



Republic of Moldova

THE PARLIAMENT

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on Competition*

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Amended by laws of the Republic of Moldova:

No. 174/2013, Official Gazette of the Republic of Moldova, 2013, No. 167-172, Article 536

No. 134/2016, Official Gazette of the Republic of Moldova, 2016, No. 245-246, Article 515

No. 102/2016, Official Gazette of the Republic of Moldova, 2016, No. 256-267, Article 547

No. 225/2017, Official Gazette of the Republic of Moldova, 2017, No. 464-470, Article 790

No. 254/2017, Official Gazette of the Republic of Moldova, 2018, No. 1-6, Article 14

No. 305/2017, Official Gazette of the Republic of Moldova, 2018, No. 7-17, Article 66

No. 74/2018, Official Gazette of the Republic of Moldova, 2018, No. 235-244, Article 368

No. 172/2018, Official Gazette of the Republic of Moldova, 2018, No. 321-332, Article 529

No. 262/2018, Official Gazette of the Republic of Moldova, 2019, No. 1-5, Article 6

No. 6/2020, Official Gazette of the Republic of Moldova, 2020, No. 63-68, Article 48

No. 38/2020, Official Gazette of the Republic of Moldova, 2020, No. 103, Article 176

No. 121/2021, Official Gazette of the Republic of Moldova, 2021, No. 239-248, Article 282

No. 155/2022, Official Gazette of the Republic of Moldova, 2022, No. 246-250, Article 474

No. 250/2022, Official Gazette of the Republic of Moldova, 2022, No. 267-273, Article 568

No. 199/2023, Official Gazette of the Republic of Moldova, 2023, No. 322-324, Article 574

The Parliament shall adopt this organic law.

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This Law transposes the provisions of Articles 101-106 of the Treaty on the Functioning of the European Union of 25 March 1957, partly the provisions of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, published in the Official Journal of the European Union No. L 11 of 14 January 2019, transposes the provisions of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, published in the Official Journal of the European Union No. L 001 of 4 January 2003, and of the Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings, published in the Official Journal of the European Union No. L 024 of 29 January 2004.

Chapter I

GENERAL PROVISIONS

Article 1. Subject matter and purpose of this Law

(1) This Law establishes the legal framework for the protection of competition, including the prevention and counteraction of anti-competitive practices and unfair competition, the implementation of economic concentrations on the market, establishes the legal framework for the activity and competence of the Competition Council and the liability for violations of competition law.

(2) The purpose of this Law is to regulate the relationships related to the protection, maintenance and stimulation of competition in order to promote the legitimate interests of consumers.

Article 2. Scope of this Law

(1) The provisions of this Law shall apply to deeds actions or inactions which have as their subject matter or have or may have as their effect the restriction, prevention or distortion of competition, as well as to deeds actions of unfair competition, which are committed by:

a) enterprises registered in the Republic of Moldova or in other States, as well as by natural persons;

b) central or local government authorities in so far as they, by decisions taken or acts adopted, intervene in the market, directly or indirectly influencing competition, except where such measures are taken in application of other laws or for the defence of an overriding public interest.

(2) This Law shall also apply to persons assimilated to public authorities exercising public authority or using the public domain, being empowered by law to provide a service of public interest.

(3) Enterprises entrusted with the task of managing services of general economic interest and enterprises having the character of a tax monopoly shall be subject to the provisions of this Law and, in particular, to the rules of competition in so far as the application of such provisions does not obstruct, in law or in fact, the performance of the particular task assigned to them.

(4) The provisions of this Law shall apply to the deeds referred to in para. (1) committed on the territory of the Republic of Moldova, as well as to those committed outside the Republic of Moldova when they produce or may produce effects on the territory of the Republic of Moldova.

(5) This Law shall not apply to employment relationships.

(6) The Competition Council is the national competition authority, competent for the implementation of the provisions of this Law, in accordance with the tasks established by this Law.

(7) If an international treaty to which the Republic of Moldova is a party lays down provisions other than those laid down in this Law, the provisions of the international treaty shall apply.

Article 3. Basic principles of competition

(1) The State shall ensure the freedom of entrepreneurial activity, the protection of fair competition and the protection of the rights and interests of enterprises and citizens against anti-competitive practices and unfair competition.

(2) Enterprises are prohibited from exercising their rights to restrict competition and harm the legitimate interests of consumers.

(3) Product prices are determined in the process of free competition, based on supply and demand, unless otherwise provided by special law.

(4) For economic sectors where competition is restricted or non-existent, as well as in exceptional circumstances (e.g. crisis situations, major imbalance between supply and demand), the Government is entitled to order and/or apply temporary measures to prevent or even block excessive price increases. These measures are adopted by Government decision for a period of 6 months, which may be extended successively for periods of up to 3 months, as long as the circumstances which justified the decision of the Government persist.

(5) In the situations referred to in para. (4), the intervention of the Government shall be made with the notification of the Competition Council for the purpose of analysing the effects of the adopted measure on competition.

(6) The Competition Council, in exercising the powers conferred by this Law, including the power of investigation, shall ensure compliance with the general principles of European Union competition law and the Convention for the Protection of Human Rights and Fundamental Freedoms.

(7) This Law shall apply taking into account the applicable case law of the Court of Justice of the European Union and other interpretative instruments of the institutions of the European Union.

(8) Where this Law does not set a time limit, the procedures for examining cases of infringement of competition law shall be conducted by the Competition Council within a reasonable time.

Article 4. Getting started

For the purposes of this Law, the following terms used in the field of competition shall mean:

agreement - any form (verbal or written) of common understanding of market conduct expressed by two or more independent enterprises;

horizontal agreement - an agreement or concerted practice between two or more independent enterprises operating in the market at the same level(s);

vertical agreement - an agreement or concerted practice entered into between two or more independent enterprises each acting, for the purposes of the agreement or concerted practice, at different levels of the production or distribution chain, relating to the conditions under which the parties may purchase, sell or resell certain products;

economic activity - any activity consisting in offering products on a given market;

joint venture - any form of association, whether non-profit or for-profit, voluntarily set up by two or more enterprises, irrespective of the legal form in which they are organised, the type of financing, the way in which decisions are taken,

whether they are binding or voluntary, and the public nature of the functions they perform;

authorisation - an action by which the Competition Council allows the applicant to implement its intention to merge or grant State aid by issuing a permissive act in the form of a decision;

cartel - an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices including fixing or coordinating purchase or selling prices or other commercial conditions, including in relation to intellectual property rights, allocating production or sales quotas, sharing markets and customers, manipulating bidding procedures, restricting imports or exports or taking anti-competitive action against other competitors;

leniency application - voluntary written or verbal information to the Competition Council by or on behalf of an enterprise or a natural person, or a record of such information, which sets out the knowledge of the enterprise or natural person concerned about a cartel and its role in it and which has been specifically drafted for submission to the competition authority with a view to obtaining immunity from fines or a reduction of fines under a leniency policy, not including evidence that exists irrespective of the enforcement proceedings and irrespective of whether or not that information is in the Competition Council's file, i.e. pre-existing information;

total turnover - the total value of product sales achieved by an enterprise during the reporting period, including worldwide. Total turnover is assimilated to:

a) the sum of income related to interest and the sum of income not related to interest - for banks, lending institutions;

b) the total amount of gross premiums written, including reinsurance, - for insurance companies;

economic concentration - operations that result in lasting changes in the control of the enterprises involved and hence in the structure of the market;

competitor - an independent enterprise which is active on a relevant market;

potential competitor - an independent enterprise which is not active in a relevant market but which, in the event of a permanent increase in relative prices of 10%, would be likely to undertake the necessary additional investment or other necessary transformation costs to enter the relevant market within a maximum of 3 years;

competition - existing or potential economic rivalry between two or more independent enterprises in a relevant market, where their actions effectively limit the possibilities of each of them to unilaterally influence the general conditions of circulation of products in that market, stimulate technical and scientific progress and increase consumer welfare;

unfair competition - any action, performed by enterprises in the process of competition, which is contrary to honest practices in economic activity;

consumer - a direct or indirect user of products, including a producer using products for processing, a wholesaler, a retailer or an end consumer;

control - the possibility of exercising decisive influence over an enterprise which derives from rights, contracts or any other means, separately or in combination, taking into account the relevant legal and factual circumstances, in particular from:

a) the right of ownership or use of all or part of the assets of an enterprise;

b) the rights or contracts which confer decisive influence on the structure, voting or decisions of the governing bodies of an enterprise.

The control is acquired by persons or enterprises who are holders of rights or beneficiaries of rights under the contracts in question or who, although not holders of such rights or beneficiaries of rights under such contracts, have the power to exercise the rights deriving therefrom;

decision of the joint venture - any manifestation of the will expressed by the joint venture or by the governing bodies of the joint venture, irrespective of the form of the manifestation or whether it is binding or voluntary;

exclusive rights - rights granted by the state, through a public authority, to an enterprise, by any legislative, regulatory or administrative instrument, to provide a service or perform an activity in a given geographical area;

special rights - rights granted by the State through a legislative, regulatory or administrative instrument to a limited number of enterprises which, in a given geographical area, limit to two or more the number of enterprises authorised to provide a service or perform an activity, or designate several competing enterprises as being authorised to provide a service or perform an activity, or confer on any one (any) enterprise any legal or regulatory advantages which significantly affect the ability of any other enterprise to provide the same service or perform the same activity in the same geographical area under substantially equivalent conditions;

group of enterprises - the controlling enterprise and all enterprises controlled directly or indirectly by it;

decisive influence - the ability to determine the strategic and tactical behaviour of the enterprise;

immunity from fines - exemption from fines that would normally be imposed on an enterprise for its participation in an agreement in order to reward it for its cooperation with a competition authority under a leniency policy;

enterprise - any entity engaged in an economic activity, regardless of its legal status and of the way in which it is financed;

independent enterprise - any enterprise, possibly consisting of several legal entities or natural persons, which determines its business policy independently of other enterprises;

tax monopoly enterprise - an enterprise that has been granted exclusive rights to conduct a specific activity in order to raise revenue for the State;

dependent enterprises - enterprises which are part of the same group of enterprises or are controlled by the same person or persons;

competition legislation - this Law, Law No. 139/2012 on State Aid and other legislation adopted in order to implement the mentioned laws;

notification - a request, addressed to the Competition Council, for authorisation of the intention to perform an economic concentration or to grant State aid;

relevant geographic market - an area in which enterprises are involved in the supply of or demand for the relevant product market, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas by appreciably different conditions of competition;

relevant market - the market within which a particular competition issue is to be assessed and which is determined by relating the relevant product market to the relevant geographic market;

relevant product market - the market for products regarded by consumers as interchangeable or substitutable because of their intended use, physical and functional characteristics and price;

leniency policy - an instrument relating to the application of Article 5 whereby a participant in a cartel, independently of the other enterprises involved in the

agreement, cooperates in an investigation by the Competition Council by voluntarily providing information it has about the cartel and its role in the cartel and in return receives, by decision, immunity from fines or a reduction of fines that would be imposed for its involvement in the cartel;

dominant market position - a position of economic strength enjoyed by an enterprise which enables it to prevent effective competition being maintained on a relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers;

anti-competitive practice - anti-competitive agreement, decision of joint venture, concerted practice, abuse of dominant position, action or inaction by public authorities to restrict competition prohibited by law;

concerted practice - a form of coordination of actions between independent enterprises and/or independent groups of enterprises whereby practical cooperation between them intentionally replaces the risks of competition without the enterprises or groups of enterprises having concluded an agreement to that effect;

product - goods, works, services, including financial services, intended to be sold, exchanged or otherwise included in the civil circuit;

proposal for acknowledgement of an infringement of competition law - voluntary notification to the Competition Council by or on behalf of an enterprise, including an acknowledgement of participation in an infringement of competition law or a waiver of the right to challenge such participation and an assumption of responsibility for the infringement, specifically drafted so that the competition authority can apply a simplified or accelerated procedure;

fine reduction - a reduction in the amount of the fine that would normally be imposed on an enterprise for committing an anti-competitive practice in order to reward it for its cooperation with the Competition Council under a leniency policy;

significant restriction of competition - a negative impact on at least one of the parameters of competition in the market, such as price, output, product quality, product variety or innovation;

services of general economic interest - marketing of products which meet all of the following conditions:

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

b) they are no longer provided or can no longer be provided satisfactorily and under conditions (such as: price, objective features relating to quality, continuity and access to the service) compatible with the public interest as defined by the State, by enterprises operating under normal market conditions, i.e. the supply of which an enterprise would not assume or would not assume to the same extent or under the same conditions if it were considering its own commercial interests;

c) the obligation to supply is laid down by a public authority in a regulatory or administrative act or in a contract or in a series of acts or contracts defining the obligations of the enterprise concerned and of the public authority, specific to the provision of such services;

bid-rigging - the implementation, by means of tenders or other forms of competitive bidding, of anti-competitive agreements by competing enterprises concerning prices, market sharing, sources of supply or product quality;

single economic unit - parent enterprise and its subsidiary where that subsidiary, although having a separate legal personality, does not decide independently on its own conduct on the market but complies in all material respects with the instructions given by the parent enterprise and thus forms a single enterprise, so that the anti-competitive conduct of the subsidiary can also be imputed to the parent enterprise.

Chapter II
ANTI-COMPETITIVE PRACTICES
Section I

Anti-competitive agreements

Article 5. Prohibition of anti-competitive agreements

(1) Any agreements between enterprises or joint ventures, any decisions by joint ventures and any concerted practices (hereinafter referred to as agreements) which have as their purpose or effect the restriction, prevention or distortion of competition, in particular those which:

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- b) limit or control production, marketing, technical development or investment;
- c) share markets or sources of supply;
- d) which participate with rigged bids in tenders or any other form of competitive bidding;
- e) apply unequal conditions to equivalent services in their dealings with trading partners, thereby placing them at a competitive disadvantage;
- f) make the conclusion of contracts subject to the acceptance by the partners of additional services which, by their nature or in accordance with commercial practice, are not related to the subject of such contracts, shall be prohibited without prior decision.

(2) Agreements prohibited under this Article shall be null and void.

(3) If it has been established that the agreement has as its purpose the prevention, restriction or distortion of competition, the existence of anti-competitive effects need not be demonstrated by the Competition Council in order to find that there is a restriction of competition within the meaning of this Law.

(4) By the nature of cartels, as the most serious anti-competitive agreements, they are presumed by their purpose to have the capacity to prevent, restrict or distort competition.

Article 6. Exemption of anti-competitive agreements

(1) The provisions of Article 5 para. (1) shall not apply to anti-competitive agreements or categories of anti-competitive agreements which cumulatively meet the following conditions:

- a) they contribute to improving the production or distribution of products or to promoting technical or economic progress;
- b) they afford consumers a fair share of the benefits obtained;
- c) they do not impose restrictions on the enterprises concerned which are not indispensable to the attainment of the objectives referred to in points a) and b);
- d) they do not afford the enterprises concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(2) The Plenum of the Competition Council has the right to adopt regulatory acts exempting certain categories of agreements from the prohibition laid down in Article 5 para. (1).

(3) Agreements referred to in Article 5 para. (1) which meet the conditions set out in para. (1) of this Article or which fall within the categories set out in para. (2) shall be considered lawful without the need for a decision to that effect.

(4) The burden of proving an infringement of Article 5 para. (1) lies with the Competition Council. In cases relating to Article 5 para. (1), the enterprises or joint ventures claiming in their defence that the anti-competitive agreements are

individually exempted under para. (1) of this Article shall bear the burden of proving that the agreements in question meet these conditions.

(5) Where an agreement is subject to a block exemption, the parties to the anti-competitive agreement shall be relieved of the obligation imposed by para. (4) and shall, in case of defence, only be required to prove that the agreement is block exempted.

(6) Cartels shall not benefit from the exemptions provided for in this Article.

Article 7. Withdrawal of exemptions

If the Competition Council finds that agreements falling within one of the exempted categories cause or are likely to cause effects incompatible with the conditions laid down in Article 6 para. (1), it may withdraw the benefit of the exemption provided for in respect of those agreements by acting within an investigation. Withdrawal of the benefit of the exemption shall not have retroactive effect.

Article 8. Anti-competitive agreements of minor importance

(1) The anti-competitive agreement is considered to be an agreement of minor importance which is likely to have the effect of preventing, restricting or distorting competition in the market and, by implication, not appreciably restricting competition if:

a) the combined market share held by the parties to the agreement does not exceed 10% in any of the relevant markets affected by the agreement where the agreement is concluded between enterprises which are actual or potential competitors in one of these markets (agreements between competitors);

b) the market share held by each of the parties to the agreement does not exceed 15% in any of the relevant markets affected by the agreement where the agreement is concluded between enterprises which are not actual or potential competitors in any of the markets (agreements between non-competitors).

If it is difficult to determine whether it is an agreement between competitors or an agreement between non-competitors, the 10% threshold applies.

(2) Where, on a relevant market, competition is restricted by the cumulative effect of agreements for the sale of products with different suppliers or distributors, the market share thresholds referred to in para. (1) shall be reduced to 5% for both agreements between competitors and agreements between non-competitors.

(3) Agreements shall be deemed not to be appreciably restrictive of competition if the market shares of the parties to the agreement do not exceed the thresholds of 10%, 15% and 5% referred to in para. (1) and (2) respectively by more than two percentage points in any two successive calendar years.

(4) The provisions of Article 5 para. (1) shall not apply to agreements of minor importance, with the exception of those referred to in Article 9.

Article 9. Prohibited agreements of minor importance

(1) The provisions of Article 8 shall not apply to agreements containing any of the following hardcore restrictions:

1) as regards agreements between competitors as defined in Article 8 para. (1), restrictions which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their purpose:

a) fixing purchase or selling prices;

b) limiting production or sales;

c) sharing markets or customers;

d) participating with rigged bids in tenders or any other form of competitive bidding;

2) as regards agreements between non-competitors as defined in Article 8 para. (1), restrictions which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their purpose:

a) restricting the buyer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that the latter is not equivalent to a fixed or minimum sale price set as a result of pressure from or incentives offered by one of the parties;

b) the restriction on the territory in which the buyer may sell the contract products or on the customers to whom the buyer may sell the contract products, unless it is one of the following restrictions which are not serious:

– the restriction of active sales into the exclusive territory or to an exclusive customer base reserved to the supplier or assigned by the supplier to another buyer, where such a restriction does not limit sales by the buyer's customers;

– the restriction of sales to end-users by a buyer acting on the market as a wholesaler;

– the restriction of sales to unauthorised distributors by members of a selective distribution system; and

– the restriction of the buyer's ability to sell components for incorporation to customers who could use them for the manufacture of products similar to those produced by the supplier;

c) the restriction of active sales or passive sales to end-users by members of a selective distribution system acting in the market as retailers, without prejudice to the possibility of prohibiting a member of the system from operating from an unauthorised secondary establishment;

d) restricting cross-deliveries between distributors within a selective distribution system, including between distributors operating at different levels of trade;

e) the restriction agreed between a supplier of components and a buyer who incorporates these components, limiting the supplier's ability to sell these components as separate parts to end users, repairers or other service providers who have not been appointed by the buyer to repair or maintain his/her goods;

3) as regards agreements between competitors as defined in Article 8 para. (1), where competitors act within the meaning of the agreement at different levels of the production or distribution chain and which contain any of the hardcore restrictions set out in points 1) and 2).

(2) It shall be presumed, in the absence of proof to the contrary, that the prohibited agreements of minor importance fall within the scope of Article 5. In individual cases, enterprises may demonstrate that the conditions for exemption set out in Article 6 para. (1) are met.

Section II

Abuse of a dominant position

Article 10. Dominant position

(1) A dominant position on one or more relevant markets may be held by a single enterprise, a group of enterprises (single dominance) or jointly by two or more enterprises or two or more groups of enterprises (collective dominance).

(2) Two or more enterprises may together hold a dominant position (collective position) where, even in the absence of any structural or other links between them, they operate in a market whose structure is considered conducive to coordinated effects.

(3) The dominant position results from a combination of several factors which, taken separately, are not necessarily decisive. The assessment of dominance

will take into account the competitive structure of the market and in particular the following factors:

a) the pressure exerted by the existing bids of current competitors and their market position (the market position of the dominant enterprise and its competitors). Market shares provide a useful first indication of the market structure and the relative importance of the different enterprises active in the market. However, market shares will be interpreted in the light of the relevant market conditions and in particular the dynamics of the market, the trend or development of market shares over time, the degree of product differentiation, and other factors which may be sufficient to constrain the conduct of the allegedly dominant enterprise;

b) the pressure exerted by the credible threat of future expansion by current competitors or market entry by potential competitors (expansion and entry). To constrain the conduct of the allegedly dominant enterprise, expansion by current competitors or entry by potential competitors must be likely, timely and sufficient;

c) the pressure exerted by the bargaining power of the firm's customers (countervailing buyer power). Countervailing buyer power may result from the size of the customers or their commercial importance to the allegedly dominant enterprise, as well as from their ability to switch suppliers easily, to favour new entry or vertical integration and to credibly threaten such action.

(4) It shall be presumed, in the absence of proof to the contrary, that one or more enterprises hold a dominant position on a relevant market if the combined share or shares on the relevant market concerned, recorded during the period under examination, exceed 50%.

(5) It shall be presumed, in the absence of proof to the contrary, that the enterprises to which exclusive rights or special rights are granted are dominant on the relevant market to which those rights relate.

(6) The Plenum of the Competition Council will adopt the Regulation on the establishment of a dominant market position and the assessment of abuse of a dominant position.

Article 11. Prohibition of abuse of a dominant position

(1) The abuse by one or more enterprises of a dominant position on the relevant market is prohibited. Such abusive practices may consist in particular of:

a) imposing, directly or indirectly, unfair bid or offer prices or other unfair trading conditions;

b) limiting production, marketing or technical development to the disadvantage of consumers;

c) applying unequal conditions to equivalent services in dealings with trading partners, thereby placing them at a competitive disadvantage;

d) making the conclusion of contracts subject to the acceptance by the partners of additional services which, by their nature or in accordance with commercial usage, have no connection with the subject-matter of such contracts;

e) charging an excessive or predatory price in order to eliminate competitors;

f) unjustified refusal to contract with a particular supplier or to deliver to a particular beneficiary;

g) breaking a previously established contractual relationship in the relevant market for the sole reason that the partner refuses to submit to unjustified commercial conditions.

(2) The break-up price may qualify, as appropriate, as a price below average variable costs or as a price below average total costs if determined as part of a plan to eliminate a competitor.

(3) If the data suggest that the price charged by the dominant enterprise is likely to lead to foreclosure of equally efficient competitors, this element will be included in the overall assessment of appreciable restriction of competition, taking into account other quantitative and/or qualitative evidence.

(4) Dominant enterprises are not penalised for ex post losses if the ex ante decision to apply the alleged abusive practices was taken in good faith, i.e. if they can provide conclusive evidence that they could reasonably expect the business to be profitable.

(5) The prohibitions set out in para. (1) shall not apply if the dominant enterprise demonstrates that its practices are justified, objectively necessary or produce significant efficiencies which outweigh any anti-competitive effects on consumers, provided that those practices are indispensable and proportionate to the dominant enterprise's claimed aim.

(6) Objective necessity and proportionality must be determined based on factors outside the control of the dominant enterprise, such as health or safety reasons related to the nature of the product concerned.

(7) If a dominant enterprise invokes efficiency enhancing reasons which are sufficient to ensure that there is no risk of net harm to consumers, it will have to demonstrate with a sufficiently high degree of probability and based on verifiable evidence that the following conditions are cumulatively met:

a) efficiency gains have been achieved or are likely to be achieved as a result of those practices, such as technical improvements in the quality of goods or reductions in the cost of production or distribution;

b) the respective practices are indispensable for efficiency gains: there must be no less anti-competitive alternatives to these practices which are capable of achieving the same efficiency gains;

c) the likely efficiencies brought about by the practices outweigh any likely negative effects on competition and consumer welfare in the affected markets;

d) the respective practices do not eliminate effective competition by eliminating most or all existing sources of actual or potential competition.

(8) Exclusionary practices that maintain, create or strengthen a market position approaching that of a monopoly cannot normally be justified on the grounds that they also create efficiency gains.

Section III

Prohibited actions or inactions by public authorities to restrict, prevent or distort competition

Article 12. Prohibited actions or inactions by public authorities to restrict, prevent or distort competition

(1) This Article covers public authorities as defined in the Administrative Code.

(2) Any action or inaction by public authorities that restricts, prevents or distorts competition is prohibited, such as:

a) restricting the rights of enterprises to purchase or sell;

b) setting discriminatory conditions or granting privileges for the activity of enterprises, where these are not provided for by law;

c) establishing prohibitions or restrictions, not provided for by law, on the activity of enterprises;

d) imposing, directly or indirectly, on enterprises to join or concentrate in any form.

(3) In exceptional cases, the actions or inactions referred to in para. (2) may be performed under the conditions of Law No. 212/2004 on the state of emergency, siege and war.

(4) Deeds of public authorities contrary to the provisions of para. (2) shall constitute violations of this Law.

(5) Persons holding a public office are liable in accordance with the provisions of the Contravention Code.

Article 13. Enforcement of Competition Council decisions on actions or inactions by public authorities restricting, preventing or distorting competition

(1) If the public authorities fail to implement or comply with the measures ordered by decision of the Competition Council within the prescribed time limit in order to restore the competitive environment, the Competition Council shall bring an action in accordance with the provisions of the Administrative Code, requesting the court, where appropriate, to annul, in whole or in part, the act which has led to the restriction, prevention or distortion of competition, to order the public authority to issue an administrative act or to perform a specific administrative operation.

(2) By way of derogation from the time limit provided for in Article 209 para. (1) of the Administrative Code No. 116/2018, the Competition Council shall apply to the court, under the terms of para. (1), within 6 months from the date of expiry of the time limit laid down in the decision, during which period the public authorities were obliged to comply with the measures necessary to restore the competitive environment.

Chapter III UNFAIR COMPETITION

Article 14. Prohibition of unfair competition

(1) Enterprises are prohibited from engaging in unfair competition.

(2) Unfair competition actions prohibited by the provisions of Articles 15-19 shall be examined by the Competition Council, upon complaint of alleged unfair competition actions filed by the enterprise whose legitimate interests have been harmed, under the conditions stipulated in Article 49 para. (2) to (4).

(3) The complaint concerning alleged unfair competition shall be filed in accordance with the form adopted by decision of the Competition Council, under the conditions set out in Article 51 para. (2) and (3).

(4) The procedure for preliminary examination, investigation and decision-making on unfair competition cases is laid down in Articles 50-55, 58-66, which apply accordingly.

(5) An enterprise the legitimate interests of which have been harmed may complain to the Competition Council about alleged unfair competition within 6 months of the date on which it knew or ought to have known of the alleged unfair competition by another enterprise.

(6) The expiry of the six-month period referred to in para. (5) shall constitute grounds for the Competition Council to refuse to examine the complaint, but shall not constitute an impediment to bringing the case before the court within the general limitation period.

(7) If it does not meet the requirements set out in para. (3), the complaint lodged shall not constitute a complaint of alleged unfair competition.

(8) After examining the case of unfair competition, the Plenum of the Competition Council adopts a decision on the finding of unfair competition or lack thereof.

(9) In the event of unfair competition actions being found, by decision of the Plenum of the Competition Council, the enterprise shall be sanctioned according to this law and/or obliged to cease such actions.

Article 15. Discrediting the competitors

It shall be prohibited to discredit competitors, i.e. to defame or jeopardise their reputation or credibility by:

- a) disseminating false information by an enterprise about its activity, its products, intended to create a favourable situation in relation to certain competitors;
- b) disseminating false statements by an enterprise about the activity of a competitor or its products, statements which harm the competitor's activity.

Article 16. Instigating the termination of the contract with the competitor

It shall be prohibited to instigate, in the interest of or for the benefit of third parties, the unjustified termination of a contract with a competitor of another enterprise, or the non-performance or improper performance of contractual obligations towards that competitor, by granting or offering, directly or indirectly, material rewards, compensation or other advantages to the enterprise party to the contract.

Article 17. Unlawfully obtaining and/or using a competitor's trade secret

It shall be prohibited for an enterprise to obtain and/or use information which constitutes a competitor's business secret without the competitor's consent if it has harmed or is likely to harm the competitor's legitimate interests.

Article 18. Diversion of competitors' customers

It shall be prohibited for enterprises to divert competitors' customers by misleading the consumer as to the nature, method and place of manufacture, the main characteristics, including the use, the quantity of the products, the price or the manner in which the price of the product is calculated.

Article 19. Confusion

(1) Any action or deed which is liable to create, by any means, confusion with an enterprise, products or economic activity of a competitor, achieved by:

- a) unlawful use, in whole or in part, of a trademark, service mark, trade name, industrial design or other industrial property that is likely to create confusion with that lawfully used by another enterprise;
- b) unlawful copying of the shape, packaging and/or external appearance of the product of an enterprise and placing that product on the market, unlawful copying of the advertising of an enterprise, if this has harmed or is likely to harm the legitimate interests of a competitor.

(2) This Article does not apply to product characteristics determined solely by the technical function they perform.

Chapter IV

ECONOMIC CONCENTRATIONS

Article 20. General provisions on economic concentration

(1) Until the economic concentration has been declared compatible with the competitive environment pursuant to a decision issued by the Plenum of the Competition Council in accordance with Article 25 para. (1) letter b) or para. (2) letters b) or c) or based on a presumption in accordance with Article 25 para. (5), the implementation of an economic concentration falling under Article 22 para. (1) is prohibited.

(2) An economic concentration occurs where the change in the duration of control results from:

- a) the merger of two or more previously independent enterprises or parts of previously independent enterprises; or

b) the acquisition, by one or more persons already controlling at least one enterprise, or by one or more enterprises, whether by purchase of securities (shares) or assets, by contract or by other means, of direct or indirect control of one or more enterprises or parts of enterprises, including the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

(3) To the extent that the creation of a joint venture constituting an economic concentration within the meaning of para. (2) of this Article has as its object or effect the coordination of the competitive behaviour of the remaining independent enterprises, such coordination shall be appraised in accordance with the criteria set out in Articles 5 para.(1) and Article 6.

(4) In making the assessment referred to in para. (3), the Competition Council shall in particular take into account the following criteria:

a) if two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market upstream or downstream of that of the joint venture or in a neighbouring market closely related to that market;

b) whether, through the coordination which is a direct consequence of the creation of the joint venture, the enterprises concerned are able to eliminate competition in respect of a significant part of the products in question.

(5) Paragraph (1) shall not prevent the implementation of a public offer or series of transactions in securities, including securities convertible into other types of securities, accepted for trading on a regulated market and/or in the multilateral trading facility, whereby control is acquired from different sellers, provided that:

a) the economic concentration is notified without delay to the Competition Council in accordance with Article 22; and

b) the acquirer of control does not exercise the voting rights attached to the securities in question or does so only in order to preserve the full value of its investment pursuant to an exemption granted by the Plenum of the Competition Council in accordance with para. (6).

(6) The Plenum of the Competition Council may, on request, grant a derogation from the obligations imposed in para. (1) or (5). The request for a derogation shall be justified. When adopting a decision on the request, the Plenum of the Competition Council shall take into account, inter alia, the effects of the suspension on one or more of the enterprises involved in the economic concentration or on a third party and the threat to competition posed by the economic concentration. Such a derogation may be granted subject to the fulfilment of conditions and obligations designed to ensure conditions of effective competition. A waiver may be requested and granted at any time before notification or after the transaction.

(7) The validity of any transaction carried out in breach of para. (1) of this Article shall be determined by a decision taken pursuant to Article 25 para. (1) letter b) or para. (2) or by a presumption pursuant to Article 25 para. (5).

(8) This Article shall have no effect on the validity of transactions in securities, including transactions in securities convertible into other types of securities, accepted for trading on a regulated market and/or in the multilateral trading facility, unless the seller and buyer knew or ought to have known that the transaction was effected in breach of para. (1).

Article 21. Operations not constituting economic concentrations

Situations where:

a) control is acquired and exercised by a liquidator or administrator appointed by a court order or by another person empowered by the public authority to conduct winding-up, insolvency or similar proceedings;

b) banks and professional non-bank financial market participants whose activities include dealing in securities for their own account or for the account of third parties temporarily hold securities of an enterprise which they have acquired with a view to resale, as long as they do not exercise the voting rights attached to the securities to determine the competitive behaviour of the enterprise in question or exercise them only with a view to preparing the disposal of all or part of the enterprise in question or its assets or the resale of the securities in question, provided that the disposal or resale takes place within 12 months of the date of acquisition. The Plenum of the Competition Council may extend this period, upon request, if the banks or professional non-bank financial market participants concerned can prove that the resale was not reasonably possible within the period set;

c) enterprises, including groups of enterprises, are engaged in restructuring or reorganisation of their activities,

shall not constitute an economic concentration.

Article 22. Notification of economic concentrations

(1) Economic concentration operations are subject to assessment and are to be notified to the Competition Council prior to implementation, when the total worldwide turnover of the enterprises involved, recorded in the year preceding the operation, exceeds MDL 50000000 and there are at least two enterprises involved in the operation which have achieved on the territory of the Republic of Moldova, each individually, a total turnover exceeding MDL 20000000 in the year preceding the operation.

(2) Implementation of an economic concentration means, as the case may be, the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest.

(2¹) By way of derogation from Article 20 para. (1), after the conclusion of the agreement, the implementation of a public bid or the acquisition of a controlling interest shall be admissible if the following conditions are cumulatively met:

a) the economic concentration is notified to the Competition Council without delay, in accordance with para. (1);

b) the acquirer of control not to exercise voting rights or to do so only in order to preserve the full value of its investment pursuant to an exemption granted by the Competition Council under Article 20 para. (6).

(3) Economic concentrations which are achieved by the merger of two or more enterprises must be notified jointly by the parties to the merger and those which are achieved by the acquisition of joint control must be notified jointly by the persons or enterprises acquiring joint control. In other cases, notification must be made by the person or enterprise acquiring control of one or more enterprises or part of one or more enterprises. Each notifying party is responsible for the accuracy and completeness of the information provided.

(4) Notifications shall be submitted in accordance with 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 must include: the Notification Form, accompanied by copies of the supporting documents, a note of the total calculated turnover and proof of payment of the examination fee.

(6) The note on the total turnover calculated must include both the total turnover and the total turnover of which it is composed, indicating the enterprises from which they derive, together with all the documents on which the calculations are based.

(7) Within 10 working days of registration of the notification, the Competition Council will confirm in writing to the notifying party/parties or their representatives that the conditions for the notification to be considered valid have been met.

(8) Within 10 working days of registration of the notification, the Competition Council may request the notifying party/parties or their representatives to supplement the information submitted and/or confirm its accuracy and completeness. The notification will be deemed effective only upon completion.

(9) The notifying party/parties or their representatives may provide any other information they consider useful for the assessment of the economic concentration.

(10) The notification becomes effective on the date on which it is registered with the Competition Council, unless it is found to contain incorrect or incomplete information.

(11) If the Competition Council finds that a notified economic concentration falls within the scope of this Law, it shall publish on its website and in the Official Gazette of the Republic of Moldova the information about the notification, mentioning the names of the parties involved, the nature of the concentration and the economic sectors involved, taking into account the legitimate interest of enterprises to protect trade secrets.

Article 23. Investigation and assessment of economic concentrations

(1) Parties intending to file a notification may request prior consultations with the Competition Council to discuss essential legal or practical issues relating to the economic concentration. To this end, the parties will provide the Competition Council, at least 3 working days before the date set for the consultation, with relevant information on the economic concentration, such as: the parties to the economic concentration, the markets in which they are active, a summary description of the economic concentration in question and the manner in which control will be acquired.

(2) The investigation of economic concentrations shall be conducted in accordance with Chapter VII.

(3) Economic concentrations which would significantly impede effective competition in the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, are declared incompatible with a competitive environment.

(4) An economic concentration which does not significantly impede effective competition in the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared compatible with a competitive environment.

(5) In order to establish compatibility with a competitive environment, economic concentrations shall be assessed based on the following criteria, provided that they are to the benefit of consumers and do not constitute an obstacle to competition:

a) the need to maintain and develop competition in the relevant market, taking into account the structure of all the markets concerned by the concentration and existing or potential competition from enterprises inside or outside the Republic of Moldova;

b) the market position held by the enterprises involved, their economic and financial strength;

c) the alternatives available to suppliers and users, their access to markets and sources of supply, and any legal or other barriers to market entry;

d) the trend in demand and supply for the relevant products;

e) the interests of intermediate and final consumers;

f) the development of technical and economic progress.

(6) Economic concentrations which may significantly impede effective competition in the market or in a substantial part of it may be authorised if the parties to the economic concentration prove that all of the following conditions are met:

a) the concentration is intended to contribute to increased economic efficiency, improved quality of production, distribution or technical progress or enhanced export competitiveness;

b) the favourable effects of the concentration outweigh the unfavourable effects of the restriction of competition;

c) consumers also benefit to a reasonable extent from the resulting advantages.

(7) The application of economic concentration assessment will be laid down in the Regulation on economic concentrations.

Article 24. Calculation of total turnover

(1) For the purposes of this Chapter, total turnover shall comprise the amounts derived by the enterprises concerned in the preceding year from the sale of products forming part of the normal activities of the enterprises concerned, after deduction of sales rebates and of value added tax and other taxes directly related to turnover.

(2) Turnover achieved on the territory of the Republic of Moldova includes products sold to enterprises or consumers in the Republic of Moldova.

(3) Where an economic concentration is implemented in the manner provided for in Article 20 para. (2) letter b) by the purchase of assets, the total turnover shall be treated as the amount of the assets which constitute the subject-matter of the concentration. Where two or more transactions, within the meaning of this paragraph, take place within a two-year period between the same persons or enterprises, those transactions shall be treated as one and the same concentration arising on the date of the last transaction.

(4) The total turnover of the enterprises involved shall be calculated by adding together the total turnovers of:

a) the enterprises involved;

b) the enterprises in which the enterprise involved, directly or indirectly:

– holds 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 company's board, executive body or bodies legally representing the enterprise; or

– has the right to manage the business of the enterprise;

c) the enterprises which hold in the enterprise concerned the rights or powers specified at letter b);

d) the enterprises in which an enterprise referred to in letter c) has the rights or powers specified in letter b);

e) the enterprises in which two or more enterprises referred to in letters a) to d) jointly have the rights or powers specified in letter b).

(5) The total turnover achieved by the enterprises concerned shall not include the value of sales of products between any of the enterprises referred to in para. (4).

(6) If the enterprises concerned by the economic concentration jointly have the rights or powers referred to in para. (4) letter b), turnover resulting from sales of products between the joint venture and each of the enterprises concerned or any other enterprise connected with any of them, as referred to in para. (4) letters b) to e), shall not be taken into account in calculating the aggregate turnover of the

enterprises concerned, but account shall be taken of the turnover resulting from product sales between the joint venture and any third enterprises. The total turnover thus calculated shall be apportioned equally among the enterprises concerned.

Article 25. Powers of the Competition Council in the field of economic concentrations

(1) Within 30 working days of receipt of a complete notification of an economic concentration, the Competition Council shall:

a) notify the notifying parties by a letter that the notified economic concentration does not fall within the scope of this Law; or

b) adopt in plenary session a decision declaring the notified economic concentration to be compatible with the competitive environment if it finds that, although the notified economic concentration falls within the scope of this Law:

– there are no serious doubts as to its compatibility with the competitive environment;

– the doubts as to its compatibility with the competitive environment have been removed by the modification of the notified economic concentration by the parties involved.

The Plenum of the Competition Council may by decision lay down conditions and obligations to ensure compliance by the parties involved with the commitments they have entered into in order to render the concentration compatible with the competitive environment; or

c) decide in plenary session to initiate an investigation if it finds that the notified economic concentration falls within the scope of this Law and raises serious doubts as to its compatibility with the competitive environment, which could not be removed pursuant to para. (1) letter b).

(2) Unless the enterprises involved demonstrate, by convincing the Plenum of the Competition Council, that they have abandoned the concentration, the Plenum of the Competition Council shall, within 90 working days of the initiation of the investigation into the notified economic concentration and, where appropriate, within a reasonable time limit for the investigation of non-notified economic concentrations:

a) shall issue a decision declaring the economic concentration incompatible with the competitive environment, if the economic concentration raises significant impediments to effective competition in the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, in accordance with the provisions of Article 23 para. (3) or, in the cases referred to in Article 20 para. (3), if it does not meet the conditions laid down in Article 6;

b) shall issue a decision declaring the economic concentration compatible with the competitive environment where the economic concentration does not significantly impede effective competition in the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, as provided for in Article 23 para. (4), or, in the cases referred to in Article 20 para. (3), where it meets the conditions laid down in Article 6. A decision declaring a concentration compatible shall be deemed to include restrictions directly related and necessary to the implementation of the concentration;

c) shall issue a decision declaring the economic concentration compatible with the competitive environment if it finds that, following modification by the enterprises concerned, the notified economic concentration meets the criterion laid down in Article 23 para. (4) and, in the cases referred to in Article 20 para. (3), the criteria laid down in Article 6. The Plenum of the Competition Council shall have the power to lay down by decision the obligations and/or conditions necessary to ensure

compliance by the parties concerned with the commitments they have entered into with a view to rendering the concentration compatible with the competitive environment.

(3) The time-limits provided for in para. (1) and (2) shall be extended if the notifying parties make a request to that effect not later than 15 working days after the initiation of proceedings. The notifying parties may submit only one request for extension. After the initiation of proceedings, the Plenum of the Competition Council may extend the time-limits provided for in para. (1) and (2) with the consent of the notifying parties. The total duration of any extension or extensions made may not exceed 20 working days.

(4) The periods provided for in para. (1) and (2) shall be extended by 30 working days where the enterprises concerned offer commitments pursuant to para. (1) or (2) with a view to achieving compatibility of the economic concentration with the competitive environment.

(4¹) The period provided for in para. (2) shall be suspended:

a) from the date of communication of the investigation report to the parties involved in the economic concentration until the date on which they submit their observations on the investigation report or, if the observations have not been submitted within the deadline, until the date of expiry of the deadline set for the submission of observations;

b) from the date on which the parties involved in the economic concentration request a hearing on the investigation report until the date of the hearing. The Competition Council shall examine the request for a hearing within 3 working days.

(5) If the Plenum of the Competition Council does not take a decision within the time limits laid down in para. (1) and (2), the economic concentration shall be deemed to have been tacitly authorised.

(6) Where, owing to circumstances for which one of the enterprises involved in the concentration is responsible, the Competition Council has had to request information pursuant to Article 54 or to order an inspection by means of an order pursuant to Article 56, the time limits provided for in para. (1) and (2) of this Article shall be suspended and shall start to run from the date on which the parties have provided the Competition Council with all the information requested.

(7) The Plenum of the Competition Council shall have the power to adopt, by decision, appropriate interim measures with a view to restoring or maintaining conditions of effective competition where an economic concentration:

a) has been implemented in breach of Article 20 para. (1) and a decision on the compatibility of the concentration with the competitive environment has not yet been adopted;

b) has been implemented in breach of one or more of the conditions included in a decision adopted pursuant to para. (1) letter b) or para. (2) letter c);

c) has already been implemented and is declared incompatible with the competitive environment.

(8) The Competition Council may revoke the administrative act issued pursuant to para.(1) or (2) if:

a) the administrative act is based on incorrect information for which one of the enterprises is responsible or the information has been obtained by fraud; or

b) the enterprises involved are in breach of one or more of the obligations contained in the act.

(9) In the cases referred to in para. (8), the Plenum of the Competition Council shall have the right to adopt an act in accordance with para. (1) without being bound by the time limit laid down in para (1).

Article 25¹. Assessment of economic concentrations in the mass media sector

(1) Special media legislation may provide for thresholds for the notification of economic concentrations other than the thresholds specified in Article 22 para. (1).

(2) Special media legislation may provide for market shares which presume the existence of a dominant position other than the share laid down in Article 10 para. (4).

(3) The Audiovisual Council shall submit to the Competition Council by 1 March each year a report on the actual beneficiaries in the audiovisual sector, with copies of the relevant documents held attached.

(4) The Audiovisual Council will refer to the Competition Council any deeds found with signs of economic concentration in the audiovisual sector and will provide it with all relevant information in its possession.

Article 26. Restoring the previous situation

(1) Where the Competition Council finds that an economic concentration has already been implemented and has been declared incompatible with the competitive environment, it is entitled:

a) to require the enterprises concerned to dissolve the concentration, in particular by dissolving the merger or divesting all the shares or assets acquired, so as to restore the situation existing prior to the implementation of the concentration;

b) to bring an action in court to dissolve the concentration.

(2) If the dissolution of the concentration does not make it possible to restore the situation existing prior to the implementation of the concentration, the Plenum of the Competition Council shall have the right to adopt any other appropriate measure in order to restore, as far as possible, the previous situation.

(3) The Competition Council may also act pursuant to para. (1) and (2) of this Article where it finds that an economic concentration has been implemented in breach of a condition imposed by a decision adopted pursuant to Article 25 para. (2) letter c), which has determined that, in the absence of the condition, the concentration would fulfil the criterion laid down in Article 23 para. (3) or, in the cases referred to in Article 20 para. (3), would not fulfil the criteria laid down in Article 6.

(4) In cases falling under para. (1) letter a) of this Article, the measures referred to in para. (1) may be imposed either by a decision adopted pursuant to Article 25 para. (2) letter a) or by a separate decision.

Article 27. Fee for examining the notification of an economic concentration

(1) This Law establishes the fee for examining the notification of an economic concentration.

(2) The fee for examining the notification of an economic concentration is set at 0.1% of the total turnover achieved cumulatively on the territory of the Republic of Moldova by the enterprises involved in the economic concentration. The examination fee shall be calculated based on the total turnover achieved in the year preceding the notification of the economic concentration and may not exceed MDL 150.000.

(3) The examination fee shall be payable by the person, enterprise or enterprises that have submitted a notification of an economic concentration to the Competition Council.

(4) The fee for examining the notification of an economic concentration is administered by the Competition Council through a treasury account. The examination fee shall be paid into the Competition Council's treasury account and shall be deposited until the Plenum adopts its decision pursuant to Article 25. The balances of the treasury account for the administration of the notification

examination fee shall remain in the management of the Competition Council for the following period.

(5) The fee for examining the notification of an economic concentration shall be refunded to the persons and/or enterprises that submitted the notification of the economic concentration to the Competition Council if the concentration does not fall under this Law or the party has abandoned the notified economic concentration before the initiation of the investigation pursuant to Article 25 para. (1) letter c). After the Plenum of the Competition Council has adopted the decision under Article 25 on the notification of economic concentration, the fee for examination shall be charged to the treasury account of the Competition Council for the administration of this fee.

(6) Upon informing the parties pursuant to Article 25 para. (1) letter a) or upon informing the Competition Council of the abandonment of the concentration within the period laid down in para. (5), the Competition Council shall, within 30 days, return the funds paid for the examination of the notification.

(7) The examination fee collected by the Competition Council following the adoption in plenary session of the decision pursuant to Article 25 on the notification of economic concentration shall constitute income of the Competition Council and shall be entered in the income account for the financial year.

(8) The Competition Council may use the income from the fee for examining the notifications of economic concentrations for expertise, market studies, training of Competition Council staff, obtaining access to databases or subscribing to specialist periodicals necessary for the work of the Competition Council.

Chapter V

DETERMINATION OF THE RELEVANT MARKET

Article 28. Relevant market and competition

(1) The examination of competition issues and the assessment of a competition case is conducted within the relevant market.

(2) Determining the relevant market is necessary in particular for:

a) the assessment of economic concentrations and the analysis of structural changes affecting the demand for or supply of a product in order to prevent the creation or strengthening of a dominant position and to prevent a significant restriction of competition;

b) the investigation and detection of abuses of dominant position;

c) the determination of the existence of appreciable restrictions of competition, the analysis of the restrictive effects of an agreement or the verification of compliance with the condition set out in Article 6 para. (1) letter d);

d) assessment of the compatibility of the State aid with the normal competitive environment.

(3) The determination of the relevant market is a tool for identifying and defining the framework in which competition takes place. Depending on the nature of the competition problem, the size of the relevant market may be different.

(4) The main purpose of the determination of the relevant market is to identify the competitive constraints that the enterprises concerned systematically face.

(5) For the purposes of this Chapter, the enterprises concerned are: the parties to the economic concentration, if there is a economic concentration; the enterprises under investigation or, as the case may be, the complainant, if investigations are conducted pursuant to Chapter II Section II; the parties to the agreement, if investigations are conducted pursuant to Chapter II Section I.

(6) The determination of the relevant market, at both product and geographic level, must make it possible to identify existing and potential competitors of the

enterprises concerned that are capable of constraining the behaviour of those enterprises and of preventing them from acting independently of competitive pressure.

(7) The time period of the relevant market analysis is determined according to the subject matter of the investigation and the particularities of the relevant market.

(8) The fundamental principles for determining the relevant market relate to competitive constraints and are: demand substitutability, supply substitutability and potential competition.

(9) In case of a cartel achieved through bid-rigging in tenders or any other form of competitive bidding, the relevant product market shall be deemed to be the product market subject to these procedures.

Article 29. Procedure for determining the relevant market

(1) The criteria and evidence used to determine the relevant product market are different, depending on the characteristics and specificities of the domestic industry and the products under consideration.

(2) In determining the relevant product market, sufficient evidence shall be used to reach a conclusion on the size of the market for the purpose of resolving the competition problem in a particular case and the other tasks listed in Article 28 para. (2).

(3) In the process of determining the relevant product market, based on available preliminary information or information submitted by the enterprises concerned, it is decided whether the products belong to the same product market.

(4) Where necessary, evidence other than that referred to in para. (3) shall subsequently be taken into account to assess the extent to which product substitution may occur. In some cases certain facts may be decisive, while in other cases the same facts may be irrelevant.

(5) The approach to information is an open one, which aims to effectively exploit all possible information that could be useful in the assessment of individual cases. A strict hierarchy of different sources of information or different types of facts is not used to establish substitutability.

(6) On a case-by-case basis, where competition concerns do not arise, it is not necessary to definitively delineate the relevant product market or to determine whether or not it includes additional products.

(7) The process of determining the relevant geographic market consists of selecting and systematising information that helps to identify the obstacles and barriers that isolate enterprises located in a given area from the competitive pressure of enterprises located outside that area, so as to clarify precisely the degree of market interpenetration at national level.

(8) Where a precise determination of the relevant market is deemed necessary, they will be contacted, as appropriate, for verbal and/or written information:

a) the main customers and the main enterprises in the sector for communications on the boundaries of the relevant product market and the relevant geographic market and to obtain factual evidence in order to reach a conclusion on the definition of the relevant market;

b) competent trade associations and enterprises active in the upstream or downstream market to define, to the extent necessary, separate relevant product and geographic markets for different levels of production or distribution of the products concerned;

c) the enterprises concerned as regards the submission of additional information.

Article 30. Evidence for determining the relevant market

(1) To assess substitutability between products, the following categories of evidence shall be used as appropriate:

a) information on the given product use, functional substitutability or similar characteristics. The given use of the products, functional substitutability or similar characteristics may, at a first stage, limit the scope of the investigation of possible substitutable products. If such evidence is not sufficient, other categories of elements will be considered;

b) information on prices, on customers' responsiveness to permanent and significant price increases. A 10% price increase is considered significant;

c) results obtained from the application of different statistical and/or econometric approaches;

d) elements relating to substitution in the near past;

e) substantiated views of major consumers and competitors on the boundaries of the relevant product market;

f) preferences of final consumers, views expressed by retailers, market studies submitted by the parties and their competitors, surveys of consumer habits and purchasing behaviour;

g) information on barriers and costs associated with a shift in demand to potentially substitutable products;

h) information on different categories of customers and price discrimination;

i) results of various quantitative tests, surveys designed to delineate the relevant markets.

(2) To determine the geographical scope, the following categories of evidence shall be used where necessary:

a) information on past redirection of orders to other areas;

b) the nature of demand (consumer preferences, need for local presence) for the relevant product;

c) substantiated views of major consumers and competitors on the boundaries of the relevant geographic market;

d) location of consumer purchasing behaviour. When consumers are supplied through tenders whose bidders are enterprises located on the territory of the Republic of Moldova, the relevant geographic market is deemed to be the territory of the Republic of Moldova;

e) trade flows;

f) barriers and switching costs associated with redirection of orders to enterprises located in other areas.

(3) Based on the evidence collected, the relevant geographic market is defined, the scope of which could range from local to global.

(4) Different determinations of the relevant market could result if:

a) any constraints on substitution are imposed by conditions in related markets;

b) compatibility with the primary product is important;

c) it is difficult to identify by-products, and there are high prices and a long life cycle of primary products;

d) substitution between by-products is significant;

e) the characteristics of primary products make it possible for consumers to react quickly and objectively to relative price increases of secondary products;

f) there are chains of substitution with elements of price interdependence at the boundaries of the chains of substitution. The price levels at the boundaries of the chains must be of the same size.

Article 31. Calculation of market shares

(1) Determination of the relevant market allows the identification of suppliers and consumers acting in that market.

(2) The total market size and market shares held can be known by consulting sources of information such as company forecasts or studies commissioned from consultancy firms and/or relevant trade associations, financial and statistical reports, information from customs authorities, regulators, etc. In the absence of such sources of information, or where the available forecasts are not reliable, the Competition Council usually requests each supplier in the relevant market to provide its own turnover so that it can calculate the total market size and market shares held.

(3) Sales are the reference point for calculating market shares. Depending on the specific product or industry in question, other benchmarks may also provide useful information, such as, in particular, the number of customers, traffic volume, installed capacity, the number of enterprises on offer in the market, fleet units in aerospace or reserves held for certain sectors.

(4) In case of cartels achieved through bid-rigging in tenders or any other form of competitive bidding, no market share is calculated, as competition takes place in the respective procedures.

**Chapter VI
COMPETITION COUNCIL**

Article 32. General provisions on the Competition Council

(1) The Competition Council is an autonomous public authority, independent and impartial from other authorities, accountable to the Parliament, ensuring the application and enforcement of legislation covering:

- a) the field of competition;
- b) the field of State aid regulated by Law No. 139/2012 on State Aid;
- c) the field of commercial advertising in terms of ensuring the rights and interests of enterprises regulated by Law No. 62/2022 on Advertising;
- d) the field of regulation of rail transport services according to the powers established by the Rail Transport Code No. 19/2022;
- e) the field of unfair commercial practices within the limits of the powers established by Law No. 231/2010 on Internal Trade.

(2) The Competition Council is vested with powers of decision, regulation, prohibition, intervention, inspection and sanction, within the limits set by law.

(2¹) The Competition Council is provided with a sufficient number of highly qualified staff and with sufficient financial, technical and technological resources which are necessary for the effective performance of its tasks and for the efficient exercise of the powers laid down by law.

(3) The Competition Council is a legal entity, with its own balance sheet, has a stamp with the image of the State Coat of Arms and its name. The headquarters of the Competition Council is located in Chisinau Municipality. Depending on needs, it may open subdivisions in the territory.

(4) The activity of the Competition Council is conducted throughout the Republic of Moldova.

Article 33. Activity of the Competition Council

(1) The Competition Council acts in accordance with the provisions of the Constitution, of this Law, of other normative acts and is independent in the exercise of its powers.

(2) The organisation and work of the Competition Council is based on the principles of autonomy, independence and collegiality.

(3) In order to guarantee the independence of the Competition Council in the application of the provisions of this Law, it shall perform its duties and exercise its powers impartially and in the interest of ensuring effective and uniform application of the provisions of the Law, subject to the requirements of proportionality in terms of liability.

(4) Members of the Plenum of the Competition Council and employees of the Competition Council, in the exercise of their duties under the law:

a) shall not be subject to political interference or other outside influence;

b) shall not seek or accept instructions from any public authority or enterprise in the performance of their duties and in the exercise of their law enforcement powers, without prejudice to the right of the Parliament and the Government to adopt/approve general policy rules that are not related to useful market intelligence investigations or specific law enforcement procedures.

(5) The Competition Council produces an annual report on its work. This report is approved by the Plenum of the Competition Council and submitted to Parliament by 1 June. The report is presented to Parliament in plenary session by the Chairman of the Competition Council.

(6) The report on the activity of the Competition Council shall contain:

a) the annual financial report and, where appropriate, the performance audit report;

b) information on the activities of the Competition Council in performing the duties set out in this Law;

c) information on the priority directions of activity of the Competition Council for the following year;

d) information on appointments and dismissals of members of the Plenum of the Competition Council;

e) information on the volume of resources allocated and any changes in this volume compared to previous years;

f) other information established by the Competition Council.

Article 33¹. Conflict of interests

(1) In the exercise of their duties under this Law, the members of the Plenum and the employees of the Competition Council are obliged to comply with the legal regime of restrictions and limitations provided for by the Law on Integrity No. 82/2017, the Law No. 133/2016 on the declaration of wealth and personal interests and the Law No. 325/2013 on the assessment of institutional integrity.

(2) On the expiry of their term of office or in the event of their resignation, members of the Plenum of the Competition Council shall receive a one-off allowance equal to 10 average salaries per economy.

(3) The indemnity specified in para. (2) shall not be granted if the member of the Plenum of the Competition Council has served in that office for less than 2 years or has been relieved of his/her duties for reasons attributable to him/her, as indicated in the Parliament decision, as well as in case of re-employment during the period of 1 year after resignation or relieved of his/her duties.

Article 34. Cooperation of the Competition Council with other authorities

(1) In exercising its powers, the Competition Council works with public authorities to implement the provisions of competition law, commercial advertising, rail transport regulation and unfair commercial practices, within the limits of its competence.

(2) Public administration authorities submit to the Competition Council for approval draft legislation that has or may have an anti-competitive impact.

(3) Where the Competition Council finds deeds in regulated markets that can be qualified as anti-competitive practices, it shall seek the opinion of the competent regulatory authority on those deeds. The opinion must be submitted within the time limit set by the Competition Council.

(4) If, in the exercise of their duties, the regulatory authorities and other public administration authorities find, ex officio or upon request, signs of infringement of this Law, they shall refer the case to the Competition Council and shall provide it with all relevant information in their possession.

(5) The cooperation between the Competition Council and other regulatory authorities shall be performed in accordance with the delimitation of positions and duties given by law based on the following principle: the regulatory bodies act ex ante (before) in the regulated sector and the Competition Council acts ex post (after) to ensure competition, applying competition law to all relations in the national economy falling under the scope of this Law.

(6) The Competition Council is entitled to cooperate with the relevant international expert bodies.

Article 35. Structure of the Competition Council

(1) The Competition Council consists of the Plenum of the Competition Council and the Executive Apparatus of the Competition Council.

(2) The Plenum of the Competition Council is a collegial decision-making board composed of 5 members, including a Chairman and two Vice-Chairmen, who are respectively Chairman and Vice-Chairmen of the Competition Council. The members of the Plenum of the Competition Council exercise positions of public dignity.

(3) The Executive Apparatus of the Competition Council is composed of specialised and operational subdivisions and, where appropriate, territorial subdivisions. The staff of the Executive Apparatus of the Competition Council includes civil servants, who fall under the Law No. 158/2008 on the Civil Service and the Status of Civil Servants, and technical service staff, whose rights and obligations are regulated by labour law.

(4) The Regulation on the organisation and functioning of the Competition Council is approved by the Plenum of the Competition Council.

(5) In order to effectively carry out the tasks laid down by law and to maintain the qualified staff of the Competition Council, salaries shall be reviewed annually in the light of the economic conditions in the country and the possibilities of the national public budget, at least at the forecast inflation rate.

(6) The Competition Council provides initial training and continuous professional development for staff and has sufficient financial and technical resources for this purpose.

Article 36. Funding of the Competition Council

(1) The Competition Council is financed from the State budget within the limits of the budget allocations approved by the annual budget law, including the revenues obtained from:

a) the fee for examining notifications of economic concentrations provided for in Article 27;

b) revenue from services rendered against payment;

c) other revenue provided for by legislation.

(2) In order to effectively implement this Law, the Government shall allocate the appropriate budgetary funds requested by the Competition Council for the proper and independent exercise of its positions. The budget allocated to the Competition Council shall include the necessary resources, adequate to ensure the optimal

number of qualified staff, professional training, salaries, incentives and social guarantees, technical and logistical equipment, maintenance of the central apparatus and territorial subdivisions and other activities related to the performance of its work.

(3) The budget of the Competition Council shall be drawn up, approved and administered in accordance with the principles, rules and procedures laid down in the Law on Public Finance and Budgetary and Fiscal Responsibility No. 181/2014.

(4) The organisational structure and staffing limits of the Competition Council shall be approved by Parliament on a reasoned proposal by the Chairman of the Competition Council.

(5) The Competition Council shall have the necessary independence in spending the budget allocated to it for the performance of the tasks entrusted to it, without prejudice to national budgetary rules and procedures.

(6) The amounts representing fines or other penalties imposed by the Competition Council shall be paid to the State budget as provided by law.

Article 37. Accounting and auditing of the work of the Competition Council

(1) The Competition Council shall ensure that all funds received and allocated are recorded in the accounts, that payments from these funds are duly authorised and that the assets of the Competition Council are adequately controlled.

(2) Annually, after the Competition Council's internal audit, which assesses the business processes, reports to the Plenum of the Competition Council on the sufficiency and effectiveness of the internal management control and accounting systems.

(3) The performance audit is conducted by the Court of Accounts.

Article 38. Responsibilities

(1) In the performance of their duties, members of the Plenum and employees of the Competition Council shall exclude any personal interest which might influence the performance of their duties. They shall refrain from any action incompatible with the fulfilment of their duties and/or the performance of their law enforcement tasks which may lead to a conflict of interest.

(2) Employees of the Competition Council may not engage in any other remunerated activities, with the exception of teaching, scientific, creative or remunerated activities in international organisations related to the work of the Competition Council.

(3) Members of the Plenum of the Competition Council and employees of the Competition Council strictly comply with the legal regime of conflict of interest provided for by the legislation on conflict of interest, as well as the provisions of Article 7 para. (2) of the Law No. 325 of 23 December 2013 on the assessment of institutional integrity.

(4) The members of the Plenum of the Competition Council, the employees of the Competition Council and the experts trained by the Competition Council are obliged to maintain the confidentiality of the information constituting a secret protected by law and other confidential information to which they have access in connection with the exercise of their duties under this Law.

(5) Confidential information collected in the process of applying this law shall be used by the Competition Council only for the purpose for which it was obtained and may be disclosed only with the consent, expressed in an explicit form, of the person from whom it was obtained or at the request of the court or other competent bodies, if provided for by law.

(6) Members of the Plenum of the Competition Council, employees of the Competition Council and experts trained by the Competition Council shall bear civil,

contraventional or criminal liability, as the case may be, for disclosing information that constitutes a secret protected by law.

(7) The official opinion of the Competition Council shall be expressed by the Chairman of the Competition Council or by the Vice-Chairman empowered for that purpose. An employee of the Competition Council may express the official opinion of the Competition Council only if so empowered.

Article 39. Tasks of the Competition Council

The Competition Council has the following main tasks:

- a) promoting a competitive culture;
- b) drawing up the necessary legislation for the implementation of competition law, advertising law, rail transport regulation and unfair commercial practices, within the limits of its powers;
- c) endorsing draft legislation that may have an anti-competitive impact;
- d) notifying the competent bodies of the incompatibility of regulatory acts with competition law, advertising law, rail transport regulation and unfair commercial practices, within the limits of its powers;
- e) investigating anti-competitive practices, unfair competition and other infringements of competition law, within the limits of its powers;
- f) examining and finding violations of the Law No. 62/2022 on Advertising concerning commercial advertising where the rights of enterprises are affected;
- g) performing regulatory tasks for rail transport under the terms of the Rail Transport Code No. 19/2022;
- h) examining complaints and finding unfair commercial practices within the limits of the powers laid down by Law No. 231/2010 on Internal Trade;
- i) notifying prosecution authorities or other competent bodies of possible deeds of infringement of legislation;
- j) adopting decisions provided for by law in cases of economic concentrations;
- k) authorising, monitoring and reporting State aid;
- l) bringing actions before the court in cases falling within its powers;
- m) performing other tasks in accordance with legislation.

Article 39¹. Useful market intelligence research and analysis of economic sectors

(1) In order to study certain markets and identify competition problems, the Competition Council may carry out useful market investigations or analyses of economic sectors.

(2) Information obtained in the course of useful market intelligence or sector inquiries, if it shows signs of a breach of competition law, may serve as a basis for opening an ex officio competition investigation. The results of the useful market investigation are published on the official website of the Competition Council.

(3) Failure to submit information, submission of unauthentic or incomplete information to the Competition Council by enterprises, joint ventures, public authorities or individuals, which has been requested for the purpose of carrying out useful investigations or analyses of economic sectors, shall be sanctioned in accordance with the provisions of the Contravention Code.

Article 40. Duties of the Chairman of the Competition Council

(1) The Chairman of the Competition Council:

- a) is accountable to the Parliament for the fulfilment by the Competition Council of its duties, within the limits provided for by this Law;
- b) represents the Competition Council in its relations with public authorities, natural and legal persons, courts of law, as well as with the relevant international specialised bodies;

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

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

e) assigns tasks to the Vice-Chairmen and members of the Plenum of the Competition Council, confirmed by decision of the Plenum of the Competition Council;

f) organises the work of the Competition Council;

g) organises and conducts competitions to fill vacancies;

h) appoints, concludes, amends, suspends and terminates individual employment contracts with employees of the Competition Council, in accordance with the law. If necessary, the Chairman of the Competition Council applies disciplinary sanctions to employees;

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

j) signs orders, delegations, lawsuits, correspondence;

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

k¹) organizes and implements the internal managerial control system and bears managerial responsibility for the administration of the budget and public assets under management;

l) exercises other duties provided by law;

(2) In case of absence or unavailability of the Chairman, his/her powers shall be exercised by the designated Vice-Chairman of the Competition Council.

(3) The Chairman of the Competition Council is entitled to grant powers to any member of the Plenum of the Competition Council, to employees of the Competition Council, and shall expressly specify the powers delegated and the duration of their exercise.

Article 41. Tasks of the Plenum of the Competition Council

(1) The Plenum of the Competition Council has the following tasks:

a) to exercise the management of the Competition Council in accordance with the law;

b) to approve the number of staff units and the staffing scheme of the Competition Council, which shall subsequently be submitted to the Parliament for approval;

c) to order the drafting and adoption of the necessary regulations for the enforcement of the competition law, the commercial advertising law, the rail transport law and the law on unfair trade practices, within the limits of its competence;

d) to issue opinions on draft regulatory acts that regulate economic activity and may have an anti-competitive impact or to propose amendments to regulatory acts that have or may have an anti-competitive impact;

e) to refer to the competent bodies the incompatibility of regulatory acts with competition law, commercial advertising law, rail transport regulation and unfair commercial practices, within the limits of its competence;

f) to take decisions rejecting complaints concerning alleged infringements of competition law;

g) to order the initiation, joining, separation, disjoining or reopening of investigations concerning alleged infringements of competition law;

h) to examine investigation reports, to submit observations on them and, if necessary, to order further investigation and other measures, within the limits of its competence;

i) to examine proposals for reopening the investigation or for revoking or annulling administrative acts, in the cases provided for by law;

j) to order the application of interim measures, under the conditions laid down by law;

k) to decide whether it is appropriate/opportune to initiate discussions on commitments proposed by enterprises and, where appropriate, to take decisions on the acceptance/rejection of commitments proposed by enterprises;

l) to take decisions on the finding of infringement of competition law, where appropriate, on the imposition of corrective measures, on the application of leniency policy, on the application of sanctions or on the termination of the investigation or other decisions provided for by this Law following the investigations carried out, within the limits of its competence;

m) to order the acceptance of the parties' proposals for the amicable settlement of unfair competition cases and the termination of the investigation;

n) to order the withdrawal of the benefit of the exemption from the provisions of Article 5, established by the regulation adopted by the Plenum for certain categories of agreements, if it finds that they no longer meet the provisions of Article 6 para. (1);

o) to take decisions on refusal, authorisation and conditional authorisation of concentrations or revocation of a decision adopted pursuant to Article 25;

p) to take decisions finding that the notified measure does not constitute State aid, decisions authorising State aid, conditional authorisation, incompatibility, prohibition of State aid and recovery of misused or unlawful aid;

q) to ensure the effective implementation and enforcement of its decisions;

r) to order the initiation, ex officio, of the useful market investigation;

s) to monitor the application of legislation on competition, commercial advertising, the regulation of rail transport and unfair commercial practices, within the limits of its competence;

t) to make recommendations to the Government and public authorities, in the various economic sectors, for the adoption of measures to facilitate the development of competition and prevent significant restrictions of competition;

u) to approve the annual activity report of the Competition Council and other reports prescribed by law, which shall be published on its official website;

v) to take decisions to amend or cancel its own administrative acts, opinions and reports issued in the performance of the duties arising from this Law or other normative acts;

w) to exercise other powers provided by law.

(2) The Plenum of the Competition Council may, on request or ex officio, reopen the procedure if:

a) there is a material change in any of the deeds on which the decision was based;

b) the enterprises act contrary to the commitments entered into and accepted by the decision of the Plenum;

c) the decision was based on incomplete, inaccurate or misleading information provided.

(3) The Plenum of the Competition Council, if it is not necessary to adopt a resolution, provision, decision or prescription, may discuss in its meeting and settle certain matters relating to the exercise of its powers, by recording the protocol entries in the minutes of the Plenary meeting.

Article 42. Membership of the Plenum of the Competition Council.
Incompatibilities and restrictions

(1) The members of the Plenum of the Competition Council, including the Chairman, shall be appointed by decision of the Parliament, on a proposal from the Speaker of the Parliament, with the opinion of the relevant parliamentary committee.

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

(3) The term of office of the members of the Plenum of the Competition Council is 5 years. Each member of the Plenum of the Competition Council is entitled to two consecutive terms of office.

(4) The terms of office of the members of the Plenum of the Competition Council shall begin on the date of entry into force of the relevant decision of the Parliament and shall expire on the expiry of the period referred to in para. (3) of this Article, except in the event of termination of membership in accordance with Article 44.

(5) A person may be appointed to the position of member of the Plenum of the Competition Council if he/she is a citizen of the Republic of Moldova, has a higher education, professional competence, a good reputation, is not prohibited from holding a public office or a position of public dignity, which derives from an act of finding of the National Integrity Authority, does not have in the last 5 years, in the record on professional integrity, entries on the negative result of the professional integrity test for violation of the obligation under Article 7 para. (2) (a) of the Law No 325 of 23 December 2013 on the assessment of institutional integrity and has at least 10 years of work experience in the following fields: economic, competition or legal.

(6) The Chairman of the Competition Council must have held a senior position in which he/she has demonstrated professional and managerial competence.

(7) Membership of the Plenum of the Competition Council is incompatible with the exercise of any other remunerated professional or consultancy activity, with participation, directly or through intermediaries, in the management or administration of public or private enterprises, with the exception of teaching and scientific activity. Members of the Plenum of the Competition Council may not be appointed as experts or arbitrators either by the parties or by the court or any other institution.

(8) Members of the Plenum of the Competition Council may not belong to political parties or political groups.

(9) The members of the Plenum of the Competition Council are responsible for the administrative acts adopted by the Plenum of the Competition Council and for the exercise of their duties.

(10) Members of the Plenum of the Competition Council may not be detained or arrested except at the request of the Prosecutor General.

(11) The members of the Plenum of the Competition Council are responsible for the area of the Competition Council's work entrusted to them by the Chairman of the Competition Council.

(12) Members of the Plenum of the Competition Council are obliged to attend meetings of the Plenum of the Competition Council and to vote "for" or "against" the adoption of administrative acts of the Plenum of the Competition Council, with the exception of the situation referred to in Article 38 para. (1).

(13) Members of the Plenum of the Competition Council submit declarations of assets and personal interests in accordance with the law.

Article 43. The oath of office of the members of the Plenum of the Competition Council

(1) The members of the Plenum of the Competition Council, including the Chairman and Vice-Chairmen, shall take the following oath upon appointment: "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 the welfare of the people.”.

(2) The oath shall be taken before Parliament after the adoption of the act of appointment.

Article 44. Termination of membership of the Plenum of the Competition Council

(1) Membership of the Plenum of the Competition Council shall cease in the event of:

- a) expiry of the term of office;
- b) resignation;
- c) revocation;
- d) death.

(2) A member of the Plenum of the Competition Council shall be removed from office by the Parliament on the proposal of the Speaker of the Parliament or of 1/3 of the elected MPs, if:

a) he/she has violated the provisions of this Law, as determined by the court, or has been convicted by a final and irrevocable court decision for committing a crime;

b) at least one of the situations referred to in Article 42 para. (7) and (8) arises, which has been established by a final decision;

c) he/she is unable to perform his/her duties because of physical or mental incapacity, as determined by a medical committee;

d) he/she has unjustifiably missed three or more consecutive meetings of the Plenum of the Competition Council. In this case, the revocation shall be made on the proposal of the Chairman of the Competition Council;

e) it has been established, by a final decision, that he/she has issued/adopted an administrative act, concluded directly or through a third person a legal act, taken or participated in taking a decision without resolving the actual conflict of interest in accordance with the provisions of the legislation on the regulation of conflict of interest;

f) he/she has not submitted the declaration of assets and personal interests or has refused to submit it, in accordance with Article 27 para. (8) of the Law No. 132 of 17 June 2016 on the National Integrity Authority;

g) the court has ordered, by irrevocable judgment, the confiscation of unjustified assets;

h) it is found to have improperly performed or failed to perform his/her duties;

i) as a result of parliamentary scrutiny conducted in accordance with the law, it is found to have acted improperly.

(2¹) In determining the grounds for removal from office on the grounds of improper performance or non-performance of duties or on the grounds that the work of the authority is judged to be defective, the relevant parliamentary committee shall analyse, in an objective and transparent manner, the institutional management, the acts adopted by the authority, the authority's activity reports, audit reports, complaints, claims, petitions, individual activity objectives and performance indicators for the person assessed, other relevant data and information gathered and submitted to the committee. Based on the analysis conducted, the relevant parliamentary committee shall draw up a report assessing the managerial skills and professional competences of the member of the Plenum of the Competition Council, the manner in which he/she performs his/her duties or, where appropriate, the

efficiency of the authority's work. In the process of examining the grounds for removal from office, the parliamentary committee may hear the members of the Plenum of the Competition Council and any employee of the institution in which they work, and may also request and receive any relevant information from natural or legal persons. If the relevant parliamentary committee finds that the grounds for removal from office referred to in para. (2) letters h) and i) exist, it shall draw up a reasoned report setting out the deeds, circumstances and circumstances which serve as grounds for removal from office and shall submit it to the Plenum of the Parliament.

(2²) Based on the report of the relevant parliamentary committee, the Parliament, by a majority vote of the elected MPs, may dismiss the members of the Plenum of the Competition Council. The Parliament's decision to remove the member of the Plenum of the Competition Council from office may be challenged in court under the conditions and within the time limits laid down in the Administrative Code.

(3) Members of the Plenum of the Competition Council shall be removed from office by a majority vote of the elected MPs.

(4) Members of the Plenum of the Competition Council whose terms of office have expired will remain in office until their successors are appointed. At least one month before the expiry of the member's term of office, the Chairman of the Competition Council shall notify Parliament to this effect, in order to start the process of appointing a new member.

(5) In the event of a vacancy on the Plenum of the Competition Council, for the situations referred to in para. (1) letters b) to d) of this Article, a new member shall be appointed in accordance with Article 42 para. (1) to fill the vacancy.

(6) The members of the Plenum of the Competition Council are obliged to immediately notify the Competition Council of the occurrence of any situation of incompatibility referred to in Article 42 para. (7) and (8), and they shall be automatically suspended from office as soon as this situation arises, and if the situation continues for more than 10 calendar days, their term of office shall cease and they shall proceed in accordance with para. (2) and (5) of this Article.

Article 45. Procedure for the adoption in plenary session of the administrative acts of the Competition Council and their entry into force

(1) The administrative acts of the Competition Council are adopted at meetings of the Plenum of the Competition Council, which may be ordinary or extraordinary. The minutes of the meetings are signed by the Chairman of the Competition Council, the members present and the Secretary of the meeting. Ordinary meetings are convened as necessary, but not less than twice a month. Extraordinary meetings are convened on the initiative of the Chairman or at least two members of the Plenum of the Competition Council.

(2) The meetings of the Plenum of the Competition Council may be closed or public. Closed meetings of the Competition Council are held for the purpose of protecting information which constitutes a state secret, a trade secret or other confidential information the disclosure of which is restricted or prohibited by law.

(3) Meetings of the Plenum of the Competition Council are deliberative if they are attended by at least 3 members, one of whom is the Chairman or Vice-Chairman, and if they are chaired by the Chairman of the Competition Council or, in his/her absence, by the designated Vice-Chairman.

(4) The administrative acts of the Competition Council shall be adopted by the Plenum of the Competition Council by a majority vote of the members present. Each

member has one vote. In the event of a tie, the vote of the Chairman or, in his/her absence, of the Vice-Chairman chairing the meeting shall be decisive.

(5) Members of the Plenum of the Competition Council shall not have the right to abstain from voting, except as provided for in Article 38 para. (1). In the case of a separate opinion, it shall be attached to the adopted administrative act.

(6) Decisions, provisions and prescriptions of the Competition Council shall enter into force on the date of their adoption, unless the decision, provision or prescription provides for a later date. Decisions of the Plenum of the Competition Council shall enter into force in accordance with the provisions of Article 56 para. (1) of Law No. 100/2017 on Regulatory Acts.

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

(1) The Plenum of the Competition Council adopts the following administrative acts: decisions, orders, prescriptions and resolutions, which are set out in writing and signed by the Chairman of the Competition Council or, in his/her absence, by the designated Vice-Chairman.

(2) Decisions are administrative acts which, as appropriate, find infringements of competition law, terminate the investigation or reject the complaint, impose remedies or interim measures, accept or reject commitments proposed by enterprises, apply appropriate sanctions, deal with notifications of economic concentrations and State aid notifications, approve activity reports and State aid reports, and other actions as required.

(3) The decision on the application of sanctions must specify the time limit within which the sanction is to be paid. The deadline for the payment of the penalty may not be less than 60 working days from the date on which the reasoned decision on the application of the penalty is communicated to the enterprise or joint ventures required to pay the penalty.

(4) The provisions initiate investigations of alleged infringements of competition law, the joinder, separation or reopening of proceedings, and initiate investigations useful for market intelligence.

(5) Prescriptions oblige public authorities to cease infringing the law and/or to remove the negative effects caused by infringing the law, including repealing or amending a regulatory act or an individual administrative act, performing certain administrative operations or refraining from performing them.

(6) Decisions are normative acts which adopt, amend or repeal the acts necessary to ensure and organize the activity of the Competition Council and the normative acts necessary for the application of this law, such as those concerning:

- a) organisation and functioning of the Competition Council;
- b) organisation, functioning and tasks of the Council of Experts attached to the Competition Council;
- c) assessment of anti-competitive agreements, anti-competitive agreements falling outside the scope of Article 5 and the exemption of certain categories of anti-competitive agreements;
- d) the establishment of a dominant market position and the assessment of abuse of a dominant position;
- e) economic concentrations;
- f) acceptance, assessment and monitoring of commitments proposed by enterprises or joint ventures;
- g) reporting, accounting, notification, assessment, authorisation and monitoring of State aid;

h) application of the simplified procedure in cases of granting favourable treatment to enterprises or joint ventures which admit to an anti-competitive practice in accordance with Article 73¹;

i) other matters relating to the performance of tasks arising from competition law and the regulation of rail transport, within the limits of their powers.

(7) The Plenum of the Competition Council shall draw up and adopt the necessary regulations for the application of this Law, provided for in para. (6) letters c)-g), in accordance with the provisions of the Law no. 235/2006 on the basic principles of regulation of entrepreneurial activity.

Article 47. Procedure for challenging administrative acts of the Competition Council

(1) The decisions and prescriptions of the Competition Council, as well as the orders referred to in Articles 56 para. (3) and Article 57, may be appealed within 30 days from their communication, in accordance with the provisions of the Administrative Code, without prior procedure.

(2) The provisions of Article 46 para. (4) shall be challenged only with the decision concluding the investigation.

(3) The orders adopted by the Competition Council pursuant to Articles 56 para. (17) and Article 60 para. (5), as well as the decision of the Plenum of the Competition Council issued pursuant to Article 57 para. (1) may be appealed, in accordance with the provisions of the Administrative Code, without prior procedure, within 15 days of their communication. These cases shall be dealt with under an accelerated procedure.

(4) The bringing of an administrative action does not suspend the enforcement of the administrative acts of the Competition Council until the case is resolved on the merits by the court, unless the court orders otherwise.

(5) Appeals against orders issued by the Chairman of the Competition Council pursuant to Articles 56 para. (3) and Article 57 shall not suspend the conduct of the inspection ordered.

(6) If the contested decision in respect of the application of sanctions has been annulled, in whole or in part, by a final and irrevocable court decision, the corresponding amount of the fine shall be refunded to the payer from the State budget within 45 days.

(7) The court may not annul the decision of the Competition Council, which is lawful on the merits, if it finds procedural violations which do not affect the merits of the case and which have not led to the restriction of the rights of defence of the parties involved, but it may refer the case back to the Competition Council.

Article 48. Training of experts and specialists

(1) In addition to the Competition Council, the Council of Experts may be set up temporarily as an advisory body. The manner of establishment, composition and powers of this body shall be determined by the Plenum of the Competition Council.

(2) The Competition Council may engage specialists and experts for consultations, to carry out the necessary expertise and analyses. They may issue opinions, which are not binding.

(3) Experts and specialists trained by the Competition Council ensure compliance with the legislation on conflict of interest and on ensuring the confidentiality of information, based on affidavits.

Chapter VII

PRELIMINARY EXAMINATION, INVESTIGATION AND DECISION-MAKING

Article 49. Grounds for initiating the examination procedure

(1) The Competition Council shall initiate the procedure for the examination of an alleged infringement of competition law:

a) upon complaint by a natural person or enterprise affected by the alleged infringement;

b) ex officio, with the exception of infringements referred to in Chapter III.

(2) To be entitled to lodge a complaint about alleged infringements of competition law, the complainant must demonstrate a legitimate interest.

(3) The complainant has a legitimate interest if the conduct complained of actually and directly affects his/her interests. The interest must be based on a statutory right.

(4) The joint venture may invoke a legitimate interest even if it is not directly affected by the conduct complained of, provided that, on the one hand, the joint venture is entitled to represent the interests of its members and, on the other hand, the conduct complained of actually and directly affects the collective interests of the members of the joint venture.

(5) The Competition Council may start an ex officio examination based on the material in its possession relating to the alleged infringement.

Article 50. Procedure for examining cases of infringement of competition law

The procedure for examining cases of infringement of competition law includes preliminary examination and/or investigation. The investigation of the case shall be ordered in accordance with Article 55. In other cases, the investigation stage will be omitted.

Article 51. Complaint concerning alleged infringements of competition law

(1) A complaint on alleged infringements of competition law is a request concerning a competition issue filed with the competition authority in accordance with the procedure and conditions laid down in this Law. The complaint shall contain the information contained in the Complaint Form, approved by decision of the Plenum of the Competition Council.

2) The complaint shall be sent by registered letter with acknowledgement of receipt or shall be submitted to the Competition Council on paper in duplicate and, if possible, in electronic form.

(2¹) The complaint concerning alleged infringements of competition law may be submitted in electronic form. If submitted in electronic form, the complaint must comply with the legal requirements laid down for an electronic document.

(3) If confidentiality is requested for any party to the complaint, the complainant must also provide a non-confidential version of the complaint and a summary of the confidential information. In the version containing confidential information, the complainant must state the legal and factual basis on which the information is considered confidential.

(4) If it does not meet the requirements set out in para. (1) to (3), the complaint lodged shall not constitute a complaint about alleged infringements of competition law and shall be considered by the Competition Council as general information.

(5) In the case referred to in para. (4), the Competition Council shall:

a) initiate an ex officio investigation by means of an order adopted in plenary session, if it finds an important public interest and considers that the conditions of Article 55 for the initiation of the investigation are met;

b) on request, return the complaint to the complainant.

(6) The Competition Council shall inform the complainant in writing within 15 working days of the lodging of the complaint of the measures referred to in para. (4) and, where appropriate, of the decision taken.

(7) If the complaint is returned in accordance with para. (5) letter b), the complainant shall have the right to lodge a new complaint meeting the requirements set out in para. (1) to (3).

(8) If, after the decision of the Plenum of the Competition Council has been sent, a new complaint is lodged by the same complainant, concerning the same parties and the same subject-matter and grounds, it shall not be examined and shall be joined to the original file.

(9) If the complaint to the Competition Council also contains issues that fall within the competence of other public authorities, a copy of the complaint with the attached evidence shall be sent to the competent public authority and the Plenum of the Competition Council shall only comment on issues that fall within its competence.

Article 52. Burden of evidence

(1) When complaining about alleged infringements of competition law, the complainant must provide evidence in support of the deeds on which the complaint is based.

(2) The enterprise or joint venture claiming the benefit of the exemption provided for in Article 6 shall bear the burden of proving that the conditions of that Article or the provisions of those Regulations are fulfilled.

(3) In the procedure for examining alleged infringements of competition law, the burden of proof of infringement lies with the Competition Council.

(4) For the purpose of applying this Law, the Competition Council may use as evidence any factual and legal elements, including confidential information acquired in the manner provided for by law, which serve to establish the existence or absence of an infringement.

(5) For the purpose of applying this Law, the Competition Council shall admit both direct and indirect evidence. Direct evidence is the testimony of witnesses or other persons, physical evidence, documents, audio and/or video recordings, expert conclusions and any other evidence which expressly proves the existence or absence of an infringement of the law. Circumstantial evidence is evidence that gives rise to a logical conclusion that a violation of the law exists or existed at some point in time or does not exist and did not exist at some point in time.

(6) The evidence on which the decision of the Plenum of the Competition Council is based is the evidence obtained by the employees of the Competition Council as well as the evidence submitted by the parties or third parties.

(7) Information lawfully obtained by employees of the Competition Council may be used as evidence regardless of whether it is made in written, verbal, electronic or recorded form. The Competition Council may consider electronic messages as relevant evidence, regardless of whether they appear unread or have been deleted.

(8) Information lawfully obtained by the Competition Council in the course of a procedure may, if necessary, be used as evidence in other investigations.

(9) In the performance of its duties under the law, the Competition Council may use as evidence information and documents collected by other public authorities, criminal prosecution bodies and subjects carrying out special investigative activity, information obtained from third parties, as well as from competition authorities of other countries.

Article 53. Preliminary examination of the complaint

(1) The preliminary examination of the complaint concerning alleged infringements of competition law shall be carried out within 45 working days from the date of receipt.

(2) In the preliminary examination of the complaint, the Competition Council determines whether there are reasonable grounds to suspect an infringement of competition law.

(3) If the Competition Council considers that, on the basis of the information submitted by the complainant and that gathered during the preliminary examination, the grounds referred to in para. (2) do not exist, it shall inform the complainant in writing, stating the reasons for such a conclusion, and shall give the complainant 10 working days within which to make known its views in writing. In such a case, the time-limit provided for in para. (1) shall be suspended. The Competition Council shall not be obliged to take into account any further written observations submitted after the expiry of the period of 10 working days.

(4) If the complainant fails to submit relevant observations within the time limit referred to in para. (3), the complaint shall be deemed to be tacitly withdrawn. In the notification sent to the complainant, the Competition Council shall also inform the complainant of the effects of not submitting observations.

(5) If the complainant makes known its views within the period referred to in para. (3), the Competition Council shall:

a) reject the complaint by decision, if the objections received do not lead to a different assessment of the complaint; or

b) order by order that the investigation be conducted.

(6) In order to reject a complaint on the ground that the conduct complained of does not infringe the competition rules or does not fall within their scope, the Competition Council is not obliged to take into account circumstances which were not brought to its attention by the complainant and which it could only have discovered by investigating the case.

(7) The decision rejecting the complaint, taken in accordance with para. (5) letter a), shall prevent the complainant from requesting the reopening of the preliminary examination procedure or from lodging a new complaint on the same subject-matter and on the same grounds.

(8) The Competition Council has the right to ask the complainant for additional information to that submitted in order to determine whether it is necessary to initiate an investigation following the complaint.

(9) If the complaint is ambiguous, the Competition Council may ask the complainant to specify the subject matter of the complaint and the grounds for the complaint.

Article 53¹. Joining, separation and disjoining of proceedings for the examination of competition law infringements

(1) In order to streamline its work, the Competition Council is entitled to examine several complaints in a joint procedure when there is a connection in terms of subject matter and/or parties. Each complainant participates in the administrative procedure independently of the other participants.

(2) In order to streamline the work of the Competition Council, the Plenum of the Competition Council may order an investigation to be joined to another investigation when there is a connection between them in terms of subject matter and/or parties.

(3) In order to streamline the work of the Competition Council, the Plenum of the Competition Council is entitled to separate:

a) an investigation initiated pursuant to the complaint which addresses several competition concerns raised by the complainant in several investigations, if it considers that their separate examination is possible without prejudice to their examination;

b) an investigation, splitting it into two or, where appropriate, more investigations where it is possible to complete the examination of some of the deeds under investigation without affecting the rest of the investigation for which further examination of the case is necessary.

(4) In order to streamline the work of the Competition Council, the Plenum of the Competition Council is entitled to order, by means of a protocol entry, that an investigation be disjointed.

Article 53². Prioritisation of cases

(1) The Competition Council is entitled to set its priorities for the performance of enforcement tasks under this Law according to the potential impact on effective competition, the public interest or the strategic importance of the economic sector concerned.

(2) To the extent that it is obliged to examine complaints, the Plenum of the Competition Council is entitled to reject such complaints on the grounds that it does not consider that the complaints in question constitute a priority for the examination of cases.

(3) The Competition Council also has the right to reject complaints on other grounds laid down by law.

Article 54. Request for information

(1) For the purpose of exercising its powers, the Competition Council shall have the right to request and obtain free of charge, while ensuring the confidentiality of information, from enterprises, joint ventures, natural persons and public authorities any necessary documents and information, including in digital format, which are accessible and may be relevant for the application of the law, without being able to invoke the protection of state secrecy, the secrecy of criminal proceedings, banking secrecy, commercial secrecy, tax secrecy, professional secrecy (except for professional secrecy provided for in Article 55 of Law No. 1260/2002 on Lawyers), personal data and other confidential information, unless otherwise provided by this Law.

(2) The Competition Council shall request the necessary information in writing, indicate the legal basis and purpose of the request for information and set a reasonable time limit within which the information must be provided, which shall be at least 3 working days, and specify the penalties provided for by law.

(3) Requests for information must be proportionate and not force enterprises and joint ventures to acknowledge that they have committed an infringement, and they must answer factual questions and provide documents even if these can be used to establish the existence of an infringement against them or another enterprise.

(4) The obligation to provide the information requested on behalf of the enterprise or joint venture and the public authority concerned shall lie with the owners of the enterprises or the representatives of the enterprises, joint ventures or public authorities, and in the case of joint ventures which do not have legal personality, with the persons authorised to represent them by law or by their statutes. Lawyers duly authorised to act shall provide information on behalf of their clients. Enterprises or joint ventures shall be liable for failure to provide information or the provision of incomplete, inaccurate or misleading information in accordance with this Law.

Article 54¹. Interview

(1) For the purpose of exercising its powers, the Competition Council shall have the right to summon to an interview any authorised representative of the enterprise, of the joint venture, any legal representative of the public authority, as well as any natural person, if such representative or such person could possess relevant information.

(2) In order to conduct the interview referred to in para. (1), the Competition Council shall send a written request, by any available and effective method, to the enterprise, joint venture, public authority or natural person, indicating the persons to be interviewed, the legal basis, purpose, date and place of the interview and the sanctions provided for in this Law.

(3) Where the Competition Council is to interview employees of enterprises, joint ventures or public authorities under investigation, the enterprises, joint ventures or public authorities concerned shall ensure the presence of their employees at the interview.

(4) The interview may be conducted by any means, including telephone, video, teleconference or other electronic means. The Competition Council may record in any form the statements made by interviewees. A copy of the recording must be made available to the interviewee for approval and the interviewee may, within the time limit set, communicate any corrections to be made to the statement. Corrections will be communicated in writing.

(5) During the interview conducted in the process of the case investigation, natural persons who are not employed in the enterprise under investigation or persons holding a public office shall be punished in accordance with the provisions of the Contravention Code for providing unauthentic or incomplete information or failing to provide the requested information.

Article 55. Investigation

(1) If after the preliminary examination of the complaint it is considered that, based on the information submitted by the complainant and that gathered during the preliminary examination, there are reasonable grounds to suspect an infringement of competition law, the Plenum of the Competition Council shall adopt an order to initiate a competition investigation.

(2) The Plenum of the Competition Council has the right to order ex officio the initiation of an investigation on the basis of the material at its disposal.

(3) By the decision to initiate an investigation, the Plenum of the Competition Council appoints a rapporteur responsible for drawing up the report on the investigation, for communicating it to the parties concerned, for receiving observations and for presenting the report at the meeting of the Plenum of the Competition Council. The appointed rapporteur implements all the acts of the investigation procedure and proposes to the Plenum of the Competition Council the measures that fall within its competence.

(4) The provision initiating the investigation does not establish an infringement of competition law. Infringement of competition law shall be established by decision of the Plenum of the Competition Council.

(4¹) The decision to initiate the investigation shall be notified to the complainant, the enterprise, joint venture or public authority under investigation within a reasonable time of its issuance, without jeopardising the proper conduct of the investigation.

(5) The Competition Council is empowered to set different degrees of priority for the cases it is to investigate, depending on the seriousness of the infringement and the public interest.

Article 56. Conduct of inspections

(1) When investigating cases of infringement of competition law, inspections by the Competition Council shall be conducted in accordance with this Law.

(2) Inspection is a procedural tool used by the Competition Council to obtain the necessary information and documents, irrespective of the medium on which they are found and their location, in order to investigate infringements of competition law.

(3) For the purpose of conducting investigations ordered under Article 55, the Competition Council may carry out the necessary inspections at any enterprise, joint venture or public authority. Inspections shall be ordered by an order issued by the Chairman of the Competition Council, indicating the purpose and subject matter of the inspection, the date on which the inspection shall commence, the sanctions provided for by law, and the right to challenge the order in court.

(4) The inspection is carried out by the employees of the Competition Council, empowered on the basis of the inspection delegation, with the exception of first-timers, if there are indications that documents can be found or information deemed necessary for the investigation of the alleged infringement of competition law can be obtained. The inspection is initiated by order of the Plenum of the Competition Council, which does not require to be demonstrated to the subject of the inspection.

(5) Experts or specialists in specific fields authorised by the Competition Council through the inspection delegation and/or representatives of other authorities may take part in inspections, where appropriate, in the cases provided for by law.

(6) The inspection shall take place between 09:00 and 18:00 and shall be conducted in the presence of the subject of the inspection or his/her representative. The inspection may continue beyond 18:00 only with the agreement of the subject of the inspection or his/her representative.

(7) When conducting the inspection, the employees of the Competition Council shall provide the subject of the inspection with a copy of the order initiating the investigation, the order referred to in para. (3) and the inspection delegation indicating their powers.

(8) If there is no person in the premise in which the inspection is to be carried out, the employees of the Competition Council authorised to conduct the inspection shall:

a) before the inspection commences, take all reasonable steps to inform the person occupying or operating the premise of the intention to conduct the inspection;

b) after the person concerned has been informed, give that person or his/her representative a reasonable opportunity to be present at the inspection.

Communication of the inspection order and the inspection delegation in the absence of the representative of the subject under inspection or of any employee of the subject under inspection may be made by means which ensure the transmission of the contents of these documents and confirmation of dispatch. In this case, the communication shall be deemed to have been effected at the date and time of dispatch.

(9) If communication cannot be made by any of the means provided for in para. (7) and (8), the inspection order and the copy of the decision to initiate the investigation shall be posted at the address designated for the inspection, as confirmed in the inspection report, which shall indicate the date and time of posting. If the premise is not occupied or the person occupying it is temporarily absent, the employees of the Competition Council shall, after the inspection, leave the premise in the safe condition in which they found it.

(10) The persons delegated to conduct the inspection shall have the right to inspect and obtain all information related to the subject matter and purpose of the investigation from the subject of the inspection, including in digital form, irrespective of the medium on which it is stored and the location of its location.

(11) In the course of the inspection, using technical equipment and/or specialised software, the persons delegated to carry out the inspection may take or obtain, in any form whatsoever, copies or extracts from registers or documents and, if they consider it appropriate, collect them and continue to process them at the Competition Council's premises. Where necessary to ensure the integrity of the evidence, the originals of the registers or documents may be taken. The removal of registers and documents shall be permitted only if such action is necessary to prevent their concealment, removal, alteration or destruction or if it is not possible to make copies thereof on the premises. Records and documents seized under this Law may be retained for a maximum of 3 months.

(12) The explanations requested by the persons delegated to conduct the inspection from the representative or employees of the subject of the inspection shall be recorded in any form. Upon request, a copy of the record shall be forwarded to the subject under inspection. Where explanations have been requested from an employee of the subject under inspection who has not been authorised by the subject under inspection to give explanations on his/her behalf within the time limit laid down in the minutes, the subject under inspection shall submit in writing corrections or additions to the explanations.

(13) In the context of inspections, the Competition Council may request the assistance of the authorised subdivisions of the Ministry of Internal Affairs, which are obliged to provide the necessary assistance to the persons delegated to conduct the inspection in the performance of their duties, in accordance with the law.

(14) Communications between the subject of the inspection and his/her lawyer, made in the framework and for the sole purpose of exercising the right of defence of the subject of the inspection, which relates to the subject matter of the investigation, may not be used as evidence in the investigation conducted by the Competition Council.

(15) The burden of proving that the conditions laid down in para. (16) have been met shall lie with the subject of the inspection. If the inspected subject does not prove the protected nature of the communication, it shall be sealed and taken back in duplicate. The inspection report shall specify a time limit within which the inspected person shall provide evidence and explanations to demonstrate the protected nature.

(16) The Chairman of the Competition Council decides, as a matter of urgency, on the protected nature of the communication on the basis of the request and the evidence and arguments presented by the subject of the inspection. If the Chairman of the Competition Council rejects the application on the protected nature of the communication, the unsealing of the document may take place only after the expiry of the time limit within which the order may be challenged, pursuant to para. (17), or, if the decision is challenged, after the judgment of the court becomes final.

(17) The order of the Chairman of the Competition Council rejecting the application for the protected nature of the communication may be appealed within 15 days of communication, without prior procedure, in accordance with the provisions of the Administrative Code.

(18) The result of the inspection shall be recorded in a record of the inspection, which shall be drawn up in duplicate, each page numbered and signed on each page by all delegated persons who conducted the inspection and by the representative of the subject of the inspection.

(19) A copy of the report shall be handed, by means of the confirmation written on it, to the subject of the inspection, who shall be obliged to confirm, by the signature of the representative or other designated person, receipt of the report. If the representative of the subject of the inspection refuses to receive or confirms by signature receipt of the report, an appropriate endorsement shall be made on the report and the signed report shall be sent by post or electronic means to the subject of the inspection.

(20) Where the conduct of the inspection has been video-recorded, the video recording shall form part of the file and shall be released to the subject of the inspection, upon request, for the exercise of the rights of defence.

(21) The time limit for conducting an inspection shall be determined according to the seriousness of the alleged infringement, its duration and other criteria that would affect the time for conducting the inspection, and shall not exceed 10 working days.

Article 56¹. Rights and obligations of the Competition Council during inspections

(1) Persons delegated to conduct the inspection shall have the following rights:

a) to enter any premises, land and means of transport of enterprises and joint ventures;

b) to examine the records and other documents relating to the business, irrespective of the medium on which they are stored, and to access any information which is accessible to the subject of the inspection;

c) to take or obtain, in any form whatsoever, copies of or extracts from registers and other documents relating to economic activity and, if it deems it appropriate, to continue to carry out such searches for information and to select copies or extracts at the office of the Competition Council;

d) to seal any premises intended for business activity and any records and documents related to the subject matter and purpose of the investigation for the duration of the inspection (but not more than 72 hours) and to the extent necessary for the inspection, without suspending the activity of the enterprise or joint venture under inspection;

e) to ask any representative or member of staff of the enterprise or joint venture for an explanation of the deeds or documents relating to the subject matter and purpose of the inspection and to record their reply;

f) to ask for password changes/locking of user and/or e-mail accounts for the duration and to the extent necessary for the inspection;

g) to search for and copy, using technical equipment and/or specialised software, documents, files or other information stored on devices which are not precisely identified in advance;

h) to use specialised technical equipment and software for restoring, copying and analysing information, whatever the form and storage medium.

(2) The persons delegated to conduct the inspection shall have the following obligations:

a) to communicate the inspection order, the inspection delegation and the order initiating the investigation to the subject under inspection;

b) to inform the subject under inspection of his/her rights and obligations;

c) to conduct the inspection in accordance with the assigned powers.

Article 56². Rights and obligations of the subject under inspection

(1) The subject under inspection shall have the following rights:

a) to acquaint him/herself with the contents of the decision initiating the investigation, the inspection order and the inspection delegation and to obtain a copy thereof;

b) to provide evidence during the inspection;

c) to provide explanations of deeds or documents relating to the subject matter and purpose of the inspection;

d) to identify information constituting a trade secret, communications of a protected nature and other confidential information by submitting a reasoned request to the Competition Council and, where appropriate, to submit a non-confidential version of such information with the same probative value as the confidential version;

e) to obtain copies of all records or documents taken during the inspection and a list of them;

f) to be assisted by a lawyer. The absence of a lawyer may not be invoked as a reason for postponing the start or continuation of the inspection;

g) to obtain a copy of the inspection report.

(2) The subject under inspection shall have the following obligations:

a) to allow the employees of the Competition Council, without delay, to start and conduct the inspection;

b) to obey the inspection and to comply with the instructions of the employees of the Competition Council delegated to conduct the inspection;

c) to facilitate, throughout the inspection, access to all documents and information requested;

d) to provide in a complete form the documents, information, records and registers requested, including copies thereof, and any necessary explanations, without being able to invoke their confidential nature;

e) when inspecting electronic computing, communications, equipment and/or storage/archiving media, to designate persons to provide the necessary support to Competition Council employees during the inspection. The absence of such persons shall not constitute a reason for postponing the start or continuation of the inspection of such equipment and/or storage media/archives;

f) to provide and ensure access to all equipment and software in use, including that which is not physically located in the inspected space but can be accessed from that space, to provide the necessary passwords and encryption/decryption keys, including local and/or network administrator passwords, and to provide the necessary support for the use of specialised equipment and software.

Article 57. Conducting inspections in other premises

(1) Where there is a reasonable suspicion that records or other documents relating to the activity and subject matter of the inspection which could be relevant to prove a serious infringement of Articles 5 and 11 are kept in the premises, land or means of transport of natural persons, including the homes of members of the management bodies or staff of the enterprises or joint ventures concerned, the Plenum of the Competition Council may by decision order an inspection to be conducted in such premises, land or means of transport.

(2) The inspection provided for in para. (1) shall be carried out in accordance with Article 56. In addition to the information referred to in Article 56 para. (3), the order to conduct such an inspection shall state the reason which led the Competition Council to conclude that there is a suspicion within the meaning of para. (1) of this Article.

(3) Access by representatives of the Competition Council to premises, land or means of transport occupied by natural persons, without their consent, shall be

permitted only on the basis of a court warrant issued under the conditions of this Article and presented to the person subject to inspection.

(4) The court warrant may be issued only if:

a) there is a reasonable suspicion that the premises, land or means of transport to be inspected contain records or other documents the production of which has been requested by the Competition Council in accordance with this Law, but which have not been produced within the prescribed period; or

b) there is a reasonable suspicion that there are kept in the premises, land or means of transport to be inspected records or other documents the production of which may be required by the Competition Council in accordance with this Law and which, if required, would not have been produced but would have been concealed, removed, altered or destroyed; or

c) the employees of the Competition Council have attempted to enter the premises, land or means of transport to be inspected but have failed to do so and there is a reasonable suspicion that the premises, land or means of transport in question contain records or other documents the production of which has been requested by the Competition Council in accordance with this Law.

(5) The court order shall contain the information referred to in Article 56 para. (3) and shall be valid for one month from the date of issue.

(6) In the case of an application for a warrant, the court is obliged to verify whether the order of the Chairman of the Competition Council to carry out the inspection is genuine and whether the coercive measures envisaged are not arbitrary or excessive in view of the subject matter of the investigation. When verifying the proportionality of the coercive measures, the court may ask the Competition Council for detailed explanations, in particular as to the grounds on which the Competition Council suspects an infringement of Articles 5 or 11, as well as the seriousness of the suspected infringement, the importance of the evidence sought, the nature of the involvement of the enterprise concerned and the reasonable likelihood that the records and documents relating to the subject matter of the investigation are kept at the place for which the warrant is sought.

(7) An appeal may be lodged against an injunction issued pursuant to this Article, which shall not have suspensory effect.

(8) The provisions of this Article shall apply *mutatis mutandis* to requests from providers of electronic communications network and/or services for traffic data relating to the electronic communications services provided.

Article 57¹. Commitments

(1) During the investigation procedure into the alleged anti-competitive agreement or abuse of a dominant position, pending the adoption of the decision by the Plenum of the Competition Council, enterprises or joint ventures under investigation may submit proposals for commitments with a view to removing the concerns of the Plenum of the Competition Council which led to the initiation of the investigation.

(2) If the importance of punishment and deterrence of the conduct under investigation prevails, serious deeds, such as cartels and forms of abuse of dominant position which have had particularly serious consequences for the market and have produced irreparable consequences and effects, are exempted from the commitments.

(3) Before adopting a decision pursuant to Article 41 para. (1) letter k), the Competition Council shall publish a summary of the case and the main content of the commitments or proposed future action. Interested third parties may submit their observations within a period set out in the publication, which may not be less than

one month. In the publication, the legitimate interest of enterprises in the protection of business secrets shall be taken into account.

(4) Where enterprises or joint ventures have offered commitments, the Plenum of the Competition Council may:

a) by decision, accept the commitments if it finds that the proposed commitments are sufficient to protect competition and their implementation leads to the removal of the problem that led to the initiation of the investigation, and may terminate the investigation of the case against the enterprise which has offered commitments;

b) by decision, reject the commitments and proceed with the appropriate procedural steps following the initiation of the investigation, if the commitments do not meet the conditions set out at letter a), if it identifies difficulties in implementing the proposed commitments or in monitoring their fulfilment. Such remedy shall be communicated by the Competition Council in writing to the enterprise offering the commitments.

(5) The Competition Council monitors the fulfilment by the enterprise or joint venture of the commitments accepted by decision of the Plenum of the Competition Council.

(6) The Plenum of the Competition Council has the right to reopen the investigation concluded by the acceptance of commitments proposed by the enterprise or joint venture:

a) if there is a material change in any of the deeds on which the decision with commitments was based;

b) if the enterprises or joint ventures concerned act contrary to the commitments offered; c) if the decision was based on incomplete, incorrect or misleading information provided by the parties.

(7) Enterprises or joint ventures may also submit proposals for commitments in the case of economic concentrations in order to make them compatible with a normal competitive environment, as provided for in Article 25.

Article 57^z. Interim measures

(1) The Plenum of the Competition Council may impose any interim measure it deems necessary, prior to the issuance of a decision finding a competition infringement, in case of urgency due to the risk of serious and irreparable damage to competition, if it finds, on a first assessment, the existence of deeds of competition infringement which must be eliminated without delay.

(2) The decision referred to in para. (1) shall be proportionate and shall apply either for a fixed period, which may be renewed as necessary and appropriate, or until the final decision is adopted.

(3) The decision referred to in para. (1) may be appealed against within 15 days of its communication, without following the prior procedure, in accordance with the provisions of the Administrative Code.

(4) The Competition Council monitors the application of the interim measures imposed.

Article 58. Exercise of the rights of defence

(1) Before adopting the decisions referred to in Article 65 para. (1), the Competition Council shall, in the investigation proceedings, fully guarantee the rights of defence of the parties concerned by granting them the right to express their views on the findings and proposals in the investigation report, by granting them access to the file and the right to be heard.

(2) In the case of an investigative procedure conducted pursuant to Chapter IV, the provisions of para. (1) shall apply to the persons and enterprises involved in the economic concentration.

(3) Before a decision is taken on alleged breaches of the procedural rules referred to in Article 68, a report shall be drawn up containing the deeds established and the evidence on which the rapporteur's conclusions are based. Pending the adoption of the decision by the Plenum of the Competition Council, the parties concerned may submit their observations within 10 working days of its communication.

(4) The Plenum of the Competition Council bases its decisions solely on the findings in the investigation report and other evidence on which it bases its decision and on which the parties concerned have been able to submit observations.

Article 59. Transmission of the investigation report and submission of observations

(1) The investigation report will contain the subject matter of the investigation, the facts found, the evidence, conclusions and proposals of the rapporteur.

(2) Once the investigation report has been drawn up, a copy of the non-confidential version of the report shall be sent for information to the parties and, where appropriate, to other persons concerned by the investigation. Upon request, a copy of the non-confidential version of the investigation report shall be forwarded to the persons whose interviews have been admitted in accordance with Article 64 para. (3).

(3) Within 30 working days from the date of receipt of the investigation report, the parties and other persons to whom the report has been transmitted have the right to submit observations on it.

(4) The time-limit referred to in para. (3) may be extended by the Competition Council, once only, by a maximum of 30 working days, on the basis of a reasoned request accompanied by evidence showing the need for an extension. In this case, the party that made the request shall be informed in writing of the outcome of the examination of the request within a maximum of 3 working days.

(5) The parties may set out in their written submissions the legal basis and deeds known to them which are relevant to their defence against the claims brought by the Competition Council. The parties may attach any relevant documents substantiating the abovementioned deeds and may propose to hear persons who could confirm the deeds set out in their observations.

(6) The investigation report, together with the observations submitted by the parties and the materials of the entire case file, shall be submitted by the rapporteur to the Plenum of the Competition Council for hearings and, where appropriate, for the adoption of the respective decision.

(7) The Competition Council may ask any person, including a public authority, to submit its views on the investigation report in writing.

(8) If, after the submission of the investigation report, new evidence is identified or submitted which the Competition Council intends to use, or if the Competition Council intends to change its legal qualification of the deeds under investigation to the detriment of the enterprises concerned, the Competition Council shall submit a supplement to the investigation report and give the enterprises the opportunity to submit observations on it.

(9) If necessary, after the submission of the investigation report, the Plenum of the Competition Council may request from enterprises or joint ventures, as well as from public authorities, any information and documents necessary in relation to the

factual or legal circumstances of the ongoing investigation, in order to apply its powers under Article 41 para. (1) letters l), o) and p).

Article 60. Access to the file

(1) The complainant may request access to the documents on which the Competition Council based its preliminary examination. Upon written request, the complainant will be granted access to these documents only once, following the information provided by the Competition Council pursuant to Article 53 para. (3). Access to the file shall be granted to the parties concerned on condition that the information in the file is used only in the context of the proceedings in the case before the Competition Council or any related court proceedings.

(2) The parties concerned in proceedings before the Competition Council have a right of access to the Competition Council's file, subject to the legitimate interest of enterprises to protect their business secrets and other confidential information. The right of access to the file does not include access to information the disclosure of which could harm competition, to the Competition Council's confidential information and internal documents, to other parties' submissions to the investigation report, to the Competition Council's correspondence with competition authorities in other countries, to information protected by other laws. Access to the file shall be granted upon written request of the parties concerned, after the Competition Council has transmitted the investigation report.

(3) The Competition Council shall ensure that access to leniency statements or proposals for acknowledgement of an infringement of competition law is granted only to the parties subject to the proceedings and only for the purpose of exercising their rights of defence in judicial proceedings.

(4) The Competition Council may grant parties additional access to documents received after the disclosure of the investigation report at later stages of the procedure if these documents constitute new evidence concerning that party.

(5) Access to confidential documents, data and information in the case file and obtaining copies and/or extracts may be ordered by order of the Chairman of the Competition Council.

(6) Access to the file shall be granted to the parties to the investigation, provided that the information in the file is used only by the party to whom access has been granted, or to their successors in rights and obligations or to those who continue their economic activity only in the framework of the respective proceedings conducted by the Competition Council or any related judicial proceedings.

Article 61. Procedures for access to the file examined by the Competition Council

(1) The Chairman of the Competition Council shall give the parties access to the file and allow them to obtain, on request and against payment, copies in paper or electronic form.

(2) The parties shall be notified of the date set for access to the file no later than 3 working days from the date of the application.

(3) Access shall be granted to the original form of the file, except where access is granted to non-confidential versions of the original information or to a summary, where confidentiality can only be ensured by summarising the relevant information.

(4) The Competition Council is not obliged to provide translations of documents on file.

Article 62. Treatment of documents and information in the file

(1) Documents, information obtained as a result of a request for information or in the course of the inspection which are not related to the subject matter of the investigation and did not form the basis for the decision shall be returned.

(2) In the case of restricted documents, access shall be granted, where possible, to the non-confidential version of such documents submitted by the enterprise claiming the protection of business secrets or other confidential information. Where confidentiality can be assured, access shall be granted to the non-confidential version of the information submitted by the enterprise that provided the information. The enterprise shall submit the non-confidential version of the information provided to the Competition Council within a set time limit. If the enterprise does not submit the non-confidential version of the information, the documents and information shall be deemed not to contain business secrets or other confidential information.

(3) The minutes drawn up on the basis of the interviews shall be accessible after deletion of information constituting business secrets or other confidential information identified by the enterprises.

Article 63. Criteria for accepting requests for confidential treatment of information in the file

(1) Information that may constitute a trade secret is defined by the Civil Code.

(2) Information other than trade secrets may be considered confidential to the extent that its disclosure could significantly harm a person or business. Confidential information may include information that would enable the parties to identify the complainants or third parties where the latter have a reasoned basis, supported in writing, for remaining anonymous. Where appropriate, other confidential information may include information submitted by third parties about the enterprises concerned which could put considerable economic and commercial pressure on competitors or on the respective business partners, customers and/or suppliers of the enterprises concerned.

(3) Trade secret and other confidential information in the file shall be marked "Contain confidential information".

(4) In order for information to be considered confidential, the natural person, enterprise, joint venture or public authority claiming a legitimate interest in the protection of its secrets and other confidential information shall submit a reasoned request to the Competition Council, which shall also identify the parties against whom its information is considered confidential.

(5) Access to confidential information provided by public authorities is granted only with the consent of those authorities.

(6) The request for confidentiality must relate to information that may constitute trade secrets or otherwise meet the description for other confidential information. The Competition Council examines the basis for the application for confidentiality. Where it does not accept the application, the Competition Council must reply to the applicant within 15 working days of receipt of the application.

(7) The classification of information as a trade secret or other confidential information does not prevent the Competition Council from disclosing or using such information if it is necessary to prove an alleged infringement.

Article 64. Hearing of parties and other natural or legal persons

(1) Parties to whom the investigation report has been transmitted are entitled to request hearings. Hearings shall be requested by the parties in writing when they make their views known on the investigation report.

(2) Hearings may also be ordered ex officio by the Chairman of the Competition Council.

(3) If necessary, the Chairman of the Competition Council may order or admit the hearing of other natural or legal persons. Requests to hear such persons shall be approved if they show sufficient interest. If the requests of the persons mentioned

are granted, they shall be provided, upon request, with a copy of the non-confidential version of the investigation report.

(4) The Competition Council may invite any person, including representatives of public authorities, to attend the hearing in person or remotely by electronic means and to express their views during the hearing.

(5) Persons invited to attend hearings in person or remotely by electronic means shall appear in person or be represented, where appropriate, by legal or statutory representatives or by legally authorised lawyers.

(6) The hearings take place in closed sessions of the Plenum of the Competition Council. Invited persons are heard in the presence of other parties to the case, with the necessary measures being taken to protect information which constitutes a trade secret or is confidential. If it is considered useful, in order to ensure the protection of information of a commercial secret or confidential nature, the persons invited may be heard separately.

(7) The hearing shall be recorded on tape or recorded in minutes containing the main statements made by the parties and annexed to the file. The statements must be signed by the party making them. The Competition Council will inform the person being heard of the intention to record the statements made at the hearing.

(8) Failure or refusal to attend the hearing or to make a statement shall not prevent the investigation from continuing.

Article 65. Adoption and communication of decisions

(1) After examining the observations submitted by the parties on the investigation report and, where appropriate, after holding hearings and examining additional information gathered at the request of the Plenum, the Plenum of the Competition Council shall:

a) adopt the decision to terminate the investigation of the case because in the course of the investigation sufficient evidence of an infringement of competition law has not been uncovered that would justify the application of corrective measures or sanctions;

b) adopt the decision to find an infringement of competition law and, where appropriate, to apply sanctions;

c) order the further investigation of the case;

d) adopt other decisions or prescriptions provided for in Article 41.

(2) If it finds an infringement of competition law, the Plenum of the Competition Council shall require enterprises, joint ventures and public authorities to bring the infringement to an end. To this end, the Plenum of the Competition Council may impose, by decision, any behavioural or structural corrective measures that are proportionate to the infringement committed and necessary for the effective termination of the infringement.

(3) The decision referred to in para. (2) shall be based on the findings and evidence to which the parties concerned have had access and on which they have had an opportunity to comment, subject to the rules on access to confidential information. Decisions and orders of the Plenum of the Competition Council shall be notified within 10 working days of the date of their adoption by the means of notification provided for in the Administrative Code.

(4) The decisions and prescriptions of the Plenum of the Competition Council are published on the website of the Competition Council. The publication of decisions and prescriptions shall be made taking into account the legitimate interest of enterprises in the protection of business secrets.

Article 66. Procedure for the enforcement of decisions and time-bars and the follow-up of the enforcement of measures applied

(1) The decisions and prescriptions of the Plenum of the Competition Council adopted under the terms of the present law shall be executed, within the term mentioned therein, by the enterprises, joint ventures, public authorities to which they are addressed.

(2) The persons concerned are obliged to inform the Competition Council of the measures taken to comply with the decision within the time limit laid down therein.

(3) The enforcement of measures imposed on public authorities and the monitoring of their execution shall be conducted in accordance with Article 13.

(4) In the event of non-implementation by enterprises or joint ventures of the decisions of the Plenum of the Competition Council imposing sanctions according to this Law within the time limit, their execution shall be performed in accordance with the provisions of the Administrative Code.

(5) Where enterprises or joint ventures fail to enforce decisions other than the imposition of penalties within the time limit, they shall be enforced in accordance with the provisions of the Enforcement Code.

Chapter VIII

LIABILITY FOR INFRINGEMENT OF COMPETITION LAW

Section I

Determination and individualisation of penalties for infringements of competition law

Article 67. General rules for the individualisation and determination of fines for infringements of competition law

(1) The fines provided for in this Law shall be determined taking into account the seriousness and duration of the deed.

(2) The amount of the fine is determined by determining the basic level of the fine, which will be increased if there are aggravating circumstances and reduced if there are mitigating circumstances.

(3) For determining the basic level of the fine, the total turnover of the enterprise or joint venture in the year preceding the penalty shall be taken as the basis for calculation. Where an infringement extends beyond the territory of the Republic of Moldova, the Competition Council shall estimate the total value of sales of products related to the infringement for the geographical sector extending beyond the territory of the Republic of Moldova.

(4) If the total turnover achieved in the year preceding the sanction is not recorded, the last year preceding the sanction in which the enterprise or joint venture achieved a turnover shall be taken into account.

(5) Notwithstanding the Contravention Code, the fines for violation of competition law shall be determined in accordance with this Law.

Article 68. Deeds constituting infringements of the procedural rules of competition law

(1) The Plenum of the Competition Council shall have the power to impose, by decision, effective, proportionate and dissuasive fines on the persons referred to in Article 20 para. (2) letter b) or on enterprises or joint ventures where, intentionally or negligently:

1) in response to a request made pursuant to Article 54, they supply incorrect, incomplete or misleading information or documents, or fail to supply the information or documents requested within the required time-limit;

2) they supply incorrect, incomplete or misleading information in an application, confirmation, notification or supplement thereto as provided for in Article 22;

3) during inspections carried out pursuant to Article 56, they submit the required records or other documents relevant to the purpose and subject matter of the investigation in incomplete form;

4) they refuse to submit to an inspection conducted in accordance with Article 56 or 57;

5) they obstruct inspections in accordance with Article 56 or 57:

a) refuse to allow access to rooms or electronic equipment subject to inspection;

b) refuse to submit documents, registers, information, regardless of the way they are stored, in incomplete or erroneous form;

c) undertake measures for the total or partial destruction of documents, records, information, including electronic equipment or information storage media;

d) refuse, prevent, hinder, obstruct, delay or provide limited access to registers, documents, information or electronic equipment or information storage media, including by failing to provide passwords to access them;

e) instruct employees not to communicate with the inspection team or limit its actions;

6) in reply to a question pursuant to Article 56 para. (14) thereof:

a) give an inaccurate or misleading answer;

b) fail to rectify an incorrect, incomplete or misleading reply within the time limit set by the Competition Council;

c) do not give a complete answer or refuse to answer on deeds relevant to the object and purpose of the inspection;

7) the seals affixed in accordance with Article 56 para. (1) letter d) have been damaged;

8) in the case of an interview conducted as part of the investigation, they do not appear or do not ensure the appearance of the persons requested at the interview ordered pursuant to Article 54¹ or they appear at the interview but refuse to be interviewed or, in the course of the interview, do not provide or provide information which is not authentic, incomplete or misleading.

(2) In its defence, the person, enterprise or joint venture may demonstrate that the information requested is not in its possession or under its control and that it is impossible for it to comply with the Competition Council's request, using all reasonable means.

(3) The fine provided for in this Article shall not apply if the information, records or documents have been requested or seals have been applied by the Competition Council or its representatives in violation of the provisions of this Law.

Article 69. Determination of the basic level of the fine for infringement of the procedural rules of competition law

(1) The basic level of the fine for infringement of the procedural rules of competition law is determined according to the seriousness and duration of the deed. The basic level is obtained by multiplying the percentage determined according to the degree of seriousness by the factor relating to the duration of the infringement.

(2) In assessing the seriousness of the infringement, account shall be taken of the nature of the deed, in particular whether the information requested could have a significant impact on the outcome of the case before the Competition Council by reason of its nature, importance and usefulness.

(3) Depending on the seriousness, the deeds are divided into 3 categories:

a) minor deeds: the basic level shall be up to 0.15% of the total turnover within the meaning of Article 67;

b) medium deeds: the basic level shall be 0.15% to 0.25% of the total turnover within the meaning of Article 67;

c) major deeds: the basic level shall be 0.25% up to 0.45% of the total turnover within the meaning of Article 67.

(3) Depending on the seriousness, the deeds are divided into 3 categories:

a) minor deeds: the basic level shall be up to 0.25% of the total turnover within the meaning of Article 67;

b) medium deeds: the basic level shall be 0.25% to 0.5% of the total turnover within the meaning of Article 67;

c) major deeds: the basic level shall be 0.5% up to 0.75% of the total turnover within the meaning of Article 67.¹

¹ The provisions of Article 69 para. (3) will enter into force as of 18.08.2026

(4) The infringements referred to in Article 68 para. (1) points 4) and 7) shall be considered as serious deeds.

(5) Depending on the duration, deeds are divided into 3 categories:

a) deeds of short duration (less than 15 days) or instantaneous: factor 1;

b) deeds of medium duration (15 - 30 days): factor 1.2;

c) deeds of long duration (more than 30 days): factor 1.4.

Article 70. Adjustment of the basic level of the fine for infringement of the procedural rules of competition law

(1) The basic level of the fine for infringement of the procedural rules of competition law may be increased or reduced by between 5% and 10% of the amount of the basic level determined in accordance with Article 69 for each aggravating or mitigating circumstance found.

(2) Aggravating circumstances leading to an increase in the basic level may be:

a) continuation or repetition by an enterprise of an identical or similar infringement after the Plenary Meeting of the Competition Council has found that this enterprise has committed an infringement referred to in Article 68;

b) measures of intimidation of other enterprises in order to induce them not to provide information requested by the Competition Council or to provide it in an inaccurate or incomplete manner or any attempt to induce such attitudes.

(3) Mitigating circumstances leading to a reduction of the basic level may be:

a) effective cooperation with the Competition Council in the proceedings beyond the legal obligation to cooperate;

b) cessation of the infringement of the offender's own willingness or since the first interventions of the Competition Council;

c) other circumstances demonstrating the enterprise's willingness to facilitate the examination of cases initiated by the Competition Council;

d) evidence by the enterprise that the infringement was committed negligently.

(4) The list of mitigating circumstances referred to in para. (3) is not exhaustive.

(5) For infringements referred to in Article 68 para. (1), committed by a newly set up enterprise which has not achieved a total turnover in the year preceding the sanction, the fine shall be set at up to MDL 500 000.

(6) Following the application of the individualisation criteria as set out in Articles 69 and 70, the fine may not exceed a maximum level of 1% of the total turnover of the enterprise in the year preceding the sanction.

Article 71. Deeds constituting infringements of the substantive rules of competition law

The Plenum of the Competition Council shall have the power to impose, by decision, effective, proportionate and dissuasive fines on enterprises or joint ventures where, intentionally or negligently, they:

- a) infringe Articles 5 and 11;
- b) fail to comply with a corrective measure ordered by a decision under Article 41 para. (1) letter l);
- c) fail to comply with a decision ordering interim measures under Article 57²;
- d) fail to comply with a commitment which becomes binding by a decision under Article 57¹;
- e) do not notify an economic concentration, as defined in Article 22 para. (1), prior to its implementation, unless they are expressly authorised to do so pursuant to Article 20 para. (5) or by a decision adopted pursuant to Article 20 para. (6);
- f) implement an economic concentration in breach of Article 20 para. (5);
- g) implement an economic concentration declared incompatible with the competitive environment by a decision of the Competition Council pursuant to Article 25 para. (2) letter a).

Article 72. Determination of the basic level of the fine for infringement of the substantive rules of competition law

(1) The basic level of fine for a material breach of competition law is determined by the seriousness and duration of the deed. The basic level is obtained by multiplying the percentage determined according to the degree of seriousness by the factor relating to the duration of the infringement.

(2) In assessing the seriousness of the material breach of the substantive rules of competition law, account shall be taken in particular of the nature of the deed committed, the proportion of the total turnover of sales of products by the enterprise on the relevant geographic market within the territory of the Republic of Moldova which are directly or indirectly related to the breach (where such an estimate is possible), the aggregate market shares of all the participating enterprises, the impact of the breach on the market (where this can be measured), the likelihood that a concentration would have been prohibited if it had been notified.

(3) The basic level of fine calculated for the seriousness of the deed is:

a) up to 1% of the total turnover within the meaning of Article 67, for deeds of minor seriousness: vertical anti-competitive agreements having little impact on the market or affecting a limited part thereof; infringements referred to in Article 71 letters d), e) and f) relating to economic concentration operations in respect of which the Competition Council issues an authorisation decision without objections because there are no doubts as to the compatibility with the competitive environment or because the doubts as to the compatibility with the competitive environment have been removed by the modifications proposed by the enterprises and accepted by the Competition Council; infringements referred to in Article 11 which have a low impact on the market or which affect a limited part thereof; infringements committed with negligence;

b) from 1% to 2% of the total turnover within the meaning of Article 67, for deeds of medium seriousness: horizontal or vertical anti-competitive agreements, except those referred to at letters a) and c) of this paragraph; infringements referred to in Article 11, except those referred to in letters a) and c) of this paragraph; infringements referred to in Article 71 letters d), e) and f) relating to economic concentrations in respect of which the Competition Council, following an investigation, may adopt a conditional clearance decision;

c) from 2% to 4% of the total turnover within the meaning of Article 67, for deeds of high seriousness: horizontal agreements such as hard-core cartels; infringements referred to in Article 71 letters d), e) and f) relating to economic concentrations in respect of which the Competition Council, following an investigation, may adopt a decision declaring the economic concentration incompatible with the competitive environment; infringements referred to in Article 11 which have had particularly serious consequences for the market, producing effects over wide areas of the market.

(3) The basic level of fine calculated for the seriousness of the deed is:

a) up to 2% of the total turnover within the meaning of Article 67, for deeds of minor seriousness: vertical anti-competitive agreements having little impact on the market or affecting a limited part thereof; infringements referred to in Article 71 letters e), f) and g) relating to economic concentrations in respect of which the Competition Council issues a clearance decision without objections because there are no doubts as to their compatibility with the competitive environment or because the doubts as to their compatibility with the competitive environment have been removed by the modifications proposed by the enterprises and accepted by the Competition Council; infringements referred to in Article 11 which have little impact on the market or which affect a limited part thereof;

b) from 2% to 4% of the total turnover within the meaning of Article 67, for deeds of medium seriousness: horizontal or vertical anti-competitive agreements, with the exception of those referred to in letters a) and c) of this paragraph; infringements referred to in Article 11, with the exception of those referred to in letters a) and c) of this paragraph; infringements referred to in Article 71 letters e), f) and g) relating to economic concentrations in respect of which the Competition Council, following an investigation, may adopt a conditional clearance decision;

c) from 4% to 8% of the total turnover within the meaning of Article 67, for deeds of high seriousness: cartels, abuse of a dominant position which has produced irremediable consequences or effects; infringements referred to in Article 71 letters e), f) and g) relating to economic concentrations in respect of which the Competition Council, following an investigation, may adopt a decision declaring the economic concentration incompatible with the competitive environment.²

² *The provisions of Article 72 para. (3) will enter into force as of 18.08.2026*

(4) Where a joint venture commits an infringement relating to the activities of its members, the basic level of the fine shall be calculated from the total turnover of each member active on the market affected by the infringement committed by the joint venture.

(5) Depending on the duration, deeds are divided into 3 categories:

a) deeds of short duration (less than one year) or instantaneous: factor 1;

b) deeds of medium duration (one year to five years): factor 1.2;

c) deeds of long duration (more than five years): factor 1.4.

(6) For a newly set up enterprise that has not achieved a turnover in the financial year preceding the sanction, the fine shall be up to MDL 5 000 000.

Article 72¹. Fine imposed on single economic units

(1) The Competition Council is entitled to apply the notion of an enterprise, as an economic unit which may consist of several natural and/or legal persons, to hold the parent enterprise liable and impose fines on it for the conduct of one of its subsidiaries where the parent enterprise and its subsidiary constitute a single economic unit.

(2) Where the parent enterprise and its subsidiary constitute a single enterprise, although the subsidiary has separate legal personality but does not independently decide its conduct on the market, essentially carrying out the instructions given to it by the parent enterprise, the Competition Council is entitled to address a decision to the parent enterprise imposing fines on it, without it being necessary to establish the parent enterprise's direct involvement in the infringement found.

(3) The Competition Council is entitled to hold the parent enterprise jointly and severally liable with its subsidiary for payment of the fine imposed on the latter, unless the parent enterprise provides sufficient evidence that its subsidiary acted independently on the market.³

³ The provisions of Article 72¹ will enter into force as of 18.08.2026

Article 72². Fine imposed on legal or economic successors

If legal or organisational changes have taken place within the enterprise that has participated in an infringement of competition law, or if the enterprise has ceased to exist, the Competition Council shall hold the legal or economic successors of the given enterprise liable and impose fines on the legal or economic successors for the infringement of competition law.⁴

⁴ The provisions of Article 72² will enter into force as of 18.08.2026

Article 73. Adjustment of the basic level of the fine for infringements of the substantive rules of competition law

(1) The basic level of the fine for infringement of the substantive rules of competition law may be increased or reduced by between 5% and 10% of the amount of the basic level determined in accordance with Article 72 for each aggravating or mitigating circumstance found. In the case of the aggravating circumstances referred to in para. (2) letter a) of this Article, the basic level shall be increased by between 10% and 25% for each such infringement found by the Competition Council.

(2) Aggravating circumstances leading to an increase in the basic level may be:

a) continuation or repetition by an enterprise of an identical or similar infringement after the Plenum of the Competition Council has found that this enterprise has infringed Article 5 or 11;

b) deliberate continuation of the infringement in the course of the investigation in hard-core cartel cases;

c) refusal to cooperate with or obstruction of the Competition Council in the conduct of investigations;

d) the role of leader or instigator of the violation. Account is taken of measures taken to coerce other enterprises to participate in the infringement and/or retaliatory measures taken against other enterprises with the aim of enforcing the infringement;

e) the institutionalised nature of the hardcore cartel.

(3) Mitigating circumstances leading to a reduction of the basic level may be:

a) provision by the enterprise of evidence that the infringement has ceased since the first interventions of the Competition Council. The mitigating circumstance

in question does not apply to agreements or practices of a secret nature (in particular hard-core cartels);

b) provision by the enterprise of evidence that its participation in the infringement is extremely limited and that, during the period in which it was party to the infringement, it effectively avoided its implementation by adopting fair competitive behaviour on the market;

c) effective cooperation of the enterprise with the Competition Council outside the scope of the leniency policy and beyond its legal obligation to cooperate;

d) authorisation or encouragement of the anti-competitive conduct of the enterprise by public authorities or existing legislation;

e) evidence by the enterprise that the infringement was committed negligently.

(4) The list of mitigating circumstances referred to in para. (3) is not exhaustive.

(5) The Competition Council will consider the need to increase the fine in order to exceed the unlawful gains realised as a result of the infringement committed, where it is possible to estimate this amount, but no more than the maximum level set out in para. (7).

(5¹) In individualising the fine to be imposed on an enterprise or joint venture, the Competition Council is entitled to take into account any compensation paid to persons harmed by a transaction.

(6) - *repealed*.

(7) Following the application of the individualisation criteria under Articles 72 and 73, the fine may not exceed a maximum level of 10% of the total turnover of the enterprise in the year preceding the sanction.

Article 73¹. Granting favourable treatment to enterprises or joint ventures which admit to an anti-competitive practice

(1) For the infringements referred to in Article 71 letter a), where the enterprise or joint venture expressly acknowledges the anti-competitive practice and, where appropriate, proposes remedies which lead to the removal of the causes and/or effects of the infringement, the Competition Council may apply a reduction of the fine of between 10% and 30% of the basic level determined pursuant to Article 72.

(2) A reduction in the amount of the fine pursuant to para. (1) shall only be possible on written application by the enterprise or joint venture concerned. The request shall contain a clear and unequivocal acknowledgement of liability for the infringement and a statement of the maximum amount of the fine which the enterprise is prepared to pay. The decision of the Competition Council shall state the amount of the fine as determined prior to the application of para. (1) as well as the amount of the fine resulting from the reduction granted for acknowledgement. If the Competition Council does not accept the terms of the application made by the enterprise or joint venture, no reduction of the fine shall be granted and the acknowledgement made shall not be used as evidence.

(3) If, prior to the communication of the investigation report, the enterprise or joint venture submits a proposal for an acknowledgement under para. (2), the Competition Council may apply a simplified procedure for granting favourable treatment to enterprises or joint ventures which acknowledge an anti-competitive practice, established in accordance with a regulation approved by a decision of the Plenum of the Competition Council.

(4) If the enterprise or joint venture challenges the decision of the Competition Council on the matters subject to acknowledgement, it shall lose the

benefit of the reduction of the fine provided for in para. (1). At the request of the Competition Council, the court will settle the action by withdrawing the benefit of the discount granted for acknowledgement and will set the fine accordingly.

(5) In cases involving parties who benefit from the application of the leniency policy but are not exempted from the fine, the reduction in the amount of the fine as a result of the acknowledgement will be added to the reduction applied as a result of the leniency procedure, but in total will not exceed 50% of the basic level determined.

Article 74. Possibility to pay the fine

In exceptional cases, upon request, the Competition Council has the right to reduce the fine, taking into account the lack of ability to pay of an enterprise in a given social and economic context. The Plenum of the Competition Council does not grant a reduction of the fine in such a case simply on the basis of a finding of an unfavourable or precarious financial situation. The reduction may be granted only on the basis of objective evidence that the application of a fine, under the conditions laid down in this Law, would irretrievably jeopardise the economic viability of the enterprise concerned and lead to the complete devaluation of its assets.

Article 75. Application of the fine to a joint venture

(1) If the fine is imposed on a joint venture, the total turnover of its members is taken into account. The maximum amount of the fine may not exceed 10% of the total turnover of each member active on the market affected by the infringement committed by the joint venture.

(2) If the joint venture is unable to meet its payment obligations, the Competition Council may order the members of the joint venture to cover the amount of the fine imposed.

(3) If the amounts claimed have not been paid to the joint venture within the time limit set by the Plenum of the Competition Council, payment of the fine or the remaining difference shall be claimed directly from each enterprise the representatives of which were members of the decision-making bodies of that joint venture.

(4) If, following a request made in accordance with the procedure set out in para. (2) and (3), the full amount of the fine has not been covered, payment of the difference shall be required from the members of the joint venture who were active on the relevant market on which the infringement of competition law was found and sanctioned.

(5) The Plenum of the Competition Council shall not require payment under para. (3) or (4) from enterprises which prove that they did not implement the decision of the joint venture leading to the infringement or that they were not aware of its existence or that they actively distanced themselves from the decision of the joint venture before the initiation of the investigation.

(6) The amount payable to each enterprise which is a member of the joint venture under para. (2) to (4) may not exceed 10% of the total turnover of the enterprise concerned in the year preceding the sanction.

Article 76. Commnatory penalties

(1) The Plenum of the Competition Council may, by decision, impose on the persons referred to in Article 20 para. (2) letter b), on enterprises or joint ventures effective, proportionate and dissuasive penalties up to 5% of the average daily turnover of the enterprise or joint venture concerned in the year preceding the sanction, for each day of delay, calculated from the date set in the decision, in order to make them pay:

a) to put an end to an infringement of Article 5 or Article 11 in accordance with a decision taken under Article 65;

- b) to comply with a decision ordering interim measures under Article 57²;
- c) to comply with a commitment made binding by a decision adopted pursuant to Article 57¹;
- d) to provide completely and correctly the information and documents required of them under the provisions of Article 54;
- e) to undergo inspection in accordance with Article 56;
- f) to attend the interview called in accordance with Article 54¹;
- g) to comply with a condition, corrective measure or obligation imposed by a decision adopted pursuant to Article 25 para. (1) letter b) or para. (2) letter c).

(2) Where the persons referred to in Article 20 para. (2) letter b), enterprises or joint ventures have fulfilled the obligation for the enforcement of which the comminatory penalties have been imposed, the Plenum of the Competition Council may fix the final amount of the comminatory penalties at a lower amount than that resulting from the initial decision. Article 75 shall be applied accordingly.

Article 77. Liability for unfair competition

(1) By way of derogation from the criminal law, the commission of deeds of unfair competition prohibited in Articles 15-19 of this Law shall be sanctioned by the Competition Council with a fine of up to 0.5% of the total turnover of the enterprise concerned in the year preceding the sanction. The basic level of the fine for unfair competition shall be determined according to the seriousness and duration of the deed.

(2) The damage caused as a result of actions found to be unfair competition is to be compensated, in accordance with the provisions of the Civil Code, by the company that caused it.

Article 78. Review of decisions to impose fines or comminatory payments

(1) Decisions by which the Plenum of the Competition Council has imposed a fine or a comminatory penalty may be directly challenged in court, in accordance with the provisions of the Administrative Code, without prior procedure.

(2) The courts referred to in para. (1) may reduce or increase the fines or the comminatory penalties imposed, and if they find that the decision finding the infringement and/or imposing the fine or penalty is unfounded and/or adopted in breach of procedure, they may cancel the fines or the comminatory penalties imposed.

Article 79. Compensation for damage caused by prohibited anti-competitive practices

(1) Irrespective of the sanctions applied in accordance with the provisions of this Law, the right of action of natural and/or legal persons for full compensation for the damage caused to them by an anti-competitive practice prohibited by this Law remains reserved.

(2) Natural or legal persons who consider themselves harmed by an anti-competitive practice prohibited by this Law may submit a claim for damages within one year from the date on which the decision of the Competition Council on which the claim is based has become final or has been upheld, in whole or in part, by a final and irrevocable court decision.

Article 80. Liability for unfair competition actions

(1) The court shall order the person committing an action of unfair competition to cease the action or remove the consequences, to return the confidential documents unlawfully appropriated from their rightful owner and, where appropriate, to pay compensation for damages, in accordance with the law in force.

(2) At the request of the legitimate trade secret owner, the court may order measures prohibiting the industrial and/or commercial exploitation of the products resulting from the misappropriation of the trade secret or the destruction of such products. The prohibition shall cease when the protected information has become public.

(3) If any of the actions of unfair competition cause pecuniary or non-pecuniary damage, the injured party is entitled to bring an action for civil liability before the competent court.

(4) By a judgment on the merits, the court may order the seized goods to be sold, after the destruction of the false entries. The amount obtained from the sale shall first cover the damages awarded.

(5) The right of action for unfair competition belongs to natural and legal persons engaged in entrepreneurial activity, provided that there is a competitive relationship between them and the offender, i.e. they are engaged in an identical or similar type of activity.

(6) If the action of unfair competition was committed by an employee in the performance of his/her duties, the employer shall be jointly and severally liable with the employee for the damage caused, unless he/she can prove that, according to custom, he/she was not in a position to prevent the commission of the deed.

(7) The persons who jointly created the damage are jointly and severally liable for the actions or deeds of unfair competition committed.

(8) The provisions of Articles 174-179 of the Code of Civil Procedure may be applied to the taking of a measure that cannot be postponed.

(9) The right of action provided for in para. (3) shall be extinguished within one year of the date on which the injured party knew or ought to have known of the damage and of the person who caused it, but not later than three years after the date on which the deed was committed.

Article 80¹. Liability for unfair business-to-business commercial practices in the supply of agricultural products and foodstuffs

The examination of contraventions and the application of contravention sanctions provided for in Article 273 point 5⁵) of the Contravention Code No. 218/2008 shall be conducted in accordance with the procedures and duties set out in the Code, if these deeds do not constitute crimes or infringements of this Law.

Section II

Limitation periods

Article 81. Limitation periods for the application of sanctions

(1) The right of the Competition Council to impose sanctions for infringements of the provisions of this Law is subject to the following limitation periods:

a) one year for infringements relating to unfair competition referred to in Articles 15-19;

b) three years for infringements of Article 68;

c) five years for all other infringements of the provisions of this Law.

(2) The limitation period begins to run from the date of the infringement. In the case of continuous or repeated infringements, the limitation period shall start to run from the date on which the infringement ceases.

(3) If the Plenum of the Competition Council has a legitimate interest in acting in such a way, it may find that an infringement has been committed in the past.

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

(1) Any act issued by the Competition Council for the purpose of preliminary examination or investigation of an infringement shall interrupt the running of the

limitation period for the imposition of sanctions provided for in Article 81. The interruption of the limitation period shall take effect from the date on which the Competition Council communicates the act issued to at least one enterprise or joint venture which participated in the infringement.

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

- a) a written request for information;
- b) an order to conduct an inspection;
- c) an order to initiate the investigation procedure.

(3) The interruption of the limitation period shall have effect for all the enterprises or joint ventures which participated in the infringement.

(4) After the interruption of the limitation period, a new limitation period of similar duration shall begin to run from the date on which the Competition Council has issued one of the acts referred to in para. (2). The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period applicable for the commission of the infringement in question has elapsed without the Competition Council having imposed a sanction provided for in this Law.

(5) The limitation period shall be suspended while the administrative acts of the Plenum of the Competition Council are the subject of legal proceedings.

Article 83. Limitation period for enforcement of sanctions

(1) Any act of the Competition Council issued for the purpose of the preliminary examination or investigation of an infringement shall interrupt the running of the limitation period for the application of sanctions provided for in Article 81. The interruption of the limitation period shall take effect from the date on which the Competition Council communicates the act to at least one enterprise or joint venture which participated in the infringement.

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

- a) a written request for information;
- b) an order to conduct an inspection;
- c) an order to initiate the investigation procedure.

(3) The limitation period for the enforcement of sanctions shall be interrupted: a)

by the communication of a decision amending the initial amount of the sanction or refusing a request for amendment;

b) by any act of the Competition Council issued for the purpose of enforcing sanctions.

(4) After the interruption of the limitation period, a new limitation period of similar duration shall begin to run from the date on which the Competition Council has issued one of the acts referred to in para. (2). The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period applicable for the commission of the infringement in question has elapsed without the Competition Council having imposed a sanction provided for in this Law.

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

a) for the period during which payment can be made;

b) for the period during which enforcement of payment is suspended pursuant to a court decision.

Section III

Leniency policy

Article 84. Scope and conditions of application of the leniency policy

(1) Leniency is the reward granted by the Competition Council for the cooperation of enterprises and joint ventures with the Competition Council if they are or have been party to an anti-competitive agreement.

(2) The leniency policy shall not apply to horizontal or vertical agreements which are exempted by law from the prohibition in Article 5 para. (1).

(3) Enterprises and joint ventures may obtain immunity from fines or reduction of fines if they meet the conditions laid down in this Law.

(4) Any statement submitted by an enterprise to the Competition Council for the purpose of leniency shall form an integral part of the case file if the enterprise is granted leniency by the Competition Council. It may not be disclosed or used for any purpose other than the application of Article 5.

(5) Access to the explanations shall be granted only to the parties concerned, provided that they undertake, together with the legally authorised representatives who are granted access on their behalf, not to make copies, by mechanical or electronic means, of any information in the explanations to which access is granted. Such persons shall ensure that the information obtained from the explanation is used only for the purposes referred to in para. (4). Other people, such as the complainants, do not have access to explanations. The Competition Council will consider that this type of specific protection is no longer justified as soon as the complainant discloses the content of the application to third parties.

(6) The Competition Council may not take any decision as to whether conditional immunity should be granted or whether any leniency application should be rewarded if it is found that the application relates to infringements exceeding the 5-year limitation period laid down in Article 81, as such an application would no longer be relevant.

(7) The Competition Council is obliged to ensure, at the request of the enterprise or joint venture applying for leniency, confidentiality as to its identity until such time as the investigation report is communicated.

Article 85. Immunity from fines

Immunity from a fine is exemption from a fine for infringement of Article 5 para. (1). There are two types of immunity from fines: type A and type B.

Article 86. Type A immunity

(1) The Competition Council will grant type A immunity from fines if the following conditions are cumulatively met:

a) the enterprise or joint venture is the first to provide information and evidence which, in the opinion of the Competition Council, enables the investigation and/or inspection to be initiated;

b) at the time the evidence was provided, the Competition Council did not have sufficient evidence to initiate the investigation and/or conduct the inspection.

c) the general conditions for granting leniency laid down in Article 90 are met.

(2) For the Competition Council to be able to initiate the investigation procedure and to conduct inspections in accordance with the provisions of para. (1), the enterprise or joint venture shall provide the following information and evidence:

1) a statement including, to the extent that the enterprise or joint venture is aware of these elements at the time of submission of the request:

a) a statement of participation in the agreement, including:

– its purposes, activities and mode of operation;

- the products involved, geographical area, duration of operation and market volumes expected to be affected by the alleged agreement;

- the dates and places of meetings, the content of discussions and the participants in meetings held under the alleged agreement;

- any relevant explanations of the evidence provided in support of the request;
– information about any previous or possible future leniency applications to any other competition authority or competition authorities in other States in relation to the alleged agreement;

b) the name and address of the enterprise or joint venture making the immunity application and the names and addresses of all other enterprises or joint ventures participating or having participated in the alleged agreement;

c) the names, positions, office locations and, where appropriate, home addresses of persons who, to the knowledge of the enterprise or joint venture, are or have been parties to the alleged agreement, including persons who have been involved on behalf of the applicant;

2) other evidence relating to the alleged agreement in the possession of the enterprise or joint venture or available at the time of the request, including in particular any evidence from the period of the suspected infringement.

(3) Statements may take the form of written documents signed by representatives of the enterprise or joint venture or by authorised representatives on their behalf, or they may be made verbally, in which case they are recorded on magnetic media.

Article 87. Type B immunity

(1) The Competition Council will grant type B immunity from fines if the following conditions are met cumulatively:

a) the enterprise or joint venture is the first to provide information and evidence which will enable the Competition Council to find an infringement of Article 5 para. (1);

b) on the date the evidence was provided, the Competition Council did not have sufficient evidence to establish an infringement of Article 5 para. (1);

c) no enterprise or joint venture had obtained immunity under Article 86 in relation to the alleged agreement;

d) the general conditions for granting leniency specified in Article 90 are met.

(2) To obtain type B immunity, the enterprise or joint venture must provide information and evidence of the kind referred to in Article 86 para. (2).

Article 88. Enterprises or joint ventures excluded from immunity from fines

(1) Enterprises or joint ventures that have taken steps to coerce other enterprises or joint ventures to join or maintain their participation in an agreement are not eligible for immunity from fines.

(2) Enterprises and joint ventures referred to in para. (1) may benefit from a reduction in the amount of the fine if they meet the requirements and conditions laid down in this Law.

Article 89. Reduction of the fine

(1) Enterprises or joint ventures that disclose their participation in an anti-competitive agreement but do not qualify for immunity may benefit from a reduction in the amount of the fine compared to the level that would normally have been imposed.

(2) To be eligible for the reduction provided for in para. (1), the enterprise or joint venture must provide the Competition Council with evidence relating to the alleged infringement, including its participation, which makes a significant additional contribution to that already in its possession and must fulfil the general conditions for leniency.

(3) The significant additional contribution relates to the extent to which previously unknown evidence provided by an enterprise or joint venture strengthens,

by its very nature and/or degree of precision, the ability of the Competition Council to prove the existence of the alleged agreement.

(4) Written evidence from the period to which deeds relate has a greater contribution than that established later.

(5) Evidence which is directly related to the deeds in question will be considered more important than evidence which is only indirectly related to those deeds.

(6) Conclusive evidence will be considered as having a more important additional contribution than evidence, such as statements, which require verification and corroboration with other sources, if contested.

(7) In all decisions issued, at the end of the investigation procedure, where applications for a reduction of the fine have been made, the Competition Council shall determine the level of the reduction to be granted to the enterprise or joint venture in relation to the fine that would normally have been imposed:

(a) for the first enterprise providing evidence which makes a significant additional contribution - a reduction of between 30% and 50%;

b) for the second enterprise providing evidence which makes a significant additional contribution - a reduction of between 20% and 30%;

c) for the other enterprises providing evidence which makes a significant additional contribution - a reduction of up to 20%.

(8) In determining the level of reduction in each of the tranches referred to in para. (7), the Competition Council shall take into account the date on which the evidence fulfilling the conditions laid down in para. (2) and the amount of the additional contribution made by the evidence was communicated to it.

(9) If the enterprise or joint venture applying for a reduction of a fine is the first to provide evidence within the meaning of para. (3) to (6) which the Competition Council uses to identify additional deeds leading to an increase in the gravity or duration of the infringement, the Competition Council shall not take such additional deeds into account in determining the amount of the fine imposed on the enterprise or joint venture which provided them.

Article 90. General conditions for granting leniency

(1) Any enterprise or joint venture wishing to apply the leniency policy must apply to the Competition Council.

(2) The enterprise or joint venture is eligible for leniency if it cumulatively fulfils the following conditions:

a) it cooperates genuinely, fully, continuously and expeditiously with the Competition Council throughout the investigation procedure, i.e.:

– it provides the Competition Council with all relevant information and evidence it has or should have concerning the suspected infringement;

- it remains at the disposal of the Competition Council to respond to any request that could contribute to the establishment of the deeds in question;

- it does not destroy, falsify or conceal relevant information or evidence concerning the alleged agreement; and

– it does not disclose the existence of the leniency application or its contents before the Competition Council forwards the investigation report to the parties, unless the Competition Council has determined otherwise;

– it ensures the availability of directors, managers and other employees for interview at the Competition Council and makes reasonable efforts to ensure the availability of former directors, managers and other employees for interview;

b) it has ceased its involvement in the alleged agreement no later than immediately after the filing of the leniency application, the application for the order

number or the formal application, unless, in order to ensure the integrity of investigations or inspections, the Competition Council requests otherwise;

c) it has not disclosed its intention to file an application for leniency or any elements of the application other than those filed with any competition authority in other States.

Article 91. Procedure for granting immunity from fines

(1) An enterprise or joint venture making an immunity application must:

a) provide immediately to the Competition Council, in addition to its statements, all information and evidence in its possession relating to the alleged infringement; or

b) initially provide the information at its disposal in a hypothetical form. The enterprise or joint venture must submit a descriptive list of the evidence proposed to be disclosed at an agreed later date. This list should accurately reflect the nature and content of the evidence, while preserving the hypothetical nature of the disclosure. Copies of documents, from which sensitive passages have been removed, may be used to demonstrate the nature and content of the evidence presented in the descriptive list. The name of the applicant enterprise or joint venture and the names of other enterprises involved in the alleged cartel need not be disclosed until the evidence indicated in the descriptive list is provided. The type of infringement, the product involved in the alleged agreement, the geographical area affected and the estimated duration of the alleged infringement must be clearly identified.

(2) The Competition Council will acknowledge in writing receipt of the application for immunity from fines and the date and time on which the enterprise provided the evidence referred to.

(3) After having received the information and evidence provided pursuant to para. (1) letter a) of this Article and having verified that it fulfils the conditions laid down in Article 86 para. (1) letters a) and b) or Article 87 para. (1) letters a), b) and c), the Competition Council shall grant the enterprise or joint venture conditional immunity from fines in writing.

(4) Where an enterprise or joint venture has submitted information and evidence in hypothetical form, the Competition Council shall verify whether the nature and content of the evidence described in the list referred to in para. (1) letter b) of this Article meet the conditions laid down in Article 86 para. (1) letters a) and b) or Article 87 para. (1) letters a), b) and c) and shall inform the enterprise or joint venture accordingly. After providing the evidence, but no later than the agreed date, and after having verified that it corresponds to the description in the list, the Competition Council will grant the enterprise or joint venture conditional immunity from fines in writing.

(5) The Competition Council shall inform the enterprise or joint venture in writing that the conditions laid down in Articles 86 and 87 have not been met.

(6) Where there is more than one application for immunity, the Competition Council shall consider applications relating to the same potential infringement in the chronological order in which they are received, irrespective of whether the application for immunity is made formally or by requesting an order number.

(7) If, at the end of the investigation procedure, the enterprise or joint venture fulfils the conditions laid down in Article 86 or 87, as the case may be, the Competition Council shall by decision grant it immunity from fines. If, at the end of the investigation procedure, the enterprise or joint venture does not meet the conditions laid down in Article 86 or 87, it will not be granted immunity.

(8) The enterprise or joint venture may at any time inform the Competition Council that it no longer wishes to proceed with its application. In such a case, the

enterprise or joint venture may withdraw the information and documents submitted to the Competition Council for immunity or request that they be taken into account for a possible reduction of the fine. This cannot prevent the Competition Council from using its investigative rights to obtain the information.

Article 92. Procedure for benefiting from a reduction of the fine

(1) An enterprise or joint venture wishing to benefit from a reduction of a fine under Article 89 para. (2) must apply to the Competition Council and provide sufficient evidence of the alleged agreement. Any voluntary provision of evidence to the Competition Council, which is likely to be taken into account for the purpose of benefiting from the favourable treatment under Article 89, must be clearly identified at the time of submission as part of an application for a reduction of the fine.

(2) The Competition Council shall acknowledge in writing receipt of the application for a reduction of the fine and each subsequent provision of evidence, indicating the exact date and time of each provision. The Competition Council shall not decide on an application for a reduction of a fine before taking a decision on an existing application for conditional immunity from fines relating to the same infringement.

(3) Where the Competition Council comes to the preliminary conclusion that the evidence submitted by the enterprise or joint venture makes a significant additional contribution pursuant to Article 89 para. (2) and (3) and that the enterprise or joint venture has met the conditions set out in Article 90 para. (2) and para. (1) of this Article, it shall inform the enterprise or joint venture in writing of the possibility of reducing the amount of the fine pursuant to Article 89 para. (7), but no later than the date on which the investigation report is transmitted to the parties involved. Within the same time-limit, the Competition Council shall inform the enterprise or joint venture in writing if it comes to the preliminary conclusion that the enterprise or joint venture is not eligible for a reduction of the fine.

(4) In the decisions it issues at the end of the investigation procedure, the Competition Council shall assess the final situation of each enterprise or joint venture which has applied for a reduction of the fine and shall determine:

a) whether the evidence provided by the enterprise or joint venture makes a significant additional contribution to the evidence already in the possession of the Competition Council;

b) whether the conditions set out in Article 89 para. (2) have been met;

c) the exact level of the reduction to which the enterprise or joint venture is entitled under Article 89 para. (7).

(5) If the Competition Council finds that the enterprise or joint venture has not met the conditions laid down in Article 89 para. (2), it shall not benefit from the reduction.

Article 92¹. Order number request

(1) A participant to the agreement may contact the Competition Council indicating its willingness to apply for leniency. To this end, the enterprise or joint venture may apply for an order number to provide the information required by this Section in order to ensure priority in the order in which leniency applications are registered. The enterprise or joint venture shall justify its request for an order number.

(2) The Competition Council may grant the order number for a period to be specified on a case-by-case basis, but not less than 10 working days, to allow the necessary information and evidence to be gathered.

(3) To be able to obtain an order number, the enterprise or joint venture must provide the Competition Council with information on its name and address, the

parties to the alleged cartel, the products/services and territories affected, the type of cartel, the estimated duration of the infringement and a brief description of how the alleged cartel operates. The enterprise or joint venture must also inform the Competition Council of any leniency applications it has made or intends to make to the competition authorities of other countries in relation to the alleged cartel.

(4) The enterprise or joint venture benefiting from an order number may not complete the application by submitting a formal application in hypothetical form.

(5) If the enterprise or joint venture completes the application within the deadline set by the Competition Council, the information and evidence provided shall be deemed to have been submitted at the time of the initial application.

(6) If the application is not completed within the deadline, the Competition Council rejects it. If the enterprise or joint venture reapplies for leniency and it has not yet been conditionally granted, the enterprise or joint venture will no longer be able to use the order number system or the formal application in hypothetical form. The enterprise or joint venture may only submit a formal application to the Competition Council, immediately providing all the information and evidence at its disposal relating to the alleged infringement of the law.

Chapter IX

FINAL AND TRANSITIONAL PROVISIONS

Article 93

(1) This Law shall enter into force on the date of publication, except for the provisions relating to the acceptance of commitments proposed by enterprises, which shall apply from 1 January 2015.

(2) Within 2 months from the date of entry into force of this Law, the National Agency for the Protection of Competition shall be reorganised into the Competition Council, which shall become the successor of the National Agency for the Protection of Competition.

(3) By 1 November 2012, the Government, together with the Competition Council, will submit proposals to Parliament to amend the legislation on the level of remuneration of the Competition Council.

(4) The Director General of the National Agency for the Protection of Competition and his/her two deputies, appointed in accordance with the Law No 1103-XIV of 30 June 2000 on the Protection of Competition, shall act as Chairman and Vice-Chairmen of the Plenum of the Competition Council, respectively, until the Plenum of the Competition Council is appointed in accordance with the provisions of this 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 substantive rules, including those on liability for infringement of competition law, laid down in the law in force at the time of the infringement.

(6) Disputes which on the date of entry into force of this Law are in the process of being examined shall be settled in accordance with the rules of law in force at the time of the dispute.

Article 94

Within 6 months from the date of publication of this Law, the Competition Council shall:

- a) draft and adopt the regulatory acts necessary for the implementation of this Law;
- b) bring its regulatory acts into line with the provisions of this Law;

c) submit, jointly with the Government, proposals to amend the legislation in force in order to ensure compatibility with this Law.

Article 95

On the date of entry into force of this Law, it shall be repealed:

On the date of entry into force of this Law, it shall be repealed:

Law No. 906-XII of 29 January 1992 on Limitation of Monopolistic Activity and Development of Competition (Official Gazette of the Republic of Moldova, 1992, No. 2, Art. 46), as subsequently amended and supplemented;

Law No 1103-XIV of 30 June 2000 on the Protection of Competition (Official Gazette of the Republic of Moldova, 2000, No 166-168, Art. 1205), as subsequently amended and supplemented.

SPEAKER OF THE PARLIAMENT

Marian LUPU

No. 183. Chisinau, 11 July 2012.