 2 or more provisions of Part III of this Act, proceedings may be instituted against that person in relation to the contravention of any one or more of the provisions; but no person shall be liable to more than one pecuniary penalty under this section in respect of the same conduct.

18. Injunctions and/or damages may be granted by the Court for contravention of Part III - (1) The Court may, either on the application of the Minister or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the matters specified in subsection (2) of this section.

(2) Every person is liable in damages to those affected for any loss or damage caused by that person engaging in conduct that constitutes any of the following -

- (a) a contravention of any of the provisions of Part III of this Act;
- (b) any attempt to contravene such a provision;
- (c) aiding, abetting, counseling, or procuring any other person to contravene such a provision;
- (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision;
- (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision;
- (f) conspiring with any other person to contravene such a provision.

(3) An action under subsection (1) of this section may be commenced by any interested person at any time within 3 years from the time when the cause of action arose.

19. Contravention of section 9 an offence - (1) Every person who contravenes any price order made pursuant to section 9 of this Act commits an offence and is liable on summary conviction -

- (a) in the case of a person other than a body corporate, to a fine not exceeding \$10,000;
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

(2) On the conviction of any person for an offence against this section, the Court may, on the application of the Minister, make an order for payment by the defendant of an amount not exceeding the difference (to be ascertained and specified by the Court) between the price charged for the controlled goods or services and the authorised price for those goods or services.

(3) All money payable pursuant to an order made under subsection (2) of this section shall be recoverable in the same manner as fines and costs are recoverable.

(4) Where in the case of any overcharge the Court is satisfied that the whole or any part of the difference has been paid to the defendant by any other person, the Court, if it considers it just and equitable, may make an order authorising the payment to that other person of the whole or such part of any amount paid by the defendant under subsection (2) of this section, as the Court thinks fit.

(5) An order made under subsection (4) of this section shall be sufficient authority to the Registrar of the Court to pay the amount so authorised.

(6) An information for an offence against this section may be laid at any time within 3 years from the time when the matter of the information arose.

This Act shall be administered by the Ministry of Tourism and Transport