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TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on Competition Law and Policy

# Handbook on Competition Legislation

*Note by the UNCTAD secretariat*

## CONTENTS

## INTRODUCTION

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (also known as the United Nations Set of Principles and Rules on Competition) provides in section F.6(c) for the compilation of a *Handbook on Restrictive Business Practices Legislation.*

The Fifth United Nations Conference to Review All Aspects of the Set, held in Antalya, Turkey from 14 to 18 November 2005, as well as the Intergovernmental Group of Experts on Competition Law and Policy, at its Seventh Session, held in Geneva from 31 October to 2 November 2006, requested the UNCTAD secretariat to publish further issues of the *Handbook on Competition Legislation*, including the text of bilateral, regional and international instruments supplemented by a summary of the main provisions of the competition laws or of the instruments, on the basis of inputs to be submitted by member States parties to these instruments (see the resolution adopted by the Review Conference (TD/RBP/CONF.6/14) and the agreed conclusions adopted by the IGE at its seventh session (TD/B/COM.2/CLP/L.10).

Accordingly, the UNCTAD secretariat has prepared this note, which contains commentaries on and/or the texts of competition legislation of the Republic of South Africa (new law), the Republic of Serbia and the Republic of Montenegro.[1]

To date, the UNCTAD secretariat has reproduced in its *Handbooks* competition legislation of 51 countries: Algeria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Côte d'Ivoire, Croatia, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, Indonesia, Italy, Jamaica, Japan, Kenya, Lithuania, Malawi, Mexico, Montenegro, Morocco, New Zealand, Norway, Pakistan, Poland, Portugal, the Republic of Korea, Romania, Senegal, Serbia, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the United Republic of Tanzania, Venezuela, Zambia and Zimbabwe.

The Secretary-General of UNCTAD, in his note of 28 December 2005, requested States that had so far not done so, or that had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the latter with their relevant legislation, court decisions and comments, using the indicated format (see following section; however, the commentary may not necessarily follow the format). To facilitate reproduction of the texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

The UNCTAD secretariat is grateful to the States that have contributed the requested material for this issue of the *Handbook*, and it once again requests States that have not yet done so to comply with the above-mentioned request of the Secretary-General of UNCTAD.

[1] The contributions are reproduced in the language and form in which they were submitted to the secretariat.

## FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which it has evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(1) The type of control – for example, outright prohibition, prohibition in principle or examination on a case-by-case basis; and

(2) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection – for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(1) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(2) Whether it applies to all practices, acts or behaviour having effects on the country in question, irrespective of where they occur; and

(3) Whether it is dependent on the existence of an agreement, or on such agreement being put into effect.

E. Description of enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements as well as the principal powers or body(-ies).

F. Description of any parallel or supplementary legislation, including treaties or undertakings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

# COMPETITION LEGISLATION

## I. REPUBLIC OF SOUTH AFRICA

### Commentary by the Government of the Republic of South Africa on the South African Competition Act

## 1 Background

South Africa's history with competition law and policy dates back to 1955 with the enactment of the Regulation of Monopolistic Conditions Act, No 24 of 1955 (the 1955 Act). The Mouton Commission of 1977, however, revealed little progress with this law as the economy was still characterized by high levels of concentration. Consequently, the Maintenance and Promotion of Competition Act, No. 96 of 1979 (the 1979 Act) repealed the 1955 Act and established a Competition Board. Disappointingly, the 1979 law was still not robust enough to deal with these structural changes to the economy. In 1986, the 1979 Act was amended to give the Board more powers to deal with structural issues. Despite the amendments, however, the Board was berated for its timidity to act decisively to combat market dominance by large firms[1].

It became imperative therefore, with the attainment of democracy, that the regulatory framework governing the economy should be reformed. The structural imbalances of the economy had long been a source of concern for the African National Congress (ANC). It was thus no wonder that competition policy was contained in the ANC's 1992 Policy Guidelines for a Democratic South Africa and sought to introduce "anti-monopoly, anti-trust and merger policies in accordance with international norms and practices, to curb monopolies and continued domination of the economy by a minority within the white minority, and to promote greater efficiency in the private sector". This ideology later found way into the democratic government's economic policy blueprints – both the Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution (GEAR) policy. Consequently, a task team was instituted in 1998 to formulate a new competition policy framework for the country. With all the flaws in the previous legislation, policymakers had to ensure that the new law was robust enough to tackle the structural problems of the economy going forward and be able to deal with anticompetitive conduct as well.

## 2 Objectives of the Act

The South African Competition Act, No 89 (the Competition Act) was then promulgated in 1998 and entered into force in 1999, thereby repealing the 1979 Act[2]. As expected, the new Act establishes three independent institutions and contains more substantive provisions to deal with merger control and anticompetitive conduct.

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[1] Browne CH. 2000. Big business and the wealth of South Africa. Policy issues in the transition from apartheid. Centre for International Politics, University of Pennsylvania, Department of Political Science. Working Paper Series No. 00-01.

[2] Department of Trade and Industry. 1997. Proposed Guidelines for Competition Policy: A Framework for Competition, Competitiveness and Development.

Not only that, the new Act had to deal with both economic efficiency issues and social equity considerations, objectives that are sometimes contradictory. Section 2 of the Act states its purpose as being

"to promote and maintain competition in the Republic in order to:

a) promote the efficiency, adaptability and development of the economy;
b) provide consumers with competitive prices and product choice;
c) promote employment and advance the social and economic welfare of South Africans;
d) expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic;
e) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
f) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons."

The Competition Act applies to all economic activity within, or having an effect within, the Republic. In other words, any activity of an economic nature is bound by the Act, with the exception of collective bargaining agreements as defined by the Constitution and the Labour Relations Act and concerted conduct aimed at achieving non-commercial and socio-economic objectives. Furthermore, conduct that takes place outside the borders of South Africa may still run afoul of the Competition Act if the effects thereof are felt within country. This relates to conduct such as export cartels that may be based in other countries but whose activities impact the South African economy.

## 3 Institutions

The Competition Act provides for the creation of independent institutions, the Competition Commission (the Commission), the Competition Tribunal (the Tribunal) and the Competition Appeal Court (the Appeal Court). The Commission has investigative and decision-making powers with respect to small and intermediate mergers, as well as exemption applications, but only makes recommendations to the Tribunal on large mergers and restrictive practices complaints. The Commission also performs a prosecutorial function before the Tribunal. Parties may appeal the Commission's rulings on small and intermediate mergers and exemption applications to the Tribunal. The Tribunal performs an adjudicative function. It makes decisions on large mergers and adjudicates on complaints referred to it by the Commission. The Tribunal also hears appeals of the Commission's decisions. The decisions of the Tribunal may then be appealed to the Appeal Court, which has the status of a High Court. The Appeal Court is presided over by at least three judges of the High Court. The Appeal Court may review any decision of the Tribunal or consider an appeal arising from the Tribunal in respect of any of its final decisions, other than a consent order or any of its interim or interlocutory decisions.

Broadly speaking, the Competition Act deals with merger review on the one hand and restrictive business practices on the other.

## 4 Merger control

In terms of section 12 and 13 of the Competition Act, companies are compelled to notify the Commission of any merger that falls within the stipulated thresholds. Mergers are divided into small, intermediate and large, based on the Gazetted financial thresholds. A party to a small merger is not required to notify the Commission unless required to do so by the

Commission in terms of section 12 (3). The Act provides that mergers must be evaluated in terms of the substantial lessening of competition (SLC) test. It also lists other factors that must be taken into consideration by the Commission and Tribunal when evaluating or assessing a merger. These include the level of actual or potential competition, the ease of entry into the market, the level and trends of concentration, the degree of countervailing power, whether the business of a party to the merger is likely to fail, etc. From the period since inception up to April 2005, the Commission received a total of 1,764 merger notifications. Of all mergers finalized during that period, only 16 transactions were prohibited.[3]

## 5 Restrictive practices

The Competition Act provides for the prohibition of restrictive horizontal and vertical practices as well as abuse of dominance conduct. Section 4 (1)(a) of the Act contains a *rule of reason* provision that prohibits an agreement between, or concerted practice by firms or a decision by an association of firms if it is between parties in a horizontal relationship and if

> "it has the effect of substantially preventing, or lessening competition in market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect."

The Commission or Tribunal has to weigh up the anticompetitive effects against the pro-competitive or other efficiency gains.

By contrast, in terms of section 4 (1)(b) an agreement described above that involves price fixing, collusive tendering or market allocation is prohibited per se. It requires no defence or justification by the offender.

In terms of section 5, an agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs the effect. Per se prohibitions relating to vertical restrictive practices include minimum resale price maintenance.

Section 8 of the Act contains abuse of dominance prohibitions. Examples include:

- Price discrimination
- Predatory pricing
- Inducing a supplier/customer not to deal
- Refusing to supply
- Charging an excessive price to the detriment of consumers
- Refusing to give a competitor access to an essential facility
- Engaging in an exclusionary act - Efficiency and pro-competitive gains defence.

## 6 Exemptions

The Act provides for the exemption of certain prohibited practices aimed at promoting exports, promoting SMEs and businesses owned by historically disadvantaged persons, stopping decline in an industry or promoting the economic stability of a designated industry.

[3] See Competition Commission Annual Reports.

## 7 Conclusion

The 2003 OECD peer review process of the South African competition regime highlighted the high level of sophistication of the competition authorities in dealing with merger cases characterized by complex structural issues. It was noted, however, that more attention should be paid to non-merger matters and advocacy. In addition, there is a need to “improve the depth and strengthen the capacity of the professional staff."

Areas for improvement that were noted in the report are being addressed. The shortage of personnel is being addressed while the skills base and professionalism of our staff are constantly enhanced through training. The Commission has also stepped up its advocacy role and has been working with both parastatals and Government departments to help unravel anti-competitive practices, some of which flow from Government policies.

**REPUBLIC OF SOUTH AFRICA**

The preamble and the table of contents below of the Competition Act, as well as texts of this act and of appropriate amendments are available at the Internet website http://www.compcom.co.za

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**COMPETITION ACT**

(Date of commencement of sections 1-3, 6,11,19-43,78,79 & 84 on 30 November 1998. The remaining sections of the Act commenced on 1 September 1999)

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**as amended by**

Competition Amendment Act, No 35 of 1999

(Date of commencement 1 September 1999)
Competition Amendment Act, No. 15 of 2000
(Date of commencement 1 September 2000)
Competition Second Amendment Act, No. 39 of 2000
(Date of commencement 1 February 2001)

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**ACT**

**To provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers; and for the establishment of a Competition Tribunal responsible to adjudicate such matters; and for the establishment of a Competition Appeal Court; and for related matters.**

**PREAMBLE**

The people of South Africa recognise:

That apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

This paragraph was amended to its present form by section 22 of The Competition Second Amendment Act, 2000

That the economy must be open to greater ownership by a greater number of South Africans.

That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.

That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.

IN ORDER TO -

provide all South Africans equal opportunity to participate fairly in the national economy;
achieve a more effective and efficient economy in South Africa;
provide for markets in which consumers have access to, and can freely select, the quality and variety of *goods and services* they desire;
create greater capability and an environment for South Africans to compete effectively in international markets;
restrain particular trade practices which undermine a competitive economy;
regulate the transfer of economic ownership in keeping with the public *interest*;
establish independent institutions to monitor economic competition; and
give effect to the international law obligations of the Republic.

**BE IT THEREFORE ENACTED BY THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA, AS FOLLOWS :**

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## II. REPUBLIC OF SERBIA

### Commentary by the Government of the Republic of Serbia on the Serbian Law on Protection of Competition

The Law, which was enacted and entered into force in 2005, is fully compliant with the EU competition legislation. Its objective is to protect competition, in order to provide for equal market conditions, economic efficiency, and social welfare and for the benefit of the consumer.

In order to achieve the objectives, the Law shall apply to the acts of all kinds of persons, including the State and its bodies, which have an effect on competition in the Republic of Serbia ("the criteria of effect"). Hence, the Law shall not apply to the State aid regime, to be regulated by separate legislation. Also, the new banking legislation provides for particular competition rules and for the authority of the National Bank of Serbia in the banking and financial sector.

The Law regulates violations of competition by agreements, abuse of dominant position and concentrations (I) and establishes an independent regulatory body, the Commission for Protection of Competition (II).

**I Violations of competition**

*a. The general principle in the field of restrictive agreements* that distort competition is an interdiction, with the possibility of individual and collective exemptions, subject to notification. An individual exemption may be authorized by the Commission whilst the bylaws provide for collective exemptions of certain types of horizontal and vertical agreements, in compliance with the criteria provided for by the Law according to EU practice and legislation. Any exemption may be retired by the Commission if, in a particular case, there is proof of unauthorized violation of competition.

*b. The Law bans abuse of dominant position.* Such a position is defined through a set of criteria among which market share is a benchmark. A market share over 40% places the burden of the proof on the company that wishes to demonstrate that it is not dominant, whereas a market share under 40% places the burden of the proof on the Commission that wishes to demonstrate the domination of a company. The domination may be individual or collective, but only an abuse, defined as practice of restriction, distortion or prevention of competition, shall be prohibited.

*c. The Law provides for control of concentrations*. Concentration is defined as statutory change, direct or indirect acquisition of control or as establishment of joint control of market participants, whereas control is defined as ownership of the whole or part of the property or as contractual authorization enabling decisive influence over a market participant. Only a significant concentration may be subject to interdiction and is therefore to be authorized. Such a concentration may be that of local Serbian companies with a combined total annual income in excess of 10 million euros; it may also be a concentration of foreign and Serbian companies with a combined total annual world income in excess of 50 million euros. Finally, only such concentrations that have been established to have a negative effect on competition shall receive a negative decision (interdiction). The effects of concentration are evaluated through a set of economic and legal criteria provided for by the Law.

## II Commission for Protection of Competition

The authority in charge with all competition matters is an independent regulatory body, the Commission. It is responsible directly to the National Parliament and is fully separate from the Government. The Commission is funded by the National Budget, its own revenues and donations.

The Commission consists of the Council (the decision-making body) and the Technical Service (in charge of procedural matters). The Council has five members appointed by the National Parliament. In order to establish full independence, each of the bodies authorized by the Law (the Association of Lawyers, the Association of Economists, the Bar, the Chamber of Commerce and the Government.) shall propose two candidates for the Council to Parliament.

The Commission takes individual decisions in application of the Law (interdictions and authorizations of restrictive agreements, interdictions of abuse of dominant position, interdictions and authorizations of concentrations). It is involved in drafting and proposing competition legislation and bylaws; it monitors and analyses conditions of competition; it issues opinions on all competition matters; it facilitates international cooperation; it cooperates with all interested State and other bodies, etc. Hence, General Courts are in charge of penalties for restrictions of competition that are provided for by the Law as a percentage of annual income.

# Law on Protection of Competition

## I GENERAL PROVISIONS

### Content and Aim

Article 1

This Law regulates the protection of competition on market in order to provide identical conditions for undertakings, with the aim of improving economic efficiency and accomplishing economic welfare for society as a whole, particularly consumers' benefits, as well as the establishment of the Commission for Protection of Competition (hereinafter the Commission).

### Violation of Competition

Article 2

Pursuant to this Law, practices and acts of the enterprises and other natural and legal persons as well as other undertakings violating competition, are the following:

(1) Agreements, which considerably prevent, restrict or distort competition;

(2) Abuse of dominant position, and

(3) Concentration causing considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening of a dominant position on the market.

Considerable prevention, restriction or distortion of competition from para 1, items 1 and 3 of this Article, shall be assessed for each actual case, pursuant to the level and schedule of the changes in the structure of the relevant market; restrictions and possibilities of the equal conditions for access to market of the new competitors; reasons for withdrawal from the market by the existing competitors; changes restricting the possibilities for market supply; level of consumers' benefits and other circumstances causing violation of competition.

The Government of the Republic of Serbia (hereinafter the Government) prescribes in more detail criteria from para 2 of this Article.

### Implementation

Article 3

This Law shall be implemented for practices and acts conducted in the territory of the Republic of Serbia, i.e. for practices and acts conducted in the territory of the State Union Serbia and Montenegro or abroad, having as a result, practices and acts in cases when such practices distort competition on the market of the Republic of Serbia or distort competition which may influence the trade between member states of State Union Serbia and Montenegro.

Scope of Application

Article 4

This Law shall apply to all legal and natural persons and Government bodies, institutions for regional autonomy and local self-government that are engaged, directly or indirectly, in trade of goods or services, and which by their acts and practices violate or may violate competition (hereinafter undertakings) in particular to:

(1) Business enterprises, entrepreneurs and other forms of enterprises, regardless of their form of ownership and seat, and entrepreneurs, in addition, regardless of their nationality and permanent residence;

(2) Other natural and legal persons who are engaged, directly or indirectly, in a permanent, single or temporary trade of goods and/or services, regardless of their legal status, form of ownership, nationality, seat or permanent residence, such as trade unions, business associations, sports organizations, institutions, cooperatives, exponents of intellectual property rights, etc;

(3) Government bodies, institutions for regional autonomy and local self-government, when directly or indirectly engaged in trade of goods or services.

This Law shall not apply to business enterprises, other forms of enterprises and entrepreneurs engaged in economic activities of general economic interest, as well as to such institutions entrusted with fiscal monopoly, if the application of this Law would obstruct the performance of activities of general economic interest, i.e. entrusted activities.

Enforcement to Related Undertakings

Article 5

This Law shall also apply to related undertakings.

Pursuant to this Law, two or more undertakings shall be considered as related undertakings when one of them directly or indirectly exercises decisive influence on the management of other undertakings, particularly on the grounds of holding majority share capital, exercises more than half of the voting rights in management boards and has a right to appoint more than half of the members of the management or supervisory board and the bodies authorized to act as proxies for undertakings and agreements on the transfer of controlling interest.

Two or more related undertakings pursuant to this Law shall be considered as a single undertaking.

Relevant Market

Article 6

Pursuant to this Law, the relevant market is a market involving a relevant product market in a relevant geographic market.

Pursuant to this Law, a relevant product market is a set of goods and/or services that can be substituted for each other under reasonable terms from the standpoint of the

consumers of said goods and/or services, particularly with regard to their quality, normal use and price.

Pursuant to this Law, a relevant geographic market is the territory within which the undertakings have been included in the demand or supply process and where the competition environment is homogeneous enough and significantly different in relation to the neighbouring territory.

The Government prescribes in more detail criteria defining relevant market.

## II DISTORTION OF COMPETITION

### 1. Acts Preventing, Restricting or Distorting Competition

#### Definition

#### Article 7

Pursuant to this Law, acts, the object or effect of which is or may be to considerably prevent, restrict or distort competition on relevant market, are agreements, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions on the associations of undertakings (hereinafter agreements).

Agreements referred to in para 1 of this Article shall be null and void, in particular those which:

(1) Directly or indirectly fix purchase or selling prices or any other trading conditions;

(2) Limit or control production, market, technical development or investments;

(3) Share market or sources of supply;

(4) Apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;

(5) Make the conclusion of contracts subject to acceptance of supplementary obligations, which by their nature and commercial usage have no bearing on the subject of the contract.

Agreements referring to para 1 of this Article may be horizontal or vertical.

Pursuant to this Law, horizontal agreements are agreements among existing and potential undertakings operating on the same production or supply level.

Pursuant to this Law, vertical agreements are agreements referring to the terms of supply, sale or resale among existing and/or potential undertakings not operating on the same production or supply level.

#### Article 8

If the Commission, ex officio or at the request of an interested party, establishes that the agreement, or some of its provisions considerably prevent, restrict or distort competition, it shall make a decision establishing a violation of Article 7 paras 1 and 2 of this Law.

Decisions based on para 1 of this Article shall contain obligatory measures for the parties to the agreement as well as the time limits for their fulfilment enabling the establishment of competition on the relevant market and the elimination of the harmful consequences of the prohibited agreement.

Individual Exemption

Article 9

The Commission may, at the request of the parties to the agreement, grant an exemption from prohibition to a particular agreement or to part of such an agreement (hereinafter individual exemption) in the event that such agreement or part of such agreement contributes to the improvement of production or distribution i.e. to the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefits, imposing only such restrictions as are necessary for the attainment of these objectives without affording the possibility of eliminating competition in respect of the substantive part of the subject goods or services.

The burden of proof concerning the existence of terms for individual exemptions contained in para 1 of this Article, shall be borne by the applicant.

The Government shall regulate in more detail the content of notification for individual exemption.

The applicant shall pay compensation in the amount determined by the tariff referred to in Article 50, para 4 of this Law for issuance of act upon the applicant's submission of request referred to in para 1 of this Article.

Article 10

Individual exemption referred to in Article 9 of this Law shall be granted by the decision containing also the validity period for which an individual exemption has been granted; such individual exemption cannot be longer than five years.

At the request of parties to the agreement individually exempted by the decision from para 1 of this Article and submitted at least four months before the expiry of the validity of the exemption granted, the time limit of validity period for the exemption may be further extended for an additional period that cannot exceed five years.

Article 11

The Commission may cancel the decision referred to in Article 10 of this Law, in case the circumstances on the basis of which the exemption was granted have changed, i.e. annul the decision in cases the exemption was granted on the basis of inaccurate and untrue information or the exemption granted has been misused.

## Group Exemptions

### Article 12

The Government prescribes in more detail the conditions for group exemptions and determines certain categories of agreements to be exempted from prohibition in case they are in compliance with the conditions set out in Article 9, para 1 of this Law, as well as other conditions stipulated by this Law.

Exemption referred to in para 1 of this Article shall not apply to a particular agreement which is a part of certain categories of agreements group exempted from prohibition, in case the Commission, ex officio or at the request of interested parties, establishes that the agreement does not comply with the provision referred to in Article 9, para 1 of this Law, as well as other conditions stipulated by this Law.

In case referred to in para 2 of this Article, the burden of proof is on the applicant, i.e. the Commission.

### Article 13

Horizontal agreements, in particular agreements on specialization, research and development, and cooperation, may be exempted from prohibition on the grounds of provisions referred to in Article 12 para 1 of this Law, provided that they are in effect on the entire territory of the Republic of Serbia and not concluded for periods longer than 7 years.

### Article 14

Vertical agreements, in particular agreements on:

(1) Exclusive sale or supply;

(2) Exclusive distribution;

(3) Exclusive allocation of clients,

(4) Selective distribution;

(5) Distribution or franchise services that are prohibited due to the provisions on exclusive distribution or supply,

(6) Exclusive representation, whereby the proxy undertakes trading risk,

(7) Restriction of sale to end users by wholesale merchant, and

(8) Transfer of technology,

may be exempted from prohibition on the grounds of provisions referred to in Article 12 para 1 of this Law, in case they are not concluded for periods longer than 5 years and are in effect on the entire territory of the Republic of Serbia.

Agreements referred to in para 1 of this Article may be exempted from prohibition pursuant to Article 12 para 1 of this Law in case they are concluded for periods longer than 5 years and are in effect in particular parts of the territory of the Republic of Serbia.

Notification of Agreements Which May be Exempted from Prohibition

Article 15

As for agreements referred to in Article 7 para 1 of this Law which may be exempted from prohibition pursuant to this Law, except agreements concluded pursuant to Article 12 para 1 of this Law, parties to such an agreement are obliged to notify the Commission about it, within the period of 15 days from the date of its conclusion.

Parties to the agreement may submit the request in order to be established whether particular agreement is not prohibited pursuant to Article 7 paras 1 and 2 of this Law.

The Commission shall issue a resolution based on its decision concerning the request referred to in para 2 of this Article.

If, upon the issuance of the decision referred to in para 2 of this Article establishing that the agreement is not prohibited, the circumstances on the basis of which such decision was made have changed, the Commission may cancel the decision or annul it in case the decision was granted on the basis of inaccurate and untrue information, the facts of which were established by additional investigation.

The applicant shall pay fees in the amount determined by the Tariff referred to in Article 50 para 4 of this Law for issuance of decision from para 3 of this Article.

2. Abuse of dominant position

Dominant Position

Article 16

An undertaking has a dominant position on a relevant market if it has the power to behave independently of other undertakings, thus being in a position to make business decisions without taking into account business decisions of its competitors, purchasers or suppliers and/or end users, their goods and/or services.

An undertaking with a relevant market share exceeding 40% may or may not be considered dominant, depending, among other things, on the undertaking's share on the relevant market, a competing undertaking's shares on that same market, barriers to entry to the relevant market and strength of potential competitors, as well as possible dominant position of the buyer.

An undertaking with a relevant market share below 40% may be considered dominant and in such case the burden of proof is on Commission, i.e. the applicant, to prove the undertaking's dominant position.

The burden of proof is on the undertaking with a relevant market share exceeding 40%, to prove that its position is not dominant pursuant to para 2 of this Article.

A relevant market share shall be determined on the grounds of all relevant economic criteria defining the position of undertakings in relation to other undertakings, in particular as concerns quantity of goods and/or services and income realized from trade of goods and/or services.

## Collective Dominance

### Article 17

Two or more independent undertakings united on the basis of their economic relations on relevant market and acting jointly as a single undertaking may have a dominant position (collective dominance).

Two or more undertakings with an aggregate relevant market share exceeding 50% may or may not be considered dominant, depending, among other things, on the undertaking's share on the relevant market, a competing undertaking's shares on that same market, barriers to entry to the relevant market and strength of potential competitors, as well as the possible dominant position of the buyer.

Two or more undertakings with an aggregate relevant market share below 50% may be considered to be dominant and in such case the burden of proof is on the Commission, i.e. the applicant.

Two or more undertakings with an aggregate relevant market share exceeding 50% bear the burden of proof that they are not dominant, pursuant to para 2 of this Article.

## Prohibition of Abuse of Dominant Position

### Article 18

The abuse of dominant position on relevant market is prohibited.

The abuse of dominant position on relevant market of goods and/or services is considered to be part of practices which restrict, distort or prevent competition, particularly such which:

(1) Directly or indirectly impose unreasonable purchase or selling price or other unreasonable conditions;

(2) Limit production, markets or technical development, thus causing harm to consumers;

(3) Apply dissimilar conditions to identical transactions with other trading parties, thereby placing them at a competitive disadvantage on the market;

(4) Make the conclusions of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial customs, have no connection with the subject of such contracts.

### Article 19

If the Commission, ex officio or at the request of interested parties, establishes that the dominant position has been abused, it shall make a decision establishing a violation under Article 18 of this Law.

Decisions based on para 1 of this Article shall contain measures obligatory for the undertakings enabling the establishment of competition on the relevant market and elimination of harmful consequences of the abuse of dominant position as well as the time limits for their fulfilment.

Pursuant to the decision referred to in para 2 of this Article, divestiture of business enterprise i.e. other forms of enterprise, transfer of its assets, shares and participating interest, termination of agreement or waiving of rights enabling exercise of prevailing influence on another undertaking, cannot be ordered.

Article 20

At the request of the undertaking with a dominant position in the relevant market, the Commission may issue a decision establishing that a particular practice which such undertaking intends to take is not a practice abusing a dominant position, pursuant to Article 18 of this Law.

The Commission may cancel the decision based on para 1 of this Article in case the circumstances on the basis of which the decision was made have changed, or annul in case the decision was granted on the basis of inaccurate and untrue information.

The applicant shall pay the contribution in the amount determined by the Tariff referred to in Article 50 para 4 of this Law for issuance of decision based on para 1 of this Article.

3. Concentration

Definition

Article 21

The following shall be considered as concentration of undertakings:

(1) Status changes of undertakings, pursuant to the Law on Business Enterprises,

(2) Direct or indirect acquisition of control over the whole or a part of another undertaking by one or more undertakings;

(3) Establishment and joint control by at least two independent undertakings over a new undertaking acting on a fully independent and long-term basis and having an access to the market (joint venture).

The control referred to in para 1, item 2 of this Article is deemed to constitute a decisive influence on undertakings' business activities, on the grounds of granted rights, agreements or any other legal or actual facts, in particular the following:

(1) Ownership over or disposal with the whole or part of the property of the undertaking;

(2) Contractual authorization or any other grounds enabling a decisive influence on the composition, activities or decision-making of another undertaking.

It shall be considered that the undertaking has acquired control in case it is the holder or bearer of rights referred to in para 2 of this Article or in case such rights may be exercised otherwise.

The forms of control referred to in para 2 of this Article shall be assessed independently or one in relation to another, whereas relevant legal and actual facts shall be taken into account but not the intention of interested parties.

Two or more concentrations between identical undertakings realized in the period of less than two years shall be deemed to constitute one concentration, while the date of occurrence of the last of these concentrations shall be considered as valid.

Article 22

The following shall not be considered as concentration of undertakings:

(1) In cases where a banking or other financial institution temporarily acquires a share or participating interest for further resale, provided that it offers it for resale at the latest within 12 months from the date of acquisition and provided that during that period the ownership status has not been used in order to influence the undertaking's business decisions that concern its conduct;

(2) In cases of acquisition of control over an undertaking by the persons acting as receivers;

(3) In cases where a joint venture is aimed at coordination of market activities between two or more undertakings maintaining their legal autonomy, whereas such joint venture shall be assessed pursuant to provisions contained in Article 7 of this Law.

The Commission may extend the time limit referred to in para 1, item 1 of this Article at the request of a party acquiring shares or a participating interest, provided that the acquiring party proves that the resale of shares and participating interest was not reasonably possible within the set time limit.

Request for Authorization of Concentration

Article 23

Concentrations referred to in Article 21 of this Law shall be carried out upon approval issued by the Commission at the request of undertakings.

Requests referred to in para 1 of this Article shall be submitted subject to:

(1) The combined total annual income of all undertakings involved in concentration on the market of the Republic of Serbia exceeding the amount of 10 (ten) million EUR in Dinar countervalue at the rate of exchange as of the date of making the annual calculation of the undertakings for the previous financial year, or

(2) The combined total annual income of undertakings involved in concentration realized on international market in the previous financial year exceeding the amount of 50 (fifty) million EUR in Dinar countervalue at the rate of exchange as of the date of making the annual calculation, whereby at least one of the undertakings involved in concentration has to be registered on the territory of the Republic of Serbia.

In the first year of business activities of the undertakings, the income referred to in para 2 of this Article shall be calculated on the basis of income realized in the current financial year for the period of 12 months.

For the purpose of calculating the total annual income of the parties involved in concentration referred to in para 2 of this Article, income realized in mutual turnover between parties involved in concentration shall not be taken into account.

Parties involved in concentration are obliged to terminate realization of concentration until the Commission issues its decision authorizing the intended concentration or until the expiration of a period of 4 months from the date on which the request for authorization of concentration has been submitted.

The Government regulates in more detail the content and manner of submission of request for authorization of concentrations.

Article 24

Total annual income for undertakings providing financial services, as well as insurance and other reinsurance companies referred to in para 2 of Article 23 of this Law, shall be calculated in the following way:

(1) For legal entities providing financial services, after deduction of turnover tax, value-added tax (indirect tax charges) and other taxes directly related to those items, the sum of following income items shall be used:

(1) Interest income and similar income;

(2) Income from securities (income from shares and other variable yield securities, income from participating interest, income from shares in related undertakings);

(3) Commissions receivables;

(4) Net profit from financial operations;

(5) Other operating income;

(2) For insurance and other reinsurance companies, the value of gross premiums which shall comprise all amounts received and receivables in respect of insurance and reinsurance contracts issued by or on behalf of the insurance companies, after deduction of taxes charged by reference to the amounts of individual premiums or the total volume of premiums.

Time Limit and Submission of Request for Authorization of Concentration by the Relevant Party

Article 25

Requests contained in para 1, Article 23 of this Law shall be notified to the Commission within the period of 7 days upon signing of agreement or announcing public bid, i.e. offer or acquiring control.

Requests referred to in para 1 of this Article may be submitted when the parties display serious intentions to conclude agreement, sign the letter of intention or announce their intention to make an offer for purchase of shares.

In cases where control over the whole or part of one or more undertakings is acquired by some other undertaking, notification shall be submitted by the undertaking acquiring control, while in all other cases notification shall be made jointly by the parties involved in concentration.

Article 26

The Commission is obliged to publish the data contained in the Request for Authorization of Concentration in the Official Gazette of the Republic of Serbia; however, if the concentration is of significance for the integrated market of State Union SCG, the data shall be published in the Official Gazette of SCG.

Data referred to in para 1 of this Article which are to be published shall contain:

(1) Name of undertakings involved in concentration;

(2) Nature of concentration;

(3) Economic sector within which the concentration shall be made.

Decision to be Issued upon the Request for Authorization of Concentration

Article 27

The Commission may, if requested, issue a decision:

(1) Disregarding the request in case the notified concentration does not fulfil the conditions referred to in Articles 23 and 24 of this Law;

(2) Suspending the procedure in case the parties involved in concentration withdraw their request;

(3) Authorizing concentration when assessment of its effects on the basis of criterion from Article 28 of this Law evaluates that such concentration will not cause considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening, of dominant position on market;

(4) Conditionally authorizing concentration, provided that some supplementary conditions are fulfilled by the parties involved in concentration, within the fixed period prior to or after the concentration has been carried out;

(5) Refusing to grant authorization for concentration if the concentration causes considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening, of dominant position on market.

The Commission can temporarily authorize the realization of procedure for concentration even before the issuance of decision referred to in para 1 of this Article at the request containing explanatory note submitted by the party involved in concentration, taking particularly into account consequences caused by termination of concentration towards parties and third parties involved, as well as the degree of potential harm to competition caused by such concentration.

The applicant shall pay contribution in the amount determined by the Tariff referred to in Article 50 para 4 of this Law for issuance of act from para 1 of this Article.

Article 28

When assessing effects of intended concentration, the Commission shall evaluate whether such concentration causes considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening, of dominant position on market, taking into account the following indicators:

(1) Structure of relevant market;

(2) Existing and potential competitors;

(3) Market position of parties involved in concentration and their economic and financial power;

(4) Whether there is a possibility to choose supplier and consumer;

(5) Legal and other barriers to entry on relevant market;

(6) Domestic and international level of competitiveness of parties involved in concentration;

(7) Supply and demand of relevant goods and/or services;

(8) Technical and economic development and

(9) Consumers' interests.

Article 29

The Commission shall annul the decision authorizing concentration in case the parties involved in concentration have not met the supplementary conditions or obligations pursuant to Article 27 para 1 item 4 of this Law, i.e. cancel the authorization or conditional authorization of concentration in cases when a decision has been granted on the grounds of inaccurate or untrue information.

The Commission shall amend the decision authorizing such concentrations conditionally, when parties involved cannot fulfil some of the conditions imposed on them by decision, owing to circumstances which could not be foreseen, avoided or prevented.

Entry into Register

Article 30

Concentrations which are entered into register pursuant to the Law and which, in line with this Law, are subject to authorization require, along with the application for registration, the decision of the Commission containing the authorization of relevant concentration.

## III COMMISSION FOR THE PROTECTION OF COMPETITION

### Concept and Status

Article 31

The Commission is an independent and autonomous organization entrusted with public competencies within the scope defined by this Law.

The Commission is a legal person.

The seat of the Commission is in Belgrade.

Article 32

The Commission is responsible to the National Parliament of the Republic of Serbia (hereinafter Parliament) for its work and shall submit to it its annual report of the activities.

The report referred to in para 1 of this Article shall be submitted at the latest by the end of February of the current year, for the preceding year.

### Decision-making Body

Article 33

The Council of the Commission (hereinafter Council) is a decision-making body responsible for making all decisions and other acts within the competency of the Commission.

The President of the Council is responsible for representing and acting on behalf of the Commission; however, when the President is prevented from performing his/her duties, the Deputy is responsible for carrying out the activities of the President.

In case the Deputy is prevented from carrying out the activities of the President of the Council, he/she shall be replaced by the eldest member of the Council.

The President of the Council i.e. Deputy of the President may assign, in whole or in part, the responsibility for representation of Commission to another member of the Council, but only upon a decision made by the Council.

### Technical Service

Article 34

The Technical Service of the Commission (hereinafter Service) performs professional activities within the competency of the Commission pursuant to this Law, Statute, Regulations and other acts of the Commission.

The Head of Service is in charge of the Technical Service.

The Head of Service is elected from among the employees of the Service and is appointed on the basis of a majority vote of the Council.

The Head of Service (hereinafter Head) may be appointed from any person who holds a university degree in legal or economic field, provided that he/she has a specific knowledge in the field of protection of competition.

The Head of Service is responsible for the Service's activities to the Council.

The Law regulating the rights, obligations and responsibilities of all employees shall be applied to the rights and obligations of employees of the Service.

Scope of Activities

Article 35

The Commission shall perform the following activities within its competency:

(1) Make decisions concerning the rights and obligations of the undertakings, pursuant to this Law;

(2) Be involved in making the regulations regulating the issue of competition protection;

(3) Propose to Government the passing of regulations for implementation of this Law;

(4) Monitor and analyse conditions concerning competition on particular markets and in particular sectors;

(5) Issue its opinion to the competent authorities concerning draft regulations as well as existing regulations violating competition;

(6) Issue its opinion concerning the implementation of regulations in the field of protection of competition;

(7) Facilitate international cooperation referring to international commitments undertaken relating to protection of competition, and cooperate with international competition authorities in order to gather data;

(8) Cooperate with Government bodies, institutions for regional autonomy and local self-government in order to provide conditions for consistent implementation of this Law and other regulations referring to the matters of significance for the protection of competition;

(9) Take action in order to develop awareness of the importance of the protection of competition;

(10) Keep a record of notified agreements and undertakings with a dominant position on the market as well as concentration of undertakings, pursuant to this Law;

(11) Initiate, conduct and monitor realization of measures providing protection of competition;

(12) Perform other activities pursuant to this Law.

The Commission shall perform activities referred to in para 1, items 1,2,3,4,5,6,7,8,11 and 12 of this Article, as entrusted activities.

## Composition of the Council and Appointment

### Article 36

The Council consists of five members appointed from among prominent experts within the legal or economic field, provided that they have specific knowledge in the field of protection of competition.

The members of the Council are appointed by the Parliament at the proposal of Institutions entrusted to propose the members of the Council (hereinafter Institutions)

Relative Institutions are:

1) Association of Lawyers of Serbia;

2) Association of Economists of Serbia;

3) The Bar of Serbia;

4) Chamber of Commerce of Serbia;

5) Government of the Republic of Serbia.

Institutions decide independently on proposals concerning membership candidates, while the Government makes its decision at the proposal of the Minister in charge of trade operations.

### Article 37

Each Institution submits its proposal with at least two candidates for membership of the Council to the competent Committee of Parliament. Each proposal has to be signed and sealed by the Institution and contain the names, addresses and general background information of the proposed candidates.

In case the proposal containing the list of candidates does not comply with the regulations of this Law, the competent Committee of the Parliament shall not accept it and shall request the Institution to harmonize the proposal with this Law within the period of 15 days.

The President of Parliament, at least 20 days prior to the making of decisions concerning the appointment of Council members, has to announce all existing lists of candidates containing their general background information, submitted by Institutions.

Competent Committees of Parliament may, prior to the making of decision concerning the appointment of the members of the Council, organize public debates with proposed candidates in order to gain insight into their capabilities to perform activities within the competency of the Commission.

Parliament appoints only one out of two proposed candidates from each valid proposal.

Article 38

Member of Council cannot be eligible for appointment in case such person:

(1) Is over 65 years old at the time of appointment;

(2) Is related to member of Council in a straight bloodline, i.e. in the transversal line up to and including the second degree;

(3) Is a Member of Parliament of the State Union Serbia and Montenegro (SCG), Member of Parliament of the Republic of Serbia and Member of Parliament of the Autonomous Region;

(4) Is an elected, assigned and appointed person in bodies and institutions of the State Union SCG, Republic of Serbia or holds any other official post;

(5) Is a political party official;

(6) Is an entrepreneur, or a person involved in management or operations of a legal person engaged in economic activities;

(7) Has been tried for a criminal offence, thus damaging the reputation of the Council, for corruption, deceit, stealing, or any other criminal offence making him/her unworthy of holding such function, regardless of the imposed punitive sanctions, or such person has been sentenced by court to imprisonment for a period longer than six months;

Before the appointment, the candidate is obliged to give a written statement to Institute confirming that there are no obstacles relating to his/her appointment, as mentioned in para 1, items 2,3,4,5 and 6 of this Article;

The candidate is obliged to submit, along with the written statement from para 2 of this Article, evidence from para 1, items 1 and 7 of this Article in its original form or certified copy.

Article 39

Members of Council do not represent Institutions, but they perform their duties responsibly and independently with due diligence pursuant to this Law and regulations made according to this Law.

Members of Council shall cease to hold the position only for the reasons and according to the procedure defined by this Law.

Article 40

Members of Council are appointed for a five-year term of office.

As an exemption from para 1 of this Article, as concerns the appointment of the first members of Council, two members shall be appointed for a period of three years, two members for a period of four years and one member for a period of five years. On the appointment of the initial composition of Council, the Institutions' lists of candidates from which the candidates are to be appointed with a three i.e. four-year term of office shall be determined by lots drawn by the President of Parliament.

The same person cannot be appointed as a member of the Council more than twice in a row.

Article 41

The mandate of the member of Council shall cease upon:

(1) The expiry of the period to which the member was appointed;

(2) Relief due to the reasons stipulated by this Law;

(3) His/her death.

Article 42

The Parliament shall relieve the member of Council from office at the proposal of the Council or at least twenty Members of the Parliament of the Republic of Serbia, if such member:

(1) Is incapable of performing his/her duties within the permanent period of six months, due to illness confirmed by the medical findings;

(2) Gave false and untrue information relating to his/her general background or has failed to state facts provided for pursuant Articles 38 and 47 of this Law;

(3) No longer fulfils the conditions for appointment, if any of the circumstances contained in Article 38 of this Law has occurred;

(4) Has failed to or refused to perform his/her duties within the permanent period of six months or within the period of twelve months, whereas in the said period he/she did not perform his/her duties for at least six months with intervals;

(5) Performed his/her duties contrary to the provisions of this Law;

(6) Issued facts contrary to Article 55, para 2 of this Law;

(7) Submitted his/her written resignation to Parliament.

Article 43

When the proposal for the relief of the member of Council has been submitted, the Council may issue a decision to suspend the member of Council against whom the decision for relief has been made, until Parliament has made its decision. However, such period cannot be longer than six months.

Article 44

The President of Parliament shall issue a notice for submittal of proposals containing the list of candidates for the member of Council at the latest six months before the expiry of term of office of the member of Council and submit it to Institutions which have provided proposals for the candidates whose term of office expire, pursuant to Article 41, item 1 of this Law.

Institutions shall, within the period of two months from the date of submittal of notice, submit to Parliament their proposals for candidates.

Parliament shall make a decision on the appointment of new members of Council before the expiration of term of office of the existing members.

In case of relief, i.e. termination of the term of office pursuant to Article 41, items 2 and 3 of this Law, the Institution which has proposed the member for appointment shall, without delay, and at the latest within the period of three months, submit to Parliament its proposal for the candidate to fill the vacant position in the Council. The Parliament shall, within the period of two months from the date of submission of the proposal, appoint the member of Council, with the term of office for the period of five years.

Article 45

Activities of the Council concerning all matters are open, pursuant to the regulations stipulating transparency of work of Government authorities and judiciary bodies.

The decisions of the Council shall be made on the basis of a majority vote of the members present, if at least three members (quorum) are present.

In case of equal number of votes by the present members supporting a particular case, a decisive vote shall be the vote of the President, while in case of his/her absence a decisive vote shall be the vote of the Deputy of the President

A member not in agreement with the decision issued on particular case can single out his/her opinion and present it in writing or orally, on the record.

Article 46

The President of the Council is responsible for managing and organizing the activities of the Council, signing the decisions and other acts, monitoring their execution and performing any other activities provided for by this Law, Statute, Book of Regulations and other acts of the Commission.

The President and the Deputy President shall be elected by the Council among its members, on the basis of a majority vote by present members of the Council.

Conflict of interest

Article 47

Members of the Council i.e. employees within the Commission, shall be considered as officials pursuant to the Law stipulating conflicts of interest relating to their performance of public duties.

Former members or former employees are not authorized to act on behalf of any person in proceedings conducted before the Council for at least two years following the relief of duty as member or employee, i.e. their term of office in the Council.

Before appointment, the member of the Council i.e. employee shall give a written statement confirming that there are no obstacles relating to his/her appointment, as defined in para 1 of this Article.

Members of the Council shall inform the President, and employees shall inform the Head of Service, of interests they have or have acquired in economic activities, particularly concerning participating interests which they have in business enterprises i.e. industries and accordingly, cannot participate in decision-making relating to cases where they have such interests.

Compensation

Article 48

The President and the members of the Council are entitled to compensation in money for their activities.

The criteria for establishing of the amount of compensation is determined by the Statute, taking into consideration the amount of salary of the President, i.e. judge of the Supreme Court of the Republic of Serbia.

Statute and Other Acts of the Commission

Article 49

The Council passes the Statute of the Commission and other acts defining more closely the internal organization and manner of work of the Commission.

The Statute of the Commission shall be confirmed by the Government.

The Statute shall be published in the Official Gazette of the Republic of Serbia.

Financing of the Commission

Article 50

Funds necessary for establishment and the first year of activities of the Commission will be provided from the budget of the Republic of Serbia.

Funds necessary for the activities of the Commission shall be provided out of income generated from activities, particularly from:

(1) Compensation to be paid to the Commission pursuant to the provisions of this Law;

(2) Donations, except for donations referred to in para 3 of this Article;

(3) Income gained by sale of publications of the Commission;

(4) Other sources pursuant to the Law.

Funds necessary for the activities of the Commission cannot be provided from donations given by the undertakings to which this law is being applied.

Compensation referred to in para 2 item 1) of this Article shall be determined by the tariff set by the Commission and confirmed by the Government.

The tariff referred to in Para 4 of this Article shall be published in the Official Gazette of the Republic of Serbia.

Article 51

Financing of the Commission shall be made according to the Financial Plan prepared by the Commission for each year and submitted to Government at the latest by 1 November of the current year for the next year.

The Financial Plan shall contain total costs and expenditures of the Commission, including allocations relating to reserve funds, as well as factors on the basis of which the cost of salary shall be determined.

Total expenditures of the Commission contained in the Financial Plan, including reserves, cannot be higher than the expenditures necessary for the efficient implementation of the Law.

The surplus in income in relation to expenditures generated by the Commission shall be paid to the Republic's budget.

The surplus in expenditures in relation to income generated by the Commission shall be covered by reserves and in case such funds are not sufficient – by the budget of the Republic.

The Financial Plan is to be confirmed by the Government.

The Balance sheet of the Commission shall be subject to the annual auditing made by an independent authorized auditor. The Commission shall issue its balance sheet at the latest three months following completion of the financial year.

Application of Law regulating General Administrative Procedure

Article 52

In the proceedings before the Commission, unless otherwise regulated by this Law, the provisions of the General Administrative Procedure Act shall apply.

Decisions made by the Commission shall be final.

Against the final decision of the Commission, an administrative appeal may be lodged with the competent court.

The President of the Council shall issue resolutions.

Against the resolution referred to in para 4 of this Article, an appeal may be lodged with the Council, within three days from the date the resolution has been delivered.

Exemption

Article 53

In addition to the reasons for exemption defined by the Law regulating General Administrative Procedure, parties to the proceedings can request the exemption of the member of Council or an employee if he/she has an interest in property or manages the undertaking which is a party to the proceeding, or he/she is on friendly terms or in conflict with the party involved in the proceedings, its shareholder, or is a member of management board or supervisory board of the party to the proceedings, or is in close relations or conflict with a party to the proceedings or a person related to that party.

The President of the Council shall decide on exemption of the member of the Council and employee.

The Council shall make a decision on exemption of the President of the Council.

Right to Access to Files and Disclosure of Information within the Procedure

Article 54

Requests for access to files shall be submitted in writing or orally, and a record made.

A party can request that the other interested persons may not be allowed to inspect certain notes on the cases or information contained in them, if such notes and information are considered to be State, military, official or business secrets.

The President of the Council or the member appointed by him shall make a resolution on the request for access or the request not to allow the access to the file.

A resolution denying access to the file can also contain an order to the party to prepare the documents without information considered as business secrets, in order to make them accessible.

Persons notifying the Commission of conduct preventing, restricting or distorting competition are entitled to information on the proceedings and have a right of access to file within the period of 15 days from the date of announcement of the decision of the Commission on the case the notification refers to.

Collecting and Secrecy of Data

Article 55

The Commission is authorized to request from the parties to the proceedings and any other undertakings to provide the Commission with the data necessary to define the state of facts for a particular case, including data relating to State, military, official or business secrets.

Collected data representing State, military, official or business secrets cannot be made public or disclosed to third persons, unless written approval has been obtained from the persons to whom the relevant data refer to.

Institution of the Proceedings ex officio

Article 56

The Commission shall make the resolution on instituting the proceedings ex officio requesting the Service to conduct it, if the Commission finds, on the grounds of information or otherwise, that the practice concerned is likely to cause distortion of competition pursuant to the provisions of this Law.

The Commission may institute the proceedings ex officio if it finds that the practice concerned is likely to cause:

- Considerable distortion, restriction or prevention of market competition; and
- It proves likely that the notifying party has insufficient funds to initiate and conduct the proceedings or that conduct of proceedings ex officio is necessary in order to protect its identity.

Resolutions on instituting proceedings ex officio shall be made by the President of the Council.

Institution of the Proceedings upon the Request of the Party

Article 57

The Commission is authorized to institute the proceedings upon the request for establishment whether a particular agreement is not prohibited or a particular agreement is exempted from the prohibition, submitted by undertaking i.e. undertakings between which an agreement has been concluded.

The Commission is authorized to institute the proceedings upon the request for establishment whether a particular practice is not prohibited pursuant to this Law on abuse of dominant position, submitted by an undertaking engaged in such practice or intending to practice it.

The Commission is authorized to institute the proceedings upon the request for initiation of proceedings against the undertakings involved in practice causing prevention, restriction or distortion of competition, submitted by:

1) Undertakings to whom damage is made or can be made,
2) Chamber of Commerce, association of employers and entrepreneurs,
3) Consumer protection association, and
4) State administration bodies and regional and local self-government authority units.

The Commission is authorized to institute the proceedings upon the request for authorization of concentration, submitted by:

1) Parties to the concentration in case of status changes of undertakings or joint venture;

2) An undertaking or undertakings acquiring the control over another undertaking or a part of an undertaking.

Resolution on Initiation of Proceedings upon the Request

Article 58

The President of the Council is obliged to issue a resolution on initiation of proceedings upon request within the period of 8 days from the date of submission of request by the party.

Within the period set in para (1) of this Article, the President of the Council shall make a resolution on dismissal of request if the request has been submitted by an unauthorized person or the practice stated in the request is not a practice restricting, preventing or distorting competition.

Response to the Request

Article 59

When the proceedings before the Commission involve the parties with contrary interests, the Commission is obliged to provide the party against which the proceedings are conducted with the request and resolution on the initiation of proceedings.

The party is entitled to supply its own response to the request within the period set by the Commission, which cannot be shorter than 8 days.

Summary Proceedings

Article 60

The Commission can make a resolution immediately, without conducting an investigation procedure, if:

1) Parties with contrary interests are not involved in the proceedings;

2) The party in its request supplies facts or submits evidence on the basis of which it is possible to establish the facts or relevant circumstances or if the facts and circumstances can be established on the grounds of facts found by the Commission;

3) In the procedure initiated upon the request for authorization of concentration, on the grounds of submitted evidence and other facts found by the Commission, it is justifiably assessed that the concentration will not cause considerable prevention, restriction or distortion of competition, particularly as a result of the creation, i.e. strengthening, of dominant position on market;

4) It is not necessary to hold a special hearing of the party in order to protect its rights i.e. legal interests.

## Inquiry

### Article 61

An employee appointed by the Head of Service shall carry out an inquiry within the time set in the resolution on instituting proceedings and submit a report to the Council.

In carrying out inquiries, an employee appointed by the Head of Service shall request documentation containing data which may contribute to solving the issue, conduct an inspection or other necessary acts in order to establish legal grounds; in carrying out inquiries, an employee is entitled to request statements from parties, witnesses and experts, and responsible persons or persons who were responsible previously, employees and previously employed persons of the undertaking against which the proceedings are conducted, as well as from all other persons disposing of the facts relevant to the procedure, but he/she shall not be entitled to hold oral hearings.

## Right to Search Premises and Temporary Confiscation of Documents and Materials

### Article 62

If there is a reasonable doubt that a party to the proceeding or any other parties involved hold documents or other instruments relevant to the establishment of material facts in the proceedings, the Commission may request the competent authority to issue a warrant ordering the search of business or any other premises of the party to the proceeding or any other parties involved and for temporary confiscation of documents and objects relevant to the establishment of material facts.

## Interim Measures

### Article 63

Where there is a danger of significant restraint of competition or it is necessary for protection of interests of the parties to the proceedings, a party to the proceedings and other parties involved are entitled to submit to the Commission the proposal containing the establishment of interim measures.

Pursuant to the proposal referred to in para 1 of this Article, the Commission shall, on the basis of its decision, suspend all actions harmful to competition and impose measures to eliminate their harmful effects.

Interim measures referred to in para 2 of this Article may be in effect until the making of the final administrative act.

## Oral Hearing

### Article 64

The Council is obliged to hold an oral hearing in the following cases:

1) two or more parties of contrary interests are involved in the case,

2) a witness or an expert is to be summoned to give their statements.

Commission may decide to hold an oral hearing upon the request of the party or upon its own initiative in cases when it deems useful for verifying disputable facts.

Oral hearings may be held when more than half of the members of Council are present.

## Termination of Proceedings

### Article 65

The Commission may decide to terminate proceedings instituted ex officio in case the competition has been restrained to an insignificant extent, while the party against which the proceedings have been conducted, shall obligatorily state not to continue or repeat the practice or activities significantly preventing, restraining or distorting competition and to compensate or eliminate any damage caused.

Termination of proceedings may not exceed six months.

In case the party against which the proceedings have been conducted does not fulfil or breaches its undertaken obligations before the expiry of six months, or in the meantime it repeats the practice violating the competition, the Commission shall continue its proceedings.

## Time limits for Decision-making

### Article 66

The Commission shall make a decision establishing violations referred to in Article 8, para 1 and Article 19, para 1 of this Law, when the agreement or some of its provisions considerably prevent, restrict or distort competition, or when dominant position is abused, as well as a decision on exemption from prohibition of the agreement referred to in Article 9, para 1 of this Law, within the period not exceeding:

1) four months following the day of the submission of request, in proceedings instituted at the request of the party,

2) six months following the day of the resolution on institution of the proceedings conducted ex officio.

The Commission is obliged to make a decision upon the request for the authorisation of concentration within the period of four months following the day of submission of request.

The Commission is obliged to make a decision authorising concentration within the period of one month following the day of submission of request (summary procedure).

Monitoring the Enforcement of Decisions

Article 67

The Technical Service is obliged to monitor the enforcement of decisions terminating the procedure and decisions containing terms, conditions and restrictions for the party concerned and enforcement of all other decisions on the basis of which the procedure before the Commission has been terminated.

If, in the course of monitoring, the enforcements of decision referred to in para 1 of this Article, it is considered that the party concerned does not observe conditions and restrictions imposed to it, the Technical Service shall, without delay, but not later than eight days, inform the Council about such case.

Decisions relating to Administrative Measures

Article 68

In case the undertaking fails to act pursuant to measures and time limits contained in decisions referred to in Article 8, para 2 and Article 19, para 2 of this Law, the Commission is obliged to make a decision imposing on the relevant undertaking the following administrative measures:

1) temporary prohibition of trade of particular type of goods and/or services on relevant market, not exceeding the period of three months;

2) temporary prohibition of operations not exceeding the period of four months, if, in spite of the prohibition referred to in item 1) of this Article, the undertaking continues with the trade of goods and/or services on relevant market.

Publication of Decisions

Article 69

Decisions of the Commission shall be published in the Official Gazette of the Republic of Serbia.

Data considered to be an official, business, state or military secret contained in the decision, shall be excluded from the publication.

## IV PENALTY CLAUSE

Request for Initiation of Infringement Procedure

Article 70

Provisions of the Law regulating infringements shall be applied in the infringement procedure.

The Commission shall submit to the relevant infringement authority the request for initiation of infringement procedure against undertakings performing acts relating to prevention, restriction or distortion of competition.

Infringements

Article 71

The undertaking shall be fined from 1% to 10% of its total annual income realised in the preceding financial year for the infringement committed, if it:

1) concludes or applies agreement which is null and void (Article 7);

2) fails to act in accordance with the decision proclaiming the agreement null and void or abuse of dominant position (Articles 8 and 19);

3) abuses dominant position on relevant market (Article 18);

4) pursues the activities relating to the implementation of the concentration without authorization for concentration (Article 23);

5) pursues the activities relating to the implementation of the concentration pursuant to the authorisation for concentration issued on the basis of incorrect or untrue information, i.e. deceit Article 29, para 1);

6) fails to act in accordance with the decision referred to in Article 63, para 2;

7) fails to act in accordance with the decision referred to in Article 68.

If the agreement concluded or applied by the association of undertakings shall cause considerable prevention, restriction or distortion of competition, total annual income realised in the precedent financial year of all undertakings members of association shall be taken into account when assessing the amount of fine to be imposed.

The fines imposed to association of undertakings may be jointly and severally paid by the members of the association in case the association is unable to effect payment or does not possess its own capital.

For the infringement referred to in para 1 of this Article, the responsible person of legal person concerned shall be fined an amount from 1% to 10% of the total annual income calculated pursuant to the regulations on income taxes of citizens for the precedent financial year.

An undertaking party to the agreement referred to in Article 7 para 1 of this Law, as well as a responsible person of the legal person, may be exempted from penalty, provided that it brings to the attention of the Commission the existence of such agreement and its participants prior to the making of the resolution on instituting the proceedings against the said undertaking.

Article 72

For the infringement committed, the undertaking shall be fined an amount from 1% to 3% of the total annual income realised in the precedent financial year, if it:

1) fails to notify agreement which may be exempted from prohibition (Article 15);

2) fails to act in accordance with the request made by the Commission to submit to or inform the Commission of the requested data or provides incorrect, incomplete or false information (Article 55).

For the infringement committed referred to in para 1 of this Article, the responsible person of the legal person shall be fined an amount from 1% to 3% of the total annual income calculated pursuant to the regulations on income taxes of citizens for the preceding financial year.

Protective Measures

Article 73

For the infringement referred to in Article 71 para 1 of this Law, the following protective measures shall be applied to the undertaking concerned: confiscation of the subject matter involved and prohibition to perform certain economic activities.

For the infringement referred to in Article 71 para 1 of this Law, the following protective measure shall be applied to the responsible person of the legal person in question: prohibition to perform certain duties.

Statute of Limitations

Article 74

A time limit set by the statute of limitations for infringements referred to in Article 71 paras 1 and 4 of this Law shall come into force upon the expiry of 5 years from the date the infringement was committed.

A time limit set by the statute of limitations for infringements referred to in Article 72 of this Law shall come into force upon the expiry of 3 years from the date the infringement was committed.

## V. TRANSITIONAL AND FINAL PROVISIONS

Article 75

Relative Institutions are obliged to submit their proposals for the members of Council to the Parliament within the period of 30 days from the date this Law comes into effect.

In case any of the relative Institutions does not submit its proposal for the members of Council within the period referred to in para 1 of this Article, the Government shall, instead of the relative Institution, submit its proposal within an additional period of 15 days.

Within the period of 60 days from the date of expiration of submission of proposal for the members, Parliament shall appoint the members of the Council.

Within the period of 15 days from the date of their appointment, the appointed members of the Council shall elect the President of the Council.

The Council shall, within the period of 30 days from the date of its establishment, prepare the Statute and submit it to the Government for its approval.

The Commission shall commence its activities on the date of the establishment of Council.

On the date of the commencement of its activities, the Commission shall take over employees from the Ministry of Trade, Tourism and Services engaged in the activities relating to prevention of monopolistic behaviour, as well as objects, files, equipment and working tools necessary for their work.

Until the commencement of activities by the Commission, the activities within the field of protection of competition shall be performed by the Ministry in charge of trade operations.

Article 76

Procedures initiated under the regulations ceasing to be in effect on the date this Law enters into force, shall be processed pursuant to this Law.

Article 77

On the day when this Law enters into force, the Antimonopoly Law (Official Gazette of FRY, no. 29/96) shall cease to be in effect.

Article 78

This Law shall enter into force on the eighth day following its publication in the 'Official Gazette of the Republic of Serbia.'

# III. REPUBLIC OF MONTENEGRO

## Commentary by the Government of the Republic of Montenegro on the Competition Legislation of the Republic of Montenegro

## INTRODUCTION

Montenegro has recognized that competition law is a field of modern business law that regulates the rules of market game, i.e. it establishes which behaviour of market participants is considered as prohibited and prescribes the appropriate sanctions for such behaviour. In line with this, it is clear that Montenegrin long-term development policy is represented throughout its effort to build up the market economy following the example of developed countries in which competition law is deeply rooted. Having in mind these facts, the main sources of development of Montenegrin competition policy and laws have been found in a long business tradition performed under conditions of trade economy of developed countries of Europe and North America.

In relation to the above, special attention should be drawn to the European integration process of Montenegro, begun some time ago but formally institutionalized with negotiations on the Stabilization and Association Agreement with the EU and its Member States, officially started on 8 November 2005. Reconfirming Montenegrin determination to pursue membership in the European Union, where tradition of competition law has being built more than 60 years and competition policy is considered as one of the priorities, it is estimated that it is necessary to establish the competition law system that will satisfy modern, primarily European standards – one of the required conditions for full membership.

## HISTORY

Previous legislation in this area was the Antimonopoly Law of the FRY ("Official Gazette FRY", No. 29/96), which addressed the issue in question in an incomplete and an inappropriate manner in relation to the modern legal standards. As for the applicability of the mentioned Law, the best yardstick is the fact that secondary legislation for its implementation was never submitted for adoption. Furthermore, even there was a federal body, the Antimonopoly Commission, which had been tasked with the implementation of the Law, in Montenegro no specialized body tasked with the implementation of the Law existed in the terms of law implementation, for which reason judicial practice had not recorded a single case where the subject was the breach of this Law.

## PRESENT STATUS

Starting from 1 January 2006, Montenegro has a new, modern law framework to implement. On 10 November 2005, the National Parliament passed a new Law on Protection of Competition, published in ("Official Gazette RM", No. 69/05). It contains provisions on forbidden agreements, abuse of dominant position and control of concentrations, therefore securing EU compatibility with Articles 81 and 82, as well as EC Merger Regulation. It is important to stress that the National Competition Authority, during the transition period, is settled in, for that purpose, a separate department of the Ministry of Economy, while investigative powers have been delegated to the Market Inspectorate. In between, two regulations have already been prepared and published in the Official Gazette, namely the Regulation on definition of relevant market and the Regulation on notification of

concentrations, therefore securing essential preconditions for the implementation of the Law in question.

Below is a short presentation of the most important provisions of the Law and its principles.

## DESCRIPTION OF BASIC LEGAL INSTITUTIONS[1]

The new Law sets out and regulates basic institutes of competition law and institutional framework for their application by elaborating the subject matter in 6 parts:

Part I Basic provisions – Defines scope and goal of the Law, type of documents and actions that are impairing competition, the competent body for its implementation (state administration body competent for economy matters), territorial and personal application of the Law, and the relevant market in relation to which the evaluation on whether impairment of competition has taken place is being performed.

Part II Impairment of free competition – Defines in detail the types of documents and actions that are impairing competition in the following manner:

1. Forbidden agreements – agreements that are preventing, restricting or distorting competition are forbidden except for cases envisaged in the law where a general or far-reaching interest that would justify a temporary impairment of competition is considered to exist;

2. Abuse of dominant position – it is not forbidden for a specific market participant to develop and grow up to the limit when its business decision cannot influence other market participants which makes him a dominant participant, but the abuse of dominant position at the market is forbidden as, for example, a dominant participant sells for a period of time products below the price of production and distribution costs with the attempt to destroy competition and grab the entire market for himself (dumping) and other similar practices;

3. Control of concentration – is introduced as control of merger of participants at the market which have at the disposal a significant economic and financial power, so it is very probable that by their merger a new participant will be created which will have a dominant position at the market, and such mergers of participants that have as a consequence a impairment of the competition are forbidden, so this is practically a prevention of abuse of the dominant position;

Part III Implementation of Law – Specifies competencies of the competent body and describes in detail the procedure held in front of this authority for particular cases, pointing out specificities compared to general rules of administrative procedure. The main particularity is that decisions of competent body are final so that a party to the procedure may file an administrative dispute before an administrative court.

Part IV Monitoring – The competent body at the same time shall be responsible for monitoring the enforcement of this Law and other regulations by Law.

[1] Extract from Rationale of Proposal of Law for Protection for Competition for the Republic of Montenegro.

Part V Penal provisions – Sets sanctions for breach of the Law. The proposal is specific as it stresses extremely severe penalties for breach of competition rules. This is stressed as impairment of the competition rules represents one of the most severe acts against the economy with far-reaching harmful consequences to the overall society, and those performing violations represent powerful economic entities as a rule, therefore the absence of a strong penalty to prevent possible violators from performing impairments would make senseless the very Law itself. Severe penalties for violators of this Law will represent a significant source of budget revenues as well, helping to eliminate the harmful consequences of the impairment of competition at the market.

Part VI Penal provisions – Defines proceedings in progress, deadlines for adoption of other regulations by law, cessation of application of existing legislation in this area, as well as exact date for entry into force for this Law.

# Law on Protection of Competition

## Part I

## General Provisions

Subject Matter

### Article 1

This Law regulates the mode, proceeding and measures for protection of competition on the relevant market and defines competencies of the body for protection of competition.

Impairment of Competition

### Article 2

(1) Pursuant to this Law, the following acts and practices are considered to impair competition:

a) agreements, decisions of associations and concerted practice preventing, restricting or distorting competition;

b) abuse of dominant position; and

c) concentrations resulting in significant prevention, restriction or distortion of competition, primarily by creating or strengthening dominant position on the market.

(2) Restrictions of competition referred to in paragraph 1 of this Article shall be identified in each case pursuant to the degree and dynamic of changes in the structure of the relevant market, restrictions and availabilities for new competitors to equally access market, changes resulting in restricted supply of markets, degree of benefits for consumers and other circumstances which influence restriction of competition.

(3) Detailed criteria referred to in paragraph 1 of this Article shall be regulated by the state administration body competent for economy matters (hereinafter the competent body).

Territorial Application

### Article 3

This Law shall apply to acts and practices conducted in the territory of the Republic of Montenegro (hereinafter Montenegro), that is acts or practices occurring as effect of acts or practices conducted abroad and which result in restriction of competition in the territory of Montenegro.

Personal Application

**Article 4**

(1) This Law shall apply to all legal entities and natural persons engaged in economic activity and trade of goods or services, which by their acts restrict or may restrict competition (hereinafter undertakings), and in particular to:

a) enterprises and other business, regardless of their seat or permanent residence, and natural persons regardless of their nationality or permanent residence;

b) other subjects engaged, directly or indirectly, in a permanent, temporary or single economic activity and trade of goods or services, regardless of their legal status, nationality, seat or permanent residence (trade unions, business associations, sports organizations, institutions, cooperatives, exponents of intellectual property rights etc), and

c) state administration bodies and local self-government bodies, when directly or indirectly engaged in economic activity and trade of goods or services.

(2) This Law shall not apply to undertakings providing services of public interest, as well as to such organizations which on the base of act of the authorized body generate income from fiscal revenues, if the application of this Law would obstruct the performance of entrusted activities.

Application to Related Undertakings

**Article 5**

(1) For the purpose of this Law, related undertakings shall mean two or more undertakings related in such a manner that one undertaking directly or indirectly, legally or factually, exercises decisive influence on the business decisions of the other undertaking especially on the grounds of a holding majority share in the initial capital, majority votes in management bodies, right to appoint more than half of the members of management bodies and the bodies authorized to act as proxies to undertakings, as well as agreements on transfer of management rights and employment contracts.

(2) Pursuant to the paragraph 1 of this Article, two or more related undertakings shall be considered as one undertaking.

Relevant Market

**Article 6**

(1) A relevant market, within the meaning of this Law, shall consider market comprising relevant product market within the relevant geographic market.

(2) A relevant product market, within the meaning of this Law, considers a set of goods or services that can be substituted under the reasonable terms from the standpoint of the consumers of goods or services, by reason of their characteristics, intended use and price.

(3) A relevant geographic market, within the meaning of this Law, considers the territory within which the undertakings take part in demand or supply process, and where there are

homogeneous conditions of competition appreciably different from the conditions of competition in the neighbouring territories.

(4) The competent body shall prescribe in greater detail criteria for determining a relevant market.

## Part II

## Impairments of Competition on the Market

## Chapter 1

## Prohibited Agreements

Agreements Preventing, Restricting or Distorting Competition

### Article 7

(1) Acts which by their object or effect have or may have the prevention, restriction or distortion of competition on the relevant market, within the meaning of this Law, are agreements, contracts, particular provisions of contracts, explicit or tacit agreements, concerted practices, decisions on associations of undertakings (hereinafter agreements).

(2) Agreements pursuant to paragraph 1 of this Article shall be prohibited and void, and in particular those that:

a) directly or indirectly fix purchase or selling prices or any other operating conditions;

b) limit or control production, market, technical development or investments;

c) share market or sources of supply;

d) apply dissimilar operating conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;

e) make the conclusion of contracts subject to acceptance of supplementary obligations, which by their nature and commercial usage and practice have no connection with the subject of the contract.

(3) With exception to paragraph 2 of this Article, agreements between undertakings considered within the meaning of this Law to be related undertakings shall not be prohibited.

(4) Concerted practice referred to in paragraph 1 of this Article shall mean cooperation between undertakings achieved without conclusion of a formal agreement and replacing competition on the relevant market, and which may take form of direct or indirect contact between undertakings with a result in influence on market behaviour.

Exemptions of Agreements

### Article 8

Agreements referred to in paragraph (1) and paragraph (2) of Article 7 may be exempted from prohibition in case they contribute to improvement of the production or distribution or to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefits, and which:

a) impose only such restrictions as are necessary for the attainment of the above-mentioned objectives, and

b) do not afford the possibility of eliminating competition in respect of the substantial part of subject goods or services.

Categories of Agreements

**Article 9**

Pursuant to Article 7 of this Law, agreements may be:

1) Horizontal agreements, i.e. agreements among existing or potential undertakings operating on the same level of production or distribution ;

2) Vertical agreements, i.e. agreements on terms of purchase, sale or resale among existing or potential undertakings not operating on the same level of production or distribution.

Decisions and measures of the competent body

**Article 10**

If the competent body, throughout official personnel, ex officio or at the request of interested party, establishes that the agreement prevents, restricts or distorts competition, it will issue decision establishing distortion of competition in accordance with Article 7 paragraphs 1 and 2 of this Law, and it can order a party to the agreement to undertake the measures enabling the establishment of competition on the relevant market and removal of harmful consequences of the prohibited agreement, as well as deadlines for their execution.

Individual Exemption

**Article 11**

(1) The competent body throughout official personnel may, at the request of the parties to the agreement and pursuant to Article 8 of this Law, approve exemption of agreement or part of that agreement form prohibition referred to in Article 7 paragraph 2 of this Law (hereinafter individual exemption).

(2) The burden of proof on the existence of conditions for exemption referred to in paragraph 8 of this Law rests on the claimant.

(3) The competent body shall prescribe the detailed content of application for individual exemption.

Content and Validity of Individual Exemption

**Article 12**

(1) The individual exemption referred to in Article 11 of this Law is approved by decision that determines the time limit of exemptions, and which can determine conditions and prohibition together with the deadline by which they have to be carried out.

(2) The time limit referred to in paragraph 1 of this Article is determined for the period not longer then necessary to return investment and accumulate reasonable profit, pursuant to the agreement referred to in Article 11 paragraph 1 of this Law.

(3) The individual exemption referred to in paragraph 1 of this Article, at the request of the party to the agreement, may be renewed if the agreement meets the requirements for exemption prescribed by Article 8 of this Law.

(4) The decision on renewal of individual exemption shall determine the new time limit, which cannot be longer than the time limit referred to in paragraph 2 of this Article, and can contain conditions and prohibitions which have to be carried out.

(5) The request for renewal of individual exemption referred to in paragraph 3 of this Article shall be submitted to the competent body by the parties of the agreement, not later than 6 months prior to the expiry of the granted exemption.

Cancellation, Annulment or Amendments of Individual Exemption

**Article 13**

A decision on individual exemption by the competent body may:

1) cancel or amend, if the circumstances on the basis of which the exemption was granted, have changed; or

2) annul, if the exemption was granted on the basis of inaccurate or false information, the conditions determined have not been fulfilled, or the exemption is misused.

Exemptions by Categories of Agreements (Block Exemptions)

**Article 14**

(1) The Government shall specify conditions for exemptions by categories of agreements and define types of agreements which can be exempted from prohibition pursuant to paragraph 8 of this Law.

(2) The competent body can, by way of decision, prohibit agreement referred to in paragraph 1 of this Article if, at the request of interested party or ex officio, it establishes that the said agreement does not comply with the conditions referred to in Article 8 of this Law.

(3) In the case referred to in paragraph (2) of this Article, the burden of proof rests on the applicant, that is the competent body.

Agreements of Minor Importance

**Article 15**

(1) Agreements of minor importance that do not have a significant impact on competition shall not be prohibited.

(2) The agreements referred to in paragraph 1 of this Article, within the meaning of this law, shall mean horizontal agreements between the undertakings whose total market share does

not exceed 10% of the relevant market and vertical agreements between the undertakings whose total market share does not exceed 15% of the relevant market.

(3) Horizontal and vertical agreements that result in distortion of competition on relevant market due to cumulative effect of agreements network that have a similar effect on the market, shall be considered agreements of minor importance if the total market share of those agreements does not exceed 5% of the relevant market.

Prohibited Restrictions of Competition

**Article 16**

(1) Horizontal agreements that directly or indirectly have the goal to: fix prices in the case of sale of products to third parties; restrict the sale; allocate the market or undertakings, that is final users, cannot be exempted pursuant to Article 14 and Article 15 of this Law.

(2) Vertical agreements that cannot be exempted from prohibition referred to in Articles 14 and 15 of this Law are those that, directly or indirectly, have the goal to:

1) impose restrictions on a trader that leads him to sell goods or services at a fixed or minimum price;

2) restrict territory or undertakings, that is end users to whom a trader may sell good or services, except in the case of:

   - exclusive distribution or exclusive allocation of undertakings, that is end users;
   - restriction of sale to end users by wholesale trader;
   - restrict sale to unauthorized members of selective distributive network;
   - restrict sale of components to competitors of suppliers of those components;

3) restrict sale to end users by members of selective distributive network;

4) restrict mutual supply among distributors within selective distributive network;

5) restrict supplier of components to sell the components as spare parts to end users and service providers.

(3) With exception to Article 15 of this Law, vertical agreements among competitors cannot be exempted in the case that their goal results in restriction referred to in paragraphs 1 and 2 of this Article.

Obligatory Notification of Agreements

**Article 17**

(1) Parties to the agreement are obliged to notify the competent body on the agreement within the period of 15 days from the date of its conclusion, except for the agreements concluded pursuant to Articles 14 and 15 of this Law.

(2) The form, content of the application and mode of recording the notified agreements shall be regulated by the competent body.

## Chapter 2

## Abuse of dominant position

Notion of Dominant Position

**Article 18**

(1) An undertaking has a dominant position on a relevant market, within the meaning of this Law, if it has the power to behave independently of other undertakings, thus being in a position to make business decisions without taking into account business decisions of its competitors, suppliers, buyers or end users of its goods or services.

(2) Dominant position of an undertaking in a relevant market shall be appraised, taking into account the market share of that undertaking on the relevant market, market shares of its competitors on the same market, the market power of potential competitors and barriers to entry in the relevant market, as well as possible dominant position of the buyer.

(3) An undertaking having a market share exceeding 50% in the relevant market shall be considered to have a dominant position.

(4) An undertaking referred to in paragraph 3 of this Article has the right to claim not to be in a dominant position, in which case the burden of proof rests on that undertaking.

(5) An undertaking with a relevant market share below 50% may also be considered dominant, in which case the burden of proof rest on the competent body, that is on the claimant.

Collective Dominance

**Article 19**

(1) Two or more independent undertakings united on the basis of their economic links on the relevant market in such a way that they act jointly as a single undertaking on that market (collective dominance) may have a dominant position.

(2) Collective dominance of two or more undertakings in a relevant market shall be appraised, taking into account the aggregate market share of those undertakings on the relevant market, market shares of its competitors on the same market, the market power of

potential competitors and barriers to entry in the relevant market, as well as the possible dominant position of the buyer.

(3) Two or more undertakings with an aggregate market share exceeding 60% in the relevant market, within the meaning of this Law, shall be considered to have collectively a dominant position.

(4) An undertaking referred to in paragraph 3 of this Article has the right to claim not to have collectively a dominant position, in which case the burden of proof rests on the undertaking.

(5) Two or more undertakings with an aggregate relevant market share below 60% may be considered collectively dominant, in which case the burden of proof rest on the competent body, that is on the claimant.

Prohibition of Abuse of Dominant Position

**Article 19**

(1) Abuse of dominant position on the relevant market shall be prohibited.

(2) Abuse of dominant position on relevant market of goods or services shall be considered as part of acts which prevent, restrict or distort competition, and particularly those which:

a) directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions;

b) limit production, markets or technical development, thus causing harm to consumers;

c) apply dissimilar conditions to identical transactions with different undertakings, thereby placing them at a competitive disadvantage on the market;

d) make the conclusions of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial customs, have no connection with the subject of such contracts.

Decisions and Measures of the Competent Body

**Article 21**

(1) If the competent body, throughout official personnel, ex officio or at the request of an interested party, establishes that the dominant position has been abused it will issue a decision establishing distortion of competition in accordance with Article 20 of this Law, and it can order the dominant undertaking to carry out the measures enabling the establishment of effective competition on the relevant market and elimination of the harmful consequences of abuse of dominant position, as well as deadlines for their execution.

(2) The decision referred to in paragraph 1 of this Article cannot order division of the undertaking, divestiture of its assets, shares or equity interest, termination of contract or waiving of rights enabling exercise of prevailing influence on the operations of another undertaking.

Admissibility of Certain Acts

**Article 22**

(1) The competent body may, at the request of an undertaking with a dominant position, issue a decision establishing that the particular practice which the undertaking intends to perform is not prohibited pursuant to Article 20, paragraph 2 of this Law.

(2) The competent body may cancel the decision from paragraph 1 of this Article, if the circumstances on the basis of which the decision was made have changed, or annul the decision if it was granted on the basis of inaccurate and false information.

## Chapter 3

Control of concentrations

Concept of Concentration and Forms of Acquiring Control over Undertaking

**Article 23**

(1) Concentrations of undertakings shall be deemed to arise in the following situations:

a) establishment of a new undertaking by merger of two or more previously independent undertakings or their parts (merger);

b) when one or more natural persons that already have the control over at least one undertaking, or when one or more undertakings, acquire control over the entire or parts of other undertaking;

c) establishment of joint control by at least two independent undertakings over a new undertaking that performs on a lasting basis all the functions of an autonomous economic entity and has access to the market (joint venture).

(2) The control referred to in paragraph 1, items 2 and 3 of this Article shall be deemed to constitute a decisive influence on undertakings' business activities, on the grounds of granted rights, contracts or any other legal or actual facts, in particular the following:

a) ownership or disposal over the whole or part of the property of the undertaking;

b) contractual authorization or any other grounds enabling decisive influence on the composition, activities or decision-making of another undertaking.

(3) It shall be considered that the undertaking has acquired control in case of being holder or bearer of rights referred to in paragraph 2 of this Article or in case such rights may be exercised otherwise.

(4) The forms of control referred to in paragraph 2 of this Article shall be assessed separately or in combination, whereas relevant legal and actual facts shall be taken into account but not the intentions of interested parties.

(5) Two or more concentrations between identical undertakings realized in the period of less than two years, shall be deemed to constitute one concentration while the date of occurrence of the last of these concentrations shall be considered as date of establishment of subject concentration.

Forms of Acquisition Not Considered

To be Concentration

**Article 24**

1) The following shall not be considered as concentration of undertakings:

a) cases where a banking or other financial institution, with a view to reselling them, temporarily acquires shares or other securities of an undertaking and sells them at the latest within 12 months upon acquiring them, provided that during that period the ownership status has not been used in order to influence the undertaking's business decisions that concern its behaviour toward competitors or is used for that purpose exclusively with the intention of preparing the sale of the respective securities or assets of the undertaking;

b) cases of acquisition of control over the undertaking by the persons acting as bankruptcy or liquidation administrator pursuant to regulations governing bankruptcy and liquidation;

c) cases where a joint venture is aimed at coordination of market activities between two or more undertakings that remain independent, where such joint venture shall be assessed pursuant to provisions contained in Article 8 of this Law.

(2) The competent body may extend the period referred to in paragraph 1, item 1 of this Article up to 6 months, at the request of interested bank or other financial institutions that prove that the sale of securities was not reasonably possible with that time period.

Request for Approval of Concentration

**Article 25**

(1) Concentration referred to in Article 23 of this Law shall be performed subject to the required approval, issued at the request of an undertaking by the competent body.

(2) The request referred to in paragraph 1 of this Article shall be submitted provided that:

1) the combined total annual income of all undertakings involved in concentration on the market of Republic of Montenegro exceeds the amount of 3 (three) million EUR according to the annual statements of the undertakings for the previous financial year; or

2) the combined total annual income of undertakings involved in concentration realized on international market in the previous financial year amounts to 15 (fifteen) million euros according to final accounts of undertakings for the previous financial year, whereby at least one of undertakings involved in concentration is registered on the territory of the Republic of Montenegro.

(3) In the first year of business activities of the undertakings, the income referred to in paragraph 2 of this Article shall be calculated on the basis of income realized in the current financial year for the period of 12 months.

(4) For the purpose of calculating the total annual income of the undertakings involved in concentration, income realized in mutual turnover between the undertakings involved in concentration shall not be taken into account.

(5) Form and contents of the request for issuing approval of concentration shall be prescribed by the competent body.

Calculation of Annual Income for Banks, other Financial Institutions and Insurance Companies

**Article 26**

(1) The total annual income of undertakings concerned pursuant to Article 25 paragraph 2 shall be calculated in the following manner:

1) for legal entities providing financial services, after deduction of value-added tax (indirect taxes) and other taxes directly related to those items, the sum of following income items shall be used:

   i) interest income and similar income;

   ii) income from securities:

      - income from shares and other variable yield securities

      - income from participating interest

      - income from shares in affiliated undertakings

   iii) due commissions

   iv) net profit from financial operations and

   v) other operating income.

2) for insurance and other reinsurance companies, the value of gross premiums which shall comprise all amounts received and receivables in respect of insurance and reinsurance contracts issued by or on behalf of the insurance companies, after deduction of taxes charged by reference to the amounts of individual premiums or the total volume of premiums.

Method for Submitting the Request for Concentration Approval

**Article 27**

(1) The request referred to in Article 25, paragraph 1 of this Law shall be submitted to the competent body within 7 days upon signing of the agreement, that is publishing of the public offer or acquiring control over the undertaking.

(2) The request for control over concentration may also be submitted in cases where the undertakings involved in concentration show a serious intention to conclude the contract by signing the statement of intent, or when the undertaking announces the intention to make an offer to purchase shares.

(3) In case the control over the entire or parts of one or more undertakings is acquired by another undertaking, the request referred to in paragraph 1 of this Article shall be submitted by a party acquiring the control, whereas in all other cases parties involved in concentration shall submit a joint request.

Publication of the Request for Concentration

**Article 28**

The competent body is obliged to publish the following data upon request in the Official Gazette of the Republic of Montenegro:

a) name of undertakings involved in concentration;

b) nature of concentration; and

c) sector of economy within which the concentration shall be made.

Criteria for Control of Concentration

**Article 29**

When assessing effects of concentration, the competent body shall evaluate whether such concentration creates or strengthens the dominant position on the market, thus considerably preventing, restricting or distorting competition, taking into account in particular:

a) structure of relevant market;

b) existing and potential competitors;

c) market position of undertakings involved in concentration and their economic and financial power;

d) possibility to choose supplier and consumer;

e) legal and other barriers to entry on market;

f) domestic and international level of competitiveness of parties involved in concentration;

g) trends for the supply and demand of relevant goods or services;

h) trends of technical and economic development, and

i) consumer interest.

Procedures upon the Request for Concentration Approval

**Article 30**

(1) The competent body shall, upon the request for concentration approval:

a) reject the request for concentration approval if the concentration does not fulfil requirements referred to in Articles 25 and 26 of this Law;

b) terminate the procedure if the applicant withdraws the request;

c) authorize concentration when assessment of its effects based on criteria prescribed in Article 29 of this Law determines that such concentration shall not create or strengthen the dominant position, the consequence of which would be prevention, restriction or distortion of competition to a significant extent;

d) authorize concentration prescribing, on its own initiative or at the proposal of the undertakings that some supplementary conditions and obligations must be fulfilled by the parties involved in concentration, within the fixed deadlines prior to or after concentration has been carried out.

e) refuse to grant authorization for concentration when assessment of its effects on the basis of criteria from Article 29 of this Law determines that such concentration creates or strengthens the dominant position on the relevant market, thus preventing, restricting or distorting competition to a significant extent.

(2) Undertakings involved in concentration are obliged to stop realization of concentration until the competent body issues its decision authorizing the intended concentration or until the expiration of periods pursuant to Article 41 paragraph 4 of this Law within which the competent body is obliged to issue the decisions.

(3) The competent body can, further to a request containing an explanatory note submitted by the party involved in concentration, authorize on a temporary basis the realization of concentration even before the decision referred to in paragraph 1 of this Article has been made, taking particularly into consideration the consequences caused by termination of such concentration towards undertakings and third parties involved, as well as the degree of potential harm to competition caused by such concentration.

Cancellation, Annulment or Amendments of Decisions

**Article 31**

(1) The competent body shall, in the course of procedure started ex officio or at the request of the interested party, cancel the decision conditionally authorizing concentration if the undertakings involved in concentration have not met supplementary conditions or obligations pursuant to Article 30, paragraph 1, item 4), that is annul the decision authorizing, conditionally authorizing or prohibiting concentration if the decision has been granted on the grounds of inaccurate or false information.

(2) The competent body shall, in the course of procedure started ex officio or at the request of parties, amend the decision conditionally authorizing certain concentrations, when the parties

involved in such concentration cannot fulfil some of the conditions imposed on them by decision, owing to circumstances that could not be foreseen, avoided or removed.

Registry

**Article 32**

(1) Approved concentrations shall be registered within the competent body.

(2) The form and the content of the application and model and mode of keeping the registry referred in to paragraph 1 of this Article shall be regulated by the competent body.

## Part III

## Implementation of the Law

Competencies

**Article 33**

The activities of the competent body shall be the following:

1) to follow competition on the market in general and markets of individual sectors of the economy;

2) to suggest policy for competition protection and development and to implement and follow up its implementation;

3) to establish competition research methods;

4) to grant exemptions from prohibition of individual agreements and authorize concentration of undertakings, under the prescribed conditions, and solve other issues within its competency pursuant to this Law;

5) to take decisions in the procedure for determining impairment of competition prescribed by this Law;

6) to undertake measures toward undertakings and associations of undertakings for distortion of competition or to prevent such distortions, terminate existing distortions and eliminate harmful effects for undertakings and consumers;

7) perform other activities pursuant to this Law.

Collecting Information and Establishing Facts

**Article 34**

In the proceedings for protection of competition, the competent body shall collect information and establish facts also by way of inspection supervision.

Application of the Law on General Administrative Procedure

**Article 35**

In the proceedings started for the purpose of protection of competition, for those issues not specifically being regulated by this Law, the provisions of the Law on General Administrative Procedure shall apply.

Conflict of Interest

**Article 36**

(1) In addition to cases envisaged by the Law on General Administrative Procedure, a person conducting the procedure or deciding in the procedure for protection of competition shall be exempted from participation in the procedure if he has ownership rights in a business organization that is a party in the procedure.

(2) A party may request exemption of the person referred to in paragraph 1 of this Article if there are other circumstances causing a justifiable doubt in his impartiality, and especially if he participates in managing the other party, his shareholder or management member, or he is in another close relationship or conflict with a party or person related to the party in the procedure.

(3) Former employees of the competent body dealing with protection of competition shall not have the right to represent any person in the procedure before the competent body for two years following termination of their employment in the competent body.

Initiation of Proceedings

**Article 37**

(1) The competent body shall institute proceedings when, on the basis of collected data and acquired information, it concludes that there are grounds to believe that a practice performed impairs competition pursuant to this Law.

(2) The competent body shall initiate proceedings on the basis of the request, submitted by undertakings between which an agreement has been concluded, for establishing that a particular agreement is not prohibited pursuant to the provisions of this Law or for exempting a particular agreement from prohibition.

(3) The competent body may initiate proceedings on the basis of the request, submitted by an undertaking engaged in practice or intending to practice it, for establishing that a particular practice is not prohibited pursuant to the provisions of this Law on abuse of dominant position.

(4) The competent body may initiate proceedings on the basis of the request for initiation of proceedings against an undertaking involved in a practice causing prevention, restriction or distortion of competition pursuant to this Law, which may be submitted by:

a) undertakings to which damage is or can be caused,

b) chamber of commerce, association of employers and entrepreneurs,

c) consumer protection association, and

d) state administration body or body of local self-government.

(5) The competent body may initiate proceedings on the basis of the request for approval of concentration of undertakings submitted by:

a) parties to the concentration in case of merger or joint venture; or

b) an undertaking acquiring control over another undertaking or part of that undertaking, in all other cases.

(6) The competent body shall prescribe in greater form and content the request for initiation of proceedings.

Submission of Data

**Article 38**

(2) The competent body shall be authorized to request from the undertakings concerned and other indirectly involved persons to submit in writing data significant to define the state of facts for a particular case within 15 days, unless the request allows a longer period of time.

(3) A person to whom such a request has been made is not eligible to the secrecy obligation in order to refuse disclosure of particular data, but is entitled to be indemnified for the entire damage, including the lost profit, suffered due to disclosure of secret by the competent body to an unauthorized third party.

Cessation of Proceedings

**Article 39**

The competent body shall pass a conclusion for the cessation of the proceedings when from the collected evidence it is clear that a certain act is not contrary to the provisions of this Law.

Termination of Proceedings

**Article 40**

(1) The competent body may issue a decision terminating proceedings instituted ex officio in case competition has been impaired to an insignificant extent, and a party to the proceedings makes an obligatory statement not to continue or repeat the practice or activities preventing, restraining or distorting competition.

(2) Termination of proceedings may not exceed a period of six months.

(3) If a party against whom the procedure is conducted does not fulfil or breaches the undertaken obligations before the expiration of period of 6 months or commits a new impairment of competition, the competent body shall continue the procedure.

Time Limits for Decision-making

**Article 41**

(1) The competent body shall be obliged to make a decision on proceedings conducted pursuant to provisions of this Law on agreements preventing, restricting or distorting competition and abuse of dominant position within four months upon initiation of the proceedings.

(2) Exceptionally, the deadline referred to in paragraph 1 of this Article may be extended by a decision of the competent body.

(3) An appeal cannot be submitted against the decision referred to in paragraph 2 of this Article.

(4) The competent body shall be obliged to make a decision in the procedure of control of concentration within:

i. 25 business days after the decision is made, in accordance with Article 30, paragraph 1, items 1 and 2;

ii. 115 business days after the decision is made, in accordance with Article 30, paragraph 1, items 3 and 4;

iii. 130 business days after the decision is made, in accordance with Article 30, paragraph 1, item 5,

provided that the deadline is counted as of the day of request submission, that is the day of its supplementation, if the request was originally submitted with incomplete data.

(5) When the competent body fails to make a decision within the deadline referred to in paragraphs 1, 2 and 4 of this Article, it shall be considered that acts and practices against which the proceedings are conducted are allowed under this Law.

Measures

**Article 42**

At the time competent body decides that an agreement is resulting in prevention, restriction or distortion of competition, or that dominant position has been abused, it shall issue an order referred to in Articles 10 and 21 of this Law, namely:

1) temporarily, for a period not longer than three months, prohibit trade in certain goods or services on the relevant market;

2) temporarily, for a period not longer than four months, prohibit conducting business if, contrary to the prohibition referred in to Article 1 of this Article, the undertaking continues to engage in trade in goods or services on the relevant market.

## Part IV

## Supervision

### Article 43

The competent body shall be responsible for supervising the enforcement of this Law and other regulations by Law.

## Part V

## Penalty Clauses

Infringements

### Article 44

(1) A pecuniary fine in the amount from 200-fold to 300-fold of the minimum wage in the Republic of Montenegro shall be imposed on enterprises and other business, state administration body or local self-government body, if it:

1) concludes or applies the prohibited or void agreement, thus causing prevention, restriction or distortion of competition (Article 7, paragraphs 1 and 2);

2) within the prescribed period of time, fails to meet requirements from the decision allowing conditional individual exemption (Article 12 paragraphs 1 and 4);

3) does not sell the shares which it holds on a temporary basis with a view to reselling them within the set period of 12 months at the longest from the date of the acquisition of such shares, or within the extended period of time (Article 24 paragraph 1 item 1);

4) fails to submit to the competent body in prescribed form a required request for approving concentration, or performs concentration without granted approval (Article 25, paragraph 2 and Article 30, paragraph 1, items 1 and 5);

5) within the determined deadline, before or after concentration was realized, fails to meet additional requirements and obligations conditional for approval of concentration (Article 30, paragraph 1, item 4);

6) does not stop realization of concentration for the time the competent body issues the decision approving intended concentration or until expiration of deadlines within which competent body was obliged to issue a decision (Article 30 paragraph 2)

(2) A pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage in the Republic of Montenegro shall be imposed, as well on natural persons or other responsible persons of enterprises or other business, state administration body or local self-government body, for the infringements referred to in paragraph 1 of this Article.

(3) If the undertaking, by the infringement referred to in paragraph 1 of this Article, has incurred damage or has failed to fulfil the obligation or acquired illegal gain, the amount of

pecuniary fine shall be up to 10-fold the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

(4) If a natural person or responsible person in enterprise or other business, state administration body or local self-government body has acquired illegal gain greater than the prescribed maximum pecuniary fine or prescribed fine referred to in paragraph 2 of this Article, a pecuniary fine in the amount of up to two-fold the acquired illegal gain shall be imposed.

**Article 45**

(1) A pecuniary fine in the amount from 150-fold to 200-fold of the minimum wage in the Republic of Montenegro shall be imposed on enterprises and other business, state administration body or local self-government body, which:

1) fails to notify an agreement within the 15 days of the day that it was concluded (Article 17);

2) fails to act in accordance with the request made by the competent body to submit or inform it on the requested data (Article 38);

(2) A pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage in the Republic of Montenegro shall be imposed on natural person or other responsible person of enterprises or other business, state administration body or local self-government body, for the infringements referred to in paragraph 1 of this Article.

(3) If the undertaking, by the infringement referred to in paragraph 1 of this Article, has incurred damage or has failed to fulfil the obligation or acquired illegal gain, the amount of pecuniary fine shall be up to five-fold the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

(4) If a natural person or responsible person in enterprises or other business, state administration body or local self-government body has acquired illegal gain greater than the prescribed maximum pecuniary fine or prescribed fine referred to in paragraph 2 of this Article, a pecuniary fine in the amount of up to two-fold of the acquired illegal gain shall be imposed.

Protective Measures

**Article 46**

(1) For the infringement referred to in Articles 44 and 45 of this Law, protective measures, confiscation of the subject matter involved and prohibition to perform economic activities shall be imposed.

(2) Prohibition to perform economic activities referred to in paragraph 1 of this Article shall be imposed for a period of time from one month up to one year.

## Part VI

## Transitional and Final Provisions

Proceedings in Progress

**Article 47**

(1) The proceedings initiated under the regulations that cease to be in effect with the application day of this Law shall be completed in accordance with this Law.

(2) Parties to the agreements concluded until the effective date of this Law shall be obliged to notify them to the competent body within 130 days of the entry into force of this Law.

Bylaws

**Article 48**

Regulations by law necessary for implementation of this Law shall be adopted within six months of the entry into force of this Law.

Cessation of the Application of Existing Regulations

**Article 49**

On the first day of application of this Act, Antimonopoly Law (Official Gazette of FRY, no. 29/96) shall cease to apply.

Entry into Force

**Article 50**

This Law shall enter into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro, and shall apply from 1 January 2006.

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