

Public Utilities Commission of Sri Lanka

L. D. – O. 44/2002

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE PUBLIC UTILITIES COMMISSION OF SRI LANKA TO REGULATE CERTAIN UTILITIES INDUSTRIES PURSUANT TO A COHERENT NATIONAL POLICY ; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

PART I

PRELIMINARY

1. (1) This Act may be cited as the Public Utilities Commission of Sri Lanka Act, No. of 2002 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette. Different dates may be appointed in respect of different provisions of this Act.

Short title, date of operation and application.

(2) This Act shall apply to the public utilities industries set out in the Schedule to this Act, the regulation of which is vested in or assigned to the Public Utilities Commission of Sri Lanka.

(3) Parliament may by resolution amend the Schedule to the Act by adding thereto any utilities industry or removing therefrom any public utilities industry, where such addition or removal is considered necessary or expedient in the public interest.

PART II

PUBLIC UTILITIES COMMISSION OF SRI LANKA

2. (1) There shall be established a Commission, which shall be called the Public Utilities Commission of Sri Lanka (hereinafter referred to as the "Commission").

Establishment of the Public Utilities Commission of Sri Lanka.

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal, and may sue and be sued in such name.

Members of the Commission.

3. (1) Subject to the provisions of section 5, the Commission shall consist of five members appointed by the Minister with the concurrence of the Constitutional Council, of whom—

- (a) at least one member shall be a person who is qualified, and has experience, in the field of engineering ;
- (b) at least one other member shall be a person who is qualified, and has experience in the field of law ; and
- (c) at least one other member shall be a person who is qualified, and has experience in the field of business management.

(2) The first members of the Commission shall be appointed within four months of the coming into operation of this Part and any subsequent vacancy in the Commission shall be filled within three months of the occurrence of the vacancy.

Duties of the Constitutional Council under this Act.

4. (1) The Constitutional Council shall, before giving its concurrence to the appointment of any person as a member of the Commission under this Act, satisfy itself that such person is qualified for appointment under subsection (1) of section 5 and is not disqualified for appointment under subsection (2) of section 5.

(2) Decisions of the Constitutional Council to give its concurrence for appointment of persons as members of the Commission shall be by majority vote.

(3) The Constitutional Council may require any person being considered for appointment as a member under section 3 to furnish it with such information as it may require for the purpose of discharging its functions under subsection (1).

“(4) The Minister shall, within one month from the date of occurrence of a vacancy in the Commission, transmit to the Constitutional Council for its concurrence, names of persons in the order of preference, to be appointed as Commissioner. The Constitutional Council, where it concurs as regards the persons to be appointed as members of the Commission, shall express its concurrence to the Minister at least one month prior to the date before which the Minister is required to make such appointments.

5. (1) The members of the Commission shall be persons with ability and integrity and have shown capacity in addressing problems relating to, engineering, law, economics, business management, accountancy or administration—

Qualifications &c.
of members of the
Commission.

(2) A Person shall be disqualified from being appointed, or continuing as a member of the Commission if-

- (a) he or she is not a citizen of Sri Lanka ; or
- (b) he or she has been convicted of a criminal offence ; or
- (c) he or she is, or has been an undischarged bankrupt or has made any arrangement with his or her creditors ; or
- (d) he or she is, or has been within three years prior to his or her nomination for appointment, a member of Parliament ; or
- (e) he or she is a member of a Provincial Council or any local authority ; or
- (f) he or she holds any post in any political party recognized for the purposes of parliamentary elections ; or
- (g) he or she or a connected person, has any financial or other interest amounting to a conflict of interest, directly or indirectly, in any company or undertaking which carries on any public utilities industry.

Resignation,
removal and term
of office, of
members of the
Commission.

6. (1) A member of the Commission may resign from office by letter in that behalf addressed to the Minister, and such resignation shall take effect from the date on which the resignation is accepted in writing by the Minister.

(2) The Minister may remove a member of the Commission from office after an address of Parliament supported by a majority of the total number of members of Parliament (including those not present) has been presented to the Minister for such removal, after compliance with the procedure set out in section 7.

(3) The term of office of a member of the Commission shall be five years from the date of appointment :

Provided however, that the first members of the Commission, other than the member who is appointed as the Chairman, shall hold office for periods of four, three, two years and one year respectively, as the Minister shall determine.

(4) Where a member of the Commission vacates office by death, resignation or other cause, the Minister shall, with the concurrence of the Constitutional Council, appoint, having regard to the provisions of sections 5 and 7, another suitable person in his or her place, and the person so appointed shall hold office for the remainder of the terms of office of the member whom he or she succeeds.

(5) A member of the Commission whose term of office is due to end otherwise than by removal shall be eligible for reappointment for not more than one further term of office (whether consecutive or otherwise).

(6) Members of the Commission shall be paid such remuneration as may be determined by a resolution of Parliament and such remuneration shall be charged to the Fund of the Commission. Members of the Commission shall exercise, perform and discharge the powers, duties and functions of the commission on a part-time basis, in accordance with the terms and conditions of their respective letters of appointment.

(7) A person shall not, for a period of three years after he or she ceases to be a member of the Commission, acquire, hold or maintain, directly or indirectly, any office, employment, consultancy arrangement or business in Sri Lanka where he or she may be liable to use or disclose information acquired by him or her in the exercise, performance and discharge of the powers, duties and functions of the Commission, and if he or she acquires any such interests involuntarily or by way of succession or testamentary disposition, he or she shall divest himself or herself of such interest, within two months of the acquisition of such interest.

7. The Minister shall not remove a member of the Commission from office unless—

Procedure for removal of member from office.

(a) the Minister has sent a notice to the member that it is proposed to remove such member from office on any one or more of the following grounds, namely, that he or she—

- (i) is an undischarged bankrupt or has made any arrangement with his or her creditors; or
- (ii) is found or declared to be of unsound mind under any law in force in Sri Lanka; or
- (iii) has ceased to be qualified to continue as a member, or is disqualified from continuing as a member ; or
- (iv) has refused or failed to discharge his or her functions for a period of three months or more; or
- (v) is guilty of misbehavior,

accompanied by full particulars relating to the proposed grounds for removal, and has afforded the member an opportunity of making representations against the proposed removal ;

- (b) the Minister, having considered any representations made by the member, has reported to Parliament, that the proposed removal of the member, on the grounds specified in the notice sent to the member is justified and has forwarded, together with the report, the representations made by the member, to Parliament;
- (c) Parliament, having considered the report of the Minister and the representations made by the member, has passed an address, supported by a majority of the total number of members of Parliament (including those not present), for such removal.

Chairman of the
Commission.

8. (1) The Minister shall appoint one of the members of the Commission to be the Chairman of the Commission (hereinafter referred to as "Chairman").

(2) The Chairman may resign from the office of Chairman by letter in that behalf addressed to the Minister and the resignation shall take effect from the date on which it is accepted, in writing, by the Minister.

(3) The Chairman shall cease to be Chairman if he or she is removed from the office of member of the Commission under section 6.

(4) The term of office of the Chairman shall be five years.

(5) The Chairman shall not, on vacation of the office of Chairman, be eligible for reappointment as Chairman.

(6) Without prejudice to the provisions of section 7, the Chairman shall, within one month of his or her appointment, nominate a member in writing, to be the Deputy Chairman to discharge the functions of the Chairman during his absence from office due to illness or any other cause.

Public Utilities Commission of Sri Lanka

9. (1) The Chairman shall summon all meetings of the Commission. Any member of the Commission may, by written notice, request the Chairman to call a meeting of the Commission and the Chairman shall not, otherwise than for good reason, refuse to do so.

Meetings of the Commission.

(2) The Commission may decide any matter, which is determined by the Chairman to be urgent with the agreement of the majority of the members.

(3) The Chairman shall preside at all meetings of the Commission and in the absence of the Chairman at any meeting, the Deputy Chairman shall preside at such meeting.

(4) The quorum for a meeting of the Commission shall be three members including the Chairman. In the absence of the Chairman, the quorum shall be three members including the Deputy Chairman.

(5) All matters for decision by the Commission shall be decided by a majority of the votes of the members of the Commission. The decision supported by the votes of a majority of the members of the Commission on any matter, shall be deemed to be the decision of the Commission on that matter.

(6) All decisions of the Commission, supported by reasons, shall be in writing and the seal of the Commission affixed thereto in accordance with paragraph (c) of section 10.

(7) In case there is an equality of votes on any matter to be decided by the Commission, the Chairman shall have a casting vote.

(8) Subject to the preceding provisions of this section, the Commission may regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

(9) No act, decision or proceeding of the Commission shall be deemed to be invalid by reason only of the existence of any vacancy in its membership or defect in the appointment of any member thereof.

Seal of the
Commission.

10. The seal of the Commission—

- (a) shall be determined by the Commission and may be altered in such manner as may be determined by the Commission;
- (b) shall be in the custody of such person as the Commission may determine from time to time;
- (c) shall not be affixed to any instrument or document except with the sanction of the Commission and in the presence of two members of the Commission who shall sign the instrument or document in token of their presence.

PART III

**APPOINTMENT OF DIRECTOR-GENERAL, DEPUTY DIRECTORS-
GENERAL AND OTHERS STAFF**

Director-General
and Deputy
Directors-General
of the
Commission.

11. (1) The Commission shall within three months of the appointment of its first members, and thereafter whenever a vacancy arises, appoint a person to be the Director-General of the Commission (hereinafter referred to as the "Director-General") who shall be the Chief Executive officer of the Commission. The Commission shall determine the conditions of employment including remuneration of the Director-General.

(2) The Commission may appoint one or more Deputy Directors-General as it considers necessary with responsibility for a specific industry.

(3) The provisions of subsections (1) and (2) of section 5 and subsection (7) of section 6 shall, *mutatis mutandis*, apply in relation to the appointments of the Director-General and the Deputy Directors-General.

(4) The Director-General shall, subject to the general direction and control of the Commission, be charged with the conduct of the day to day activities of the Commission required for the exercise of its powers, performance of its duties and functions and the administration and control of the staff of the Commission.

(5) The Commission may delegate to the Director-General only its decision making powers in relation to the administration and control of its staff other than those concerning the Director-General.

(6) The Director-General shall attend meetings of Commission. However, he shall not attend the meeting during such time any matter relating to him or her or to the appointment of a successor to him or her is discussed. He shall not be entitled to vote at meetings.

(7) The Director-General may, with the approval of the Commission, delegate to a Deputy Director-General or any staff of the Commission, any power, function or duty which has been validly delegated to him or her, except the power of Delegation conferred on him or her by this section, and such Deputy or staff shall exercise such powers and perform such functions and discharge such duties in accordance with a general or specific direction of the Director-General.

(8) The Commission may remove from office the Director-General or any Deputy Director-General appointed under subsection (1) or (2), as the case may be.

Staff of the
Commission

12. 1) The Commission-

- (a) shall appoint a Secretary to undertake a corporate secretarial role *inter alia*;
- (b) may appoint such other staff as it considers necessary for the exercise of its powers and performance of its functions and duties;
- (c) may dismiss and exercise disciplinary control over such staff;
- (d) shall fix the rates at which such staff shall be remunerated;
- (e) shall determine the terms and conditions of service of such staff; and
- (f) may establish and regulate provident funds or schemes for the benefit of such staff and make contributions to any such funds or schemes from the Fund of the Commission

(2) Staff shall include the Director-General and Deputy Directors-General for the purpose of this section.

(3) The Commission may make rules in respect of all or any of the matters referred to in subsection (1).

Official secrecy.

13. (1) Every member of the Commission, the Secretary the Director-General, Deputy Director-General (if any), and other Staff of the Commission shall, before taking up office, sign a declaration of secrecy in such form, in such manner and before such authority as may be prescribed by the Minister. All agents, consultants and advisors of the Commission shall be required by the Commission to adhere to such secrecy requirements.

Public Utilities Commission of Sri Lanka

(2) Any person who contravenes the provisions of subsection (1), shall be guilty of an offence and on conviction after summary trial before a Magistrate be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

PART IV

OBJECTIVES, POWERS AND FUNCTIONS

14. (1) The Commission shall exercise, perform and discharge its powers functions and duties under this Act and any other industry Act reasonably with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with this Act and such other Act.

Objectives of the Commission.

(2) Without prejudice to the provisions of subsection (1), the Commission shall exercise, perform and discharge the powers, functions and duties conferred on or assigned to it by or under this Act and any other industry Act, in a manner which it considers is best calculated—

- (a) to protect the interests of all consumers;
- (b) to promote competition;
- (c) to promote efficiency in both the operations of, and capital investment in, public utilities industries;
- (d) to promote an efficient allocation of resources in public utilities industries;
- (e) to promote safety and service quality in public utilities industries;
- (f) to benchmark, where feasible, the utilities services as against international standards; and
- (g) to ensure that price controlled entities acting efficiently, do not find it unduly difficult in financing their public utilities industries.

Powers of the Commission to require information.

15. (1) The Commission shall have the following powers as reasonably required to carry out its functions :—

- (a) to request any person, including a regulated entity, to furnish to the Commission periodically, or as and when required by the Commission, any information, books, accounts or other documents which are required by the Commission and are in the custody or under the control of that person.
- (b) to summon to attend at a public hearing held under section 18 any person who, in the opinion of the Commission, may be able to give evidence in relation to any matter before the Commission.

(2) Any person to whom a request for information has been made under this section shall duly furnish the Commission with the information, books, accounts or other documents.

(3) Any person who without reasonable excuse fails to furnish any information, books accounts or other documents required of him or her by the Commission under subsection (2), shall be guilty of an offence and upon conviction after summary trial before a Magistrate be liable to a fine not exceeding one million rupees and where the offence is a continuing offence, to an additional fine of fifty thousand rupees for each day during which such offence continues :

Provided however, that a person referred to in this section shall not be compelled to produce a document which he or she could not be compelled to produce in civil proceedings before a court or to furnish information which he or she could not be compelled to give in evidence in any such proceedings.

(4) Subject to the provisions of subsection (5), any information with respect to any particular business which—

- (a) has been obtained under or by virtue of any of the provisions of this Part;

- (b) relates to the affairs of any individual or to any particular business; and
- (c) is stated in writing, at the time of provisions, to be confidential or commercially sensitive,

shall not, during the lifetime of that individual or for so long as that business continues to be carried on, be disclosed by the Commission without the written consent of the individual or business.

(5) Subsection (4) shall not apply to any disclosure of information—

- (a) which is required by a Court of law; or
- (b) if the Commission is of the opinion that the disclosure is required for the public benefit; or
- (c) which is made for the purpose of enabling a licensee to comply with a condition of its license under or by virtue of which it is required to disclose the information to another person.

For the purpose of this Act any information contained in an electronic record, printed on a paper, stored, recorded or copied in optical or magnetic media and produced by whatever means, shall be deemed to be also a document.

16. Without prejudice to the powers expressly conferred on the Commission by this Act, the Commission shall have the power—

General powers of the Commission.

- (a) to engage, subject to section 13, from time to time the services of consultants or advisors as it may consider necessary to assist in the discharge of its functions and remunerate such persons out of the Fund of the Commission in such manner and at such rates as may be determined by the Commission;

Public Utilities Commission of Sri Lanka

- (b) to enter into agreements with regulated entities;
- (c) to acquire and hold property movable and immovable, and to sell, lease, mortgage, exchange, or otherwise dispose of, the same;
- (d) to enter into such contracts as may be necessary for the exercise, performance and discharge of its powers, duties and functions;
- (e) to acquire such right, privileges, licences and authorities as may be necessary for the effective discharge of its functions ;
- (f) to levy fees ; and
- (g) generally to do all such other acts and things as are incidental to or consequential upon the exercise, performance and discharge of its powers, duties and functions under this Act and any other industry Act.

Functions of the Commission.

17. Subject to the provisions of this Act, the Commission shall, among other things,—

- (a) exercise, perform and discharge the powers, functions and duties conferred on or assigned to the Commission by or under this Act or any industry Act ;
- (b) consult, to the extent the Commission considers appropriate, any person or group who or which may be affected, or likely to be affected, by the decisions of the Commission ;
- (c) advise the Government, as the Commission deems appropriate, on all matters concernig any industry falling within the purview of this Act ;
- (d) collect, record and disseminate, subject to section 15 (4), information concerning any public utilities industries ;

- (e) prepare within six months of its establishment a regulatory manual containing a code of good practice governing the functions of the Commission and revise it as and when required ;
- (f) exercise licensing, regulatory and inspection functions in respect of all matters provided for in any industry Act ;
- (g) enforce the provisions of licences, contracts and other instruments issued under the authority of any industry Act ;
- (h) regulate tariffs and other charges levied by regulated entities where required by any industry Act ;
- (i) determine by mediation disputes arising in any public utilities industry ;
- (j) set and enforce technical and other standards relating to the safety, quality, continuity and reliability of the public utilities industries ; and
- (k) undertake such other incidental or ancillary activities which the Commission may consider appropriate for the effective discharge of any of its functions.

18. (1) The Commission may, in discharging the functions assigned to it by or under this Act or any other industry Act, and where it deems necessary in the public interest hold a public hearing in order to investigate or determine any matter. The public hearing shall be held in any manner not inconsistent with the principles of natural justice.

Public hearing.

(2) The Commission shall, for the purposes of a public hearing referred to in subsection (1), have the power—

- (a) to procure and receive all such evidence, written or oral and to examine all such persons as witnesses, as the Commission may think necessary or desirable to procure or examine ;

- (b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation and to administer or cause to be administered by an officer authorized in that behalf by the Commission, an oath or affirmation to every such witness ;
- (c) to summon any person residing in Sri Lanka to attend a public hearing of the Commission to give evidence or produce any document or other thing in his or her possession and to examine him or her as a witness or to require him or her to produce any document or other thing in his or her possession ;
- (d) to admit any evidence, whether written or oral notwithstanding the provisions contained in the Evidence Ordinance.”

(3) Any person who has been summoned or whose interests are likely to be affected by any matter before the Commission may appear in person or by authorized representative.

(4) Every person who gives evidence at such public hearing shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him or her before such court.

(5) The proceedings at such a public hearing shall be open to the public and the minutes, including a record of the evidence given and a statement of all facts taken into consideration, shall be kept by the Commission and made available to the public.

(6) Every offence of contempt committed against, or in disrespect of, the authority of the Commission shall be punishable by the Court of Appeal as though it were an offence of contempt committed against, or in disrespect of the authority of that Court, and the Court of Appeal is hereby vested with jurisdiction to try every such offence.

Public Utilities Commission of Sri Lanka

(7) An act done or omitted to be done in relation to the Commission, whether in the presence of the Commission, or otherwise, shall constitute an offence of contempt against, or in disrespect of, the authority of the Commission, if such act would, if done or omitted to be done in relation to the Court of Appeal have constituted an offence of contempt against, or in disrespect of, the authority of such Court.

(8) Any person—

- (a) who fails without cause to appear before the Commission at the time and place mentioned in the summons issued by the Commission ; or
- (b) who refuses to be sworn, or affirmed or having been duly sworn or affirmed refuses or fails without cause to answer any question lawfully ;
- (c) who refuses or fails without cause, to produce or show to the Commission any document or other thing which is in his or her possession or power and which is in the opinion of the Commission necessary for arriving at the truth of the matter being inquired into by the Commission,

shall be guilty of the offence of contempt against, or in disrespect of the authority of the Commission.

(9) During or at the conclusion of a public hearing the Commission may—

- (a) make an order or award with reasons therefor relating to the matter before it or part thereof, or give a direction with reasons therefor ;
- (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof, if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest ;

- (c) generally give all such directions and do all such things as are necessary or expedient for expeditious and just hearing and determination of the matter before it.

(10) Every order or award made and every direction given in pursuance of paragraph (a) of subsection (10) shall be published in the Gazette, and a copy of every such order, award or direction shall be served on each party to the public hearing.

Finality of orders made under section 18 subject to appeal on a question of law.

19. (1) An order, award or direction made by the Commission under section 18 shall, subject to subsection (2), be final.

(2) An appeal shall lie by any person aggrieved from an order, award or direction made under section 18 on a question of law, to the Court of Appeal.

(3) An appeal under subsection (2), shall be by written petition and shall—

- (a) be presented in triplicate to the Commission within thirty days after the date of the communication by which the order, award or direction was notified to the appellant ;
- (b) set forth the order, award or direction of the Commission and the question of law to be argued ;
make any necessary party a respondent to such appeal ; and
- (d) be accompanied by a fee of one thousand rupees to be made payable to the Fund of the Commission.

(4) Where a petition of appeal is presented to the Commission in the manner and within the time specified in subsection (3), the Commission shall—

- (a) transmit, or cause to be transmitted to the Court of Appeal a copy of the petition together with the record

of the proceedings in which the order, award or direction referred to in the petition was made or given ;

- (b) issue, or cause to be issued notice of the appeal to the respondents named in the petition of appeal together with a copy of that petition ; and
- (c) file or cause to be filed of record a copy of the petition.

(5) The Court of Appeal may in determining such question of law, confirm, vary or annul the order, award or direction of the Commission or may remit the matter to the Commission with the decision of that Court on the question of law with such directions as may be deemed appropriate.

20. A copy of any rule, order, award, direction or other document made by or in the custody of the Commission and certified by the Chairman to be a true copy thereof shall, in any court, be evidence of the rule, order, award, direction or other document without proof of the signature of the Chairman.

Evidence of documents.

21. Any person who without lawful authority contravenes or fails to comply with an order, award or direction of the Commission shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees and where the offence is a continuing offence to an additional fine of five hundred thousand rupees for each day during which such contravention continues.

Contravention of an order, award or direction.

PART V

COMPETITION

22. The Commission shall, in relation to each public utilities industry, regulate and inquire into anti-competitive practices, monopolies, acquisitions and abuses of a dominant position, and merger situations and may carry out an investigation, either of its own motion or on a complaint or request made to it by any person, with respect to—

Commission's competition functions.

- (a) the existence or suspected existence of any anti-competitive practices ;
- (b) the acquisition, existence or suspected existence of abuse of a dominant position which may affect domestic trade or economic development in one or more markets in which a regulated entity operates ;
or
- (c) the creation or suspected creation of a merger situation,

on becoming aware of the same, in consultation with any regulated entity affected or likely to be affected, the complainant and any Consumer Consultative Committee established.

Criteria for
Commission's
competition
function.

23. (1) For the purposes of section 22—

- (a) (i) any agreement in writing, oral or by conduct, involving a regulated entity ;
- (ii) any decision by regulated entities acting together ; or
- (iii) any practice or conduct of one or more regulated entities,

which affects or is likely to affect domestic or international trade and the object or effect of which is to prevent, restrict or distort competition in Sri Lanka shall constitute an anti-competitive practice ;

- (b) the provisions of section 23 (1) (a) shall apply in particular, to agreements, decisions, practices or conduct which—
 - (i) directly or indirectly fix purchase or selling prices ;

- (ii) eliminate or substantially damage a competitor in a market ;
 - (iii) prevent the entry of a competitor into a market
 - (iv) deter or prevent a person from engaging in competitive conduct in a market ; or
 - (v) unduly limit or control a consumer's access to, or ability to transfer to or from, a regulated entity ;
- (c) a dominant position shall be taken to exist if the prescribed percentage of a utility network is used or provided by, or the prescribed percentage of a utility service is provided by or to—
- (i) the same person ; or
 - (ii) members of a group of persons, including connected bodies corporate ;
- (d) conduct that may, in particular, constitute an abuse of a dominant position if it—
- (i) amounts to directly or indirectly imposing unfair purchase or selling prices ;
 - (ii) eliminates or substantially damages a competitor in a market ;
 - (iii) prevents the entry of a competitor into a market
 - (iv) deters or prevents a person from engaging in competitive conduct in a market ; or
 - (v) unduly limits or controls a consumer's access to, or ability to transfer to or from, regulated entities ;

- (e) a merger situation shall be taken to exist if a person, including a body corporate, acquires or proposes to acquire, directly or indirectly, any shares or assets of any other person which results or would result in a change of control of that other person –
- (i) the object or effect of which is that the persons taken together are or are likely to be or would be in a dominant position in a market in any public utilities industry ; or
 - (ii) where both persons are engaged, exclusively or otherwise, in the provision of, and hold a dominant position within the same utility network or utility service in a public utilities industry, in the same or different geographical areas, even if the circumstances in (i) above are not satisfied ;
- (f) any regulated entity which is of the opinion or ought reasonably to be of the opinion that it may fall within the scope of the activities set out in section 22 which the Commission is empowered to investigate shall notify the Commission immediately,

(2) In this section–

“control” means direct or indirect control of the whole or parts of one or more other persons ;

“utility network” means a network or system, however defined in any industry Act, for the provision of utility services ; and

“utility services” means the provision of goods or services in the public utilities industries.

Commission’s
competition
enforcement
powers.

24. (1) Where, upon investigation, the Commission is satisfied that an anti-competitive practice or merger situation exists but that it does not operate or is not likely to operate against the public interest, the Commission shall by order, authorize that anti-competitive practice or merger situation subject to such conditions as it may consider necessary or expedient.

(2) Where, upon investigation, the Commission is satisfied that a dominant position exists but that no abuse of that dominant position exists, the Commission shall by order, declare that no abuse of a dominant position has occurred, subject to such conditions, as it may consider necessary or expedient.

(3) Where, upon investigation, the Commission is satisfied that—

(a) a merger situation exists, is likely to operate against the public interest and that a merger has not yet taken place, the Commission may by order prohibit the merger situation ;

(b) Without prejudice to paragraph (a), in anti-competitive practice or merger situation exists and that it operates against the public interest, or an abuse of a dominant position exists, the Commission may by order provide for—

(i) the carrying on of any activity or the safeguarding of any assets by the appointment of a person to conduct or supervise the conduct of such activities or safeguarding such assets on such terms and with such powers as may be specified in the order ;

(ii) the termination of any anti-competitive practice or abuse of a dominant position or the de-merger of a merger situation in such manner as may be specified in the order ; and

(iii) such action as the Commission may consider necessary in the circumstances for the purpose of remedying or preventing the resulting adverse effects, subject to such conditions as it may consider necessary or expedient.

(4) In determining for the purpose of this section whether an anti-competitive practice or merger situation operates or is likely to operate against the public interest, the Commission shall take into account all matters which appear to the Commission to be relevant to the matter under investigation and shall have special regard to the desirability of —

- (a) maintaining and promoting effective competition between regulated entities ; and
- (b) promoting the interests of consumers in relation to the market in which the anti-competitive practice or merger situation operates, or is likely to operate; and

in addition, in the case of a merger situation—

- (c) giving effect to the principle that the number of regulated entities which are under independent control should not be so reduced as to prejudice the Commission's ability, in carrying on its functions to make comparisons between different regulated entities in the same public utilities industry.

(5) The Commission shall give any regulated entity, which is the subject of an inquiry or investigation held by the Commission under section 22, an opportunity to be heard and to produce oral or documentary evidence.

Powers of entry,
inspection and
search.

25. (1) Where the Commission reasonably believes that an activity identified under section 22 exists, without prejudice to section 15, the Commission shall have the power exercised by an officer of the Commission authorized in that behalf, on reasonable grounds, with an entry warrant issued by a Magistrate and on production, if required, thereof —

- (a) to enter, inspect and search at all reasonable hours of the day the premises in which any regulated entity is carrying on its business or any other premises ; and

- (b) to inspect, take copies of or seize and detain any relevant records or documents of that regulated entity,

and no person shall obstruct any officer acting in the exercise of his or her powers under this section.

26. (1) The Commission is required to ensure that so far as possible, having regard to any relevant differences between the provisions concerned, question arising under this Part in relation to the regulation of competition in the public utilities industries are dealt with, in a manner which is consistent with the treatment of corresponding question arising under the relevant Act.

Principles to be applied.

(2) In determining a question under this Part, the Commission shall act so far as is compatible with the provisions of this Part, with a view to securing that there would be no inconsistency between the principles applied, and any decision reached, by the relevant authority in determining that question and the Commission shall, in addition, have regard to any relevant decision or statement of the relevant authority.

(3) In this section "relevant authority" means the statutory regulatory authority charged, under a relevant Act, with equivalent competition regulation functions for industries other than the public utilities industries.

27. (1) Any person who fails to comply with a relevant obligation shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable—

Offences and penalties.

- (a) where such person is not a body corporate, to a fine not less than one million and not more than ten million rupees or to imprisonment of either description for a term not exceeding seven years or to both such fine and imprisonment ;

- (b) where such person is a body corporate, to a fine not less than ten million and not more than hundred million rupees ; and
- (c) in either case, where the offence is a continuing offence, to an additional fine of five hundred thousand rupees for each day during which such contravention continues,

and the court may in addition order such persons to refrain from carrying on those activities which are required to have been terminated, or to do such other acts as are required to be done, under the Commission's earlier order for such period as may be determined by the court or until such person complies with such order made under that section.

(2) The Commission may publish or cause to be published in such manner as it sees fit, the names and addresses of all persons convicted under this Act.

(3) Where any offence is committed by a body of persons, then—

- (a) if the body of persons is a body corporate, every director and officer of such body corporate ; and
- (b) if the body of persons is a firm, every partner of that firm,

shall be guilty of an offence, provided that such director, officer or partner shall not be deemed to be guilty of that offence if he or she establishes to the satisfaction of the court that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(4) In this section, “relevant obligation” means an obligation cast on any person under this Part, or the obligations under section 15 where applicable in this Part, or an order of the Commission made under this Part, or acts in contravention of such order.

PART VI

CONSUMER PROTECTION

28. The Commission shall in the exercise of its powers under any industry Act or any regulation made thereunder, protect the rights of the consumer—

Consumer
protection.

- (a) against the marketing of goods and services which are hazardous to life and property ;
- (b) against unfair trade practices ;
- (c) to be heard and to be assured that their interests will receive due consideration ; and
- (d) to consumer education.

29. (1) The Commission shall, after consultation with the Minister, appoint a Consumer Consultative Committee.

Consumer
Consultative
Committee

(2) The composition of the Committee shall be as prescribed by regulation.

- (3) The functions of the Committee shall be to—
- (a) advise the Commission on appropriate standards to be prescribed or determined under this Act ;
 - (b) monitor whether the needs of consumers of goods or services provided by any public utilities industry are being satisfied ; and
 - (c) promote awareness of the standards prescribed or determined under this Act and the rights of consumers with respect to those standards.

PART VII

POLICY GUIDELINES

Minister to issue
general policy
guidelines.

30. (1) The Cabinet of Ministers shall in consultation with the Minister in charge of a public utilities industry, formulate where it sees fit, general policy guidelines and issue such guidelines to the Commission through the Minister—

- (a) on any matter identified in or under such industry Act for which general policy guidelines may be made ;
- (b) on the need for the supply of public utility services under such industry Act in order to attain national targets for sustainable economic growth in respect of, among other things—
 - (i) different geographical areas encompassing rural areas ; and
 - (ii) different socio-economic groups ;
- (c) on measures taken by the Government to facilitate the needs identified under paragraph (b) ;
- (d) on setting down the priorities and attaining the objectives specified in paragraphs (a), (b) and (c).

(2) Where any general policy guideline issued under subsection (1) results in the need for a regulated entity to subsidize the provision of any service of a public utilities industry to any socio-economic group or to a geographical area, the Commission shall, in implementing the policy guidelines, ensure that—

- (a) the government compensates such regulated entity for all loss and expenses caused to that regulated entity by reason of its compliance ; and

(b) adequate financial provision is made by the Government before such regulated entity undertakes any necessary activities.

(3) The Minister shall—

(a) within three months of the end of each calendar year submit a report to Parliament setting out the action he or she has taken in respect of implementing the policy guidelines during the said calendar year ; and

(b) prior to issuing the general policy guidelines under subsection (1), lay such policy guidelines before Parliament for information.

PART VIII

FINANCE

31. (1) The Commission shall have its own Fund.

Fund of the
Commission.

(2) There shall be paid into the Fund of the Commission—

(a) all such sums of money as may be reasonably required by the Commission to perform its functions and duties under this Act and any other industry Act, voted upon by Parliament during the first year of the establishment of the Commission ;

(b) all such sums of money as are recovered by the Commission as levies under industry Acts ;

(c) all such sums of money as are received by the Commission in the exercise, performance and discharge, of its powers, duties and functions under this Act or any other industry Act, including fees received by the Commission for the grant or renewal of licences under those Acts ;

(d) all such sums of money as are received by the Commission by way of loans, gifts or grants from any source whatsoever ; and

(e) all such sums of money as are authorized or required to be paid into the Fund by any provisions of this Act or any other industry Act.

(3) There shall be paid out of the Fund of the Commission—

(a) all such sums of money as are required to defray any expenditure incurred by the Commission in the exercise, performance and discharge of its powers duties and functions under this Act or any other industry Act ; and

(b) all such sums of money as are required or authorized to be paid out of the Fund by any provision of this Act or any other industry Act.

(4) The Commission may, with the approval of the Minister in charge of the subject of Finance, invest such moneys as are not immediately required for its purposes, in such securities as the Commission may consider fit and transfer or sell such securities.

Power to borrow.

32. The Commission may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Commission may reasonably require for performing or discharging its duties and functions under this Act or any other industry Act :

Provided that the aggregate of the amounts outstanding in respect of any temporary loans raised under this section shall not at any time exceed such sum as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

33. (1) Any excess of the revenue of the Commission in any year over its expenditure for that year shall be carried forwards to meet its expenditure in subsequent years.

Provision relating to expenditure.

(2) The Commission shall, not later than September of each year, cause to be published in the Gazette, a statement setting out its estimated expenditure for the next financial year.

(3) The Commission may revise its estimated expenditure for any year in that year and shall cause every such revision to be published in the Gazette.

(4) The expenditure of the Commission for any year, shall not exceed by ten *per centum* of its estimated expenditure (as revised from time to time), for that year.

34. (1) The financial year of the Commission shall be the calendar year.

Accounts and audit.

(2) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission. Separate accounts shall be maintained in respect of loans received.

(3) The Auditor-General shall audit the accounts of the Commission.

(4) The Auditor-General and any person assisting him or her in the audit of the accounts of the Commission, shall have access to all such books, deeds, contracts, accounts, vouchers and documents as the Auditor General may consider necessary for the purposes of such audit, and shall be furnished by the Commission or its officers with such information within their knowledge as may be required for such purposes.

(5) The Auditor-General shall examine the accounts of the Commission and furnish a report—

- (a) stating whether he or she has or has not obtained all the information and explanations required by him or her ;

- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Commission ; and
- (c) drawing attention to any item in the accounts which in his or her opinion may be of interest to Parliament in any examination of the activities and accounts of the Commission.

(6) The Auditor-General shall transmit the report and statement prepared by him under subsection (5), to the Commission.

(7) For the purpose of meeting the expenses incurred by him or her in the audit of the accounts of the Commission, the Auditor-General shall be paid out of the Fund of the Commission, such remuneration as the Commission may determine. Any remuneration received by the Auditor-General under this subsection shall, after deduction therefrom of any sums paid by him or her to any qualified auditor or auditors employed by him or her for the purposes of such audit, be credited to the Consolidated Fund.

PART IX

GENERAL

Co-operation
between
Commission and
other bodies.

35. (1) The Commission and the relevant person at each of the following :—

- (a) the Central Environmental Authority
- (b) the Urban Development Authority
- (c) the Telecommunication Regulatory Commission and
- (d) such other regulatory body as may be designated by the Minister for the purposes of this section,

shall, in the case of the persons referred to in paragraphs (a), (b) and (c), not later than six months after the

establishment of the Commission, and in the case of the persons referred to in paragraph (d), not later than six months after they are designated under that paragraph, make arrangements and prepare a written memorandum with a view to securing —

- (i) co-operation and exchange of information between the Commission and each of those bodies ; and
- (ii) consistent treatment of matters which come within the scope of the functions of the Commission and each of those bodies, insofar as such treatment does not contravene the provisions of this Act or any other law.

(2) As soon as practicable after a written memorandum is prepared, and whenever any revision of it is subsequently agreed upon as being appropriate by the Commission and each of the bodies referred to in subsection (1), the Commission shall send a copy of the written memorandum, or the revised memorandum, as the case may be, to the Minister for his or her information.

(3) The “relevant person” in relation to—

- (a) the Central Environmental Authority, shall be its General Manager ;
- (b) the Urban Development Authority, shall be its General manager ;
- (c) the Telecommunication Regulatory Commission, shall be its chief executive officer ; and
- (d) a body designated under paragraph (d) of subsection(1) shall be its chief executive officer.

Protection of
action.

36. (1) No suit or prosecution shall lie against—

(a) the Commission for any act which in good faith is done or omitted to be done, by the Commission under this Act or any other industry Act ;

(b) any member, secretary, Director-General, Deputy Director-General (if any), Staff, Consultant or Advisor of the Commission for any act which in goods faith is done or omitted to be done, by him or her under this Act or any other industry Act.

(2) Any expenses incurred by the Commission in any suit or prosecution brought by , or against, the Commission before any court, shall be paid out of the Fund of the Commission and any costs paid to, or recovered by, the Commission in any such suit or prosecution, shall be credited to the Fund of the Commission.

(3) Any expenses incurred by any member of the Commission, Secretary, Director-General, Deputy Director-General (if any), Staff, Consultant or Advisor thereof, in any suit or prosecution brought against him or her in any court in respect of any act which is done, or purported to be done, by him or her under this Act or any other industry Act or on the direction of the Commission shall, if the court holds that the act was done in good faith, be paid out of the Fund of the Commission, unless such expense is recovered by him in such suit or prosecution.

Annual report.

37. (1) The Commission shall within three months of the end of each financial year, prepare a report of its activities during that year and its proposed activities in the following year, and shall transmit a copy of such report together with a copy of the audited accounts of the Commission for that year, to the Minister.

(2) The Minister on receipt of a report prepared under subsection (1)—

- (a) shall cause a copy of such report to be placed before Parliament ;
- (b) may require the members of the Commission to clarify any matter arising from such report to Parliament or a Committee of Parliament ; and
- (c) may require the Commission to publish such report and accounts in such manner as she or he considers appropriate to bring them to the attention of the public .

(3) Without prejudice to the generality of subsection (1) every annual report shall contain—

- (a) a general survey of developments during the year to which the report relates in respect of matters falling within the scope of the Commission's function and in particular, developments in the promotion of consumer interests ;
- (b) details of enforcement order (if any) made by the Commission during that year ; and
- (c) details of development and expansion of the public utilities industries in Sri Lanka.

38. (1) The Commission may make rules in respect of all or any matters for which rules are authorized or required by this Act to be made.

Power of Commission to make rules.

(2) Every rule made under subsection (1) shall come into force upon publication in the Gazette.

39. The provisions of this Act and the regulations, rules or orders made thereunder shall have effect notwithstanding

Provision for conflict with other written laws.

anything inconsistent therewith contained in any other relevant Act other than this Act and in the event of any conflict between the provisions of this Act and the provisions of any other relevant Act the provisions of this Act shall prevail.

Adjustment of Commission to make rules.

40. The Minister, by Order published in the Gazette, may make such provisions, not inconsistent with the provisions of this Act, as he may deem necessary with a view to providing for any unforeseen or special circumstances, or to determining or adjusting any question or matter, for the determination or adjustment of which no provision or no effective provision is made in this Act.

Members and Staff of the Commission deemed to be public servants.

41. All members and staff of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

Commission deemed to be a scheduled institution for the purpose of the Bribery Act.

42 The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

Sinhala text to prevail in case of inconsistency.

43. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

44. In this Act, unless the context otherwise requires-

“Act” means an Act of Parliament

“annual report” means annual report prepared under section 37 ;

“Central Environmental Authority” means the Central Environmental Authority established by the National Environmental Act, No. 47 of 1980 ;

“Chairman” includes the Deputy Chairman appointed under section 8 (6) ;

“connected person” in relation to any person means a spouse, child, brother or sister of that person ;

“Constitutional Council” means the Constitutional Council established under Article 41A of the Constitution of the Republic of Sri Lanka ;

“consumer” means any person who buys or avails of any goods or services, as the case may be, for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes—

- (i) any user of such goods or beneficiary of such services other than the person who buys or avails of such goods or services, as the case may be, for consideration paid or promised, or under any system of deferred payment when such use is made or services are availed of with the approval of the first-mentioned person ;
- (ii) any prospective buyer or beneficiary of such goods or services, as the case may be ;

“financial year” means the calendar year ;

“industry Act” means an Act that governs any specific public utilities industry the regulation of which is vested in or assigned to the Commission ;

“Minister” means the Minister in charge of the subject of Policy Development and Implementation ;

“notice” means notice in writing ;

“prescribed” means prescribed by the Minister or Commission, as the case may be, by regulation ;

“prescribed percentage” in relation to the provision of a utility network or utility services means the greater of forty *per centum* or the percentage prescribed, if any, by regulations made by the Minister in charge of the subject of Commerce ;

“public utilities industry” for the purpose of this Act, means any public utilities industry the regulation of which has been vested in or assigned to the Commission ;

“regulated entity” means a company or undertaking which, subject to the provisions of any industry Act, is engaged in the provision of public utilities services under a valid licence, exemption, concession, or contract granted by the Commission ;

“relevant Act” means the Consumer Protection Act, No. 1 of 1979, the Fair Trading Commission Act, No. 1 of 1987 and the Control of Prices Act (Chapter 173) or any Act replacing any of them, or such other Act containing equivalent competition regulation provisions for industries other than the public utilities industries ;

“Telecommunication Regulatory Commission” means the Telecommunication Regulatory Commission established by the Sri Lanka Telecommunications Act, No. 25 of 1991 ;

“unfair trade practice” means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service adopts an unfair method or unfair or deceptive practice including any of the following practices, namely—

- (1) the practice of making any statement, whether orally or in writing or by visible representation which—

- (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model ;
 - (b) falsely represents that the services are of a particular standard, quality or grade ;
 - (c) makes a false or misleading representation concerning the need for, or the usefulness of any goods or services ;
 - (d) gives false or misleading facts disparaging the goods, services or trade of another person ; and
- (2) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by any industry Act or any regulation made thereunder relating to performance, composition, contents, design, construction, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods ;

“Urban Development Authority” means the Urban Development Authority established by the Urban Development Authority law, No. 41 of 1978.

SCHEDULE [Section 1 (2)]

Electricity industry ; and

Water service industry.