

**THE PARLIAMENT
OF THE REPUBLIC OF MOLDOVA
COMPETITION LAW**

The Parliament adopts the present organic law.

The present law transposes the provisions of the art 101-106 of the Treaty on European Union Functioning as of 25 March 1957, EC Regulation No.1/2003 as of 16 December 2002, on the enforcement of the competition norms provided for in Art 81 and 82 of the Treaty, published in the Official Gazette of the European Union No. L 1 as of 4 January 2003 and partially (EC) Regulation No. 139/2004 of the Council as of 20 January 2004 on the control of mergers between undertakings, published in the Official Gazette of the European Union No. L 24 of 29 January 2004.

Chapter I General provisions

Article 1 Object, scope of the present law

(1) The present law establishes the normative framework of the competition protection, including prevention and counteract of the anticompetitive practices and unfair competition, of carrying out economic concentrations on the market, regarding the activity and the competence of the Competition Council and the liability for infringing the legislation in the competition domain.

(2) The goal of the present Law is to regulate the relationship related to the protection, maintenance and stimulation of competition, with a view towards promoting consumer's legitimate interests.

Article 2. Field of application of the present law

(1) The provisions of this law apply to deeds - actions and inactions that have or may have as an object or effect the restriction, prevention or distortion of competition, as well to acts of unfair competition, committed by:

a) legal persons, registered in the Republic of Moldova or registered in foreign states and natural persons;

b) local or central public administration authorities, to the extent they, by the decisions issued or the enactments adopted, interfere in the market, influencing the competition directly or indirectly, except for the situation when such measures are taken with regard to the enforcement of other laws or for the defense of a major public interest.

(2) The present law covers persons assimilated to public authorities, who exert attributions of public power or use the public domain, being entitled by the law to provide a public interest service.

(3) The undertakings entrusted with the operation of services of general economic interest and the undertakings having the character of fiscal monopoly shall be subject

to the provisions of the present law, and in particular, to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

(4) The provisions of the present law shall apply to the acts provided for in par (1), committed on the territory of the Republic of Moldova and outside, where they produce effects on the territory of the Republic of Moldova.

(5) The present law shall not apply to the labor relations.

(6) The Competition Council is the national competition authority entitled to apply the provisions of the present law, in compliance with the duties established by the present law.

(7) In the event the international treaty, to which the Republic of Moldova takes part, established other provisions than those stipulated by the present law, the provisions of the international treaty shall apply.

Article 3 Basic principles of competition

(1) The State ensures the freedom of entrepreneurship, fair competition protection and defense of rights and interests of the undertakings and of the citizens contrary to the anticompetitive practices and unfair competition.

(2) The undertakings are prohibited to exert the rights in view of competition restraint and damaging the legitimate interests of the consumer.

(3) The prices of products shall be determined freely through competition, based on demand and supply, unless specific legislation regulates otherwise.

(4) For economic sectors where the competition is restricted or does not exist and in exceptional circumstances, such as: crisis situations, major imbalance between demand and supply, the Government is entitled to order and/or enforce temporary measures to prevent or even block excessive price increase. These measures shall be adopted by Government decision, for a period of 6 months, which may be successively extended for periods not exceeding 3 months, as long as the circumstances that justified the Government decision continue to exist.

(5) For situations described in paragraph (4), the Government intervention shall be made with the Competition Council advisory opinion, aiming at the analysis of the effects of the adopted measure on competition.

Article 4 Main notions

In the meaning of the present law, the main notions used are autonomous notions in the competition domain and mean the following:

Agreement – any form (verbal or written) of manifestation of common will, regarding the conduct on the market expressed by two or more independent undertakings;

Horizontal agreements – agreement or concerted practice between two or more undertakings which operate at the same level/levels on the market;

Vertical agreement – agreement or concerted practice between two or more undertakings, each operating in the meaning of the agreement, at different levels of the production or distribution process and which refer to the conditions in which the parties may buy, sell or resell certain products;

Economic activity– any activity of offering products on a certain market;

Associations of undertakings – non-commercial organization voluntarily established by two or more undertakings as provided for by the law, regardless of their legal form of organization, type of financing, way in which the decisions are taken, their compulsory or optional character, as well the public character of the functions they carry out;

Authorization- action by which the Competition Council allows the applicant to fulfill its intention of economic concentration or granting the state aid, issuing to it a permissive document in the shape of decision;

Economic concentration – operations which resulted in long term modifications over the control of the undertakings involved, and therefore, over the market structure;

Competition – the existent or potential economic rivalry, between two or more independent undertakings on a relevant market, where their actions effectively restrict the possibilities of each of them to unilaterally influence the general condition of the products circulation on the market at issue, stimulate the scientific and technical progress and the increase of consumers' welfare;

unfair competition – any action carried out by undertakings in the competition process, which is contrary to honest practice in the economic activity;

Competitors- independent undertakings which are active on the relevant market;

Potential competitors- independent undertakings which are not active on the relevant market, but which in case of a permanent increase of the relative prices by 10%, is likely to carry out the necessary supplementary investments or have other transformation costs in order to enter the relevant market in a maximum period of 3 years;

Consumers- direct or indirect users of the products, including producers who use processing products, wholesalers, retailers and final consumers;

control – the possibility of exerting a decisive influence over an undertaking, flowing from rights, agreements or any other means, either separately or combined, taking into account the legal and factual circumstances, particularly from:

- a) right to ownership or integral or partial use over the assets of an undertaking;
- b) rights or agreements which provide decisive influence over the structure, vote or decisions of the management bodies of an undertaking.

The control is acquired by the persons or undertakings, which are holders of the rights or beneficiary of the rights based on the agreements at issue, or which, although are not holders of these rights or beneficiary of the rights based on these agreements, have the power to exert the rights flowing from these;

Total turnover- the total value of the sales of the products carried out by the undertaking during the reporting period. The total turnover is assimilated:

- a) for the banks, institutions which grant loans – with the sum of the income related to the interest and the sum of the income which is not related to the interest;
- b) for insurance companies – with the total value of the gross written premiums, including reinsurance.

decision of the association of undertaking – any manifestation of the will expressed by the association or its governing bodies, regardless of its form or the compulsory or optional character;

Exclusive rights- rights granted by a competent public authority by means of any legislative, normative or administrative act, whose effect is restricting the exert of an economic activity within a certain geographic area, to one or more undertakings and which affects substantially the capacity of other undertakings to carry out such activity within the area at issue. The rights granted in any form, including by means of concession acts, to a limited number of undertakings based on objective, proportionate and non-discriminatory criteria which allow to any interested party fulfilling those criteria, to benefit from those rights, shall not be considered exclusive rights;

Special rights- rights granted by the state to a limited number of undertakings by means of a legislative, normative, or administrative act, within a certain geographic area;

Group of undertakings- the undertaking which exert the control and all directly or indirectly controlled undertakings by it;

Decisive influence – capability to determine the strategic and tactic conduct for the undertaking ;

Inspection- procedural tool for obtaining information and documents necessary, at the place of their location, used by the Competition Council for stating the infringement of the present law or the Law on state aid;

Undertaking- any entity, including the association of undertakings, involved in economic activity, regardless of its legal status and the way of financing;

Undertakings which have a fiscal monopolistic character-the undertaking which was entitled with exclusive rights in order to carry out a specific activity aiming at obtaining profit for the state;

Dependent undertakings- the undertakings which are part of the same group of undertakings or which are controlled by the same undertakings or persons;

Independent undertakings- other than the dependent ones;

Undertakings involved- undertakings participating to an economic concentration;

Notification – request, addressed to the Competition Council, for authorizing the initiative to carry out an economic concentration or granting a state aid;

Relevant market – the market on which a certain competition problem shall be assessed, determined by the combination of product market and geographical market;

Relevant product market –products’ market considered by the consumer as interchangeable or substitutable, due to use, physical and operational characteristics, prices thereof;

relevant geographic market – area in which the undertakings are involved in supply and demand of products from the relevant product market, in which the competition conditions are sufficiently homogenous and which may be distinguished from the neighboring geographic areas, because the competition conditions differ appreciable in those areas;

Dominant market position – position of economic power which an undertaking benefits of, and which allows it to prevent effective competition on the relevant market, giving the possibility to behave independently, to a considerable extent, of its competitors, clients, and finally of its consumers;

Anticompetitive practices – Anticompetitive agreements, decisions of associations of undertakings, concerted practices, abuse of dominant position, actions or inactions of public authorities of competition restrictions prohibited by the law;

Concerted practice – form of coordinating the actions among independent undertakings and/or groups of undertakings, by which, without signing an agreement among them, a practical cooperation among them replace intentionally the competition risks;

Predatory price- the price which is inferior to the variable average, practiced by an undertaking being in a dominant position in view of eliminating the competitors from the relevant market;

Product – goods, works, services, including financial services, for sale, exchange or other ways of including into the civil circulation;

Significant competition restriction- the negative impact upon at least one of the market competition parameters, such as price, production, product quality, product variety or innovation;

Services of general economic interest- commercialization of products which:

a) are intended for citizens or are in the interest of society in general;

b) are not already provided or may not be provided satisfactory and under conditions such as price, objective peculiarities regarding the quality, continuity, and the access to the service- compatible with the public interest, such as being defined by the state, by the undertakings which carry out their activity under regular market conditions, i.e. the provision of which an undertaking, if taking account of its own commercial interests, shall not assume or shall not assume to the same extent or under the same conditions;

c) the provision obligation of which is established by a public authority by means of a legislative, normative or administrative act or by means of an agreement or a number of acts and agreements, which define the obligations of the undertaking at issue and of the authority, specific for the provisions of such services.

Bid rigging- carrying out, by means of auctions or other forms of competitive tendering, anticompetitive agreements of competing undertakings as to the prices, market division, supply sources or the quality of the products;

Chapter II: Anticompetitive practices

Section 1 Anticompetitive agreements

Article 5. Prohibition of anticompetitive agreements

(1) The following shall be prohibited, no prior decision to the effect being required: all agreements between undertakings or associations of undertakings, decisions by associations of undertakings and concerted practices (hereinafter agreements) which

have as their object or effect the prevention, restriction or distorting of competition on the market of the Republic of Moldova or part of it.

- (2) The agreements prohibited under the present article shall be automatically void.
- (3) Anticompetitive agreements are deemed to be those which are directed towards:
 - a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - b) limit or control production, commercialization, technical development, or investment;
 - c) share markets or sources of supply;
 - d) bids rigging or any other forms of competitive tendering;
 - e) limiting or preventing access to the market and the free exercise of competition between other undertakings, as well as agreements not to buy or sell to certain undertakings without reasonable justification.
 - f) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - g) Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial practice, have no connection with the subject of such contracts.
- (4) Agreements concluded between dependent undertakings shall not qualify as anticompetitive agreements.
- (5) Where it was established that an agreement has competition prevention, restriction or distortion as its object, the Competition Council shall not prove the existence of anticompetitive effects in order to establish any competition restriction in the meaning of present law.

Article 6. The exemption of anticompetitive agreements

- (1) The interdiction provided for in par. (1) and (2) of Art. 5 shall not apply to the anticompetitive agreements or categories of anticompetitive agreements which fulfil cumulatively the following conditions:
 - (a) contribute to improving the production or distribution of goods or to promoting technical or economic progress;
 - (b) allow consumers a fair share of the resulting benefit;
 - (c) Do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of the objective mentioned in let. a) and b);
 - (d) Do not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products at issue.
- (2) The agreements mentioned in Article 5 which fulfil the conditions set up in par (1) or fall under the categories provided for in par (3), shall be deemed legal, without a prior decision in this respect.
- (3) Certain categories of agreements can be directly exempted of the interdictions established in Art.5 by adopting by Competition Council of the guidelines considering the provisions of the par.(1).
- (4) The undertakings or the associations of undertakings which imply as a defence in the cases under the application of Art. 5, that the anticompetitive agreements benefit

from individual exemption in compliance with the provisions of the present article, have the task to demonstrate that the agreements at issue fulfill the conditions of the par. (1).

- (5) When an agreement is covered by a block exemption, the parties to the restrictive agreement are relieved of their burden under par (5) being obliged, in case of defense, only to prove that the agreement benefits from a block exemption.
- (6) Where the Competition Council states that the agreements covered by one of the exempted categories have or may have effects which are incompatible with the conditions set up in par. (1), this may, ex officio or upon complaint, withdraw the benefit of exemption set up for the agreements at issue. In this case, the Competition Council shall demonstrate that the agreements at issue breaches the provisions of the Art.5 par.(1) and do not fulfil the conditions under par.(1). The withdrawal of the benefit of exemption does not have a retroactive effect.
- (7) The agreements mentioned in art. 5, resulting from the enforcement of a normative or legislative act, shall not be prohibited, without a prior decision in this respect.

Article 7. Prohibition of hardcore cartels

a) Any horizontal anticompetitive agreement shall be deemed hardcore cartel, except for the minor importance agreement, which directly or indirectly, alone or in combination with other factors under the control of the parties, has as an object:

- a) fixing the selling price of the products to the third parties;
- b) restricting the production or the sales area;
- c) sharing of markets or customers;

- (1)d) participation with bid rigging or other forms of competitions
- (2) Being given the nature of hardcore cartels, as being qualified as the most serious anticompetitive agreements, it is presumed that they *per se* are able to prevent, restrict or distort the competition.
- (3) The hardcore cartels do not benefit of the exemption provided for in Art.6.

Article 8. The anticompetitive agreements of minor importance

- (1) An anticompetitive agreement is deemed to be of minor importance and not restricting significantly the competition if:
 - a) It is concluded between undertakings which are actual or potential competitors (horizontal agreement) on one of the markets affected by the agreement and the share on the cumulative market hold by the parties to the agreement and the undertakings which are dependent of these, does not exceed 10% on none of the relevant markets affected by the given agreement;
 - b) It is signed between the undertakings which are not competitors and the market share held by each of the parties to agreement and the undertakings which are dependent of these, does not exceed 15% on none of the relevant markets affected by the given agreement;
 - c) The market share held by each of the parties to the agreement and by the

undertakings dependent of these does not exceed 10% on none of the relevant markets affected by the given agreement, where it is difficult to establish whether it is an agreement between competitors or non competitors.

(2) Where in a relevant market the competition is restricted by the cumulative effect of agreements for the sale of goods entered into by different suppliers or distributors (cumulative foreclosure effect of parallel networks of agreements having similar effects on the market) the thresholds under par. (1) are reduced to 5 %, both for horizontal and vertical agreements.

(3) It is deemed that the agreements are not restrictive of competition if the market shares do not exceed market share thresholds of 10%, 15% and 5% provided for under par. (1) and (2) by more than two percentage points over two consecutive years from the date of agreement conclusion.

(4) The provisions of the Art.5 shall not apply to the agreements which are of a minor importance, except for those provided for in Art. 9.

Article 9. Prohibited agreements of minor importance

(1) Art.8 shall not apply to horizontal agreements of minor importance, which directly or indirectly, alone or in combination with other factors under the control of the parties, has as an object:

- a) fixing the selling price of the products to the third parties;
- b) restricting the production or the sales area;
- c) sharing of markets or customers;

d) participation with bid rigging or other forms of competitions

(2) The art. 8 shall not apply to the agreements of minor importance concluded between non-competitors, containing any of the restrictions which, directly or indirectly, independently or in combination with other factors being under the control of the parties, have as their object:

a) Limiting the capacity of the buyer to set up the selling price, without bringing prejudice to the supplier's possibility to impose a maximum sale price or recommending a sale price, provided that the latter is not equivalent to a fixed or minimum sale price established in response to pressures from any party or incentives offered by it;

b) territorial restrictions or regarding the customers of which the buyer is able to sell the products which are the agreement's object, except for the case related to one of the following restrictions which are not severe;

- restricting active sales to the exclusive territory or to exclusive customers reserved to the provider or given by the provider to another buyer, where such restriction does not limit the sales made by the buyer's customers;

- restricting the sales to final consumers carried out by a buyer operating on the market as a wholesaler;

- restricting the sales to non authorized distributors carried out by the members of a selective distribution system;

- restricting the buyer's capacity to sell components designated to the incorporation of some customers which could use them for the manufacturing of products similar to those produced by the provider;

c) restricting the sales to final consumers carried out by the members of a selective distribution system which operate on the market as retailers, notwithstanding the possibility of prohibiting a member of the system to operate in an unauthorized secondary office;

d) Restricting the cross supplies among distributors within a selective distribution system, including among distributors operating at different trade levels;

e) Restriction agreed between a provider of components and a buyer incorporating these components, which limit the possibility of the provider to sell these components as separate pieces to the final, to repairers or other service providers which were not appointed by the buyer for the reparation or maintenance of its products.

(3) the art. 8 shall not apply to the agreements of minor importance concluded among competitors operating in the meaning of the agreement, at different levels of production or distribution chain, which contain any of the severe restrictions enumerated in par. (1) or (2).

(4) An agreement which falls under the present article shall be presumed as being covered by the scope of art. 5. Nevertheless, the undertakings have the opportunity to prove the effects favorable to the competition, in an individual case in compliance with art.6 par. (1).

Section 2 Abuse of dominant position

Article 10 Dominant position

(1) The dominant position on one or more relevant markets may be held by an undertaking or a group of undertakings (unique dominant position) or jointly by two or more undertakings or by two or more groups of undertakings (collective dominant position).

(2) Two or more undertaking may jointly hold a dominant position (collective dominant position) where, even in the absence of any structural or other link between them, these operate on a market whose structure is considered favorable for the production of coordinated effects.

(3) The dominant position results from a combination of more factors, which, taken separately, are not necessarily decisive. The assessment of the dominant position shall take account of the competition market structure, in particular of the following factors:

a) The pressure exerted by the existent offers of the current competitors and by their position on the market (market position of the dominant undertaking and its competitors). The market shares provide a first useful indication related to the market structure and the relative importance of different undertakings active on the market. However, the market shares shall be interpreted through the relevant market conditions and in particular the market dynamics, tendency or evolution of the market shares over time, degree of product differentiation, as

well other factors which may be sufficient for exerting pressure over the conduct of the alleged dominant undertaking;

b) the pressure exerted by the credible threatening of a further expansion of the current competitors or entry on the market of potential competitors (expansion and entry on the market). in order to exert pressure on the conduct of the alleged dominant undertaking, the expansion of current competitors or the entry on the market of potential competitors must be likely, timely and sufficient;

c) the pressure exerted by the power of negotiation of the undertaking's customers (the compensatory power of buyers). The compensatory power of buyers may result from the customers' dimension or from their trading importance for the alleged dominant undertaking, as well from their capacity to easily change the providers, to favor a new entry on the market or to vertically integrate and to credibly threaten with such actions.

(4) It is presumed, until proven otherwise, that one or more undertakings are holding dominant position on a relevant market, when the aggregate share or the shares on the relevant market, registered for the analyzed period, exceed 50%.

(5) the undertakings vested with exclusive rights are deemed to be undertakings with dominant position on the relevant market to which these rights refer.

(6) the Plenum of the Competition Council shall adopt the regulation on establishing the dominant position on the market and the assessment of the abuse of dominant position.

Article 11 Prohibition of the abuse of dominant position

(1) Any abusive use of the dominant position within the relevant market, to the extent it may affect the competition or damage the collective interests of the final consumers on the relevant market, shall be prohibited.

(2) The abusive practices may consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions;
- (b) limiting production, distribution or technical development to the prejudice of consumers;
- (c) applying, in the relationship with trading partners, dissimilar conditions to equivalent transactions, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the partners of supplementary obligations which, by their nature or according to commercial practice, have no connection with the subject of such contracts.
- e) charging excessive or predatory prices, with the aim of driving competitors out;
- f) the unjustified refuse to contract with certain providers and/or supply to certain beneficiaries;
- g) the cessation of a commercial relationship established previously on the relevant market for the single reason that the partner refuses to obey to some groundless commercial conditions;

(3) whether the data suggests that the price practiced by the dominant undertaking risks to lead to the removal of some competitors as much efficient, then, this element shall be included in the general assessment of the significant competition restriction, taking account of other quantitative and/or qualitative evidence.

(4) the dominant undertakings shall not be penalized for some *ex post* losses, where the *ex ante* decision of applying the alleged abusive practices was taken in good faith, in particular, whether they are able to provide conclusive evidence pursuant to which they could reasonably estimate that the activity shall be profitable.

(5) the interdiction set up in par. (1) and (2) shall not apply whether the dominant undertaking proved that its practices are reasoned, being necessary objectively or producing significant efficiency increase, which compensate any anticompetitive effects on consumers, upon the condition that the practices at issue are indispensable and proportionate in relation to the alleged goal followed by the dominant undertaking.

(6) the nature of objective necessity and proportionality must be determined based on some factors which are not related to the dominant undertaking, such as the health reasons or of security related to the nature of the respective product.

(7) In the case of invoking the reasons of efficiency increase which are sufficient in order to guarantee there is no risk of causing a net prejudice to consumers, the dominant undertaking shall have to prove, with a rather increased degree of probability and based on some verifiable evidence, that the following conditions are cumulatively fulfilled:

a) the efficiency increase was implemented, or it is likely to be implemented, as a result of the respective practices, such as technical improvement of goods' quality or reducing the production or distribution cost;

b) the respective practices are indispensable for that efficiency increase: there must not exist less anticompetitive alternatives for these practices which shall be capable to determine to the same extent the efficiency increase;

c) the likely efficiency increase determined by the respective practices compensate any likely negative effects on the competition and consumers' welfare on the affected markets;

d) the respective practices do not eliminate effective competition, by suppression of the majority of all the existent sources of effective or potential competition.

(8) the exclusionary practices which maintain, create or enhance a market position approaching the monopolistic one, may not be normally justified grounded on the reason that these create efficiency gains also.

Section 3: Actions or inactions of competition restriction, prevention or distortion by authorities and central or local public administration institutions

Article 12. Prohibition of actions or inactions of competition restriction, prevention or distortion by authorities and central or local public administration institutions

(1) Any actions or inactions by the authorities and local or central public administration institutions, which restrict, prevent or distort competition, are prohibited, as:

- a) Limitation of undertaking's rights to procure or commercialize;
- b) setting discriminatory conditions or granting privilege to undertakings activity, in case these are not provided for by the law;
- c) setting interdictions or restrictions, which are not provided for by the law, to undertakings activity;
- d) entailing, directly or indirectly, the undertakings to associate or concentrate irrespective of the form.

(2) Only in cases of exceptional situation, the Government, authorities and central or local public administration institutions are entitled to carry out actions or inactions provided for in par (1) for the liquidation of consequences of natural calamities and disasters and for the prevention of epidemics in compliance with the law No.212-XV as of 24.06.2004 on the state of emergency, siege and war.

(3) the acts of the authorities and public administration institutions carried out contrary to the provisions of par. (1) are deemed to be infringements of the present law.

(4) duty holders from the public administration authorities and institutions are liable, in compliance with the Contravention Code, for non provision of information, documents or provision of non authentic and incomplete information or documents requested by the Competition Council.

Article 13. Way of execution of decisions of the Competition Council adopted on actions or inactions of competition restriction, prevention or distortion by authorities and central or local public administration institutions

(1) Where the authorities and the local or central public administration institutions do not execute or comply within the time limit set with the measures ordered by the Competition Council's decision aimed at restoring the competition environment, it may initiate administrative contentious action, requesting the court, if needed, to cancel, in whole or in part, the action leading to the restriction, prevention or distortion of competition, to obligate the authority or the institution concerned to issue an administrative act or to take the imposed measure.

(2) By derogation from the limitation period provided for in the Law on administrative contentious 793-XIV as of 10.02.2000, the Competition Council may address to court in compliance with the provisions of par (1) within 6 month from the date of expiration of the period provided for in the decision, in

which the authority or the local or central public administration authority had the obligation to comply with the measures necessary for restoring the competition environment.

Chapter III

Unfair competition

Art. 14 Prohibition of unfair competition

(1) The undertakings are prohibited to carry out unfair competition actions.

(2) The actions of unfair competition prohibited by the Art 15-19, are examined by the Competition Council, upon application on the alleged actions of unfair competition submitted by the undertaking, whose legitimate interests were damaged, under the conditions of art. 49 par (2)- (4).

(3) The application on the alleged unfair competition actions is submitted in compliance with the Form, adopted by the Competition Council decision, under conditions provided for in art.51, par (2) and (3).

(4) The preliminary examination, investigation and decision making procedure on unfair competition cases is provided for in art 50- 55, 59 par (1), 65, 66 which apply correspondingly.

(5) The undertaking whose legitimate interests were damaged, may submit an application on the alleged actions of unfair competition to the Competition Council, within 6 months from the date they learned or should have learned about the unfair acts committed by another undertaking.

(6) The expiry of the limitation period of 6 months is deemed to be a reason for the Competition Council refusal to examine the application, but is not deemed an impediment to address to the court within the general limitation period.

(7) If the application does not comply with the requirements provided for in par (3), this does not qualify as application on the alleged unfair competition actions.

(8) As a result of the examination of unfair competition case, the Plenum of the Competition Council makes decisions regarding the stating of unfair competition acts, or the lack of infringement.

(9) In case of stating the unfair competition actions, the undertaking may be sanctioned pursuant the present law, by the decision of the Plenum of the Competition Council, and/or obliged to stop the actions at issue.

Article 15. Disparagement of competitors

Disparagement of competitors is prohibited where it involves defamation or endangering their reputation or credibility by:

- a) spreading by an undertaking of false information about its activity, about its activity, its products, aimed at creating a favorable situation in relationship with certain competitors;
- b) spreading by an undertaking of false statements about the activity of a competitor or its products, able to harm the competitor's activity.

Article 16. Incitement to termination of contract with the competitor

It is prohibited the incitement, in the own interest or in the interest of third parties, to

cancel unreasonably the contract with the competitor of other undertaking, to non fulfilment or inappropriate fulfilment of contractual obligations towards the concerned competitor, by granting or offering to the undertaking party to contract, directly or indirectly, material reward, compensations or other benefits.

Article 17. Acquiring and/or illegal use of the competitor's commercial secret

It is prohibited to obtain and/or use the information which represents a commercial secret, by an undertaking, without the holder's consent if these had damaged or may damage to the legitimate interests of the competitor.

Article 18. Stealing the competitor's clients

The undertakings are prohibited to steal competitor's clients by misleading a consumer regarding the type, way and place of manufacturing, main features, including the usage, products quantity, price or way of calculating the product's price.

Article.19 Creating confusion

(1) Are prohibited any acts of such a nature as to create confusion by any means whatever with the undertaking, the products, or the economic activities of a competitor, carried out by:

- a) illegal use, integrally or partially, of a trademark, emblem of service, company name, industrial design or model, or other industrial property objects which may create a confusion with those used legally by another undertaking,
- b) illegal copying of the form, packaging and appearance of undertaking's good and placing this good on the market, of advertising of an undertaking, if this had damaged or may damage to the legitimate interests of the competitor.

(2) the present article shall not apply to the products characteristics exclusively determined by the technical function they fulfill.

Chapter IV: Economic concentration

Article 20. General provisions on economic concentration.

(1) until the declaration of the economic concentration as being compatible with the competition environment, pursuant a decision issued by the Plenum of the Competition Council in compliance with art. 25 par. (1) let. b) or par.(2) let. b) or c), or based on a presumption in compliance with art. 25 par. (5), the enforcement of an economic concentration covered by art.22 par. (1) is prohibited.

(2) A concentration operation shall be deemed to arise when the long modification of the control results from:

- a) the merger of two or more previously independent undertakings or parts of previously independent undertakings;
- b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities (shares social) or assets, by contract or by any other means, of direct or indirect

control of the whole or parts of one or more other undertakings, including the joint establishment of a commercial society which sustainably fulfils all the tasks of an autonomous economic entity.

(3) to the extent to which the establishment of a joint society, representing a concentration under the provisions of par. (1), has as its object or effect the coordination of the competitive conduct of the undertakings which remained independent, such a coordination shall be assessed in compliance with the criteria provided for in art. 5 par. (3) and art.6.

(4) While carrying out the assessment provided for in par. (3), the Competition Council shall take account, in particular, of the following criteria:

a) If two or more parent societies withhold, to a significant extent, the activities from the same market as the joint society, or on an upstream or downstream market in relation to that of the joint society or on a neighboring market being in a close relation with this market;

b) If through the coordination which represents the direct consequence of joint society establishment, the undertakings involved have the possibility to eliminate the competition for a significant part of the products at issue.

(5) Par. (1) shall not prevent the application of a public offer or of a number of securities transactions, including convertible securities in other types of securities, accepted in view of transaction on a market of stock market type, by which the control from different sellers is acquired, under the condition that:

a) The concentration shall be notified without delay to the Competition Council in compliance with art. 22; and

b) The person acquiring the control shall not exert the voting rights related to the securities at issue or shall do this only for maintaining the integral value of its investment pursuant to a derogation granted by the Competition Council Plenum in compliance with par. (6).

(6) Competition Council Plenum may grant, upon request, a derogation from the obligations imposed in par. (1) or (5). The request for a derogation granting shall be substantiated. At the adoption of a decision on the request, the Competition Council Plenum shall take account, among others, of suspension effects on one or more undertakings involved in the concentration or on a third party and the threat of the concentration over the competition. Such derogation may be granted under the reserve of fulfilling some conditions and obligations for the insurance of some effective competition conditions. A derogation may be requested and granted in any moment, prior the notification or after the operation.

(7) The validity of any operation carried out with the infringement of the par. (1) shall be set up by a decision adopted pursuant the art. 25 par. (1) let. (b) or par. (2), or pursuant to a presumption in compliance with art. 25 par. (5).

(8) The present article has no effect on the validity of securities transactions, including on transactions of securities which may be converted into other types of securities, accepted in view of transaction on a stock market type, except for the cases where the seller and the buyer had known or should had known that the transaction was carried out with the infringement of the par. (1).

Article 21. Operations which are not classified as economic concentrations

Concentration shall not be deemed to arise in the situations where:

- a) control is acquired and exercised by a liquidator or administrator nominated pursuant to a court decision or other person mandated by a public authority to carry out winding, insolvability or other similar procedures.
- b) banks and professional participants on the non-banking financial market, the activities of which include dealing in securities for their own account or for the account of third parties, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behavior of the undertaking at issue, or provided that they exercise such voting rights only with a view to the preparation of whole or partial alienation of the undertaking at issue reselling them, upon the condition that the reselling takes place within 12 months from the date of acquisition; Competition Council Plenum may extend this time limit, upon request, in case the banks at issue or the professional participants to the non-banking financial market are able to prove that the reselling was not possible, under reasonable conditions, within the time limit set;
- c) the operations of restructuring or reorganizing of their own activities are carried out by the undertakings, including groups of undertakings.

Article 22. Notifications of economic concentrations.

- (1) Concentrations are subject to assessment and shall be notified to the Competition Council prior to their implementation, in case the aggregate amount of the turnover of the undertakings concerned registered for the year prior to the operation exceeds 25 000 000 MDL and there are at least two undertakings concerned in the operation which register each separately a turnover more than 10 000 000 MDL for the year prior to the operation, on the territory of the Republic of Moldova.
- (2) enforcing the concentration it is deemed to be, if needed, the conclusion of the agreement, public offer announcement or the acquiring of the controlling interest.
- (3) The economic concentrations carried out through the merger of two or several undertakings shall be notified jointly by the parties to concentration, those which are carried out by obtaining joint control, shall be notified jointly by the persons or undertakings acquiring joint control. In the other cases, the notification must be made by the individual or the undertaking which obtain control over one or several undertakings or over parts of one or more undertakings. Each party which initiates the notification is liable for the exact and full nature of the information provided.
- (4) The notifications shall be submitted in the way provided for in the notification form, part of the Regulation on economic concentrations adopted by the Plenum of the Competition Council.
- (5) The notification submitted to the Competition Council shall contain: notification form, accompanied by copies of the justifying documents, note on the calculated turnover and the proof of the examination tax payment.

- (6) The note on the calculated turnover shall contain both the total turnover, and the turnovers out of which it consists, mentioning the undertakings from which it comes, with all the documents on which the calculation was based.
- (7) Within a time limit of 10 working days from the registration of the notification the Competition Council shall confirm in written to the notifying party/parties or their representatives the conditions for the notification to be deemed valid.
- (8) Within a time limit of 10 working days from the registration of the notification, the Competition Council shall be able to request from the notifying party/parties or their representatives, the fulfillment of the transmitted information and/or the confirmation of its accuracy. The notification shall be deemed effective only after it's filling up.
- (9) The party/parties or their representatives shall be able to provide other information which they consider useful for the assessment of the concentration.
- (10) The notification shall become effective on the date it was registered at the Competition Council, except for the cases where it is stated that the information contained in the notification is not exact or complete.
- (11) In cases where the Competition Council establishes that an economic concentration notified falls within the scope of the Law, shall be able to publish on the web page and in the Official Gazette the information regarding the notification, mentioning the name of the parties involved, the nature of concentration and the economic sectors concerned, taking account of the legitimate interest of the undertakings for protecting the commercial secrets.

Article 23 Investigation and assessment of economic concentrations

- (1) before the notification, the parties intending to submit a notification, may request the Competition Council prior consultancy at the premises of the Competition Council, in order to discuss essential legal or practical aspects on the economic concentration. For this purpose, the parties shall provide the Competition Council, at least 3 working days prior the date set for consultancy, with the relevant information on the economic concentration such as: parties involved in the concentration, markets on which they operate, summary description of the economic concentration at issue and the way of undertaking control.
- 2) the investigation of economic concentrations shall be carried out in compliance with the provisions stipulated in chapter VII from the present law.
- (3) Concentrations are deemed to be declared incompatible with the competition environment in case they raise significant barriers for the effective competition on the market or on a substantial part of it, in particular as a result of the creation or enhancement of a dominant position.
- (4) A concentration which does not raise significant barriers for the effective competition on the market or on a substantial part of it, in particular as a result of the creation or enhancement of a dominant position, shall be declared compatible with the competition environment.
- (5) In order to establish the compatibility with a competition environment, the economic concentrations are assessed based on the following criteria:
- (a) the necessity to maintain and develop the competition on the relevant market, taking account of the structure of all the markets affected by the concentration and

- the existent or potential competition on behalf of the undertakings located on the territory of the Republic of Moldova or outside of it;
- b) the market position held by the undertakings involved, their economic and financial power;
 - c) the alternatives available for the providers and users, their access to markets and supplying resources, as well any other legal or other barriers raised at the entry on the market;
 - d) the tendency of supply and demand for the relevant products;
 - e) the interests of intermediate and final consumers;
 - f) evolution of the economic and technical progress.

(6) the economic concentration susceptible to raise significant barriers to efficient competition on the market or substantial part of it may be authorized if the parties involved in the concentration operation prove the aggregate fulfillment of the following conditions:

- a) concentration operation shall contribute to the increase of the economic efficiency, improvement of production quality, distribution or technical progress or growth of competitiveness at the export;
- b) the concentration's favorable effects compensate the unfavorable effects of the competition restriction;
- c) consumers benefit from the resulted advantages, to a reasonable extent.

(7) The way of applying the economic concentrations' assessment shall be set up in the Regulation on economic concentrations, adopted by the Plenum of the Competition Council.

Article 24. Calculation of aggregate turnover

(1) In the meaning of the present chapter, the total turnover contains the sums obtained by the undertakings involved in the preceding year, from the sales of goods being part of the common activities of the undertaking at issue, after the deduction of sales rebates and the value added tax and other taxes directly related to the turnover.

(2) The turnover realized on the territory of the Republic of Moldova contains the products sold to the undertakings or consumers from the Republic of Moldova.

(3) When a concentration occurs in the way provided for in art.20 par.(2) let. b) by means of buying assets elements, the total turnover is assimilated to the sum related to the assets which are the operation object. Whether two or more operations in the meaning of the present paragraph occur during a two year period among the same persons or the undertakings are treated as being the same concentration carried out on the date of concluding the last operation.

(4) The aggregate turnover of undertakings concerned shall be calculated by adding together the turnovers of:

- a) the undertakings concerned;
- b) those undertakings in which the undertaking concerned, directly or indirectly:
 - owns more than half the capital, or

- has the power to exercise more than half the voting rights, or
- has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings,
- has the right to manage the undertakings' activities;
 - c) those undertakings which have in the undertaking concerned the rights or competences listed in (b);
 - (d) those undertakings in which an undertaking as referred to in let. (c) has the rights or competences listed in (b);
 - (e) those undertakings in which two or more undertakings as referred to in let.(a) to (d) jointly have the rights or competences listed in (b).

(5) The aggregate turnover of undertakings involved does not include the sales of products intervened among any of the undertakings mentioned in par. (4).

(6) Where the undertaking involved in the concentration hold jointly rights or competences provided for in par (4), let b), the calculation of the total turnover of the undertakings involved does not take account of the turnover resulted from the sales of products occurred between the common undertaking and each of the involved undertakings or any other undertaking which is related to any of it, pursuant to the par (4) let b)-e), however account is taken of the turnover resulted from the sales of products occurred between the common undertaking and any other third undertakings. The total turnover calculated in this way is distributed equally among the involved undertakings.

Article 25. The competency of the Competition Council in the domain of economic concentrations

(1) Within a time limit of 30 days from the moment of receiving the complete concentration notification, the Competition Council:

(a) shall inform the notifying parties by a letter on the fact that the economic concentration notified is not covered by the present law;

(b) shall adopt in the Plenum a decision where it declares the notified economic concentration as being compatible with the competition environment where it states that, although the notified concentration is covered by the present Law:

- there are no serious doubts about the compatibility with the competition environment;

- the doubts about the compatibility with the competition environment were removed through the modification by the parties concerned of the notified economic concentration;

- The Plenum of the Competition Council may set by decision the conditions and the obligations to ensure the meeting of commitments by the parties involved, in view of implementing the compatibility of the concentration with the competition environment.

(c) shall decide in the Plenum on the initiation of an investigation where it states that the notified concentration is covered by the current law and raises serious

- doubts about the compatibility with the competition environment and these could not have been removed in compliance with the provisions of the par.(1), let. b);
- (2) Except for the cases where the undertakings involved prove to the confidence of the Plenum of the Competition Council that they renounced to the economic concentration, in a time limit of 90 working days from the date of investigation initiation, the Plenum of the Competition Council shall:
- (a) issue a decision to declare the concentration incompatible with the competition environment, since it raises significant barriers for the effective competition on the market or on a substantial part of it, in particular as a result of the creation or enhancement of a dominant position, in compliance with the provisions of the article 23, par (3), or in the cases provided for by the article 20, par. (3) since it does not fulfil the conditions stipulated in art. 6;
 - (b) issue a decision, by which it shall declare the economic concentration compatible with the competition environment, whether the concentration does not raise significant barriers for the effective competition on the market or on a substantial part of it, in particular as a result of the creation or enhancement of a dominant position, in compliance with the provisions of the article 23, par.(4), or in the cases provided for in art. 20, par. (3), whether it meets the conditions provided for in art. 6. It is considered that a decision by which a concentration is declared compatible includes the restrictions directly related and necessary for the concentration enforcement;
 - (c) issue a decision, by which it shall declare the economic concentration compatible with the competition environment, whether the Plenum of the Competition Council states that as a result of the modifications operated by the undertakings involved, the notified economic concentration fulfils the criterion stipulated in art. 23, par. (4) and in the cases mentioned in art. 20, par. (3), the criteria stipulated in art. 6. the Plenum of the Competition Council is entitled to set up by decision the obligations or /and the conditions necessary to ensure the compliance with the commitments undertaken by the parties concerned for the purpose of compatibility of the concentration with the competition environment. It is considered that a decision by which a concentration is declared compatible includes the restrictions directly related and necessary for the concentration enforcement.
- (3) The time limits provided for in par (1) and (2) shall be extended where the notifying parties submit an application in this respect in a time limit of at most 15 working days from the initiation of procedure. The notifying parties may submit such type of application once. After the procedure initiation the Plenum of the Competition Council may extend the time limits provided for at par. (1) and (2) with the consent of the notifying parties. The total duration of any extent or extents may not exceed 20 working days.
- (4) The time limits provided for in par. (1) and (2) shall be extended by 30 working days, where the undertakings involved offer to make commitments pursuant to par. (1) or (2) for the purpose of compatibility of the concentration with the competition environment.
- (5) In case the Plenum of the Competition Council does not make a decision within

the time limit set in par (1) and (2), the concentration is deemed to be tacitly authorized.

(6) Where, because of some circumstances of which one of the undertakings involved in the concentration is liable, the Competition Council had to request the information pursuant to art. 54 or had to order an inspection by an order adopted pursuant to art. 56, the time limits provided for in par. (1) and (2) shall be suspended and shall start to run from the date on which the parties provided the Competition Council with all the requested information.

(7) the Competition Council Plenum is able, by a prescription, to adopt proper interim measures for restoring or maintaining the effective competition conditions where a concentration:

- a) was applied with the infringement of art. 20 par. (1) and no decision was made on the compatibility of the concentration with the competition environment;
- b) was applied with the infringement of a condition included into a decision adopted in compliance with par. (1) let. b) or par. (2) let. c);
- c) was already applied and is already declared compatible with the competition environment.

(8) the Competition Council Plenum is able to revoke the decision adopted pursuant to par. (1) let. a) or b) in case:

- a) the decision is grounded on incorrect information for which one of the undertakings is liable or in the case it was obtained by means of fraud; or
- b) the undertakings involved infringe an obligation included in the decision.

(9) in the cases listed in par. (8), the Competition Council is entitled to adopt a decision in compliance with par. (1), without the obligation to comply with the time limit provided for in par. (1).

Article 26. Restoring the previous situation

(1) In case the Competition Council states that a concentration was already implemented and that concentration was declared incompatible with the competition environment, it has the right

- a) to ask the undertakings involved to dissolve the concentration, in particular by dissolving the merger or assignment of all the shares (social shares) or the assets acquired, so that to restore the situation previous to the concentration application;
- b) to bring an action in court related to concentration dissolution.

(2) in the cases in which the concentration dissolution does not make possible the restoring of the situation previous to the concentration application, the Plenum of the Competition Council is entitled to adopt any other appropriate measure for the purpose of restoring the previous situation, as far as possible.

(3) The Competition Council may act in compliance with par (1) and (2) also when it establishes that a concentration was implemented in contravention to a condition imposed by a decision adopted in compliance with the provisions of art 25 par. (2) let. c), by which it was established that, in case of the absence of the condition, the

concentration would fulfill the criterion provided for in art. 23, par. (3), or in the cases provided for in art. 20, par. (3) would not fulfill the criteria provided for in art. 6.

(4) in the cases which are covered by par. (1) let a), the measures stipulated in the previously mentioned paragraph may be imposed by a decision adopted pursuant to art. 25 par (2) let a), either by a separate decision.

Article 27. Examination tax of economic concentration.

(1) the present law sets up the tax for the concentration examination.

(2) Concentration examination tax is set up at a share of 0,1% from the aggregate turnover on the territory of the Republic of Moldova by the undertakings concerned in the concentration and is calculated on the grounds of the total turnover of the year previous to the concentration and may not exceed 75 000 MDL.

(3) The person, undertaking or undertakings which submitted a concentration notification to the Competition Council shall be required to pay the examination tax.

(4) the economic concentration examination tax shall be reimbursed to the persons and/or undertakings which provided the Competition Council with a notification of an economic concentration, where this operation is not covered by the present law.

(5) from the moment of notification by the Competition Council under art 25 par (1) let. a), the Competition Council, in a time limit of 30 calendar days refunds the finances spent for the notification examination.

Chapter V. Establishing the relevant market

Article 28. The relevant market and the competition

(1) The examination of the competition issues, the evaluation of a competition case is done within the relevant market.

(2) Relevant market definition is necessary especially to:

a) assessment of the economic concentrations and the structural modifications analysis which affect the supply of a product to hamper the creation or consolidation of a dominant position, and for prevention of significant restriction of the competition;

b) investigation and statement of dominant position abuses;

c) determine if there are considerable restrictions for the competition, analyze the restrictive effects of an agreement or verify if the condition stipulated in letter d) par. (1) of art. 6.

(3) Market definition is an instrument of identification and definition of the framework in which competition is exercised. Depending on the nature of the competition issue the size of the relevant market can be different.

(4) The main goal of defining the market is to identify the competition constraints that the relevant undertakings are systematically confronted with.

(5) In the meaning of the present chapter the undertakings at issue are, in case of an economic concentration, the parties participating in an economic concentration; during the investigations conducted pursuant to the stipulations of Section 2, chapter II, the undertakings at issue are the object of investigation or complaint, or if appropriate the

author of the complaint; in the case of investigations conducted pursuant to the stipulations of Section 1, chapter II, these undertakings are the parties of the agreement.

(6) Market definition in both its product and geographic dimensions must allow the identification of the existing and potential competitors of these undertakings capable to condition their behaviour and to prevent them from acting independently of the competition pressure.

(7) the time limit of analyzing the relevant market shall be determined upon the investigation object and the relevant market's peculiarities.

(8) the fundamental principles of the relevant market definition are related to the competition restrictions as follows: substitutability at demand level, substitutability at supply level and the potential competition.

Article 29. Procedure of establishing the relevant market

(1) Probation criteria and elements used for defining the product market are different depending on the characteristics and the peculiarities of the national economic branch and on the analyzed products.

(2) When defining the product market, sufficient probation elements shall be used to reach a conclusion regarding the market size in order to solve the competition issue related to a concrete case, as well as other tasks mentioned in paragraph (2) of art. 29.

(3) In the process of defining the product market, based on the preliminary information available or the information offered by the companies at issue, it is decided whether the products belong to the same product market.

(4) If appropriate, a series of evidence shall be taken into consideration, which allows the evaluation of the extent to which substitution between products would be possible. In individual cases, certain types of evidence shall be determinant, while in other cases the same elements could be irrelevant.

(5) The approach to information is an open one, aimed at making an effective use of all available information which may be useful while assessing individual cases. There is no rigid hierarchy of different sources of information or types of factual elements for establishing the existence of substitutability.

(6) Depending on each case individually, when competition issues are not raised, it is not necessary to delineate definitively the product market or to determine whether the market includes or not additional products.

(7) The process of defining the geographical market consists in selecting and systematizing the information contributing to the identification of the obstacles and barriers isolating the undertakings situated in a certain area of competition pressure from the companies situated outside this area, so as to clarify precisely the degree of interpenetration of the markets at the national level.

(8) In case defining a precise relevant market is considered necessary the following shall be contacted to present orally or/and in written form:

- a) the main customers and the main undertakings from the respective sector to present information on the limits of the product market and the geographical market and to obtain factual elements aimed at reaching a conclusion regarding the definition of the relevant market;

- b) the competent associations and undertakings on the upstream market to define, to the extent this fact is necessary, relevant product markets and the distinct relevant geographical markets for different levels of production or distribution of these products;
- c) these undertakings regarding the presentation of additional information.

Article 30. Evidence for establishing the relevant market

(1) In order to determine the substitutability of the products the following categories of evidence items are used, depending on the case:

- a) information regarding the products usage, functional substitutability or similar characteristics. The products usage, functional substitutability or similar characteristics can, at a primary stage, limit the sphere of research regarding possible substitutable products. When this evidence is not sufficient, other categories of elements will be taken into consideration;
- b) Information about the prices, the clients' capacity of reaction to the permanent and significant prices' increase. The prices' increase by 10% is deemed to be significant.
- c) the outcomes obtained as a result of applying different statistical and/or econometric approaches;
- d) elements regarding the substitution in the nearest past;
- e) the reasoned points of view of the main consumers and competitors on the limits of the product market;
- f) the preference of the final consumers, the opinions expressed by the retailers, the market studies presented by the parties and their competitors, the surveys regarding the consumer habits and the purchase behavior of the consumers;
- g) information regarding the barriers and related costs associated with a transfer of demand to the potential substitutable products.
- h) information regarding different categories of clients and discrimination through price.
- i) the outcomes obtained as a result of applying different quantitative tests, surveys drafted for delineating markets.

(2) In order to determine the geographical dimension the following categories of evidence items are used, when necessary:

- a) information regarding the reorientation of past orders to other areas;
- b) the nature of demand (the consumer preferences, the need for a local presence) for the relevant product;
- c) the reasoned points of view of the main consumers and competitors on the limits of the geographical market;
- d) the location of the purchasing behavior of consumers. When the consumers are purchasing through biddings and the bidders are companies situated anywhere on the territory of the Republic of Moldova, it is generally considered that the relevant geographic market is the territory of the Republic of Moldova;
- e) the commercial fluxes,
- f) transfer barriers and costs related to the reorientation of orders to undertakings situated in other areas.

- (3) Based on the evidence collected the geographic market is defined, whose sphere of influence could vary from a local to a world scale.
- (4) Different definitions of the relevant market could result when:
- a) possible constraints on the substitution imposed by the conditions of the related market;
 - b) compatibility with the primary product is important;
 - c) the secondary products are difficult to identify, as well as the existence of some raised prices and of a long life cycle of the primary products;
 - d) substitution is significant among secondary products;
 - e) the characteristics of the primary products may cause rapid and objective consumer reactions to the increase of relative prices for the secondary products;
 - f) the existence of some “chains of substitution” in collaboration with the price interdependence, as well as price levels at the limits of the chains which need to be of the same size.

Article 31. Calculation of market shares

- (1) Defining the relevant market allows the identification of suppliers and consumers who act on the respective market.
- (2) The total size of the relevant market and the shares held may be recognized referring to information sources such as the undertakings’ forecast or the studies ordered to the consultancy undertakings and/or competent professional associations, financial and statistical reports, information provided for by customs authorities, regulating authorities, etc. In the absence of such information sources, or whether the available forecast is not viable, the Competition Council, usually requests from each provider from the relevant market to notify its own turnover so that to be able to calculate the total size of the market and the shares held.
- (3) the sales are the reference point for calculating the market shares. Depending upon the specific of the products or the industry at issue, there is another reference, which may provide useful information, such as, in particular, number of the clients, traffic volume, installed capacity, number of undertakings in the market supply, fleet units in aerospace or reserves held for certain sectors.

Chapter VI Competition Council

Article 32 General provisions on Competition Council

- (1) The Competition Council is an autonomous public authority liable towards the Parliament, which ensures the observance of the enforcement of the legislation regarding the competition, state aid and advertising in the limits of its competence.
- (2) For this purpose, the Competition Council is entitled with power of decision, regulation, prohibition, intervention, inspection and sanctioning, in the limits set up by the legislation.
- (3) The Competition Council is a legal person, with its own balance, seal with the image of the state coat of arms and name. The Competition Council has its central premises in Chisinau, and if needed, it can open branches in the territory.

(4) The Competition Council carries out its activity on the whole territory of the Republic of Moldova.

Article 33 Activity of the Competition Council

(1) The Competition Council operates in compliance with the provisions of the Constitution, present law, other legislative and normative acts, its own regulation and is independent in exerting its functions.

(2) The Competition Council's organization and activity is based on the principle of autonomy, independence and collegiality.

(3) On an annual basis, the Competition Council prepares a report on its activity. The report of the Competition Council is adopted by the Competition Council's Plenum, it is presented to the Parliament of the Republic of Moldova annually until 1st of June and it is made public.

(4) the activity report shall contain:

- a) annual financial report and the audit report;
- b) the Competition Council's activities in the accomplishment of the objectives provided for by the present law and the legislation in the state aid domain and advertising;
- c) the priority activity directions of the Competition Council for the following year;
- d) other information set up by the Competition Council

Article 34. Competition Council's collaboration with other authorities.

(1) In the process of carrying out its tasks, the Competition Council collaborates with public authorities, in view of enforcing the provisions of the legislation regarding the competition domain, state aid and advertising domains, in the limits of its competence.

(2) The public administration authorities send to the Competition Council for approval the drafts of the legislative and normative acts which have or may have anticompetitive impact.

(3) In the event, the Competition Council finds on the regulated markets acts which may be qualified as anticompetitive practices, the Competition Council request the opinion of the competent regulating authority on these acts in the time limit set up by the Competition Council.

(4) In the event, the regulatory authorities and other public administration authorities, in the process of exerting their duties, find, *ex officio* or upon request, signs of infringement of the present law, they shall refer to the Competition Council with regard to the case at issue and shall provide it with all the relevant information held.

(5) the collaboration between the Competition Council and other regulating authorities is carried out in compliance with the delimitation of tasks and duties by the law based on the principle – the regulating authorities act *ex ante* in the regulated sector, while the Competition Council act *ex post* in order to ensure the competition applying the competition legislation over all the relationship from the national economy which are covered by the present law.

(6) The Competition Council is entitled to collaborate with the international specialty authorities.

Article 35. Competition Council's Structure

(1) The Competition Council consists of the administration, executive body consisting of specialized and operational subdivisions, and territorial branches. The administration consists of the Competition Council's Plenum.

(2) The Competition Council Plenum is a collegial body and consists of 5 members, including the One President of the Plenum of the Competition Council , two Vice Presidents of the Competition Council Plenum, and two members of the Competition

Council Plenum who are respectively President and Vice presidents and members of

the Competition Council (hereinafter president, vice presidents and members of the Competition Council).

(3) Competition Council Plenum members fulfill public dignity functions. The Competition Council's staff consists of specialty, which falls under the law No.158- XVI as of 4 July 2008 on the public service and public servant status and technical

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(4) in view of exerting its tasks, the Competition Council, drafts and approves the bylaw on organization, functioning and procedure.

(7) the rights and the liabilities of the technical staff are regulated by the labour

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on;

(8) the Competition Council shall ensure the initial instruction and the continuous professional training of the staff pursuant the bylaw.

Article 36 The Budget of the Competition Council.

(1) the Budget of the Competition Council shall cover the estimative cost of all the activities, so that it shall exert effectively, efficiently and plenary its activities.

(2) The Competition Council makes up its budget from:

a) the examination fee for economic concentrations, in the amount set up

in art. 27;

b) financial means from the state budget

(3) the Competition Council Plenum approved the Competition Council Budget for the following financial year until 15 November the current year

(3) the budget of the Competition Council for the following year, the limit of the employees units and the classification scheme, shall be approved by the Parliament until the 1 of July of each year.

(4) the Parliament shall send the approved budget of Competition Council to the Government, in order to include it into the draft law on the state budget for the following year.

(5) The amounts representing fines and other sanctions applied by the Competition Council are income to the state budget under the law.

Article 37. Accounting and auditing of the Competition Council's activities

(1) the Competition Council shall ensure the accounting record of all the collected and allocated financial means, the proper authorization of payments from the account of these financial means and the proper control over the Competition Council's heritage.

(2) Annually after the internal audit of the Competition Council by which the activity processes are assessed, they report to the Competition Council Plenum on the sufficiency and efficiency of the internal control systems and accounting.

(3) The performance audit is carried out by the Courts of Audit.

Article 38. Liabilities

(1) In the exercise of their function, the members of the Competition Council Plenum and the employees shall exclude any personal interest which would influence the fulfillment of the duty tasks.

(2) The employees of the Competition Council may not carry out other remunerated activities, except for the didactic, scientific, creation activities or remunerated activity within international organizations related to the Competition Council's activity.

(3) The members of the Competition Council Plenum and the employees of the Competition Council shall observe strictly the legal regime of the conflict of interests provided for in the legislation on conflict of interests, as well as the provisions of art. 7 par. (2) of the Law no. 325 of 23 December 2013 on the assessment of institutional integrity.

(4) The members of the Competition Council Plenum, the employees of the Competition Council and the experts engaged by the Competition Council are obliged to keep the confidentiality of information classified as secrets protected by the law and of other confidential information, to

which they have access due to the exerting of their functions provided for by the present law.

(5) the confidential information collected during the enforcement of the present law shall be used by the Competition Council only for the purpose for

which it was collected and may be disclosed only with the consent, expressed

explicitly, of the person from which it was obtained or at the request of the court or other competent institutions, if this is provided for by the law.

(6) if appropriate, the employees of the Competition Council and the Plenum members shall bear civil, contravention or penal liability for the disclosure of the information classified as secret protected by the law.

(7) The official opinion of the Competition Council shall be expressed by the President of the Competition Council or the vice president entitled in this respect. An employee of the Competition Council may express the official opinion of the Competition Council only if entitled to do so, in compliance with the internal procedures.

Article 39. Tasks of the Competition Council

The following main tasks lie within the Competition Council competence:

- a) promotes the competitive culture;
- b) drafting the necessary normative acts for enforcing the competition legislation, legislation on state aid and advertising, in the
- c) endorsement of the draft normative and legislative acts which may have anticompetitive impact;
- d) addressing to competent bodies on the incompatibility of the legislative and normative acts adopted with the competition legislation, legislation on state aid and advertising, in the limits of its competence;
- e) Investigation of anticompetitive practices, unfair competition and other infringements of the legislation regarding the competition legislation, legislation on state aid and advertising, in the limits of its competence, provided for by the present law;
- f) by decision of the Competition Council, ascertains the infringements of the legislation regarding the protection of competition, advertising and state aid, applies interim measures as to the termination of the infringements denounced and enforces sanctions for the commitment of the infringements, within its competence;
- g) adopts decisions of the economic concentrations covered by the present law.
- h) Exercise the authorization, monitoring and reporting of the state aid;
- i) Initiates actions in the court on cases within its

competence;

k) carries out other task in compliance with the competition legislation, legislation on state aid and advertising, in the limits of its competence

Article 40. The functions of the Competition Council President

(1) The President of the Competition Council:

a) is liable before the Parliament for the accomplishment of the tasks entitled to the Competition Council by the legislative and normative acts in the domain of competition, state aid and advertising;

b) represents the Competition Council in the relationship with public authorities, physical and legal persons, in courts as well the international specialty authorities concerned;

c) convenes and chairs meetings of the Competition Council Plenum, and monitors the carrying out of the adopted decisions;

d) approves the agenda of the meetings of the Competition Council Plenum;

e) distributes tasks to the vice presidents and members of the Competition Council

Plenum confirmed by the decision of the Competition Council Plenum;

f) organizes the activity of the Competition Council;

g) organizes and carries out contest in order to fill the vacancies;

h) appoints, signs, modifies, suspends and terminates individual contracts of employment with the employees of the Competition Council in compliance with the legislation. If needed, applies disciplinary sanctions.

i) ensures the professional training of the Competition Council employees;

j) signs orders, official replies, court proceedings, other mail;

k) signs administrative acts, endorsements, reports of the Competition Council;

l) exerts other tasks provided for by the law;

(2) In case of absence or unavailability of the President, his/her functions shall be exercised by the authorized Vice president of the Competition Council.

(3) The Competition Council President is entitled to delegate powers to any

Competition Council Plenum member, to the employees of the Competition Council; the mandate must expressly specify the delegated powers and the length of exercise.

Article 41. The functions of the Competition Council Plenum

- (1) The Competition Council Plenum has the following functions:
- a) Exerts the administration of the Competition Council pursuant the legislation;
 - b) Approves the structure and the staff positions of the Competition Council, which subsequently shall be submitted to the Parliament for approval;
 - c) Orders drafting and approves normative acts necessary for the enforcement of legislation related to the competition domain, advertising and state aid within its competence, as well internal acts;
 - d) issues opinions on the drafts of legislative acts and other normative acts which may have anticompetitive impact and recommends the amendment of those which have or may have anticompetitive impact;
 - e) issues complaints to the competent bodies on the incompatibility of the legislative and normative acts adopted with the legislation on competition, state aid and advertising, in the limits of its competence;
 - f) orders initiation of investigations within Competition Council's competence;
 - g) examines investigations reports, with ultimate observations formulated for these and decides upon measures to be taken in the limits of its competence;
 - h) makes decisions of statements of law infringement, imposing of corrective measures, application of sanctions, application of leniency policy and other decisions stipulated in the present law, within its competence, as a result of the investigations carried out;
 - i) makes decisions of withdrawal of the benefit of exemption from the provisions or art.5, set up by the regulation adopted by the Competition Council for some agreement categories, decisions made by undertakings or associations of undertakings or concerted practices, where it states that these do not comply with the provisions stipulated in art 6, par (1);
 - j) makes decisions of refusal, authorization and conditional authorization of economic concentrations, revocation of a decision adopted in compliance with art. 25, par. (1), let. (a) or (b) or par. 2 let. (b) or (c);
 - k) makes decisions of stating the fact that the measure notified is not state aid, of state aid authorization, of conditional authorization, of state aid prohibition and recovery of the abusively used or illegal state aid;
 - l) applies interim measures in the conditions provided for by the

- law;
- m) ensures the enforcement and the effective carrying out of own decisions;
 - n) orders useful ex officio investigations for the market understanding;
 - o) makes decisions as to notification to the criminal investigation bodies or other competent authorities about the acts of possible current legislation infringements;
 - p) makes decisions on initiation of court actions on cases within its competence;
 - q) observes the application of legal dispositions and other normative acts related to the domain of competition, advertising, state aid, within its competence pursuant the current legislation;
 - r) makes recommendations to the Government and local and central public administration authorities in different economic sectors for the purpose of adopting measures which shall facilitate the market and competition development as well recommendation regarding different general aspects of the competition legislation enforcement taking account of the practice of national and European courts;
 - s) orders the carrying out of studies, approves reports regarding its activity domain and provides the Parliament, Government, public opinion and specialized international organizations with appropriate information;
 - t) makes decision on amendment, completion or annulment of own decision and any other decision, endorsements and reports issued in the accomplishment of the tasks pursuant to the present law or other legislative acts;
 - u) makes decision on acceptance of commitments proposed by the undertakings pursuant the present law;
 - v) exerts other functions provided for by the law.

(2) where the Competition Council Plenum, acting as a result of an application or ex officio, establishes the existence of an infringement of the art. 5, 7, 8 or 11, it requests by decision that the undertakings and the associations of undertakings stop the infringement at issue. For this purpose, the Competition Council Plenum may impose any behavioral or structural remedies which are proportionate with the committed infringement and necessary for the effective infringement ending. The structural remedies may be imposed only if there does not exist any behavioral remedy as efficient, or where a behavioral remedy would be more onerous for the undertaking at issue than a structural remedy.

Where the Competition Council Plenum has a legitimate interest to act in such a way, it may also state that an infringement was committed in the past.

(3) where, after the preliminary examination of the application, the Competition Council Plenum considers there exist sufficient reasons for

initiating an investigation on the alleged case of infringing the legislation on competition, state aid, advertising, acting ex officio, it may, in case of urgency determined by the risk of a severe and irretrievable to competition, by a prescription, order interim measures. The interim measures may be ordered only if the alleged infringement represents a practice expressly prohibited by the law and must be eliminated without delay, in order to prevent or stop the severe and certain damage. The interim measures must be strictly limited both in length and in their object, to what is needed in order to repair the free competition. Such a prescription may be renewed to the extent it is appropriate and necessary.

(4) where the Competition Council Plenum intends to adopt a decision imposing ending the infringement, and the undertakings recommend commitments in response to the concerns expressed by the Competition Council Plenum in its preliminary assessment, the Competition Council Plenum may, by decision, make obligatory commitments for the undertakings. Such a decision may be adopted for a determined length and may conclude that there are no more reasons for the action of the Competition Council Plenum.

(5) the Competition Council Plenum may, upon request or ex officio, reopen the procedure:

(a) in case an essential change intervenes regarding any of the deeds on which the decision was grounded;

(b) in case the undertakings at issue act contrary the undertaken commitments; or

(c) in case the decision was grounded on incomplete, inaccurate or misleading information provided for by the parties.

(6) The decisions or the prescriptions issued by the Competition Council Plenum for the enforcement of the provisions of par. (2) and (3) shall be sent to the author of the complaint and the undertaking or association of undertakings which make the object of the complaint or investigation within 10 days from the adoption and shall include the reasoning of the decision or prescription, if appropriate. These decisions or prescriptions may be appealed in competent the administrative contentious court within 30 days from their receipt.

(7) if appropriate, the Competition Council Plenum may raise discussion in meetings and solve some issues, pursuant the Regulation on organization and functioning of the Council, by protocol registrations in the minutes. The protocol registrations shall apply only within the limits where the adoption of a decision, resolution, disposition or prescription is not necessary.

Article 42. Membership of the Competition Council Plenum, incompatibilities and restrictions

(1) The members of the Competition Council Plenum, are appointed by the Parliament decision, at the proposal of the Speaker of the Parliament with the endorsement of the specialty parliamentary commission. The Speaker of the Parliament proposes, as well, the candidature of the Competition Council President.

(2) the members of the Competition Council Plenum do not represent the appointing authority and are independent in decision making.

(3) the duration of the Competition Council member' term is 5 years. Each member of the Competition Council is entitled to two consecutive mandates.

(4) Competition Council Plenum's membership mandates start from the date of entry into force of the Parliament's decision and expire on reaching the deadlines provided for in par (3), calculated from this date, and except for the termination of the membership based on the conditions pursuant the art. 48.

(5) As a member of the Plenum of the Competition Council can be appointed the person holding the citizenship of the Republic of Moldova, having higher education, professional competence, good reputation, has not in the last 5 years, in the professional integrity record, registered the negative result of the test of professional integrity for violation of the obligation stipulated in art.7 para. (2) lit. a) of Law no. 325 of 23 December 2013 on the assessment of institutional integrity, and has at least 10 years' work experience in economic, competition or legal activities.

(6) The President of the Competition Council must have held a leading position, in which he/she has proved professional and managerial competence.

(7) Competition Council Plenum's membership is incompatible with exercising any other remunerated activity, professional or of consultancy, with the direct participation

or by intermediaries at the management or administration of public or private undertakings, except for didactic and scientific activities. The members of Competition

Council Plenum's may not be appointed as experts or referees, neither by the parties, nor by the court or other institution.

(8) The members of the Competition Council Plenum may not be members of political parties.

(9) The members of the Competition Council Plenum are liable for the administrative

acts adopted by the Competition Council Plenum and for the accomplishment of their functions.

(10) The members of the Competition Council Plenum may be prosecuted, detained, arrested only at the request of Attorney General.

(11) The members of the Competition Council Plenum are liable for the sector related to the field of the Competition Council's activity entrusted by the president of the Competition Council

(12) The members of the Competition Council Plenum are obligated to participate at the Competition Council Plenum's meetings, to vote "for" or

- “against” the adoption of administrative acts of the Competition Council Plenum.
- (13) The members of the Competition Council Plenum make statements of assets and personal interests under the law.

Article 43 The oath of the members of the Competition Council

- (1) At the appointment, the President, vice presidents and the members of the Competition Council, make the following oath before the Parliament ,” I swear to faithfully serve the Republic of Moldova to observe the Constitution and laws of the Republic of Moldova, to protect public property, democracy and welfare of the people”
- (2) the oath is made before the Parliament, after the adoption of the appointment act.

Article 44. Termination of membership and revocation of members of Competition Council Plenum

- (1) The Competition Council Plenum membership may be terminated in case of:

- a) expiration of mandate;
 - b) resignation
 - c) death
 - d) revocation by the Parliament, at the proposal of the Speaker, or at the proposals of 1/3 deputies.
- (2) The Competition Council Plenum members are revoked by the Parliament in case:
- a) infringed the present law, fact established by the court or, they were convicted by a final and irrevocable court sentence for the commitment of an offence;
 - b) at least one of the situations provided in art. 42 para. (7) and (8), as established by a final finding act;
 - c) are not able to accomplish their duties for the reasons of physical or mental incapacity stated by a medical commission.
 - d) were absent groundless from three or more consecutive meetings of the Competition Council Plenum. In such case, the revocation of the members is carried out at the proposal of the president of Competition Council;

- e) it was established by an act of final determination that his / her adoption / adoption of an administrative act, direct or through a third person a legal act, taking or participating in a decision without the resolution of the real conflict of interests in accordance with the provisions of the legislation on conflict of interest regulation;
- f) did not file the declaration of personal assets or interests or refused to submit it, under the conditions of art. 27 par. (8) of the Law no. 132 of 17 June 2016 on the National Integrity Authority;
- g) the court has ordered, by irrevocable decision, confiscation of unjustified assets.

(3) The members of the Competition Council Plenum are revoked with the majority of votes from the total number of deputies.

(4) The members of the Competition Council Plenum whose mandates have expired

shall continue their activities until the appointment of their successors. At least one month until de expiry of the member's mandate, the president of Competition Council shall notify the Parliament in this respect, in order to start the appointment process of a new member.

(5) In case of a vacant position in the Competition Council Plenum for the situations provided for in par (1), let. b)-d), shall be acted in compliance with art. 42 par. (1), (2) to the appointment of a new member to fill the vacancy.

(6) The members of the Competition Council Plenum are obligated to notify immediately the Competition Council about the occurrence of any situation of incompatibility or impediment from those stipulated in art. 42 par. (7) and (8), they being legally suspended from the function at the moment of its occurrence, and in the event the situation continues for a time limit over 10 consecutive days, the mandate is terminated and it is acted pursuant to the provisions of par. (2) and (5).

Article 45. The manner of adoption and entry into force in the Plenum of the Competition Council administrative acts

(1) The administrative acts of the Competition Council shall be adopted during the Competition Council Plenum meetings, which may be ordinary or extraordinary. The meetings' minutes shall be signed by the President of the Competition Council, present

members and the secretary of the meeting. The ordinary meetings shall be convened when is deemed necessary, but not less than twice per month. The extraordinary meetings shall be convened at the initiative of the President or at least two members of the Competition Council.

(2) The meetings of the Competition Council may be public or closed. Closed meetings of the Competition Council may be organized for the purpose of protecting the information deemed to be commercial secret or other information whose disclosure is limited or prohibited by the law.

(3) The meetings of the Competition Council shall be deliberative where at least 3 members participate at them, out of which one is the president or the

vice president, and they are chaired by the President of the Competition Council, and in his/her absence, by the appointed Vice president.

(4) The administrative acts of the Competition Council shall be adopted in the Plenum by the vote of the majority of the members present at the meeting. Each member has one vote. In case of equal votes, the vote of the President, or in his/her absence, of the Vice president who chairs the Plenum meeting is decisive.

(5) The members of the Competition Council Plenum do not have the right to abstain from voting. The members who voted against, may record their separate opinion in the minutes of the meeting concerned.

(6) The decisions, dispositions and prescriptions of the Competition Council shall enter into force at the date of their adoption, if the decision, disposition or prescription does not provide for a later date. The decisions of the Competition Council enter into force at the date of publishing in the Official Gazette of the Republic of Moldova, if the decision does not provide for a later date.

Article 46. Form of the administrative acts adopted by the Competition Council in the Plenum

(1) The Competition Council in the Plenum adopts the following administrative acts: resolutions, decisions, provisions and prescriptions, which are stated in written form and are signed by the President or, in his/her absence, by the appointed Vice president.

(2) The decisions are individual administrative acts, which state the infringement of the legal provisions, apply corrective measures, adequate sanctions, solve the notifications on economic concentrations, pursuant to the tasks of the Competition Council stipulated by the present law and other legislative acts.

(3) The decision on the application of sanctions shall specify the time limit to pay the sanction. The time limit to pay the sanction shall not be set up earlier than the expiry of 60 working days from the date of communication to the undertaking or the association of undertakings obliged to pay the sanction of the reasoned decision on the application of sanction.

(4) By provisions, the investigation of the cases of infringement of legislation regarding the competition, state aid and advertising

(5) By prescriptions, interim measures are ordered, the public authorities, as well as the persons assimilated to public authorities are obliged to terminate the infringement and/or removal of the negative effects caused by the infringement of the law, as well as to annul or modify the normative or individual act, to carry out certain actions, or to refrain from them.

(6) The resolutions are normative acts by which the acts are adopted, modified or revoked which are necessary for the insurance of organization and activity of the

Competition Council, as well the acts necessary for the enforcement on the present law, such as those regarding:

- a) organization and functioning of the Competition Council;
 - b) organization, functioning and tasks of the Council of experts of the Competition Council;
 - c) assessment of the anticompetitive agreements, anticompetitive agreements not covered by the scope of art. 5 and the exemption of some categories of anticompetitive agreements;
 - d) establishing the dominant position and the assessment of the abuse of dominant position on the market;
 - e) economic concentrations;
 - f) accepting the commitments suggested by the undertakings;
 - g) other issues related to the fulfillment of tasks pursuant to the legislation on competition and state aid;
- (7) the Competition Council shall prepare and adopt in the Plenum the normative acts necessary for the enforcement of the present law, stipulated at par.(6) let.c)-g), in compliance with the provisions of the Law on the basic principles of regulating the entrepreneurial activity No.235-XVI as of 20.07.2006.

Article 47. The manner of appealing the administrative acts of the Competition Council

(1) The decisions and provisions of the Competition Council and the orders stipulated at art.56 par.(1) may be appealed within 30 days from the date of receipt by the parties in the competent administrative court, without prior application.

(2) Dispositions provided for in art.46 par. (4) may be appealed together with the decision or the prescription adopted in the case at issue, except for the prescription ordering interim measures.

(3) the initiation of the action does not suspend the enforcement of the decision or the prescription of the Competition Council Plenum, until the final solving of the case in the court, if the court does not order otherwise.

(4) In case of annulment, totally or partially, of the decision in the chapter related to applying sanctions, by a final and irrevocable court decision, the corresponding sum of the fine shall be returned to the payer from the state budgeted

within 45 days..

Article 48. Council of Experts

(1) Within the Competition Council, a consultative, impermanent authority may be established-Council of Experts. The way of establishing, the structure and the functions of this authority shall be set up by the Competition Council Plenum.

(2)The Competition Council may involve, specialists and experts for consultancy, expertise, analysis, who shall issue non obligatory opinions regarding the main aspects of competition policy.

Chapter VII Preliminary examination, investigation and decision making Article 49. The grounds for initiating the examination procedure

(1)The Competition Council initiates the procedure for examining the alleged case of infringement of competition law:

- a) upon request of a natural person or undertaking affected by the alleged law infringement;
- b) ex officio, except for the infringement provided for in Chapter III.

(2) in order to be entitled to submit a complaint regarding the alleged anticompetitive actions their authors shall show their legitimate interest.

(3) The authors of the complaint have a legitimate interest if the conduct denounced directly and really affects their interests. The interest shall be grounded on a right provided for by the legislation.

(4) The association of undertakings may imply a legitimate interest even if it is not directly affected by the conduct denounced, on the condition that, on the one hand the association has the right to represent the interests of its members, and on the other hand the conduct denounced really and directly brings damage to the collective interests of the association members.

(5) The Competition Council may begin the examination ex officio, based on the materials which it holds regarding the alleged infringement.

Article 50. The examination procedure of the case of infringement of competition law.

The procedure of examination of cases comprises the preliminary examination and/or the investigation. Case investigation is ordered pursuant to the conditions of art.55. If contrary, the investigation stage shall be omitted.

Article 51. The complaint on the alleged anticompetitive actions

(1) The complaint on alleged anticompetitive actions shall contain the data from the complaint Form approved by the Competition Council Plenum by decision.

(2) The complaint is sent by registered post, with receipt notice or is submitted to the

Competition Council on a hardcopy in two copies, and if possible, in an electronic version.

(3) In case the confidentiality for any of the parts of the complaint is requested, the complainant shall also submit a non-confidential version of the complaint, including the summary of the confidential information. In the confidential version, the complainant shall obligatorily state the factual and legal ground upon which the data is considered to be confidential.

(4) If the submitted complaint does not comply with the provisions of the par (1) – (3), this shall not be considered an complaint for notification of the alleged anticompetitive actions and shall be considered by the Competition Council as a general information

(5) In the case provided for in par (4) of the present Article, the Competition Council:

a) Initiates, by a disposition issued in the Plenum, an investigation ex officio, in case it states a major public interest and considers the conditions of art. 53 are fulfilled for the investigation initiation;

b) Upon request, returns the complaint to the author.

(6) About those provided for in par. (4) and the disposition of the Competition Council Plenum, if appropriate, the Competition Council shall notify the author of the complaint in written in a time-limit of 15 working days from the date of complaint submission.

(7) In case of return of the complaint pursuant par. (5), let b), the author is entitled to submit a new complaint which shall comply with the requirements provided for in par. (1)-(3).

Article 52. Burden of proof

(1) Upon notification of the alleged anticompetitive actions, the complainant shall submit evidence supporting the facts on which the application submitted to the Competition Council is grounded.

(2) The undertaking or the association of undertakings, invoking the benefit of exemption pursuant to the art. 6, is entitled to prove that the conditions of the article at issue or the provisions of the regulations at issue are

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(3) Within the examination procedure of the alleged cases of competition legislation infringement, the burden of proof shall rest on the

complainant.

(4) For the purpose of enforcing the present law, the Competition Council may use as a means of evidence any factual or legal element, including the confidential information acquired in the manner provided for by the law, which serve to state the existence or absence of infringement.

(5) For the purpose of applying the provisions of the present law, the Competition Council shall admit both direct and indirect evidence. The direct evidence is deemed the witnesses' statements or of other persons, material evidence, written documents, video-audio recording, experts' conclusions or any other proof, which demonstrates expressly the existence or absence of a law infringement. Indirect evidence is deemed those leading to a logical conclusion that a law infringement exists or existed at a given moment, or does not exist or did not exist at a given moment.

(6) The evidence collected by the Competition Council's and the evidence submitted by the parties or third persons make the ground of the Competition Council Plenum's decision.

Article 53. The preliminary examination of complaint

(1) The preliminary examination of the complaint submitted for alleged anticompetitive actions is carried out in time-limit of 30 days from application date.

(2) Within the preliminary examination of the complaint, the Competition Council

states whether there exists reasonable ground for suspecting the infringement of the competition legislation.

(3) Where the Competition Council considers that on the basis of the information in its possession, submitted by the author of the complaint and those collected within the preliminary examination, there are no such grounds, it shall inform the author of the

complaint in written form, listing the reasons of such a conclusion, and shall set a time-limit of 10 days within which it may express its views in writing. In this case the period provided in the par. (1) is suspended. The Competition Council is not obliged to consider any other written observations submitted after the expiration of this term.

(4) If the author of the complaint does not submit relevant observations within the time-limit set up in par. (3), the complaint is deemed tacitly withdrawn. The Competition Council shall notify the author of the complaint

in the notification sent, also about the effects of non submitting the observations.

(5) If the author of the complaint expresses its views within the time-limit set up in par. (3), the Competition Council:

- a) shall reject the complaint by decision, if the objections received do not lead to another complaint assessment;
- b) by a disposition, orders the investigation.

(6) In order to reject a complaint on the ground that the conduct denounced is not contrary with the competition rules or does not fall within their scope, the Competition Council is not obliged to take account of the circumstances that have not been made known to it by the author of the complaint and which could not be discovered in any other way than investigating the case.

(7) The decision of rejecting the complaint under par (4) prevents the author of the complaint to ask for the reopening of preliminary examination of the complaint or to submit a new complaint regarding the same object and on the same grounds.

(8) The Competition Council is entitled to request complementary information from the author of complaint, in order to determine the necessity of initiation of an investigation following the submitted complaint.

(9) In case of complaint ambiguity, the Competition Council may request specification of the complaint object and its grounds from the author of the complaint.

Article 54. Request of Information

(1) In order to carry out the duties assigned to it, the Competition Council is entitled the right to request and obtain from the undertakings, the associations of undertakings, public administration authorities, to provide the necessary documents and information.

(2) The Competition Council request the information at issue in written form stating the legal basis and the purpose of the request; specifies the information requested and fixes a reasonable time-limit within which the information is to be provided; as well the sanctions provided for in the law for non provisions of information or supplying incorrect, incomplete or misleading information.

(3) The undertakings and the associations of undertakings may not be obliged to recognize the infringement, but are obliged to answer factual questions and supply

documents even if these documents or information may be used for establishing against them or other undertaking the existence of an infringement.

(4) The obligation to provide the requested information on behalf of the undertaking or association of undertakings at issue lies on the owners of the undertakings or representatives of undertakings or associations of undertakings, and, in case of legal persons, companies and associations which do not have legal personality, to the persons authorized to represent

them based on the law or status. The lawyers authorized correspondingly to act shall provide information on behalf of their clients. The latter bear further on the entire liability in case the provided information is incomplete, inaccurate or misleading.

- (5) For the purpose of exerting its tasks, the Competition Council is entitled to interview any natural or legal person who consents to be interviewed in view of obtaining information regarding the object of investigation.
- (6) Where the employees of the Competition Council want to interview a person, they are obliged to indicate, prior to the interview, the legal ground (the disposition of the Competition Council Plenum on the initiation of investigation) and the goal of the interview, its intention to record the interview and the person's right to refuse the interview.
- (7) The interview may be taken by any means, including over the telephone or via internet. The Competition Council may register in any form the declarations made by the interviewed persons. A copy of the recording shall be made available to the interviewed person for approval. In the same time, the Competition Council establishes a time limit in which the interviewed person may communicate any correction to be made in the declaration. The corrections shall be communicated in written form.

Article 55. Investigation

(1) If, after the preliminary examination of complaint, it is considered that, on the grounds of the information submitted by the author of the complaint and that collected during the preliminary examination, there exist reasonable ground to suspect the competition legislation infringement, the Competition Council Plenum shall adopt a disposition of initiating the competition investigation.

(2) The Competition Council Plenum is entitled to order ex officio investigations based on the materials it holds.

(3) By the disposition of initiating an investigation, the Competition Council Plenum, appoints a rapporteur responsible for the preparation. The appointed rapporteur investigates all the acts of the investigation procedure, proposing the Competition Council Plenum to order the measures which lay within its competence. (4) The disposition of initiating the investigation does not imply the establishment of a competition legislation infringement. The infringement of legislation on competition is established by a decision of the Competition Council Plenum.

(5) The Competition Council is entitled to establish various degrees of priority for the cases which shall be investigated, depending upon the gravity of the infringement and the public interest.

Article 56. Carrying out inspections, the rights and obligations of the Competition Council employees and the rights and obligations of the persons subject to inspections

(1) In order to carry out the duties assigned to it pursuant to art. 55, the Competition Council is entitled to carry out all the necessary inspections at the undertakings and associations of undertakings. The inspection shall be ordered by the ordinance issued by the President of the Competition Council, stipulating the goal and the object of the inspection, date of starting the inspection and the sanctions provided for in art. 67 and 76, as well the right to appeal the ordinance in the court.

(2) The inspection is exerted by the Competition Council's employees, except for the beginners, only if there exist indicators that documents may be found and information may be collected which are deemed necessary for the investigation of the alleged case on infringement of competition legislation, initiated by a provision of the Competition Council Plenum, fact which shall not be proved to the subject of inspection.

(3) The Competition Council's employees entitled with inspection powers, have the following inspection rights:

a) to have access to premises, land and means of transport owned or used by undertaking, associations of undertakings or public administration authorities, except for the natural persons living spaces, land related to it and the transport means of the natural persons;

b) to examine the books and other documents related to the business, to the subject-matter and the purpose of investigation, irrespective of the physical or electronic support they are kept;

c) to take or obtain in any form copies of or extracts from such books or documents stipulated at let b). It is admitted to take registers or documents only if such a measure is necessary for preventing the hiding, removal of modification or destruction thereof or if it is not possible to take copies from them in the premise at issue;

d) to seal any activity premises, books and documents relating to the subject- matter and the purpose of investigation, for the inspection period, but not more than for 72 hours and to the extent necessary for the inspection, without suspending the activity of the undertaking subject to inspection;

e) to ask any representative or member of staff of the undertaking or association of undertakings or public administration authority for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record their answers;

f) To ask that the information relating to the subject-matter and purpose of the inspection, kept on the computer and available in the premise, is submitted in a form so that it may be taken and may be visible and readable.

(4) Where the Competition Council's employees request explanations from representatives or members the staff of an undertaking or association of undertakings, the explanations may be recorded in any form. A copy of any record made is given to the undertaking or the association of undertakings concerned after the inspection. Where explanations were requested from a member of the staff of the undertaking or association of undertakings which is

not or was not authorized by the undertaking or association of undertakings to make explanations on behalf of it, the Competition Council sets up a time limit within which the undertaking or association of undertakings shall pass on rectifications or completions to the explanations given by such a staff member. The rectifications and completions shall be added to the recorded explanations.

(5) The employees of the Competition Council, authorized to conduct an inspection, exert their rights for inspection by presenting the order mentioned in par. (1) and a delegation signed by the president of the Competition Council in which their powers are mentioned.

(6) where there are no persons in the premises within which the inspection shall be conducted, the Competition Council's employees, authorized to conduct the inspection,

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a) before its beginning, to undertake all reasonable actions in order inform the person who occupies or operates the premise about the intention to conduct the inspection;

b) after the person in question was notified, to offer it or its representative the reasonable possibility to assist during the inspection;

c) where they failed to inform the person in question, to leave in the premise, in an open place, a copy of the documents mentioned in par. (5);

(7) In case, the premise is not occupied, or the occupying person is temporarily missing, the Competition Council's employees, after conducting the inspection, shall leave the premise, leaving it in the security state they found it.

(8) The Competition Council's employees, authorized to conduct inspections, may

request the support of the competent subdivisions of Ministry of Internal Affairs, which are obliged to provide the necessary assistance to the employees of the Competition Council, in the exercise of their duties. Where the employees of the Competition Council authorized to conduct inspections, state that an undertaking precludes the inspection ordered pursuant the present article, they may request the support of the competent subdivisions of Ministry of Internal Affairs for the insurance of the access to the necessary information for performing their tasks, in compliance with the Law 416-XII as of 18.12.1990 on police. If needed, in the inspection can be also involved experts from certain domains, authorized and entitled by the Competition Council, in compliance with par. (5).

(9) During the inspection, the Competition Council's employees, as well the authorized experts are required to:

a) To inform the person subject to the inspection about its rights and obligations;

b) carry on the inspection actions in compliance with the

entitled

competences and taking account of the purpose of the inspection;

(10) During the inspection, the subject under inspection is being entitled the following rights:

- a) to get acquainted with the decision of initiating the case, of order on the ground of which the inspection and the inspection delegation was ordered, and to get a copy of it;
- b) to obtain a copy of the minutes on the inspection;
- c) to present their proof during the inspection;
- d) to present explanations registered under any form related to the subject matter and the purpose of the inspection;
- e) to identify data and information classified as commercial secret, and other confidential information supplied by him during the inspection process;
- f) to obtain copies of all the books or documents raised during the inspection and the list of these books and documents signed by the Competition Council's employees, conducting the inspection;
- g) to be assisted by lawyers, other legal representatives entitled pursuant the law, however their absence may not invoked by the subject under inspection as a ground for postponing the inspections.

(11) The undertaking, association of undertakings, central public administration authority has the obligation to obey to the inspection of the Competition Council.

(12) the inspection shall be conducted within 9.00-18.00 o'clock and shall be carried out in the presence of the person at whose place the inspection is conducted or its representative. The inspection may be extended after 18.00 only at the consent of the person at whose place the inspection is conducted or its representative.

(13) The time limit for the inspection is set depending upon the gravity, duration of the alleged infringement, as well on the grounds of other criteria which may allow determining the duration of inspection and may not exceed 10 working days.

(14) The inspection result is recorded in a minutes on inspection, drafted in two copies is numbered and signed on each page by all the employees of the Competition Council who carried out the inspection.

(15) One copy of the minutes is submitted, against a confirmation written in the minutes, to the person subject to inspection. The person subject to inspection, as well through the persons with leading positions or other representative is obliged to confirm by signature the receipt of the copy of the minutes even in case of disagreement with the statements mentioned in it. In case the representative of the person subject to inspection refuses to receive or the confirm by signature the receipt of the copy of the minutes, on the minutes the mention is written „ refused to receive or to confirm by signature the receipt of the copy of the minutes”, signed by the employees of the Competition Council who carried out the inspection and the minutes shall be sent to the person subject to inspection by registered letter, with the receipt notice.

(16) the books and the documents raised on the grounds of the present article may be withheld for a maximum time limit of three months.

(17) the obligation to submit the documents and information and the right to rise documents shall not apply to the communication between the lawyer or independent legal adviser and the client for the purpose and to the interest of exerting the defense right of the client within the procedures provided for by the present law.

Article 57. Carrying out inspections in other premises

(1) In case of a substantiated suspicion that books or other documents related to the business and the object of inspection, which may be relevant to prove a severe infringement under the art.5 and 11, are kept in any other premises, lands and transport means of the physical persons, including the private places of the members of the administration bodies or the members of the staff of the undertakings or associations of undertakings concerned, the Competition Council Plenum may order by a decision the conduct of inspections within these premises, lands or transport means.

(2) This inspection shall be conducted under the conditions of art. 56. In addition to the information mentioned in art.56 par. (1) the order on carrying out such an inspection shall indicate the reason for which the Competition Council concluded the existence of a suspicion in the meaning of the present paragraph.

(3) The access of the Competition Council’s representatives on the lands or transport means of physical persons, without their consent, shall be allowed only based on the judicial conclusion (mandate) issued under the conditions of the present paragraph and submitted to the person subject to the inspection.

(4) The mandate may be issued only if:

a) there is a substantiated suspicion that in the premises, lands or transport means which shall be subject to the inspection are kept the

registers or other documents, the submission of which was requested by the Competition

Council in compliance with the present law and which were not submitted within the set time limit, or

- b) there is a substantiated suspicion that in the premises, lands or

transport means which shall be subject to the inspection are kept the registers or other documents, the submission of which may be requested by the Competition

Council in compliance with the present law and which if they were required, were not submitted, but they were hidden, removed, modified or destroyed; or

- c) the employees of the Competition Council tried to enter the

premises, lands or transport means which shall be subject to the inspection, but did not succeed and there is a substantiated suspicion that in the premises, lands or transport means at issue, the registers or other documents are kept, the submission of which was requested by the Competition Council in compliance with the present law.

(5) The mandate shall contain the information mentioned in par. (1) of art. 56 and shall be valid for a maximum time limit of one month from the date

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(6) In case of requesting such a mandate, the court is compelled to verify whether the Competition Council President's order on carrying out of the inspection is authentic and whether the coercive measures planned are not arbitrary or excessive, taking account of the investigation object. When it verifies the proportionality of the coercive measures, the court may request the Competition Council detailed explanations namely on the grounds on which the

Competition Council suspects the art. 5 or 11, as well regarding the gravity of the suspected infringement, the importance of the searched evidence, the character of the involvement of the undertaking at issue and the reasonable probability that the registers and the documents related to the investigation object are kept in the place for the access of which the mandate is requested.

(7) The conclusion of the judge issued in compliance with the present paragraph may be appealed with recourse, which does not suspend the execution, if the appeal court provides otherwise.

Article 58. The exercise of defense rights

(1) Prior to the decisions adoption provided for in art. 65 par. (1), the Competition Council, during the investigation procedures shall fully grant the rights to defense of the parties concerned by granting the right to express the point of view regarding the conclusions and proposals from the investigation report, by ensuring the access to the case file, and right to hearings.

(2) In case of a procedure carried on in compliance with Chapter IV, the dispositions from par.(1) shall be applicable to the persons and undertakings involved in the concentration.

(3) Where the Competition Council Plenum intends to adopt a decision pursuant to art.41 par. (4), it shall publish the abstract of the case and the essential content of the commitments or the future recommended action. The interested third parties may submit their observations within a time limit set up by the Competition Council Plenum in the publication made and which shall not be less than a month. The publication shall take account of the legitimate interest of the undertakings for the defense of the commercial secret thereof.

(4) The Competition Council Plenum shall ground the decisions only on the objections over which the parties at issue could have presented the observations.

Article 59. Sending the investigation report and presenting the observations

(1) The report shall contain the investigation object, stated facts, evidence, conclusions and recommendations of the rapporteur at the termination of investigation.

(2) After drafting the investigation report, one copy of the non confidential version of the report, shall be transmitted for information to the parties in question-the author of the complaint and undertakings or associations of undertaking which make the object of investigation. Upon request, one copy of the non confidential version of the investigation report shall be transmitted to the persons whose hearing had been ordered under art. 64 par. (3).

(3) Within 30 days from the date of receiving the investigation report, the

parties involved have the right to present observations on it.

(4) The time limit mentioned in paragraph (3) may be extended by the Competition Council one time with at most 30 days, upon the substantiated request, to which the evidence proving the necessity of extension is enclosed. In this case, the party

submitting the request is notified in written form about the result of examination of its request in maximum 3 working days.

(5) In their written observations, the parties may mention the legal grounds and the known facts which are pertinent for their defense against the claims issued by the

Competition Council. The parties shall enclose any relevant documents as proof of

mentioned facts and may propose hearings of those persons which may confirm the presented facts in their observations.

(6) The investigation report, together with the observations presented by the interested persons and the case file materials is submitted by the rapporteur to the

secretary ship of the Competition Council Plenum for hearings, if appropriate, and decision making.

(7) The Competition Council may invite any other person, including a public administration authority to express their point on view in written form on the

investigation report.

Article 60. Access to the file

(1) The author of the complaint may request the access to the documents on

which the Completion Council grounded its preliminary examination. The author of the complaint shall be granted access to these documents once, upon a written request, as a result of the notification by the Competition Council, in compliance with art. 53 par. (3).

(2) The right to access to Competition Council's file is granted to undertakings and associations of undertakings, which make the object of the

procedures carried out by the Competition Council, under the reserve of the legitimate

interest of the undertakings to protect their commercial secrets. The right to access to file shall not include the access to confidential information and internal documents of the Competition Council, the mail of the Competition Council with competition authorities from other states. The access to the file shall be granted upon written request, only one time, as a result of the transmission of investigation report by the Competition Council for presenting observations

(3) The access to the file is granted, upon the condition that the file information, shall be used only within the procedure in question carried out by the Competition Council or the eventual judicial procedure related.

Article 61. Ways of access to files of Competition Council

(1) The President of the Competition Council shall allow the parties in question the access to file at the secretary ship of the Competition Council Plenum and making copies and file extracts, upon request and payment.

(2) The parties shall be notified about the date established for the access to the file within at least 3 working days from the complaint submission.

(3) The Competition Council is not entitled to provide the translation of the file documents.

Article 62. Treatment of documents and information contained in the file of the Competition Council

(1) The documents raised during the inspection by the Competition Council, out of

which some, as a result of a more detailed research, prove not be related to the object of the investigation concerned shall be returned to the undertaking from which they were raised. After returning, these documents shall no more be part of the case file.

(2) In case of documents with limited accessibility from the Competition Council's file, if possible, the access shall be granted to a non confidential version of these documents, in the way it was sent by the undertaking benefiting from protection of the confidential character. Where the confidentiality may be granted by summarizing the relevant information, the access shall be granted to its summary.

(3) Where the person or the undertaking concerned obtained, by signature, meeting minutes, or notes of the meetings, these documents shall be accessible after removing the commercial secrets or other confidential information.

Article 63. Criteria for accepting the requests regarding the confidential treatment of the information contained in the Competition Council file

(1) the information which may be classified as commercial secret are defined in the Law No. 171-XIII as of 06.07.1994 on commercial secret.

(2) The information other than commercial secrets, may be deemed as confidential in case and to the extent its disclosure may significantly bring damage to a person or to an undertaking. The confidential information may contain information which could allow the

parties to identify the authors of the complaint or other third parties, where the latter have a substantiated reason, proved in written form, to remain anonymous.

(3) The information which is classified as commercial secret shall be correspondingly marked in compliance with the law on commercial secret.

(4) The information other than commercial secret shall be classified as confidential where a person, undertaking or association of undertakings at issue submit a substantiated application in this respect and this request is accepted by the Competition Council.

(5) The application shall refer only to the information collected by the Competition Council from the author of the complaint and not to the information obtained from other sources. The application shall identify the parties towards which the information possessed by the Competition Council is deemed confidential.

(6) Classifying the information as commercial secret or other confidential information shall not prevent the Competition Council to disclose or to use such information, where it is necessary in order to prove an alleged infringement.

(7) Where the Competition Council intends to disclose restricted information, the person or the undertaking involved shall be granted the possibility to provide a non confidential version of the documents containing the information concerned, with the same probative value as the original documents.

Article 64. Hearings of the parties and other legal or natural persons

(1) Parties to which the report on investigation was transmitted are entitled to request hearings. The hearings are requested by the parties in written form together with the submission of observations on the investigation report.

(2) The hearings may also be ordered ex officio, by the president of the Competition Council.

(3) Where it is considered appropriate, the President of the Competition Council Plenum may order or admit the hearing of other legal or natural person. The requests of hearing these persons shall be approved in the event they prove adequate interest. Where these persons' requests are approved, they shall be passed on, if appropriate, upon request, a copy of the non confidential version of the investigation report.

(4) The Competition Council may invite any other person, including the representatives of the public administration bodies to assist in hearing. The Competition Council may invite these persons to express their point of view during the hearings.

(5) The persons invited to hearings shall be present in person, or if needed, may be represented by legal or statutory representatives, or by lawyer legally entitled representatives

(6) The hearings shall be conducted within the meetings of the Competition Council Plenum which are not public. The persons invited are heard in the presence of other parties to the case, taking the imposed measures in order to protect the information classified as commercial secret or being confidential. Where it is considered useful and for the purpose of protecting the information classified as commercial secret or being confidential, the persons invited may be heard separately.

(7) The hearing is audio recorded, or registered in a minute which contains the main declarations of the parties, which is enclosed to the file. The declarations shall be signed by the parties submitting them. The Competition Council shall notify the heard person about its intention to record the declarations made during the hearings.

(8) The absence from or the rejection of hearing, as well the refusal to submit any depositions, shall not represent any impediment for the continuation of the investigation procedure

Article 65. Decision making and communication

(1) After the examination of the observations submitted by the parties on the report of investigation, and if appropriate, after the hearings, the Competition Council Plenum shall decide:

a) To stop the investigation, on the ground that during the investigation there were not found sufficient proofs related to the infringement of the provisions of the present law which could substantiate the application of remedies or sanctions; or

b) To adopt a decision or a prescription pursuant the art. 41 par. (1) let. (h) – (l) and (u).

(2) if the present law does not provide otherwise, the decisions and the prescriptions of the Competition Council Plenum, adopted in view of carrying out its duties, provided for by the present law, shall be notified in written

to the persons concerned, within 10 days from the date of adoption thereof.

(3) the decisions and the prescriptions of the Competition Council Plenum shall be published on the web page of the Competition Council. The decisions and the prescriptions shall be published taking account of the legitimate interest of the undertakings as to the protection of the commercial secrets.

Article 66. The way of the execution of decisions and prescriptions and the observance of execution of the measures applied

(1) The Competition Council Plenum decisions, adopted under the conditions of the present law, shall be executed by the undertaking, association or the public administration authority to which it addresses within the time limit set.

(2) The persons concerned are requested to notify the Competition Council on the measures undertaken for the purpose of decision's execution, within the time limit set in it.

(3) The execution of measures applied to public authorities as well the observance of their execution is carried out under the conditions of art. 13.

(4) In case non execution of the Competition Council Plenum decision within the time limit set, by the undertakings and associations of undertakings, the forced execution is carried out in compliance with the provisions of the present law and the Execution Code.

**Chapter VIII Liability for competition law infringement
Section I Determination and individualization of sanctions
for the competition law infringement**

Article 67. General rules of individualization and determination of the fines for the competition law infringement

(1) The individualization of the fines provided for in the present law is carried out taking view of the gravity and the duration of the deed.

(2) The fine quantum is set up based on determining the basic amount which shall increase in case of aggravating circumstances and shall decrease in case of mitigating circumstances.

(3) The basic amount of the fine in case of competition law infringement is set

up grounded on the total turnover of the undertaking for the prior year to the sanctioning.

(4) Where the total turnover for the financial year preceding the sanctioning may not be determined, view shall be taken of the last year prior to the sanctioning in which the undertaking of the association of undertakings registered turnover.

(5) the fines for the infringement of the competition legislation shall be set up pursuant the present law by derogation from the Contravention Code no 218-XVI as of 24.10.2008.

Article 68. Deeds deemed to be infringement of the procedural norms of competition legislation

(1) the plenum of the Competition Council is entitled to apply, by decision, to the persons mentioned in art. 20 par (2) let. (b) or to the undertakings fines in the event where purposely or negligently:

a) as a reply to a request pursuant to art. 54, they provide inaccurate, incomplete or misleading or provide incomplete documents or withholding information or documents requested in the time limit set;

b) they provide inaccurate, incomplete or misleading information in an application, confirmation, notification or a completion of it, pursuant to the provisions of the art.22;

c) they provide documents or registers requested in relation with the object and the goal of the investigation in an incomplete form during the inspections carried out pursuant to art. 56 and 57.

d) they refuse to comply with an inspection carried out pursuant to art.56 and 57

e) as a reply to a question addressed pursuant to art. 56 par (3) let. (e), they:

1) provide an inaccurate or misleading answer;

2) do not rectify in the time limit set by the President of the Competition Council, an inaccurate, incomplete or misleading answer provided by a member of the staff; or

3) do not provide a complete answer or refuse to provide this answer related to the deeds which refer to the object and the goal of the inspection ordered by an order adopted pursuant to art. 56, par. (1).

f) seals, applied by the authorized employees of the Competition Council, pursuant art. 56, par (3), let. (d) were broken.

(2) for its defense, the person, undertaking or the association of undertakings, may prove that the information requested was not in its possession or under its control and that it was impossible for it to comply with the requirements of the Competition Council, making use of all reasonable means.

(3) The fine provided for in the present article shall not apply where the information, registers or the documents were requested or the seals were applied by the Competition Council or the representatives thereof with the infringement of the relevant provisions of the present law.

Article 69. Establishing the base level of the fine for infringement of the procedural norms of the competition legislation

(1) The base level is set up grounded on the gravity and the duration of the deed. The base amount is calculated by multiplying the per cent determined based on the amount of gravity by the factor related to the infringement duration.

(2) While evaluating the infringement gravity view is taken of the action's character, in particular if the requested information could have had a significant impact on case solving being examined by the Competition Council due to its character, importance and utility of these.

(3) Upon the gravity, the deeds are divided into three categories:

a) small gravity infringements: basic amount is set up in the quantum up to 0,15% from the total turnover in the meaning of the art. 67;

b) medium gravity infringements: basic amount is set up in the quantum from 0,15% to 0,25% from the total turnover in the meaning of the art. 67;

c) high gravity infringements: basic amount is set up in the quantum from 0,25% to 0,45% from the total turnover in the meaning of the art. 67.

(4) The infringements pursuant to art. 68, par. (1) let. d) and f) are deemed to be deeds of high gravity.

(5) Upon the duration, the infringements are divided into three categories, as follows:

a) short term duration infringements (less than 15 days) or with instant consumption: factor 1;

b) medium duration infringements (15 - 30 days): factor 1,2;

c) long term duration infringements (more than 30 days): factor 1,4.

Article 70. Adapting the basic level of the fine for the infringement of the procedural norms of the competition legislation

(1) The basic amount may be increased or decreased by a per cent from 5% to 10% from the basic level quantum set up pursuant to art. 69 for each established aggravating or mitigating circumstance.

(2) The basic level may be increased where there are aggravating circumstances as follows:

a) where an undertaking continues or repeats an identical or similar infringement after the previously the Plenum of the Competition Council established that the undertaking committed an offence mentioned in art. 67;

b) intimidation measures on other undertakings to persuade them either not to provide information requested by the Competition Council, or to provide inaccurate or incomplete information or other attempts to persuade such attitudes;

(3) The basic level shall be decreased where there are mitigating circumstances as follows:

a) effective collaboration with the Competition Council during procedures, except for the legal obligation to cooperate;

b) end of infringement on the own will of the offender or from the first interventions of the Competition Council;

c) other circumstances which prove the will of the undertaking to facilitate the examination of the causes initiated by the Competition Council.

d) the case where the undertaking makes the prove that the infringement was committed neglectfully;

(4) the list of the mitigating circumstances mentioned in the par. (3) is not exhaustive.

(5) For the infringements pursuant to art.68, par. (1) committed by the newly established undertaking which did not realized the total turnover for the year prior to the sanctioning, the fine is set up in quantum up to MDL 500 000.

(6) Where, as a result of applying the criteria of individualization, the maximum threshold pursuant to art. 69, par. (3) for the infringement category at issue is

exceeded, the fine shall be reduced to a maximum threshold of 0,5% from the total turnover, in the meaning of art. 67.

Article 71 Deeds deemed to be infringements of the material norms of the competition legislation

(1) The plenum of the Competition Council is entitled to apply, by decision, to the undertakings fines in the event where they purposely or negligently:

- a) infringes the provisions of the art.5 and 11;
- b) contravene to a prescription ordering interim measures pursuant to art. 41, par. (3)
- c) do not comply with an commitment which becomes obligatory by a decision pursuant to art. 41 par (4);
- d) does not notify an economic concentration, defined under art. 22, par. (1), prior to its enforcement, except for the cases where they are authorized expressly in this meaning in compliance with the art.20, par. (5), or by a decision adopted in compliance with art. 20, par. (6);
- e) carries out of a concentration operation infringing the provisions of the art.20, par. (5);
- f) enforce a concentration action declared incompatible by a decision of a Competition Council, in compliance with the provisions of art. 25, par. (2), let. a);

Article 72. Setting the basic level of the fine for the infringement of the material norms of the competition legislation

(1) The basic level is set up based on the severity and duration of the deeds. The basic level is setup by multiplying the percent determined based on the gravity of the infringement to the factor related to the duration of infringement.

(2) While evaluating the severity of the infringement of the material norms of the competition legislation, account is taken, in particular, of the character of the committed deed, share in the total turnover of products selling, realized by the undertaking which are directly or indirectly linked to the infringement, in the relevant geographic market on the territory of the Republic of Moldova, where such an assessment is possible, cumulative shares of all participating undertakings, impact of the infringement of the market, where it may be assessed, probability for a concentration to be prohibited if notified.

(3) The amount of the fine calculated for the gravity of the infringement is:

- a) up to 1% from the total turnover, in the meaning of art. 67, for the deeds of small gravity - such as, vertical anticompetitive agreements, with a reduced impact on the market or which affect a limited part of it; infringements provided

for in art. 71, let. d), e) and f) related to concentration for which the Competition Council issues non objection authorization decisions, since there are no doubts as to the compatibility with the competition environment, or because the doubts as to the compatibility with the competition environment were removed by the amendments recommended by the undertakings and accepted by the Competition Council; infringements provided for in art. 11 with a reduced impact on the market or which affect a limited part of it; infringement committed negligently;

b) from 1% to 2% from the total turnover, in the meaning of art. 67, for the deeds of medium gravity - such as horizontal or vertical anticompetitive agreements, except for those provided for in let. a) and c); infringements provided for in art. 71, let. d), e) and f) related to the concentrations referring to which the Competition Council may adopt a decision of conditional authorization as a result of an investigation;

c) from 2% to 4% from the total turnover in the meaning of art. 67 for high gravity deeds –category which includes the horizontal agreements such as hard core cartels; the infringements provided for in art. 71 let. d), e) and f) related to concentrations to which the Competition Council, as a result of investigation, may adopt a decision by which the concentration shall be declared incompatible with the competition environment; the infringements provided for in art. 11 which had very grave consequences for the market, producing effects on large areas thereof.

(4) Where an association of undertakings commits an infringement related to its members' activity, the basic level of the fine shall be calculated out of the total turnover of each member active on the market affected by the infringement committed by the association.

(5) based on the duration of the infringements, these are divided into three categories:

- a) short term infringements (less than 1 year) or with immediate consumption: factor 1.
- b) Medium term infringements (from 1 to 5 years): factor 1,2;
- c) Long term infringements (over 5 years): factor 1,4.

(6) where the undertaking at issue did not realized any turnover in the financial year prior to sanctioning for the reason it was not yet established, the fine is set up in quantum up to MDL 5.000.000

Article 73. Adapting the basic level of the fine for the infringement of the material norms of the competition legislation

(1) The basic level may be increased or decreased by a per cent among 5% and 10% of the quantum of the basic level established in compliance with art. 72 for each constant aggravating and mitigating circumstance mentioned in par (2) let (a), the basic level shall be increased by a per cent among 10% and 25% for each of this type of infringement established by the Competition Council.

(2) The aggravating circumstances determining the increase of the basic **level** are as follows:

a) where an undertaking continues or repeats and identical or similar infringement after the Competition Council Plenum established that this undertaking has infringed the provisions of art. 5 or 11.

b) deliberate continuation of the infringement during the investigation in the cases related to cartels;

c) refusal to cooperate with the Competition Council or the obstruction in the investigation implementation;

d) role of leader or instigator of the infringement. Account shall be taken of the measures undertaken in order to constraint other undertakings to participate to infringements and/or retaliation measures undertaken against other undertakings aimed at imposing the infringement commission;

e) institutionalized character of the cartel.

(3) The mitigating circumstances which determine the decrease of the basic level are deemed to be the following:

a) the undertaking concerned provides the proves that it stopped the infringement after the first intervention of the Competition Council. The mitigating circumstance at issue shall not apply in case of agreements of secret practices (in particular in case of cartels);

b) provision by the undertaking of the proves that its participation in the committed infringement is extremely reduced and thus that, during the period of the infringement , effectively it avoided its application, adopting a correct conduct on the market;

c) the undertaking concerned collaborated effectively and fully with the Competition Council outside the domain of application of the leniency policy and behind its legal obligation to cooperate;

d) the anticompetitive conduct of the undertaking was authorized or encouraged by the public authorities or by the existent legislation;

e) where the undertaking concerned proves that the infringement was committed out of negligence.

(4) The list of the mitigating circumstances mentioned in par. (3) is not exhaustive.

(5) The Competition Council shall take account of the necessity to increase the sanction in order to exceed the illicit gains, as a result of the committed infringement, where it is possible to assess this quantum, but not more than the maximum threshold set up in par. (7)

(6) In case of the infringement pursuant to art. 71 par. (1) let. a), if, after the receipt of the investigation report and exert of the right to file access or during the hearings, the undertaking expressly recognizes the commitment of the anticompetitive deeds, this being retained as a mitigating circumstance in form of collaboration within the case investigation procedure and shall determine the decrease of the fine quantum by a per cent from 10% to 25% from the basic level set up in compliance with the provisions of art.72 . While determining the per cent of reducing the basic level, as a result of action recognition, the Competition Council shall take account of the fact, from case to case, that the undertaking recognized totally or partially the action stated in the report. In case of partial recognition, the Competition Council may refuse to offer the decrease if the recognition is deemed to be insufficient and does not signifies the commitment of the deeds by the undertaking.

(7) where, as a result of the application of individualization criteria, the maximum threshold set up for the infringement category at issue in art. 72 par (3) is exceeded, the fine shall be reduced to a maximum threshold of 5 % of the total turnover in the meaning of art. 67.

Article 74. Possibility of fine payment

In outstanding cases, at request, the Competition Council shall be entitled to reduction of the fine, taking account of the lack of payment capacity of an undertaking in a certain social and economic context. The Plenum of the Competition Council shall not grant a fine reduction in a such case only grounded on the simple finding if an unfavorable or poor financial situation. The reduction may occur only on the grounds of objective proof according to which the application of a fine, under the conditions provided for by the present law, would irretrievably jeopardize the economic viability of the undertaking concerned and lead to full depreciation of assets thereof.

Article 75. Application of the fine to an association of undertakings

(1) When a fine is applied to an association of undertakings, taking account of its members' turnover, and the association is not solvable, the association is obliged to request its members to cover by contributions the amount of the fine, if the implication of these in the commitment of the anticompetitive deed is stated.

(2) where the requested contributions were not granted to the association in the time limit set up by the Plenum of the Competition Council, the fine payment or the remained difference shall be requested directly from each association member involved in the commitment of the anticompetitive deed.

(3) If, as a result of the request made pursuant to the procedure provided for in par. (1) and (2) from the present article, the entire quantum of the fine was not covered, the payment of the difference shall be requested from those members of the association which were active on the relevant market on which the law infringement occurred, in the way defined by the decision of the Competition Council by which the law infringement was sanctioned.

(4) However, the Plenum of the Competition Council does not request the payment under the par. (2) or (3) from the undertakings which prove they did not applied the decision of the association which lead to infringement or did not know about its existence or that actively distanced themselves from this, before the initiation of the investigation by the Plenum of the Competition Council in the case at issue.

(5) The sum to be paid by each undertaking, member of association, may not exceed the maximum threshold of the fine set up by the present law for the infringement type (procedural or material) at issue, calculated from the total turnover realized by the undertaking at issue in the year prior to the sanction.

Article 76. Penalty payment

(1) the Plenum of the Competition Council may apply, by decision, to the persons mentioned in art. 20 par. (2) let.(b), undertakings of associations of undertakings penalties in the amount of up 5% of the average daily turnover realized by the undertaking of association of undertakings at issue in the year prior to sanctioning, for each delay day, calculated at a date subsequently set up in the decision, in order to commit them:

a) to stop an infringement of the provisions of art. 5 or 11, in compliance with a decision made pursuant art. 41 par. (2);

b)) to comply with a prescription which orders interim measures pursuant to art. 41 par. (3);

c) to comply with a commitment which became compulsory by a decision pursuant to art. 41 par. (4);

d) to provide completely and correctly the information and the documents which were requested in compliance with the provisions of art. 54;

e) to submit to an inspection ordered by an ordinance of the President of the Competition Council under the conditions of art. 56 and 57;

f) to comply with a condition or an obligation imposed by a decision adopted pursuant to 25 par. (1) let. (c) or par. (2) let. (c).

(2) where the persons mentioned in art. 20 par. (2) let. (b), undertakings or associations of undertakings have fulfilled the obligation for the execution of which the penalty payment was applied, the Plenum of the Competition Council may set the final sum of the penalty payment at a value less than the one resulting from the initial decision. The art. 75 shall apply correspondingly.

Article 77. Liability for the unfair competition

(1) By derogation from the criminal law, the implementation of the unfair competition actions prohibited by the art. 15-19 is sanctioned by the Competition Council with a fine in the quantum up to 0,5% from the total turnover realized by the undertaking at issue in the year prior to the sanctioning.

(2) The damage produced as a result of the actions stated as unfair competition, shall be repaired in compliance with the provisions of the Civil Code, by the undertaking which caused it.

Article 78 Control of the decisions on the application of fines or penalty payment

(1) Decisions by which the Plenum of the Competition Council has imposed a fine or a penalty payment can be appealed to the court.

(2) the courts mentioned in par. (1) may reduce or increase the fines or penalty payments enforced, and in the event they find that the decision on establishing the infringement and/or fine or penalty payment enforcement is groundless and/or is made with the procedure infringement, these may cancel the enforced fines or penalty payments.

Article 79. Repairing the prejudice caused by prohibited anticompetitive practices

(1) Independently of the applied sanctions in compliance with the provisions of the present law, the right to action of the natural and/or legal persons for the integral repairing of the prejudice caused by an anticompetitive practice prohibited by the present law, shall remain reserved.

(2) The natural and/or legal persons, considering themselves prejudiced by an anticompetitive practice prohibited by the present law, shall be able to submit request for compensation within one year from the date on which the decision of the Competition Council, on which the action is grounded, remained

final or was maintained, entirely or in a part, by a final and irrevocable court decision.

Article 80. Liability for unfair competition deeds

(1) The court shall compel the person committing an unfair competition deed to stop or remove the deed, to return the confidential documents illicitly acquired from their legitimate holder, and, if appropriate, to pay compensation for the caused damage, in compliance with the current legislation.

(2) Upon the request of the legitimate holder of the commercial secret, the court may order measures of interdicting the industrial and/or commercial exploiting of the products resulted from the illicit acquirement of the commercial secret or the destruction of these products. The interdiction ends when the protected information became public.

(3) if any of these unfair competition deeds causes patrimonial or moral damages, the prejudiced person is entitled to address to the competent court with appropriate civil action.

(4) by the decision on the fund at issue, the court may order that the sequestered goods be sold, after the destruction of the false mentioning. The sum obtained as a result of selling, shall firstly cover the granted compensation.

(5) the right to action in unfair competition belongs to natural and legal persons practicing entrepreneurship, upon the condition that a competition relation exists between them and the author of the deed, i.e. to exercise an identical or similar type of activity.

(6) if the unfair competition deed was committed by an employee during the exert of duty tasks, the employer shall be jointly liable for the caused damage, except for the case where it could prove that, according to the practice, it was not able to prevent the commission of the deed.

(7) the persons who created together the prejudice, are jointly liable for the committed unfair competition acts and deeds.

(8) for undertaking an urgent measure, the provisions of art. 174-179 of the Civil procedure code shall apply.

(9) the right to action provided for in par. (3) is prescribed within one year from the date on which the injured party learned or must have learned the damage and the person who caused it, but not later than 3 years from the date of committing the deed.

Section 2 Limitation periods

Art. 81. Limitation periods for application of sanctions

(1) The right of the Competition Council to enforce sanctions for the infringement of the provisions of the present law shall be subject to the following limitation periods:

a) one year in case of the infringements related to unfair competition provided for in art. 15-19;

b) Three years in case of the infringement of the provisions of art. 68;

c) Five years in case of all other infringements of the present law provisions.

(2) The limitation period starts from the moment of infringement commitment. In case of continuous or repeated infringements, the limitation period starts from the moment of infringement termination.

Article 82. Interruption of the limitation period for the application of sanctions

(1) Any action taken by the Competition Council for the purpose of preliminary examination and investigation of an infringement shall interrupt the limitation period for the enforcement of sanctions pursuant to art.81. The interruption of the limitation period produces effect from the date of communication of the action by the Competition Council, to at least one undertaking or association of undertakings which took part at the infringement.

(2) the limitation period is interrupted by the actions by the Competition Council as follows:

a) written request of information;

b) carrying out of inspections;

c) commencement of investigation procedure.

(3) The interruption of the limitation period produces effects for all the undertakings or associations of undertakings which have participated in the infringement.

(4) After the interruption of the limitation period, another period starts, with a similar length, from the date at which the Competition Council initiated one of the actions mentioned at par (2). The limitation period shall expire the later on the day in which a period equal to the double limitation period, applicable for the

commitment of the concerned infringement, run, without a sanction being applied by the Competition Council in compliance with the present law.

Article 83. Limitation period for the enforcement of sanctions

(1) Any deed of the Competition Council in view of preliminary examination or investigation of an infringement interrupts the limitation period for the enforcement of sanctions provided for in art. 81. The interruption of the limitation period produces effect from the date of communicating the deed by the Competition Council, communication made at least to one undertaking or association of undertakings which have participated in the infringement.

(2) The limitation period shall be interrupted by the deeds of the Competition Council, as follows:

- a) request of information in written form;
- b) order on carrying out inspections;
- c) ordinance on initiation of the investigation procedure;

(3) The prescription for sanctions enforcement is interrupted:

- a) By the communication of a decision of modifying the initial sanction quantum or refusal of a modification request;
- b) By any other deed of the Competition Council realized in view of forced sanction enforcement.

(4) After the interruption of the limitation period, a new period starts to run, with a similar duration, from the date on which the Competition Council issued one of the documents mentioned in par. (2). However, the limitation period shall expire the latest on the day on which a period equal to the double length of the limitation period, applicable for committing the infringement at issue, has run, without a sanction provided for by the present law being applied by the Competition Council.

(5) The limitation period for the enforcement of sanctions shall be suspended:

- a) for the period in which the payment may be made;
- b) for the period in which the forced payment enforcement is suspended in compliance with a court decision.

Section 3 Leniency policy

Article 84. The sphere and the conditions of leniency policy enforcement

(1) The leniency is deemed the recompense granted by the Competition Council for the cooperation of the undertakings and the associations of undertakings with the Competition Council, when these were or are part of anticompetitive agreement.

(2) Leniency policy shall not apply to horizontal or vertical agreements which, pursuant to law, may be exempted from the prohibition provided for in art.5, par (1) of the present law.

(3) The undertakings and the associations of undertakings may gain immunity to fines or the decrease of its quantum, if they fulfill the conditions provided for in the present law.

(4) Any declaration made by an undertaking to the Competition Council for the purpose of benefiting from leniency is deemed to be part of the file where this undertaking is granted leniency by the Competition Council. This may not be disclosed or used for other purpose than the application of the art.5.

(5) The access to explanations is granted only to the parties concerned, upon the condition to involve, together with the legal representatives who gain access on their behalf, not to get copies, through mechanical or electronic means, of any information obtained from the explanations to which they are granted access. These persons must ensure the fact that the information obtained from the explanations shall be used only for purposes provided for in par (4). Other persons, as for instance authors of complaints, shall not be granted access to explanations. The Competition Council regards this type of specific protection as not being justified from the moment in which the applicant discloses the content of request to third parties.

(6) The Competition Council shall not make any decision as to the opportunity of granting the conditional immunity or the opportunity to recompense any leniency request in case of stating that the request refers to infringements exceeding five years limitation period, provided for in art. 81, since such a request shall not have any object.

Article 85 Immunity to fine

Immunity to fine is deemed to be the exoneration from the fine enforcement for the infringement of the provisions of art. 5 par (1) . There exist two types of immunity to fine, namely type A and type B.

Article 86 Type A immunity

(1) The Competition Council shall grant immunity to fine if the following conditions are cumulatively fulfilled:

a) the undertaking or the association of undertakings is the first to provide information and evidence which in the Competition Council opinion, allows the initiation of the investigation procedure and the inspection;

b) on the date of evidence provision, the Competition Council did not possess sufficient evidence for the initiation of the investigation procedure or the inspection;

c) the general conditions for granting the leniency are fulfilled under the art.90

(2) The Competition Council shall be able to initiate the investigation procedure and carry on inspections pursuant to par (1), where the applicant provides the following information and evidence:

a) a declaration which shall include, to the extent the applicant knows about this evidence at the moment of submitting the application;

- a detailed description of the way of organization of the alleged agreement including:

(i) the goals, activities and way of functioning;

(ii) products concerned, geographic area, functioning duration and market volumes estimated to be affected by the alleged agreement;

(iii) dates and meeting places, content of discussions, participants to meetings within the alleged agreement;

(iv) all the relevant explanations related to the evidence provided in order to support the application;

- name and address of the undertaking or the association of undertakings which submits the application for granting the immunity, as well the name and addresses of all other undertakings and associations of undertakings which participate or participated at the alleged agreement;

- name, positions, location of offices, and if necessary, domicile addresses of the persons who, as known by the undertaking or the association of undertakings, were or are part to the alleged agreement, including the persons who were involved on behalf of the applicant;

b) other evidence related to the alleged agreement, possessed by the undertaking or the association of undertakings, or available at the moment of application submission, including in particular any evidence from the period of the suspected infringement.

(3) The declarations may be made as written and signed documents by the representatives of the undertaking or association of undertakings, either by the persons entitled on their behalf, or verbally, being audio registered.

Article 87. Type B immunity

(1) The Competition Council shall grant immunity to fine if the following conditions are cumulatively fulfilled:

a) the undertaking or the association of undertakings is the first to provide information and evidence which shall enable the Competition Council to set up the infringement of the art.5 par (1);

b) on the date of evidence provision, the Competition Council did not possess sufficient evidence in order to set up the infringement of the art.5 par (1);

c) none of the undertaking or the association of undertakings was granted immunity under art.86 concerning the alleged agreement;

d) the general conditions for leniency granting are fulfilled pursuant to art.90

(2) In order to gain immunity, the undertaking or the association of undertakings shall provide information and evidence such as those provided for in art.86 par. (2).

Article 88. Undertakings or associations of undertakings excluded from the benefit of the immunity to fine.

The undertaking or the association of undertakings initiating the agreement and/or the association of undertakings which took measures for the constraint of other undertakings to participate to the alleged agreement or remain part of it shall not benefit from the immunity to fine. These may benefit from a discount of the fine quantum, if fulfilling the requirements and conditions provided for in the present law.

Article 89. Reduction of fine quantum

(1) The undertakings and the associations of undertakings which disclose their participation to an agreement which affect the competition, but do not fulfill the conditions necessary for gaining the immunity, may benefit from a reduction of the fine quantum, compared to the level which would have been applied regularly.

(2) In order to benefit from such a reduction, the undertaking or the association of undertakings shall provide to the Competition Council evidence related to the alleged law infringement, which may additionally bring a significant contribution as to those possessed already and shall fulfill the general conditions for the leniency application.

(3) The additional significant contribution refers to the extent to which the evidence, unknown until that date, provided by an undertaking or an association of undertakings, enhances by their nature and/or level of their degree of

precision, the capacity of the Competition Council to prove the existence of the alleged infringement.

(4) The written evidence coming from the period to which the facts refer, have a greater contribution than those previously established.

(5) The evidence having a direct relationship with the concerned facts shall be deemed more important than those which have only an indirect relationship with the concerned facts.

(6) The conclusive evidence shall be deemed to have a more important additional contribution than the evidence such as declarations, which need assessment and corroboration with other sources, in case of being litigated.

(7) In all the decisions issued, at the end of the investigation procedure, the Competition Council shall establish the reduction level from which the undertaking or the association of undertakings shall benefit, compared to the fine which would have been applied regularly:

a) For the first undertaking to provide evidence bringing a significant additional contribution, a reduction from 30% to 50%;

b) For the second undertaking to provide evidence bringing a significant additional contribution, a reduction from 20% to 30%;

c) For the rest of the undertakings to provide evidence bringing a significant additional contribution, a reduction of maximum 20%.

(8) In order to establish the reduction level within each of these installments, the Competition Council shall take account of the date on which the evidence fulfilling the conditions of par (2) were supplied as well the value of the additional contribution brought.

(9) If the undertaking or the association of undertakings requesting the reduction of the fine quantum is the first to provide evidence, as those provided for in par (3), (4), (5) and (6) which are used by the Competition Council to identify additional facts which lead to the increased severity or length of the infringement, this shall not take account of the additional facts while setting the fine quantum applied to the providing undertaking.

Article 90. General conditions for granting leniency

(1) Any undertaking or association of undertakings willing to request the fine immunity shall address to the Competition Council.

(2) The undertaking or the association of undertakings may benefit from leniency if fulfils cumulatively the following conditions:

a) cooperates in actual fact, totally, continuously and promptly with the Competition Council during the entire investigation procedure, and consequently:

- provides the Competition Council with all relevant information and evidence which it possesses or might possess related to the suspected infringement;
- remains at the Competition Council disposal in order to respond to any request which might contribute to the establishment of the facts concerned;
- does not destroy, falsify or conceal relevant information or evidence relating to the alleged agreement, and:
- does not disclose the existence of the leniency request or its content before the Competition Council transmits the investigation report to parties, except for the case where the Competition Council has established otherwise;

b) ended the involvement into the alleged agreement at the request of the Competition Council;

c) did not disclose its intention of implementation of a leniency request of other elements of the request.

Article 91. Procedure of granting the fine immunity

(1) An undertaking or an association of undertakings submitting a request for immunity shall:

a) immediately provide the Competition Council, besides declarations, with all information and evidence, in its possession, concerning the alleged law infringement; or

b) to provide in a first stage the information it possesses in a hypothetical form. The undertaking or the association of undertakings shall submit a narrative list of the evidence proposed to be disclosed on a established date. This list shall exactly reflect the character and the content of the evidence keeping the hypothetical character of the disclosure. Copies of the documents, from which vulnerable bulks were removed, may be used in order to show the character and the content of the evidence presented in the narrative list. The titles of the requesting undertaking, as well as the titles of other undertaking involved in the alleged agreement are not necessary to be disclosed until the moment of provision of the evidence stipulated in the narrative list. The type of the infringement, the product involved in the alleged agreement, the affected geographical area, and the estimated length of the alleged infringement shall be clearly identified.

(2) The Competition Council shall confirm in written form the receipt of the fine immunity request, as well the date and the hour at when the undertaking provided the mentioned evidence.

(3) After the Competition Council received the information and the evidence, provided for in compliance with par (1), let a), and verified if these meet the conditions provided for in art.86 let. a) and b) or art.87 let. a), b) and c), the Competition Council shall grant the undertaking or the association of undertakings in written form the conditional immunity to fine.

(4) Where an undertaking or an association of undertakings presented the information and the evidence hypothetically, the Competition Council shall verify if the character and the content of the evidence described in the list mentioned in par (1), let. b) fulfill the conditions under the art 86, let. a), let. b), or art 87, let.a), let. b),let.c) and shall notify the undertaking or the association of undertakings. After the evidence provision, but not later than the established date, and after verifying if it corresponds to the description made in the list, the Competition Council shall give in written form to the undertaking or the association of undertakings the conditional immunity to fine.

(5) The Competition Council shall notify in written form the undertaking or the association of undertakings referring to the non fulfillment of the conditions provided for in art.86 and 87.

(6) Where there exist more requests for immunity, the Competition Council shall examine the applications, referring to the same potential law infringement in chronological order of their receipt.

(7) If, at the end of the investigation procedure, the undertaking or the association of undertakings fulfils the conditions provided for in art 86 or 87, if needed, the Competition Council grants immunity to fine by decision. Where at the end of the investigation procedure, the undertaking or the association of undertakings fails to fulfill the conditions provided for in art.86 or 87, it may not benefit from immunity.

(8) The undertaking or the association of undertakings may inform the Competition Council, at any moment that it does not want the continuation of the procedures related to its application. In this situation the undertaking or the association of undertakings may withdraw the information and the documents supplied to the Competition Council in view of immunity granting or may request that these be taken account of in case of an eventual fine reduction. This may not prevent the Competition Council from using its investigation rights for the purpose of obtaining the information concerned.

Article 92. Procedure of benefitting from fine quantum reduction

(1) An undertaking or an association of undertakings which wants to benefit from a fine reduction, pursuant to art.89 par (2), shall submit an application to the Competition Council and shall provide it with adequate evidence of the alleged agreement. Any voluntary evidence provision to the Competition Council, likely to be taken into account in order to benefit from the favorable conduct provided for in art.89 shall be clearly identified, at the moment of transmission, as being part of a request for fine reduction.

(2) The Competition Council shall confirm in written form the receipt of request for fine reduction and each following evidence, confirming the date and exact hour of such provision. The Competition Council shall not make statements on a request for fine reduction prior to take a decision regarding an existent request for conditional immunity to fine, concerning the same infringement.

(3) Where the Competition Council makes the preliminary conclusion that the supplied evidence by the undertaking bring a significant additional contribution pursuant to the provisions of the art.89, par (2) and (3) and the undertaking or the association of undertakings fulfilled the conditions provided for in art 90 par (2) and par (1) of the present article, the Competition Council shall inform in written form the undertaking or the association of undertakings about the possibility of fine reduction in compliance with art.89 par (7), but not later than the date on which the investigation report is transmitted to the parties involved. Within the same time period, the Competition Council shall inform the undertaking or the association of undertakings in written form, if it makes the preliminary conclusion that the undertaking concerned may not benefit from the fine reduction.

(4) In the issued decisions at the end of the investigation procedure, the Competition Council shall assess the final situation of each undertaking or association of undertakings which submitted a request for fine reduction. In its decisions the Competition Council shall establish the following:

a) if the provided evidence by the undertaking or the association of undertakings bring significant additional contribution compared with the evidence possessed by the Competition Council;

b) if the conditions provided for in art 98 par (2) were fulfilled;

c) the exact level of reduction from which the undertaking or the association of undertakings benefit, in compliance with the art.89 par (7).

(5) Where the Competition Council states that the undertaking or the association of undertakings did not fulfill the conditions provided from in art.89 par (2) they shall not benefit from leniency.

Chapter IX Final and Transition Provisions

Article 93

- (1) This law shall enter into force on the date of its publication, except as regards the provisions of the law related to accepting the commitments suggested by the undertakings shall enter into force on 01.01.2015.
- (2) Within 2 months of the entry into force of this law, the National Agency for the Protection of Competition shall be reorganized into the Competition Council, which shall become the successor of the National Agency for the Protection of Competition.
- (3) Until November 1, 2012, the Government, jointly with the Competition Council, will submit to the Parliament proposals for amending the legislation regarding the level of remuneration of the Competition Council.
- (4) The General Director of the National Agency for the Protection of Competition and his two deputies, appointed under Law no. 1103-XIV of June 30, 2000 on the protection of competition, shall act as chairperson and vice-presidents of the Plenum of the Competition Council before the appointment of the Plenum of the Competition Council according to the provisions of the present law.
- (5) Complaints and cases whose examination procedures by the National Agency for the Protection of Competition have not been completed by the date of entry into force of this law shall be examined in accordance with the procedural rules laid down in this Law and the material rules including those on liability for breach of law as provided by the law in force at the time when the infringement was committed.
- (6) Disputes which at the date of entry into force of this law are under examination shall be settled in accordance with the rules of the law in force at the date of the dispute.

Article 94

Within a period of six month from the date of publication, the Competition Council:

- a) shall elaborate and adopt the normative acts necessary for the enforcement of the present law.
- b) Shall bring its normative acts in line with the provisions of the present law
- c) Jointly with the Government shall present recommendations for the amendment of the current legislation for the purpose of ensuring the compatibility with the present law.

Article 95

From the moment of entry into force of the present law, are repealed:

the Law no 906-XII as of 29.01.1992 on limitation of the monopolistic activity and competition development (Official Gazette 1992, no.2, art.46) with the further amendments;

the Law no 1103-XIV as of 30.06.2000 on competition protection with the (Official Gazette of the Republic of Moldova, 2000, nr. 166-168, art. 1205) further amendments,