

Prime Ministerial Decree

No. 1316 of 2005

**Issuing the executive regulations of Protection of Competition and
Prohibition of Monopolistic Practices law No. 3 of 2005**

The Prime Minister

After reviewing the Constitution,

**The Law concerning the Protection of Competition and Prohibition of
Monopolistic Practices issued by law No. 3 of 2005,**

And in accordance with the view of the Council of State

Decides

Article (1)

There shall come into force the provisions of the executive regulations of the Protection of Competition and Prohibition of Monopolistic Practices law issued by law No. 3 of 2005 hereby attached.

Article (2)

This Decree shall be published in the Official Gazette and shall be enforced as of the following day of its publication.

16 August 2005

Dr. Ahmed Nazif

**The Executive Regulations for the Law concerning the
Protection of Competition and Prohibition of Monopolistic Practices
Issued by Law No. 3 of 2005**

**Part One
General Rules And Definitions**

**Chapter One
General Rules**

Article 1

In the application of the provisions of these Regulations the law means the Law of Protection of Competition and the Prohibition of Monopolistic Practices issued by the Law No. 3 of 2005 and the Competent Minister means the Prime Minister.

The Authority means the Authority for the protection of competition and prohibition of monopolistic practices established in accordance with the provisions of the law and the board means the board of directors of the Authority for the protection of competition and prohibition of monopolistic practices.

Article 2

Economic activities shall be undertaken in a manner that does not prevent, restrict or harm the freedom of competition in accordance with the provisions of the Law and these Regulations.

Article 3

The provisions of the Law and these Regulations shall apply to all acts including practices, contracts or agreements committed abroad, which constitute crimes according to the Law if they prevent, restrict or harm the freedom of competition in Egypt.

Chapter Two

Definitions

Article 4

In the application of the Law and these Regulations, the words and the phrases stipulated in the following articles shall have the meanings set out for each of them.

Article 5: Persons

Persons mean natural or juristic persons, economic entities, unions, federations, associations and financial grouping, whatever the method of their establishment, mechanisms of their financing, their nationalities, head quarters or main centers of activities.

Persons referred to in the first paragraph include, the related parties that are composed of two or more persons, each of them has an independent legal personality, where the majority of stocks or shares of one of them is owned, directly or indirectly, by the other party or where the majority of stocks or shares in both parties are owned by one party.

Related parties also include the person or persons who are subject to the actual control of another person. Actual control means every arrangement, agreement or ownership of stocks or shares, regardless of its percentage, in a manner that leads to the control of the management or decisions-taking.

Article 6: The Relevant Market

The relevant market means the market that consists of two elements: the relevant products and the geographical area. Each of these elements is determined as follows:

First: The relevant products: They are the products that can be considered, from the consumers' point of view, practical and objective substitutes to each other. In determining such products the following criteria, in particular, shall be taken into consideration:

1. The resemblance of the products in the characteristics and usage.
2. The probability that the buyers shift from a certain product to another as a result of the relative change in price or in any other competitive factors.
3. If the sellers take their commercial decisions on basis of the shift of the buyers from the products to other products as a result to the relative change in prices or any other competitive factors.
4. The relative ease by which other persons can enter the market of the product.
5. The availability of the substitutive products before the consumer.

Secondly: Geographical area: It is the geographical area where the circumstances of competition are homogenous. In this regard, the potential probabilities of competition shall be taken into consideration and any of the following criteria:

1. The ability of the buyers to move between geographical areas as a result of the relative changes in prices or in other competitive factors.
2. Whether the buyers take their commercial decisions on basis of the movement of buyers between different geographical areas due to the relative changes in prices or in other competitive factors.
3. The relative ease that enables other persons to enter the relevant market.
4. The transportation costs between geographical areas, including the insurance costs and the required duration to provide the geographical area with the relevant product from other markets or geographical areas or from abroad.
5. The customs tariffs and the non-tariff barriers on both domestic and international levels.

Article 7: Dominance

The dominance of a person in a relevant market is achieved with the availability of the following elements:

1. The person has a market share exceeding 25% of the relevant market. The calculation of this share is based on the two elements of that market together, namely, the relevant products and the geographic area during a certain period of time.
2. The ability of a person to exercise an effective impact on the prices of the products or on the quantity supplied of them in the relevant market.
3. The inability of the person's competitors to limit his/her effective impact on the prices or on the quantity of the products supplied in the relevant market.

Article 8

The person shall have effective impact on the prices of the products or the quantity supplied in the relevant market if this person has the ability, through his/her individual acts, to determine the prices of these products or the quantity supplied in that market where his/her competitors do not have the ability to prevent these acts, taking into consideration the following factors:

- a) The person's share in the relevant market and his/her position in comparison to the remaining competitors.
- b) The conduct of the person in the relevant market in the previous period.
- c) The number of competing persons in the relevant market and its relative impact on the structure of that market.
- d) The ability of the person and his/her competitors to obtain the raw materials necessary for production.
- e) The existence of barriers facing other persons to enter the relevant market.

Article 9: Competing Persons

Competing Persons shall mean any of the persons who have the ability to carry out the same activity in the relevant market at the present time or in the future.

Part Two

Agreements And Contracts Between Competing Persons

Article 10

The agreements and contracts concluded between the Competing Persons in the Relevant Market include verbal and written agreements and contracts.

Article 11

Agreements or contracts between Competing Persons in any relevant market shall be prohibited if they are intended to cause any of the following:

- a) Increasing, decreasing or fixing prices of sale or purchase of products subject matter of dealings. Determination of price shall cover due returns on installments, guarantee duration, after sale services and other contractual conditions that influence the purchasing or selling decision.
- b) Dividing product markets or allocating them on grounds of geographic areas, distribution centers, customer base, goods, seasons or time periods.
- c) Coordination with regard to proceeding or refraining from participating in tenders, auctions, bids and other calls for procurement. The indications that are taken into consideration for the existence of such coordination are, in particular, the following:
 - Submitting similar offers, which include the agreement on common rules for the calculation of prices or the determination of the offer conditions.
 - Agreeing on the person who will submit the offer, which includes the prior agreement on the person who will be awarded the tender either by alternation, or on geographical basis or on customer division basis.
 - Agreeing on the submission of fictitious offers.
 - Agreeing on preventing a person from submitting or participating in submitting offers.
- d) Restricting the manufacture, distribution or marketing or limiting the distribution of services in terms of its kind or volume or applying conditions or restrictions for their availability.

Part Three
Agreements Or Contracts Between A Person
And Any Of Its Suppliers Or Clients

Article 12

Agreements or contracts between a person and any of its suppliers or clients are prohibited if they are intended to restrict competition.

The evaluation of whether or not the agreement or contract between a person and any of its suppliers or clients would restrict competition is based on the inquiry made by the Authority on a case by case basis in light of the following factors:

1. The effect of the agreement or contract on the freedom of competition in the market.
2. The existence of benefits accrued to the consumer from the agreement or contract.
3. The considerations of preserving the quality of the product, its reputation, safety, and security requirements, in a manner that do not harm competition.
4. The extent of compliance of the conditions of the agreement or the contract with established commercial customs in the activity subject to examination.

Part Four
Abuse Of Dominant Position
In A Relevant Market

Article 13

A Person holding a dominant position in a relevant market is prohibited from carrying out any of the following:

- a) Undertaking an act leading to the non-manufacturing, non-production or non-distribution of a product, whether totally or partially, for a certain period or certain periods of time. Period or periods of time shall mean the period or periods of time that suffice to result in the prevention, restriction or harm of the freedom of competition.
- b) Refraining from entry into sale or purchase transaction regarding a product with any Person or totally ceasing to deal with it in a manner that results in restricting that Person's freedom to access or exit the market at any time, which includes

imposing financial conditions or obligations or abusive contractual conditions or conditions that are unusual in the activity subject matter of dealings.

Refraining from entry into transactions with any Person or totally ceasing to deal with it shall not be prohibited if justified on the basis that this Person does not have the ability to fulfill its obligations arising from the contract.

- c) Any act that limits distribution of a specific product, on the basis of geographic areas, distribution centers, clients, seasons or periods of time among Persons with vertical relationships. Vertical relationship shall mean the relationship between the Dominant Person and any of its suppliers or between the Dominant Person and any of its clients.
- d) Imposing as a condition, for the entry into a sale or purchase agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement.
- e) Discriminating between sellers or buyers having similar commercial positions in sale or purchase prices or in the terms of the transactions, in a manner that weakens their ability to compete with one another or leads to drive out some of them from the market.
- f) Refraining, whether totally or partially, from producing or providing a product that is circumstantially scarce in the market when its production or provision is economically possible.

A circumstantially scarce product shall mean the product of which the available quantities do not fulfill except a small percentage of the demand size in the Relevant Market.

- g) For the Person in a dominant position to dictate on Persons dealing with it not to allow the usage of their utilities or services to any of its competitors, despite this being economically possible.

These utilities and services shall include those which are privately owned by those dealing with the Person in a dominant position, and which are indispensable for the competing persons to enter or to remain in the market.

- e) Selling products below their marginal cost or average variable cost.

Marginal Cost shall mean the share of one unit of a given product from the total costs within a certain period of time. The Variable Cost shall mean the cost which changes with the change in the volume of products provided by the Person during a certain period of time.

Average Variable Cost shall mean the total variable costs divided by the number of units of products.

For the determination of whether the product is sold below their marginal cost or the average variable cost the following elements shall be taken into consideration:

1. If the sale will drive out the Dominant Persons' competing persons from the market.
 2. If the sale will prevent the Dominant Person's competing persons from entering the market.
 3. If the Dominant Person will be able to increase prices after driving out its competing persons from the market.
 4. If the period of time of the sale of a product below its marginal cost or its average variable cost will result into the occurrence of any of the aforementioned.
- f) Imposing an obligation on a supplier not to deal with a competitor.

The non-dealing shall mean the refraining from dealing with a competing person, whether totally or reducing the size of dealing with him to the extent that would drive it out of the market or prevent the potential competitors from entering the market.

Part Five

Public Utilities And Essential Products

Chapter One

Public Utilities

Article 14

The provisions of the Law and these Regulations shall not apply to public utilities managed by the State. The decisions, agreements, contracts and works related to these public utilities managed by the State are not subject to any of the acts provided for in Articles 6, 7 and 8 of the Law.

Article 15

Any company subject to the provisions of the Private Law and managing a public utility, before concluding agreements, contracts or carrying out works related to the activity of this utility and is within the scope of the prohibitions set out in Articles 6, 7 and 8 of the Law, may request the Authority to exempt all these agreements, contracts or works or any of them from the prohibition where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition.

Article 16

The request referred to in Article 15 of these Regulations and the decision on it shall be in accordance with the following measures and procedures:

1. The request is to be presented in writing to the Chairperson of the Authority, prior to the conclusion of the agreement or the contract or prior to the carrying out of the works subject matter of the request, provided the request includes an extensive presentation of its reasons and a clarification of the public interest attained by the agreement, contract or works, or to the benefits to the consumer. Supporting evidence shall be annexed to the request.
2. The Chairperson presents the request to the Board to review it in its first upcoming meeting or in the meeting determined by the Chairperson when necessary.
3. The Board may refer the request to the competent department of the Authority to examine it and to prepare a report within the time limit determined by the Board and not exceeding thirty days. The Board may extend this period for additional thirty days upon the request of the Executive Director of the Authority.
4. The competent department may request additional information and data from the concerned parties or others and may hold hearings to which the submitter of the request is invited.
5. The competent department submits its report regarding the request to the Executive Director in order to present it to the Board in the first upcoming meeting after finalizing the report. The Board shall decide on the request within thirty days from the date it was presented in.
6. The decision of the Board accepting the exemption from the prohibition shall be based on the attainment of public interest or benefits to the consumers that exceed the effects of restricting the freedom of competition, otherwise the request shall be rejected. The decision of acceptance may include an obligation on the requestor to carry out a certain act or to refrain from carrying out a certain act.
7. The Executive Director shall be responsible for delivering the decision of the Board to the requestor by registered mail, to be signed upon receipt. A decision of refusal shall be justified.

Article 17:

The exemption granted by the Authority is valid for two years, and may be renewed upon the request of the concerned parties sixty days prior to the end of the exemption period. The Authority reviews the renewal request in accordance with the same provisions and procedures set out by Article 16 of these Regulations.

Chapter Two

Essential Products

Article 18

The Council of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one essential product or more for a specific period of time.

Article 19

The Authority carries out the necessary studies for the Council of Ministers Cabinet to perform its competence set out in Article 10 of the Law regarding the determination of the selling prices of the essential products and prepares the reports on the opinion of the Authority on this matter.

Article 20

Any agreement concluded by the government for the purposes of the implementation of the selling prices of the essential products determined according to Article 10 of the Law shall not be considered an anti-competitive practice.

Part Six

The Authority For The Protection Of Competition And The Prohibition Of Monopolistic Practices

Chapter One

Board Meetings And Its Work Flow

Article 21

The management of the Authority shall be carried by a Board of Directors composed of a Chairperson and fourteen members and formed as set out in Article 12 of the Law. The Board shall have a Secretariat of which the formation and work flow shall be issued by virtue of a decision of the Board.

Article 22

The Board shall convene upon an invitation of its Chairperson at least once every month and whenever the necessity so requires. Invitations to the meeting are to be sent, in

writing, at least four days prior to the date of the meeting. The agenda of the meeting shall be attached to the invitation.

The meetings of the Board shall be valid with a quorum of at least ten members, and the resolutions shall be passed by a majority vote of its members.

Article 23

No Board member shall participate in the deliberations or voting concerning a case presented to the Board, if he/she has a direct or indirect interest in it, or if he/she is a relative to any of the parties up to the fourth degree, or if such member currently represents or has represented any of the parties. The Board member is committed to disclose in writing any of the previously mentioned reasons before the beginning of the hearings or voting regarding the presented case.

Article 24

The Board may invite to its meetings specialists of whom it wishes to seek assistance. Such specialists shall not have voting rights.

Article 25

The minutes of the Board meetings shall be regularly documented in a special register, after each meeting and shall be signed by the Chairperson and the Secretary of the meeting.

Chapter Two Competences Of The Board

Article 26

The Board shall be competent of the following:

- a) Giving its opinion to the Ministers' Cabinet to determine the selling price of one or more essential products for a specific period of time pursuant to Article 10 of the Law.
- b) Accepting grants, donations and any other resources are granted to the Authority and which do not contradict with its goals.
- c) Issuing the regulations concerning the organization of the work in the Authority and concerning the financial and administrative rules pertaining to its, without being restricted by the rules and regulations applicable to State Civil Employees, and referring it to the Competent Minister for issuance.
- d) Recommending the names of the employees of the Authority who are shall be granted the status of law enforcement officers in applying the provisions of the Law, who shall be specified by virtue of a decree issued by the Minister of Justice in agreement with the Competent Minister.

- e) Approving the annual report regarding the activities, future plans and recommendations of the Authority.
- f) Giving its opinion on draft laws and regulations relating to the regulation of competition.

The aforementioned competences are in addition to other competences provided for under the Law and in the other articles of these Regulations.

Article 27

The Board may assign one of its members or a committee formed among them to carry out a specific assignment or to supervise any of the aspects of the activities of the Authority, and subsequently to prepare reports on the assignment or the supervision performed to be presented to the Board.

Article 28

The Chairperson shall be competent of the following:

- a) Coordinate with competition authorities in other countries on matters of common interest, and to present the respective reports to the Board.
- b) Preparing an annual report on the activities of the Authority and its future plans and recommendations and presenting it to the Board for its approval.
- c) Nominating the Executive Director of the Authority and send this selection to the Competent Minister.
- d) Supervising the organization of training and educational programs related to the awareness about the provisions of the Law and free market principles in general.
- e) Supervising the issuance of the periodic reports which include the decisions, recommendations, procedures and measures taken by the Authority and other matters relating to the Authority.

Chapter Three

Fees

Article 29

The exemption request provided under Article 9 of the Law and the request of renewal of this exemption shall be subject to a fee of ten thousands 10,000 LE payable at the time of the submission of the request to which the receipt evidencing payment shall be attached.

Article 30

The request of review or that of issuing a certificate or an official copy of one of the documents that the Authority is allowed to circulate shall be subject to a fee of one hundred 100 LE.

Part Seven
Filing Complaints And The Procedures Of
Inquiry, Inspection, Collection Of Information
And Receiving Notifications

Chapter One
Filing Complaints

Article 31

Any person may report to the Authority any breach of the provisions of the Law. The Authority shall not collect any fees for receiving the above complaints or for their examination.

Article 32

The complaint shall be filed with the Authority in writing and shall be accompanied with the following data and documents:

1. The name of the complainant and his/her address, profession, capacity and his/her interest in filing the complaint and the supporting documents.
2. The name of the complained against, his/her address and the nature of his/her activity.
3. The kind of breach.
4. The supporting evidence on which the complaint is based and related documents if available.
5. The indication of the damage incurred by the complainant if available.

The Authority may not review any complaint that does not fulfill the aforementioned data and documents.

Chapter Two
Procedures Of Inquiries, Inspection
And Collection of Information

Article 33

The Authority shall handle all complaints filed, and it may, without the need of receiving a complaint, initiate the procedures of inquiry, inspection and collection of information and issue orders to initiate such actions in the cases of anticompetitive agreements and practices.

Article 34

The procedures of inquiry, inspection and collecting of information regarding the cases of anticompetitive agreements and practices or other breaches of the provisions of the Law shall be carried out in accordance with the following articles.

Article 35

The complaint shall be registered upon its filing in a specially held record, and the complainant shall be given a receipt with the number and the date of registration of the report.

Cases in which the Authority carries out the inquiry, inspection and collection of information on its own or cases in which the Authority issues orders to initiate such actions shall be registered in another specially held record.

Any procedures carried out regarding any of the registered cases as well as any decisions or rulings issued in this respect shall be regularly recorded in both aforementioned records.

Article 36

Complaints shall be presented to the Executive Director to ensure their fulfillment of the data and documents provided under Article 32 of these Regulations, and to refer the complying complaints to the competent department and to notify the Chairperson of this referral.

Article 37

The competent department in the Authority will carry out the procedures of inquiry, inspection and collection of information regarding complaints it was referred by the Executive Director within a period not exceeding ninety days from the date of referral. Minutes, encompassing all procedures carried out, shall be prepared.

The Executive Director assigns the competent department to carry out the aforementioned procedures in the cases in which the Chairperson so decides.

Article 38

Employees who are granted the status of law enforcement officers shall be entitled to carry out the following procedures after disclosing their identity and presenting it to the concerned party:

1. Reviewing records and documents, as well as obtaining any information or data from any governmental or non-governmental authority for the purpose of handling cases submitted to the Authority.
2. Entering, during official working hours, work places or headquarters of Persons subject to examination upon obtaining a written permission from the Executive Director, and they can call for the assistance of the Public Authority personnel the need arises.
3. Carrying out the necessary procedures of collecting information necessary for examination and interrogating any person regarding his committing of any breach of the provisions of the Law.

Article 39

The competent department shall, subsequent to the accomplishment of the procedures of inquiry, inspection and collection of information, prepare an opinion to be presented to the Executive Director of the Authority. The Executive Director presents the above opinion to the Board accompanied by his/her own opinion, in its first upcoming meeting after receiving the opinion.

Article 40

The Board may, after reviewing the report on the case at hand, issue a justified decision to terminate the matter or to carry out further inquiry, inspection and collection of information by the competent department in the Authority.

Article 41

Upon establishing a breach of any of the provisions of Articles 6, 7 and 8, the Authority shall order the person in breach to remedy the situation and eliminate such breach immediately or within a given period of time specified by the Board.

The Executive Director shall notify the person in breach of the remedy order by means of registered mail, to be signed upon receipt.

The Board may issue a decision to stop the prohibited practice immediately or after the lapse of the said period without remedying the situation or eliminating the breach.

Article 42

Without prejudice to the provisions of Article 40 of these Regulations, the Board may refer the report regarding the case at hand to the Competent Minister or any person delegated by him to carry out the procedures of filing the criminal lawsuit.

Article 43

The Executive Director shall notify the concerned person or persons of the decision taken by the Board regarding the complaint or the case at hand by means of registered mail, to be signed upon receipt.

Chapter Three

Receiving Notifications

Article 44

The Authority shall receive notifications from Persons within 30 days from the acquisition of assets, proprietary rights, usufruct, shares, the setting up of unions, mergers or amalgamations or joint management of two or more Persons.

Article 45

Notification shall be presented to the Authority in writing and must include the following data:

1. The name of the notifying person and other concerned persons, their nationalities, administration centers and the headquarters of their activities.
2. The notified legal disposition, its date and the legal position arising from it.
3. The licenses and approvals obtained.

All references supporting the aforementioned data shall be attached to the notification.