MOORE

Competition Law

Law No. 10/2013 of 11 April



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CHAPTER I – GENERAL PROVISIONS

SECTION I – Definitions, subject matter and scope

ARTICLE 1 – (Definitions)

The definitions of the terms used in this Law are contained in the attached Glossary, which is an integral part of it.

ARTICLE 2 – (Purpose)

This Law regulates matters relating to competition in the exercise of economic activities.

ARTICLE 3 – (Scope)

1. The legal regime defined by this Law shall apply to all economic activities carried out in the national territory or that produce effects therein.

2. This Law applies to both private and public companies.

ARTICLE 4 – (Exceptions)

This Law does not apply to:

a) collective agreements established or to be established with workers' organizations, under the terms of the Labour Law in force;

(b) practices aimed at achieving a non-commercial objective;

c) agreements that derive from international obligations that do not harm the national economy;

d) cases of need for specific protection of a sector of the economy, for the benefit of the national interest or of the consumer.

SECTION II – Competition regulation

ARTICLE 5 – (Competition Regulatory Authority)

1. Compliance with the competition rules shall be ensured by a regulatory body representing business associations, trade unions and consumers within the limits of the powers and powers conferred on it by law.

2. The prohibition of anti-competitive practices and the control of mergers between undertakings shall be carried out by the competition regulatory authority, in accordance with the rules of the competent procedure provided for in this Law and other applicable legislation.

ARTICLE 6 – (Guarantee of autonomy)

The Competition Regulatory Authority acts independently and impartially, and its organic statute must establish mechanisms to ensure:

a) the promotion of the full realization of administrative and financial autonomy within the limits established by law;

b) the prevention of conflicts of interest among the members of the deliberative bodies in relation to the matter subject to the decision;

c) the participation of the various segments of society, in addition to the public sector, in the executive and deliberative bodies;

d) the immobility of the members of the deliberative bodies before the end of the term of office;

e) the impartiality and independence of the members of the deliberative bodies.

ARTICLE 7 – (Sectoral regulatory bodies)

1. The sectoral regulatory authorities shall cooperate with the Competition Regulatory Authority in the application of competition law, under the terms provided for in this Law.

2. The Competition Regulatory Authority and the sectoral regulatory authorities shall initialle the collaboration agreements with a view to regulating the procedures and mechanisms for the exchange of information.

SECTION III – Competition Regulatory Authority

ARTICLE 8 – (Powers)

The Competition Regulatory Authority has the powers of supervision, regulation and sanction established in this Law and its statutes.

ARTICLE 9 – (Articles of Association)

The Statutes of the Competition Regulatory Authority are approved by the Council of Ministers.

ARTICLE 10 – (Funding)

The financing of the Competition Regulatory Authority is ensured by the contributions of the sectoral regulatory authorities and by the fees collected, by the State Budget, and any other forms of financing, under the terms to be defined in the statutes.

ARTICLE 11 – (Cooperation)

The sectoral regulatory authorities and the Competition Regulatory Authority cooperate with each other in the application of competition law, under the terms provided for by law, and may, for this purpose, enter into bilateral or multilateral cooperation protocols, as the case may be.

ARTICLE 12 – (Activity and Fiscal Year Report)

1. Annually, the Competition Regulatory Authority shall draw up the respective report on the activities and exercise of its powers and competences, supervision, regulation and sanctions, as well as the balance sheet and annual management accounts, for the previous calendar year.

2. The report and other documents referred to in the preceding paragraph, once approved by the Council of the Competition Regulatory Authority and with the opinion of the Single Auditor, shall be sent to the Government for consideration by 30 April of each year, which, in turn, shall send them to the Assembly of the Republic.

3. In the absence of an assessment by the Government, the report, the balance sheet and the accounts shall be deemed to have been approved 90 days after their receipt.

4. The Report, balance sheet and accounts shall be published in the *Official Gazette* within 30 days of their express or tacit approval.

ARTICLE 13 – (Scrutiny by the Assembly of the Republic)

1. The Assembly of the Republic shall hold a plenary debate on the implementation of competition policy at least once a year in Ordinary Session.

2. Without prejudice to the Government's competences in the field of competition policy, the members of the deliberative body of the Competition Regulatory Authority shall appear before the competent Commission of the Assembly of the Republic to:

a) hearing on the activity report;

(b) provide information or clarification on its activities or competition policy issues when requested.

ARTICLE 14 – (Priority in the exercise of its mission)

1. In the performance of its legal duties, the Competition Regulatory Authority shall be guided by the criterion of the public interest in the promotion and defence of competition and, on the basis of this criterion, may assign different degrees of priority in the treatment of the issues it is called upon to analyse.

2. The Competition Regulatory Authority shall exercise its sanctioning powers whenever reasons of public interest in the prosecution and punishment of infringements of competition rules determine the initiation of infringement proceedings in the specific case, taking into account, in particular, the priorities of competition policy and the elements of fact and law submitted to them, as well as the seriousness of the possible infringement, the probability of being able to prove its existence and the extent of the necessary investigative measures.

3. During the last quarter of each year, the Competition Regulatory Authority shall publish the competition policy priorities for the following year.

CHAPTER II – ANTI-COMPETITIVE PRACTICES

SECTION I – Anti-competitive practices

ARTICLE 15 – (Typification of anti-competitive practices)

1. The following shall constitute anti-competitive practices:

a) horizontal agreements;

b) vertical agreements;

(c) abuse of dominant position.

2. Mergers between undertakings shall be subject to control by the Competition Regulatory Authority, in accordance with this Law.

ARTICLE 16 – (Relationship between competing companies)

The relationship between competing companies can be:

(a) horizontal relationship: the relationship between undertakings competing in the same sector, irrespective of the size of each of them and the form in which such competition takes place;

b) Vertical relationship: relationship between a company that produces goods or supplies goods or services with other related companies along the production chain, including consumers.

ARTICLE 17 – (Horizontal agreements)

Agreements, decisions by associations of undertakings and concerted practices between undertakings which are in a horizontal relationship shall be prohibited, provided that they have as their object or effect the prevention, distortion or appreciable restriction of competition in all or part of the national market, in particular those which result in:

a) Adopt a uniform or concerted commercial conduct;

(b) to fix, directly or indirectly, the purchase or sale prices or to interfere with their determination;

c) causing price fluctuations without just cause;

(d) to establish, directly or indirectly, other conditions of transaction carried out at the same or different stages of the economic process;

(e) limit or control the production or distribution of goods, the provision of services, research, technical development or investments for the production of goods or services or their distribution;

f) to share markets or sources of supply, through the sharing of customers, suppliers, territories or types of goods and services;

(g) to form coalitions or engage in other concerted practices in order to obtain an advantage, interfere with or influence the results of public tenders for the supply of goods or services;

h) limit or prevent the access of new companies to the market.

ARTICLE 18 – (Vertical agreements)

Agreements between companies or other subjects that are in a vertical relationship and that result in:

(a) apply, systematically or occasionally, discriminatory price or other conditions in respect of equivalent services;

b) refuses, directly or indirectly, without just cause, the purchase or sale of goods and the provision of services;

(c) make the conclusion of contracts subject to the acceptance of additional obligations which, by their nature or according to commercial usage, have no connection with the subject matter of those contracts;

d) condition the sale of goods or the provision of services to the acceptance of payment terms that are different from or contrary to normal commercial uses and customs;

e) to subordinate commercial relations to the acceptance of unjustifiable or anti-competitive commercial clauses and conditions

f) impose on distributors resale prices, discounts, payment terms, minimum or maximum quantities, profit margin or any other conditions of commercialization with third parties;

g) discriminate against suppliers or consumers of goods or services by means of differentiated price fixing, or operating conditions of sale or provision of services;

h) condition the sale of one good to the acquisition of another or to the use of a service, or to make the provision of a service conditional on the use of another or to the acquisition of a good;

i) impose excessive prices, or increase the price of a good or service without just cause.

ARTICLE 19 – (Abuse of dominant position)

1. The abuse by one or more undertakings of a dominant position on the national market or in a substantial part of it with the object or effect of preventing, distorting or restricting competition shall be prohibited.

2. The following shall be deemed to have a dominant position in relation to the market for a particular good or service:

(a) an undertaking which operates on a market in which it does not suffer significant competition or assume a preponderance over its competitors;

(b) two or more undertakings acting in concert on a market in which they do not suffer significant competition or assume preponderance over third parties.

3. The following shall be considered to be abusive, in particular:

a) adopt any conduct referred to in Articles 17 and 18;

(b) refuse to provide, for appropriate remuneration, any other undertaking access to a network or other essential infrastructure which the former controls, provided that, without such access, the latter undertaking would not be able, for factual or legal reasons, to operate as a competitor of the undertaking in a dominant position on the upstream or

downstream market, unless the dominant undertaking demonstrates that, for operational or other reasons, such access is reasonably impossible;

c) breaks, in whole or in part, a commercial relationship in an unjustified manner;

d) oblige or induce a supplier or consumer

not to establish commercial relations with a competitor;

e) unjustifiably selling goods below cost price;

f) import any goods below the cost practiced in the exporting country.

4. Price discrimination applied to different purchasers shall also constitute abusive conduct, provided that:

(a) is likely to prevent, distort or restrict competition to an appreciable extent;

(b) relates to equivalent transactions of goods or services of the same kind and quality;

(c) refers to the sale price, discounts, payment terms, credit granted or other services provided in connection with the supply of goods or services.

ARTICLE 20 – (Abuse of economic dependence)

It is also prohibited the abusive exploitation by one or more undertakings of the State of economic dependence in which any supplier or customer undertaking is located, without having an equivalent alternative, in particular where it results in the adoption of any of the conduct provided for in Article 17.

ARTICLE 21 – (Justification of prohibited practices)

1. The practices referred to in Articles 17 and 18 and in Article 19(1) shall be considered justified in so far as they have the following objectives:

a) contribute to improving the production or distribution of goods and services;

b) reduce prices to consumers;

(c) accelerating economic development;

d) to encourage the technological development and innovation of national companies;

e) provide a better allocation of resources;

f) to promote national products and services;

g) to promote exports;

h) To promote the competitiveness of small and medium-sized national enterprises;

i) to contribute to the consolidation of the national business community;

j) to promote the protection of intellectual property.

2. In any event, the objectives set out in the preceding paragraph may not entail the elimination of competition or the imposition on the undertakings concerned of any restrictions which are not indispensable to the attainment of those objectives.

ARTICLE 22 – (Exemption from the prohibition of anti-competitive practices)

1. Practices prohibited and justified under the terms of the previous article are exempt from the application of the provisions of Articles 17, 18 and paragraph 1 of Article 19, provided that it is previously requested by the interested parties to the Competition Regulatory Authority.

2. The request for exemption shall be subject to prior assessment by the Competition Regulatory Authority, in accordance with the procedural provisions provided for in this Law and other applicable legislation.

3. The Competition Regulatory Authority shall determine the conditions and the period of validity of the exemption granted.

ARTICLE 23 – (Control of concentrations of undertakings)

The Competition Regulatory Authority controls concentrations of undertakings consisting, inter alia, in the acquisition of:

a) all or part of the capital stock;

(b) rights of ownership, use or enjoyment of all or part of the assets of an undertaking;

(c) rights or the conclusion of contracts which confer a preponderant influence on the composition or decisions of the organs of an undertaking.

ARTICLE 24 – (Duty of communication)

1. Mergers are only subject to prior notification to the Competition Regulatory Authority, when they determine a market share or turnover or annual turnover.

2. Concentrations covered by the preceding paragraph shall be notified to the Competition Regulatory Authority within seven working days of the conclusion of the agreement or proposed acquisition giving rise to the concentration.

3. The market share or turnover or annual turnover indicated in paragraph 1, as well as the methods for calculating the same, shall be determined by the Council of Ministers.

4. The market share or annual turnover or turnover referred to in paragraph 1 may be determined in general or by production or distribution sectors.

ARTICLE 25 – (Suspension of the merger operation)

1. A concentration subject to prior notification may not be carried out before it has been notified to the Competition Regulatory Authority and before it has been the subject of an express or implied decision not to oppose it.

2. The validity of any legal transaction carried out in violation of the provisions of the preceding paragraph depends on the express or tacit authorization of the merger.

3. The Competition Regulatory Authority shall, upon a reasoned request from the participating undertaking or undertakings, submitted before or after the communication, grant a derogation from compliance with the obligations laid down in paragraph 1.

4. Once a prior communication has been submitted to the Competition Regulatory Authority, if the latter does not take a decision on it within sixty days, it must be

understood that the latter has not opposed the concentration operation communicated, and there is a tacit approval.

ARTICLE 26 – (Exemption from the duty of communication)

Mergers between undertakings not covered by Article 24(1) are only subject to notification in cases where it is expressly requested by the Competition Regulatory Authority.

ARTICLE 27 – (Investigation of concentrations and communication by request)

1. The Competition Regulatory Authority shall initiate an investigation into the transactions referred to in the preceding article and shall request that they be notified within a maximum period of six months after the publication of the transaction in cases where the concentration:

(a) is likely to prevent, distort or restrict competition to an appreciable extent;

b) has not benefited from any type of exemption based on the public interest.

2. The Competition Regulatory Authority shall issue the final decision on the transaction within a maximum period of sixty days from the date of publication of the transaction pursuant to Article 51, which may be approval, conditional approval or prohibition.

3. Pending the decision on the operation, under the terms of the previous paragraph, it cannot be implemented.

4. The parties involved in a concentration referred to in the preceding article may voluntarily notify the concentration at any time, jointly or individually.

SECTION II – Penalties

ARTICLE 28 – (Qualification)

Without prejudice to criminal liability and the administrative measures that may be taken, infringements of the rules provided for in this Law, the observance of which is ensured by the Competition Regulatory Authority, are punishable in accordance with the provisions of this section.

ARTICLE 29 – (Fines)

1. An infringement of the provisions of Article 15(1), Articles 25 and 43 and Article 55(1)(b) and (3) shall constitute an infringement punishable by a fine not exceeding 5% of the turnover in the last year of each of the undertakings involved or of the aggregate of undertakings participating in the prohibited conduct.

2. The following shall constitute an offence punishable by a fine not exceeding, for each of the undertakings, 1% of the turnover of the previous year:

(a) failure to notify a concentration subject to prior notification pursuant to Article 24;

(b) failure to provide or the provision of false, inaccurate or incomplete information in response to requests from the Competition Regulatory Authority, in the exercise of its powers of sanction or supervision;

(c) failure to cooperate with the Competition Regulatory Authority or obstruction of the exercise by the latter of the powers provided for in Article 34.

3. Failure to appear unjustifiably in a procedural procedure for which they have been duly notified, as witnesses, expert witnesses or representatives of the complainant or infringing companies, shall constitute an offence punishable by a fine of up to 10 minimum wages in the economic sector in question.

4. The imposition of the fine does not exempt the offender from fulfilling the duty, if it is still possible.

ARTICLE 30 – (Determination and allocation of fines)

1. The fines referred to in the preceding article shall be set taking into account, inter alia, the following circumstances:

(a) the gravity of the infringement for the maintenance of effective competition on the national market;

b) the consummation or not of the infringement;

c) the bad faith of the offender;

(d) the advantages enjoyed by the infringing undertakings as a result of the infringement;

(e) the repeated or occasional nature of the infringement;

(f) the degree of participation in the infringement;

g) the cooperation provided to the Competition Regulatory Authority, until the end of the administrative procedure;

(h) the conduct of the offender in eliminating the prohibited practices and in making good the damage caused to competition.

2. The allocation of the proceeds of the fines provided for in this Law shall be defined by the Council of Ministers.

ARTICLE 31 – (Ancillary sanctions)

Without prejudice to the provisions of Article 29, where justified by the seriousness of the infringement or the interest of the general public, the Competition Regulatory Authority shall apply the following sanctions:

a) the publication of the penalty imposed in the Official Gazette and/or in a newspaper with a national, regional or local circulation, depending on the relevant geographic market in which the prohibited practice produced its effects, at the expense of the offender;

(b) the exclusion of the offender from participating in public tenders for a period of five years;

(c) the division of the company, transfer of controlling interest, sale of assets, partial cessation of business, or any other act or measure necessary to eliminate the harmful effects on competition.

ARTICLE 32 – (Periodic penalty payments)

The Competition Regulatory Authority decides, where justified, to impose a periodic penalty payment, for each day of delay, from the date fixed in the decision, in an amount not exceeding 5% of the daily average turnover in the last year, in the following cases:

a) failure to comply with a decision of the Competition Regulatory Authority that imposes a sanction or orders the adoption of specific measures;

(b) failure to provide information or false information in the context of prior notification of a concentration.

ARTICLE 33 – (Statute of Limitations)

1. The infringement procedure shall be terminated by limitation within a period of:

a) three years, in the cases provided for in paragraphs 3 and 4 of article 29;

b) five years, in other cases.

2. The limitation period for penalties shall be five years from the day on which the decision determining their application becomes final or final, except in the case provided for in paragraph 4 of Article 29, which shall be three years.

CHAPTER III – PROCESS

SECTION I – Inquiry

ARTICLE 34 – (Powers of investigation and inspection)

1. In the exercise of its powers of sanction and supervision, the Competition Regulatory Authority may:

a) To question the legal representatives of the companies or associations of companies involved, as well as to request from them documents and other elements of information that it deems appropriate or necessary for the clarification of the facts;

(b) to question the legal representatives of other undertakings or associations of undertakings and any other persons whose statements it considers relevant, and to request documents and other information from them;

c) To search, examine, collect and seize copies or extracts of the records and other documentation at the premises of the companies or associations of companies involved, whether or not it is in a reserved place or not freely accessible to the public, whenever such steps are necessary to obtain evidence;

d) To seal the premises of the undertakings where elements of writing or other documentation are or likely to be found, during the period and to the extent strictly necessary to carry out the steps referred to in the previous paragraph;

e) to request from any other services of the Public Administration, including the criminal police bodies, the collaboration that is necessary for the full performance of its functions.

2. The steps provided for in paragraph c) of the preceding paragraph depend on an order of the competent judicial authority.

3. Officials who carry out investigations abroad must be bearers:

a) in the case of paragraph 1(a) and (b), the credential issued by the Competition Regulatory Authority, which contains the purpose of the investigation;

b) In the case of paragraph 1(c), the credential referred to in the previous paragraph and the order provided for in the previous paragraph.

4. Whenever necessary, the officials referred to in the previous paragraph may request the intervention of the police authorities.

5. Failure of the notified entities to appear to make statements to the competition regulator shall result in the penalties provided for in the Criminal Law and shall not prevent the proceedings from following its terms.

ARTICLE 35 – (Rights of companies)

In the investigation, the Competition Regulatory Authority must observe clear principles defined in terms to be regulated by the Government, aiming to safeguard the rights of companies, maintain an environment of trust and responsibility, namely with regard to:

a) duty of confidentiality;

b) duty to state reasons;

c) duty of minimum inclusion, as necessary and justified;

d) policy of dialogue, instruction and responsibility;

e) guarantees of protection of trade secrets and accountability of agents who violate it.

ARTICLE 36 – (Opening of the investigation)

1. Whenever, by any means, the Competition Regulatory Authority becomes aware of strong indications of anti-competitive practices, it shall initiate an investigation, notifying the party concerned and initiating the investigation of such practices and respective agents.

2. Anti-competitive practices of which they are aware may participate:

a) public entities;

b) individuals.

3. The investigation of possible anti-competitive practices is the initiative of the regulatory authorities.

ARTICLE 37 – (Inquiry)

1. The investigation shall be carried out by at least two duly accredited members appointed by the executive body of the Competition Regulatory Authority.

2. To carry out multi-sectoral investigations, teams shall be set up, including members of the Competition Regulatory Authority concerned or other public entities.

3. The company concerned shall be informed of the notification of the investigation, its purpose, purpose and duration.

4. The investigation shall be conducted in secrecy, with a view to safeguarding the investigations and the prestige of the undertakings.

ARTICLE 38 – (Conclusions of the inquiry)

1. The final report of the inquiry shall be submitted to the executive body within five days of the conclusion of the inquiry.

2. The final report shall contain the findings, conclusions and recommendations.

ARTICLE 39 – (Decision of the inquiry)

1. The executive body, within a maximum period of five working days, shall take the decision, which may be to:

(a) close the case if it considers that there is insufficient evidence of infringement;

(b) initiate the investigation of the case when it is established that there is sufficient evidence of an infringement of the competition rules.

2. If the investigation has been initiated on the basis of a complaint from any interested party, the head of the executive body may not archive it without first informing the complainant of his intentions, granting him a period of five days to make a statement.

ARTICLE 40 – (Articulation with the sectoral regulatory authorities)

1. Whenever the Competition Regulatory Authority becomes aware, under the terms of Article 38 of this Law, of facts that have occurred in an area subject to sectoral regulation and which may be classified as practices restricting competition, it shall immediately inform the sectoral regulatory authority, competent by reason of the matter, so that it may take a decision within a reasonable period set by it.

2. Whenever, within the scope of its powers, a sectoral regulatory authority examines, of its own motion or at the request of regulated entities, matters that may constitute a violation of the provisions of this Law, it shall immediately inform the competition regulatory authority of the case and its essential elements.

3. In the cases provided for in the preceding paragraphs, the Competition Regulatory Authority shall, by reasoned decision, suspend its option to initiate or continue an investigation or proceeding for such period as it deems appropriate.

4. Before the adoption of the final decision, the sectoral regulatory authority shall inform the Competition Regulatory Authority of the draft decision, so that it may take a decision within a maximum period of fifteen days.

5. If the period indicated in the preceding paragraph has expired without the Competition Regulatory Authority taking a decision, the sectoral regulatory authority must understand that it has no comments to make on its draft decision and must notify the company or companies concerned of the decision taken immediately.

6. The recommendations of the Competition Regulatory Authority are binding on the Competition Sector Entities.

SECTION II – Administrative Proceeding

ARTICLE 41 – (Instruction of the process)

1. In the notification referred to in Article 40(1)(b), the executive body shall set a period of thirty days for the accused companies to comment in writing on the accusations made and other issues that may be of interest to the decision of the case, as well as on the evidence produced, and to request the additional measures of evidence they deem appropriate.

2. The defendant companies may, at any time, before the end of the procedural investigation, submit evidence of their interest, including new documents.

3. The defendant companies may also request the executive body to hear witnesses.

4. The written hearing referred to in paragraph 1 may, at the request of the accused undertakings or associations of undertakings, be supplemented or replaced by an oral hearing.

5. The executive body shall reject the request for additional evidentiary measures whenever it is manifest that the evidence requested is irrelevant or that its intention is merely dilatory

6. The executive body shall order of its own motion that additional evidentiary measures be taken, even after the hearing referred to in paragraphs 1 and 2, provided that it ensures that the accused companies comply with the adversarial principle.

7. Once the procedural investigation has been concluded, the defendant companies are notified to present their final allegations within five days.

8. The instruction safeguards the legitimate interests of companies by not disclosing their business secrets.

ARTICLE 42 – (Precautionary measures)

1. Where the investigation indicates that the practice which is the subject of the proceedings is likely to cause imminent, serious or irreparable damage or damage to competition or to the interests of third parties, the executive body shall, at any time during the investigation or investigation, order as a preventive measure the immediate suspension of that practice or any other interim measures necessary for the immediate restoration of competition or which are essential to the effectiveness of the decision to be taken at the end of the proceedings.

2. The measures provided for in this article shall be adopted by the executive body of its own motion or at the request of any interested party and shall be in force until they are revoked by the body concerned and, in any event, for a period not exceeding ninety days, unless there is a duly justified extension.

3. Without prejudice to the provisions of paragraph 5, the adoption of the measures referred to in the preceding paragraphs shall be preceded by a hearing of the interested parties, unless this would jeopardise the objective or effectiveness of the measure.

4. Where a market subject to sectoral regulation is at stake, the executive body shall request the prior opinion of the respective sectoral regulatory authority, which shall be issued within a maximum period of five working days.

5. The provisions of the preceding paragraph shall not prejudice the possibility of the executive body, in cases of urgency, to determine provisionally the measures that are essential for the restoration or maintenance of effective competition.

6. An appeal may be lodged against the decision taken pursuant to paragraph 1 within five days to the deliberative body, without suspensive effect

ARTICLE 43 – (Conclusion of the investigation)

1. Once the investigation has been completed, the executive body shall adopt measures on the basis of the report of the investigation brigade and the conclusions

of the procedural instruction that may be:

a) order archiving the case;

b) conditioned order of archiving of the case;

c) admonition;

d) referral of the process to the deliberative body for final decision.

2. If the proceedings have been initiated on the basis of a complaint by any interested party, the decision referred to in paragraph a) of the preceding paragraph shall be immediately communicated to the latter, granting him a maximum period of fifteen days to comment.

SECTION III – Examination of the case

ARTICLE 44 – (Indication of the rapporteur)

The assignment of the process is made by the head of the deliberative body, by lottery, to one of the members of the body who is constituted as rapporteur.

ARTICLE 45 – (Complementary Diligences)

1. The rapporteur determines the carrying out of additional steps, hearing witnesses or requesting new information, as well as granting the accused party the right to produce new evidence, when he understands the elements in the case file, insufficient for the formation of the judgment.

2. The rapporteur requests the prior opinion of a sectoral regulatory authority where practices affecting a market subject to regulation are at stake.

ARTICLE 46 – (Final decision)

1. The plenary session of the deliberative body shall adopt the decision, which shall be:

(a) a declaration of the existence of a practice restricting competition and, where appropriate, notification to the infringer to take the measures necessary to bring the practice or its effects to an end within the period prescribed for it;

b) admonition;

c) application of fines and other sanctions provided for in this Law;

d) authorization of an agreement, imposing terms and conditions.

2. The decision shall state the reasons on which it is based and shall contain:

a) the specification of the facts that constitute the infringement established and the indication of the measures to be taken by those responsible to put an end to it;

b) the deadline for compliance;

c) the sanction.

3. The decision of the deliberative body constitutes a title and immediately promotes its execution and is then communicated to the Public Prosecutor's Office, for the other legal measures applicable within the scope of its attributions.

4. The rules of procedure of the Competition Regulatory Authority provide for administrative proceedings in a complementary manner.

ARTICLE 47 (Publication and review of the decision)

1. The decision of the deliberative body must be published in the Official Gazette.

2. The supervision of compliance with the decision is the responsibility of the deliberative body.

SECTION IV – Merger control procedure

ARTICLE 48 – (Applicable regime)

The provisions relating to agreements between undertakings shall apply mutatis mutandis to mergers.

ARTICLE 49 – (Prior Communication)

Notification of concentrations under Article 24 shall be made in accordance with the form approved by the Competition Regulatory Authority and shall contain the information and documents required therein.

ARTICLE 50 – (Publication)

1. Within five days from the date on which the communication was received, the Competition Regulatory Authority shall publish in two newspapers of national expansion, at the authors' expense, the communication of the essential elements thereof.

2. Interested parties may submit any comments within a maximum period of fifteen days.

ARTICLE 51 – (Instruction of the process)

1. At the end of the period indicated in the preceding article, the Competition Regulatory Authority shall complete the investigation of the respective procedure, within thirty days from the date of its publication.

2. If, in the course of the investigation, it proves necessary to provide additional information or documents or to correct those provided, the Competition Regulatory Authority shall notify the authors of the communication accordingly and set a time limit for them to provide the information in question or to make the necessary corrections.

3. The notification provided for in the preceding paragraph shall suspend the period referred to in paragraph 1.

4. In the course of the investigation, the Competition Regulatory Authority shall request from any other entities, public or private, the information it considers relevant for the decision of the case, which shall be provided within the time limits set by it.

5. The provisions relating to the investigation procedures shall apply mutatis mutandis.

ARTICLE 52 – (Decision)

1. By the end of the period referred to in paragraph 1 of the preceding article, the head of the executive body shall analyse the final investigation report and take a decision, which may determine:

(a) the transaction is not covered by the prior notification obligation referred to in Article 24;

b) referral of the case to the deliberative body for the purpose of a final decision;

(c) initiation of an in-depth investigation, where it considers that the concentration in question is likely to create or strengthen a dominant position on the market which could significantly impede effective competition on the national market or on a substantial part of it.

2. Failure to take a decision within the time limit referred to in the preceding paragraph shall be deemed to be a decision not to oppose the merger.

ARTICLE 53 – (In-depth investigation)

1. Within a maximum period of sixty days from the date of the decision referred to in paragraph 1(c) of the preceding article, the executive body shall carry out the additional investigative measures it deems necessary.

2. The provisions of paragraphs 2 to 4 of article 52 shall apply to the investigative measures referred to in the preceding paragraph.

3. By the end of the period laid down in paragraph 1 of Article 52, the executive body shall decide:

(a) the transaction is not covered by the prior notification obligation referred to in this Article;

b) to refer the case to the final decision of the deliberative body.

ARTICLE 54 – (Decision of the deliberative body)

1. The deliberative body decides, within thirty days:

a) not to oppose the merger;

(b) prohibit the concentration by ordering, if it has already been implemented, appropriate measures to restore effective competition, in particular the separation of the undertakings or the grouped assets or the cessation of control.

2. The decision referred to in paragraph 1(a) shall be taken where the deliberative body concludes that the operation, as communicated or as a result of amendments made by the authors of the communication, is not likely to create or strengthen a dominant position which could result in significant impediments to effective competition in the national market or in a substantial part of it.

3. Decisions taken by the deliberative body pursuant to paragraph 1(a) may be accompanied by the imposition of conditions and obligations to ensure compliance with commitments made by the authors of the communication with a view to ensuring the maintenance of effective competition.

4. The provisions of paragraphs 2 and 3 of paragraph 1 shall apply mutatis mutandis to the decision referred to in paragraph 1(a).

5. Failure to take a decision within the time limit referred to in paragraph 1 shall be deemed to be a decision not to oppose the implementation of the concentration.

ARTICLE 55 – (Hearing of interested parties)

1. The decisions referred to in Article 53(1), Article 54(3) and Article 55(1) shall be taken subject to a prior hearing of the authors of the communication and the counter-interested parties.

2. In the non-opposition decisions referred to in Article 55(1)(a), when not accompanied by the imposition of conditions or obligations, the competition regulator may, in the absence of counter-interested parties, waive the hearing of the authors of the communication.

3. For the purposes of this Article, interested parties shall be deemed to be those who, in the course of the procedure, have expressed an unfavourable opinion on the implementation of the concentration in question.

4. The holding of the hearing of interested parties shall suspend the calculation of the time limits referred to in paragraph 1 of article 52 and paragraph 1 of article 53.

ARTICLE 56 – (Notice of Merger Decisions)

1. Decisions on a merger involving a market subject to sectoral regulation shall be preceded by a communication to the respective sectoral regulatory authority granting a period of time for it to take a decision.

2. The provisions of the preceding paragraph shall be without prejudice to the exercise by the sectoral regulatory authorities of the powers which, within the framework of their specific powers, are legally conferred on them in relation to the concentration in question.

ARTICLE 57 – (Ex officio procedure)

1. Without prejudice to the application of the corresponding penalties, concentrations shall be the subject of an ex officio procedure:

a) the performance of which the competition regulatory authority is aware of and which, in breach of the provisions of this Law, has not been the subject of prior notification;

(b) whose express or implied decision not to oppose was based on false or incorrect information concerning circumstances essential to the decision provided by the participants in the concentration;

c) in which there is total or partial non-compliance with the obligations or conditions imposed at the time of the respective non-opposition decision.

2. In the event provided for in paragraph a) of the preceding paragraph, the Competition Regulatory Authority shall notify the undertakings in default so that they may notify the transaction under the terms provided for in this Law, within the period set by the same.

3. In the cases provided for in paragraph 1(a) and (b), the Competition Regulatory Authority shall not be subject to the time limits set out in Article 52(1) and Article 55(1).

4. In the cases referred to in paragraph 1(c), the decision of the Competition Regulatory Authority to initiate an ex officio procedure shall take effect from the date of its notification to any of the undertakings or persons participating in the concentration.

ARTICLE 58 – (Nullity)

Legal transactions related to a merger are null and void to the extent that they contradict decisions of the Competition Regulatory Authority that there are:

a) the merger is prohibited;

b) imposed conditions for its realization;

(c) appropriate measures to restore effective competition.

SECTION V – Procedure for granting exemptions

ARTICLE 59 – (Applicable regime)

The provisions of Articles 63, 64 and 65 shall apply to the procedure for granting exemptions, mutatis mutandis.

ARTICLE 60 – (Submission of the exemption request)

1. One or more undertakings or associations of undertakings may apply for exemption from the application of this Law in respect of any agreement, decision or concerted practice in whole or in part.

2. The application for exemption must be submitted on a specific form defined by the Competition Regulatory Authority, accompanied by all the required information.

3. The request for exemption shall be published in a newspaper with the largest national circulation, with the indication:

a) the type of exemption requested;

b) the request, so that the interested parties submit, within thirty days after publication, the opposition or any other observation deemed pertinent and duly substantiated.

4. The application for exemption is subject to the payment of fees.

5. The decision on the request for exemption shall be published in the Official Gazette.

ARTICLE 61 – (Examination of the request)

1. After the period indicated in the previous article has elapsed or when the discussion is over, the Competition Regulatory Authority shall examine the case.

2. The examination of the case shall consist of an examination of the application made, any oppositions or other observations submitted.

3. The examination of the case shall also establish whether the practice is justified under Article 21.

ARTICLE 62 – (Decision)

1. The executive body shall submit the report of the examination to the deliberative body for the purpose of a decision, which may be:

a) granting of the exemption request;

b) rejection of the request for granting the exemption, duly substantiated;

c) exclusion of the agreement, decision or concerted practice from the category of those that should be assessed and authored by the Competition Regulatory Author.

2. The decision referred to in paragraph 1(a) shall indicate the period of validity of the exemption and any conditions to be met.

ARTICLE 63 – (Revocation of the exemption)

1. The Competition Regulatory Authority shall revoke the decision on the benefit referred to in the preceding article if it finds that:

(a) the practice concerned produces effects which are incompatible with the provisions of Article 21(1);

(b) the exemption was granted on the basis of incorrect or misleading information;

(c) the conditions existing at the time the exemption was granted have changed;

d) the conditions imposed under paragraph 2 of the previous article have not been met.

2. The revocation of the exemption shall be preceded by notification to the beneficiary and any other interested parties and by a period of thirty days for them to comment.

ARTICLE 64 – (Exemption from rules of professional associations)

1. Professional associations duly recognised by the Government whose internal rules may have the effect of preventing, distorting or substantially restricting competition in the market may apply for an exemption from those rules.

2. An exemption shall be granted where the rule in question is essential to maintain:

a) professional standards;

b) the specificities of the profession.

3. The rules defined in Articles 59 to 63 shall apply mutatis mutandis.

ARTICLE 65 – (Exemptions in relation to the exercise of intellectual property rights)

1. Holders of intellectual property rights may apply for an exemption in respect of an agreement or practice related to the exercise of intellectual property rights.

2. The rules set out in Articles 59 to 63 shall apply mutatis mutandis.

CHAPTER IV – TAX

ARTICLE 66 – (Approval and updating of fee amounts)

The values of the fees to be applied in the proceedings carried out before the Competition Regulatory Authority are approved by a joint diploma of the Ministers who supervise the areas of Industry and Commerce and Finance.

ARTICLE 67 – (Forms of payment)

1. It is incumbent upon the Competition Regulatory Authority to define the forms of payment of the fees established under the terms of the previous article.

2. No act shall be considered valid without payment of the legally established fees.

CHAPTER IV – FINAL AND TRANSITIONAL PROVISIONS

ARTICLE 68 - (Regulation)

It is incumbent upon the Council of Ministers to regulate this Law within 90 days after its entry into force.

(Entry into force)

This Law enters into force 90 days after its publication.

Approved by the Assembly of the Republic, on 11 December 2012.

The President of the Assembly of the Republic, Verónica Nataniel Macamo Dlhovo.

Promulgated on 20 March 2013.

Public.

The President of the Republic, Armando Emílio Guebuza.

ANNEXES

Glossary

For the purposes of this Law, the following shall be considered:

Acquisition – An act that consists of obtaining shares in a company or other assets, inside and outside the country, and that gives rise to a change of control of a company or part of it.

Concentration of undertakings – An act consisting of the merger of two or more previously independent undertakings, the acquisition of direct or indirect control of an undertaking or part of one or more undertakings, or the creation or acquisition of a joint venture which performs on a lasting basis the functions of an autonomous economic entity.

Competition – The existence of companies, independent of each other, that carry out the same activity and compete with each other to attract customers.

Effective competition – A situation in which competition as defined under the terms of this Law is not restricted and is fully realized.

Consumer - Anyone to whom any rights are provided, provided or transmitted, as an end user.

Prior communication Information that must be submitted to the Competition Regulatory Authority by companies intending to proceed with a merger operation when it results in a certain market share or turnover or annual turnover.

Intellectual property law - Branch of law that deals with rights related to industrial property and copyright.

Competition regulator - Entity responsible for regulating competition.

Sectoral regulatory bodies - Public institutions of national scope created by the Government for the regulation and supervision of a specific sector.

Company - Any public or private entity that carries out an economic activity consisting of the production, acquisition, supply of goods or the provision of services in the national market.

Merger - An act consisting of the merger of two or more companies into one.

Monopoly - A situation in which a company has substantial control of goods and services in the market.

Dominant position - The power of an undertaking or undertakings which, by acting independently, are entitled to act without regard to competitors, buyers or suppliers.

Concerted practice - Coordinated conduct between companies carried out through direct or indirect contact that influences the decision-making autonomy of an company even if it does not result in a written agreement.

Market share - The degree to which a company participates in the market in which it operates.

Horizontal relationship - Relationship between competing companies, whatever the form of the same.

Vertical relationship - Relationship between a company that produces goods or supplies goods or services with other related companies along the production chain, including consumers.

Turnover - Net portion of sales and provision of services made by an enterprise or association in relation to the total domestic market.

WHY MOORE?

Moore in the world

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- Limited review of financial statements
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