

Law on Protection of Competition

(“Official Gazette of Montenegro”, No. 44/12)

I. BASIC PROVISIONS

Subject Matter

Article 1

This Law shall regulate the protection of competition in the market of Montenegro and other matters relevant to the protection of competition.

Territorial scope of application

Article 2

This Law shall apply to acts and practices done in the territory of Montenegro and/or to acts and practices occurring as a consequence of acts or practices done outside its territory which have as their object or effect the distortion of competition in the territory of Montenegro.

Personal scope of application

Article 3

This Law shall apply to legal and natural persons engaged in an economic activity and participating in the production of and trade in goods and/or services in the territory of Montenegro (hereinafter referred to as the „undertakings”), as follows:

- 1) Companies and other forms of engaging in an economic activity regardless of their registered office and natural persons regardless of their nationality and residence;
- 2) Other entities who, directly or indirectly, on a lasting, occasional or one-off basis, engage in an economic activity and participate in the trade in goods and/or services, regardless of their nationality, registered office or residence (trade unions, business associations, sports organisations, institutions, cooperatives, intellectual property right holders etc.), and
- 3) Public bodies, state administration bodies, local administration bodies and local self-government bodies, when they engage in an economic activity directly or indirectly and participate in the trade in goods and/or services.

Connected undertakings

Article 4

This Law shall apply to connected undertakings.

For the purpose of this Law, connected undertakings shall be two or more undertakings connected in such a manner that one undertaking controls another undertaking or more undertakings.

The control referred to in paragraph 2 above shall exist in the case when one undertaking holds in another undertaking:

- 1) more than half the shares or participating interests, or
- 2) more than half the voting rights, or
- 3) the power to appoint more than half the members of the management bodies or persons legally representing the undertaking, or
- 4) decisive influence on management and running of business operations of a company.

For the purpose of this Law, connected undertakings shall be considered to be a single undertaking.

Activity of public interest

Article 5

This Law shall also apply to undertakings performing activities of public interest and to those to whom the right to perform a particular activity was conferred by an act of a competent public body insofar as the application of this Law would not considerably obstruct the performance of such activities.

The burden of proof that the application of this Law can considerably obstruct the performance of the activity referred to in paragraph 1 above shall lie with the undertaking performing such activity.

Relevant market

Article 6

For the purpose of this Law, relevant market shall be the market comprising relevant product market in the relevant geographic market.

A relevant product market comprises goods and/or services which are regarded as interchangeable or substitutable, by reason of those goods' and services' characteristics, their prices and their intended use.

The relevant geographic market comprises the area in which the undertakings are involved in the supply and demand under the same or similar conditions of competition which are appreciably different from the conditions of competition in the neighbouring areas.

Existence, degree and intensity of competition of goods and services shall be assessed in relation to a specific relevant market.

The criteria for and the method of determination of the relevant market shall be prescribed by the state administration body competent for economic affairs (hereinafter referred to as the “Ministry”).

II. IMPAIRMENT OF COMPETITION IN THE MARKET

1. Impairments

Acts or practices

Article 7

For the purpose of this Law, the acts or practices impairing competition in the market are as follows:

- 1) agreements preventing, restricting or distorting competition;
- 2) abuse of dominant position, and
- 3) concentrations preventing, restricting or distorting competition or free development of open market economy, and in particular, creation and/or strengthening of a dominant position in the market.

The impairment of competition referred to in paragraph 1 items 2 and 3 above shall be established for a specific case on the basis of the level and dynamics of changes in the structure of the relevant market, restrictions and possibility of equal access to the market by new competitors, changes restricting the possibilities for market supply based on the level of benefits to consumers and other circumstances affecting impairment of competition.

2. Agreements

Agreements Preventing, Restricting or Distorting Competition

Article 8

The acts the object or effect of which is or may be to prevent, restrict or distort competition in the relevant market shall be prohibited and shall be null and void, including written or verbal arrangements, agreements, contracts, single provisions of agreements, explicit or tacit agreements, concerted practice, as well as decisions by associations of undertakings (hereinafter referred to as the “agreements”), which:

- 1) directly or indirectly fix purchase or selling prices or any other trading conditions;
- 2) limit or control production, market, technical development or investment;

- 3) share markets or sources of supply;
- 4) apply dissimilar conditions to equivalent transactions with different undertakings, thereby placing them at a competitive disadvantage;
- 5) make the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements;
- 6) impose the obligation to apply particular resale price or otherwise ensure the application of recommended resale price.

Concerted practice referred to in paragraph 1 above shall mean cooperation between undertakings which, without having concluded a formal or informal agreement, is aimed at coordination of business activities of competitors in the relevant market, which can be achieved by direct or indirect contact between undertakings and which is not a consequence of regular economic activity and independent operation of undertakings.

Conditions for exemptions from prohibition

Article 9

The agreements referred to in Article 8 hereof may be exempted from prohibition if they contribute to improving the production or distribution of goods or services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit in the relevant market, provided that they:

- impose only restrictions which are indispensable to the attainment of objectives of the agreements, and
- do not afford such undertakings the possibility of eliminating competition in the relevant market or a substantial part thereof.

Horizontal and vertical agreements

Article 10

Agreements which have as their object or effect the prevention, restriction or distortion of competition may be horizontal and vertical.

Horizontal agreements shall mean agreements between existing and/or potential undertakings operating at the same level of the production or distribution chain.

Vertical agreements shall mean agreements on conditions of supply, purchase, sale or resale, between existing and/or potential undertakings operating at a different level of the production or distribution chain.

Block Exemptions

Article 11

Conditions, procedure and criteria for exemptions by categories of agreements (hereinafter referred to as the “block exemptions”) pursuant to Articles 9 and 10 of this Law shall be specified by a regulation adopted by the Government of Montenegro (hereinafter referred to as the “Government”).

The regulation referred to in paragraph 1 above shall determine, in particular, the following:

- 1) categories of agreements that may be exempted;
- 2) restrictions and conditions that the agreements referred in paragraph 1 above may not contain;
- 3) other conditions that the parties to the agreement must fulfil and with which the agreements must comply and, in particular, the periods of validity of agreements and exemptions.

The agreements fulfilling the conditions prescribed for block exemption do not require the approval by the authority competent for competition affairs (hereinafter referred to as the “Agency”).

In case of initiating proceedings against a party to the agreement, the burden of proof that the agreement fulfils the applicable block exemption conditions shall lie with the party to the agreement.

Individual exemptions

Article 12

On the request from a party to the agreement for an individual exemption, the Agency shall approve an individual exemption if the agreement fulfils the conditions laid down in Article 9 of this Law.

The burden of proof that the conditions referred to in Article 9 of this Law have been fulfilled shall lie with the party applying for individual exemption.

The content and the manner of submitting the request for individual exemption shall be prescribed by the Ministry.

Agreements of Minor Importance

Article 13

An agreement of minor importance shall mean an agreement between undertakings whose aggregate market share in the relevant market of products and services does not exceed:

- 1) 10% market share, where the agreement is concluded between undertakings operating at the same level of production or trade (horizontal agreements);
- 2) 15% market share, where the agreement is concluded between undertakings operating at different levels of production or trade (vertical agreements);
- 3) 10% share on a relevant market for the agreements where it is not clearly defined whether those are horizontal or vertical agreements.

The agreement referred to in paragraph 1 above shall be permitted unless it contains conditions referred to in Article 8 paragraph 1 items 1, 2 and 3 of this Law.

3. Dominant Position

Concept

Article 14

An undertaking has a dominant position in a relevant market if it has no competitors or has significant market power enabling it to restrict or prevent development of effective competition in the market of Montenegro or a part thereof, or if it has a significantly better position in relation to competitors enabling it to undertake business activities to a significant extent independently of its competitors, suppliers, buyers or end users, taking into account in particular the following:

- 1) market share and market power;
- 2) level of concentration of the market, market shares and market power of competitors;
- 3) market dynamics in the past period;
- 4) financial power;
- 5) buyers' power;
- 6) access to sources of supply and demand;
- 7) links with other undertakings in the relevant and connected markets;
- 8) legal or other barriers to entry for other undertakings;
- 9) the ability of the undertaking to dictate market conditions considering its supply and demand.

It is presumed that an undertaking has a dominant position in the market of products (goods or services), if its market share in the relevant market exceeds 50%.

It is presumed that two or more undertakings have a dominant position in the market of goods and services if there is no significant competition between them and if their aggregate share in the relevant market exceeds 60% (collective domination).

The burden of proof that an undertaking whose share in the relevant market is lower than 50%, or lower than 60% in case of collective domination, can have a dominant position in the market lies with the Agency.

Abuse of a Dominant Position

Article 15

Abuse of a dominant position in the relevant market shall be prohibited.

The abuse of dominant position in the market shall be deemed to be:

- 1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- 2) limiting production, markets or technical development to the prejudice of consumers;
- 3) applying dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- 4) making the conclusion of contracts subject to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

4. Concentration of Undertakings

Concept of concentration

Article 16

A concentration of undertakings shall be deemed to be:

- 1) the merger of two or more independent undertakings or parts thereof in the relevant market;
- 2) the acquisition, by one or more natural persons already controlling at least one undertaking, or by one or more undertakings, of indirect or direct control of the whole or a part of another undertaking;
- 3) where two or more independent undertakings establish a new undertaking or acquire joint control of the existing undertaking which operates independently on a lasting basis and performs all the functions of an autonomous undertaking (hereinafter referred to as the "joint venture").

The control referred to in paragraph 1 items 2 and 3 above shall be deemed to be the possibility of exercising joint influence on the business operations of an undertaking, by any legal or factual means referred to in Article 4 paragraph 3 of this Law.

The existence of control referred to in paragraph 2 above shall be appraised by the Agency, taking into consideration relevant legal acts and other evidence but not the intention of interested parties.

Two or more transactions (acquisition of shares or of participating interests) between the same undertakings, pursuant to paragraph 1 item 2 above, implemented in the period of time of less than two years, shall be deemed to constitute one concentration.

Acquisition of Control not Considered to be Concentration

Article 17

Acquisition of control shall not be considered to be concentration of undertakings when:

- 1) a bank or other financial institution acquires shares or other securities in a certain undertaking on a temporary basis with a view to reselling them, provided that it sells them no later than 12 months from the date of acquisition and that during the period in which it disposes with such securities the ownership right is not used in order to influence undertaking's business decisions that concern the competitive behaviour of that undertaking or provided that it uses such ownership right only with a view to preparing the sale of those securities or the assets of the undertaking;
- 2) the control of an undertaking is acquired by a person performing the duty of bankruptcy or liquidation trustee pursuant to the law regulating bankruptcy or liquidation, and
- 3) a joint venture has as its object the coordination of market activities between two or more undertakings that remain independent, where such joint venture shall be appraised pursuant to Article 9 of this Law.

On the request from the interested bank or other financial institution that demonstrates that the sale of securities was not reasonably possible within the period referred to in paragraph 1 item 1 above, the Agency may extend such period for up to 6 months.

Prohibited concentrations

Article 18

The concentrations creating a new dominant position or strengthening a dominant position of one or more undertakings, either separately or in combination, which may significantly affect prevention, restriction or distortion of effective competition in the relevant market, except if the parties to the concentration demonstrate that the concentration will benefit the consumers and that the effects of such concentration will be more significant than the negative effects of creation or strengthening of a dominant position.

It shall be prohibited to implement a concentration without the approval referred to in Article 50 paragraphs 1 and 3 of this Law.

III. AGENCY FOR THE PROTECTION OF COMPETITION

Establishing Agency

Article 19

The Agency shall be established as an independent authority having legal personality and carrying out the tasks laid down in this Law.

The Agency shall, within the limits of its powers:

- 1) monitor and analyse conditions of competition in the general market as well as in the markets of particular economic sectors;
- 2) define research methods for competition;
- 3) approve exemptions from the prohibition of certain agreements and approve concentrations of undertakings, under prescribed conditions and take decisions in other matters, in accordance with this Law;
- 4) take measures against undertakings and associations of undertakings for impairment of competition in the market, or take measures with a view to preventing the occurrence of or terminating the infringement and eliminating harmful effects for undertakings and consumers;
- 5) give opinion on the enforcement of legislation in the field of protection of competition;
- 6) prepare expert bases for drafting laws and secondary legislation;
- 7) determine the amount of fee for decision-making in accordance with this Law, with the consent of the Government;
- 8) conduct administrative procedure and take decisions in individual administrative matters;
- 9) file request for initiating misdemeanour proceedings to the competent authority and/or issue misdemeanour orders in accordance with the law that regulates misdemeanours;
- 10) give opinions regarding applicable legislation that affect or may affect competition and inform the public thereof;
- 11) form expert and advisory bodies as required for the implementation of this Law;
- 12) cooperate with international and national organisations and institutions in the field of competition;
- 13) develop activity report for the preceding year and a financial plan for each subsequent year;
- 14) publish statistical data and keep records of approved and notified concentrations;
- 15) control the implementation of measures imposed by decisions, and

16) carry out other tasks in accordance with this Law.

The Agency shall be obliged to publish its activity report for the preceding year and the annual financial statement including the auditor's report on its website.

Status of the Agency

Article 20

The Agency shall be accountable for its operation to the Government.

The headquarters of the Agency shall be in Podgorica.

The Agency shall be registered in the Central Registry of Business Entities.

The Agency shall have its statute which shall regulate internal organisation, the powers and scope of work of the Agency, the manner of and procedure for decision-making, adoption and publication of general acts and other issues relevant to the tasks of the Agency laid down in this Law.

The statute of the Agency shall be subject to the Government's consent.

The statute of the Agency shall be published in the *Official Gazette of Montenegro*.

Managing the Agency

Article 21

The Agency shall be managed by a Director.

The Director of the Agency shall be appointed by the Government on a proposal from the Ministry for a term of four years.

The Director of the Agency shall have a deputy.

The Deputy Director of the Agency shall be appointed by the Government for a term of four years.

The Director or the Deputy Director of the Agency may be a person who, additionally to general requirements laid down in the law, meets the following requirements:

- 1) is a Montenegrin national and a resident of Montenegro;
- 2) holds a university degree, and
- 3) has at least five years of work experience.

The persons referred to in paragraphs 1 and 3 above may not be appointed more than twice consecutively.

The Director or the Deputy Director may not exercise the office of a Member of the Parliament or another public office or perform another activity as a professional or engage in other paid public or private work, with the exception of academic activities and work in scientific institutions.

Powers of the Director

Article 22

The Director of the Agency shall have the power to:

- 1) act on behalf of and represent the Agency;
- 2) be responsible for the legality of operation of the Agency;
- 3) organise and manage operations of the Agency, and
- 4) adopt acts falling within the competence of the Agency.

The Deputy Director of the Agency shall act as substitute for the Director of the Agency in his absence.

The Deputy Director of the Agency shall also perform other tasks ordered by the Director of the Agency.

Dismissal of Director or Deputy Director

Article 23

The Government shall dismiss the Director and/or the Deputy Director of the Agency:

- 1) on his personal request;
- 2) if he was convicted of the offence that makes him improper for performing his duty;
- 3) if his acts do not comply with the law, if he discharges his duty unprofessionally and unconscientiously;
- 4) if his conduct and work call into question the independence and reputation of the Agency;
- 5) if he permanently loses the capacity to discharge his duty, and
- 6) if he is elected to or commences exercising another office or the activity incompatible with his duty in the Agency.

The rights and obligations of the Agency staff shall be governed by the legislation regulating the status and salaries of civil servants and state employees.

Financial resources

Article 24

The resources necessary for the operation of the Agency shall be provided from:

- 1) the fees paid to the Agency in accordance with this Law;
- 2) the budget of Montenegro;
- 3) donations, and
- 4) other sources in accordance with the law.

The Agency may not receive donations from the undertakings to which this Law applies.

Fees shall be charged in the proceedings before the Agency.

The fees referred to in paragraph 3 above shall be determined in the tariff of fees to be adopted by the Agency, with the consent of the Government.

The tariff referred to in paragraph 4 above shall be published in the *Official Gazette of Montenegro*.

Financing of the Agency

Article 25

The Agency shall be financed in accordance with a financial plan to be adopted by the Agency.

The financial plan shall be submitted to the Government for consent at the latest by November 1 of the current year for the following year.

The financial plan shall lay down total income and expenses of the Agency.

Total expenses of the Agency covered by a financial plan may not exceed necessary costs required for the successful enforcement of the law.

Excess of income over expenses of the Agency shall be contributed to the budget of Montenegro.

The annual financial statement of the Agency shall be subject to an annual audit by an independent certified auditor designated in accordance with the law.

The Agency shall be obliged to submit the annual financial statement with auditor's report referred to in paragraph 6 above to the Government by the end of the second quarter of the current year.

The Agency shall be obliged to submit within the time limit referred to in paragraph 7 above to the Government and the Parliament of Montenegro the activity report for the preceding year for adoption.

IV. PROCEEDINGS BEFORE THE AGENCY

1. Conduct of proceedings

Application of the rules of general administrative procedure and misdemeanour proceedings

Article 26

In the proceedings before the Agency, the provisions of the laws regulating general administrative procedure and misdemeanour proceedings shall apply to issues not regulated by this Law.

Parties to the proceedings

Article 27

A party to the proceedings before the Agency shall be:

- 1) an undertaking which filed a request for issuance of the approval for implementation of a concentration or the request for individual exemption of the agreement from prohibition;
- 2) an undertaking against whom investigation has been initiated.

The persons submitting initiative for investigation into the impairment of competition, persons providing information, documents, data, professionals and other interested persons, organisations whose analyses are used in the proceedings, including also public bodies and organisations cooperating with the Agency during the proceedings shall not have the status of the party referred to in paragraph 1 above.

Initiating proceedings ex officio

Article 28

The Agency shall initiate the procedure for investigation into impairment of competition ex officio and when it reasonably presumes the existence of impairment of competition on the grounds of submitted initiatives, information, documents and other available information.

The Director of the Agency shall adopt conclusion on initiating the proceedings.

The proceedings shall be deemed initiated on the date of service on the party of the conclusion on initiating the proceedings.

The conclusion on initiating the proceedings contains:

- 1) description of the practices or acts that may constitute impairment of competition;
- 2) reasons and legal basis for initiating the proceedings;
- 3) invitation to all natural and legal persons to submit to the Agency data, documents or information that may be relevant for proper and full determination of facts in the proceedings.

The conclusion referred to in paragraph 2 above shall be published in the *Official Gazette of Montenegro* and on the website of the Agency.

Initiating proceedings upon the party's request

Article 29

The proceedings for the issuance of the approval for implementation of a concentration, as well as the proceedings for individual exemption shall be initiated upon the request of the party.

Summary proceedings

Article 30

The Agency may adopt the decision immediately, without conducting investigation, if the party in its request for issuance of the approval for implementation of a concentration supplied facts or submitted evidence on the basis of which it is possible to determine that the notified concentration fulfils all admissibility requirements on the basis of criteria referred to in Article 54 of this Law or if such state of play can be established on the basis of generally known facts or the facts known to the Agency, except if the conditions for investigating concentration *ex officio* are established or met.

Investigation

Article 31

Necessary evidentiary actions with a view to properly establishing facts shall be taken in the investigation procedure, including in particular taking statements from the parties, witnesses, conducting expert examinations, obtaining data, documents and items, collecting information through inspection and temporarily seizing items.

Investigation shall be conducted by the authorised persons of the Agency, designated by the Director of the Agency on a case-by-case basis.

Collecting information through inspection

Article 32

If for the purpose of collecting information in the proceedings before the Agency it is necessary to conduct inspection of business premises, land or vehicles of the party or another participant in the proceedings, the Director of the Agency shall adopt conclusion on conducting inspection.

When conducting inspection referred to in paragraph 1 above, the authorised person of the Agency has the right to:

- 1) enter and inspect business premises, vehicles, land and other places where the party or another undertaking engages in economic activities or performs other business activities which are likely to infringe this Law;
- 2) examine business records and other documents;
- 3) copy or scan business documentation, and if that is not possible for technical reasons, to temporarily seize business documentation for the period necessary to make copies thereof;
- 4) seal any business premises and business documents during the inspection to the extent necessary for the implementation thereof;
- 5) take statements from the representative of the party or its employees, as well as the documents on the facts which relate to the subject-matter of inspection and to make a record thereof, and if a written statement is necessary, to set the date by which such statement must be presented, and
- 6) perform other activities in accordance with the objectives of the investigation.

The person who is not a party to the proceedings shall be obliged to allow inspection referred to in paragraph 1 above if there is a reasonable suspicion that the economic activity or the items necessary for decision making in the proceedings, is performed or are located in its buildings or premises.

Upon the request of the Agency, in the cases of obstructing or non-compliance with the orders of authorised persons in the execution of actions referred to in this Article, the administration body competent for police affairs shall be obliged to provide assistance in the execution of certain actions in the proceedings and in particular in collecting information through inspection and temporarily seizing items in accordance with the law regulating powers and actions of the police.

Official identification card

Article 33

The authorised persons of the Agency taking actions within the investigation shall have an official identification card, while other persons shall show special authorisation to conduct inspection in the procedure of gathering evidence.

The official identification card and the authorisation referred to in paragraph 1 above shall be issued by the Director of the Agency.

The form and the content of the official identification card and of special authorisation referred to in paragraph 1 above shall be prescribed by the state administration body competent for public administration affairs.

Privileged Communication

Article 34

The exchange of documents, information, data and other forms of communication between the party against whom the proceedings are conducted and its attorneys who are not employees of the party, to the extent directly relevant to the proceedings conducted before the Agency, shall be permitted (hereinafter referred to as the "privileged communication").

The communication referred to in paragraph 1 above shall be confidential and may not be used as evidence in the proceedings.

If the abuse of privileged communication is suspected, the Agency may examine its content and/or adopt a conclusion on not recognising communication as privileged regarding its particular forms.

Notice of established facts, circumstances and conclusions in the proceedings

Article 35

Before it makes a final decision, the Agency shall be obliged to deliver to all the parties against whom the proceedings have been initiated a written notice of established facts, circumstances and conclusions in the proceedings.

The party against whom the proceedings have been initiated shall have the right to object to the notice referred to in paragraph 1 above, within a period which may not be shorter than 15 days from the day of receiving the notice.

In the objection referred to in paragraph 2 above, the party may propose hearing additional witnesses and presenting supplementary evidence.

Upon the request of the person submitting initiative, the Agency may submit the notice referred to in paragraph 1 above which does not contain protected information, with an instruction advising him of his right to submit his written observation to the Agency within 15 days from the day of receiving the notice.

The Agency may submit the notice referred to in paragraph 4 above to a third party at his request, if he demonstrates that his rights or legal interests are determined in the proceedings before the Agency.

Oral hearing

Article 36

The Agency shall decide without holding an oral hearing, unless it finds on a reasoned request from the party or at its own discretion during the proceedings that it is necessary to hold an oral hearing.

The proceedings before the Agency in which an oral hearing is held shall be closed to the public for the purpose of protecting official and business secret.

Cooperation with the Agency

Article 37

Public bodies, state administration bodies, local administration bodies, local self-government bodies and other legal persons, exercising public powers, shall be obliged to provide, on the request from the Agency, free of charge, all data necessary in the process of decision-making by the Agency in accordance with this Law, including data which may constitute business secret, as well as other confidential data within a period which may not be shorter than 15 days from the day of submitting the request.

The Agency shall be obliged to handle data referred to in paragraph 1 above in accordance with the legislation regulating data confidentiality, personal data protection and protection of unpublished data.

In case of denying, late or incomplete delivery of data referred to in paragraph 1 above, the Agency may inform the authority supervising operation of the body referred in paragraph 1 above and/or request taking of necessary measures with a view to collecting the requested data.

Protected information

Article 38

Upon the request of the person who submitted the initiative for investigating impairment of competition or a third person who submitted and/or made available the requested information in the proceedings, the Agency may impose a measure of protection of the source of information or specific information (hereinafter referred to as the “protected information”), if it assesses that the request of the applicant is justified and more important than the need to inform the public of the subject of such request.

The person referred to in paragraph 1 above shall be obliged to demonstrate that it is likely that the damage will arise from disclosing the source of information and/or the content of information the request relates to.

The Agency shall be obliged to ensure the protection of information referred to in paragraph 1 above.

The conclusion on the protection of the source of information and protection of information shall be adopted by the Director of the Agency.

Protected information shall not have the status of information of public importance within the meaning of the law regulating free access to information of public importance.

Request to supply data and documents

Article 39

Upon the request of the Agency, the undertakings and other legal and natural persons shall be obliged to supply, within 15 days from the day of receiving the request, data and documents relevant to establishing the facts in the proceedings conducted in accordance with this Law.

The authorised person of the Agency may, when carrying out inspection in the undertaking's premises or taking statement from the responsible persons in the legal person, order that the documents and data be supplied within a set period of time.

The person to whom the request was submitted shall not have the right to invoke business secret as a reason for refusing to disclose certain data or to give documents.

Sectoral analyses

Article 40

In cases when the price movements or other circumstances indicate the possibility of prevention, restriction or distortion of competition, the Agency may analyse the state of competition in a particular economic sector or analyse particular categories of agreements in different economic sectors (hereinafter referred to as the "sectoral analyses").

With a view to carrying out sectoral analyses referred to in paragraph 1 above, the Agency may request the undertakings to submit all necessary data and/or documents and may carry out any necessary research.

The Agency may request the undertakings to supply all agreements, decisions, notices or data with a view to establishing the existence of concerted practice.

The Agency shall post reports on sectoral analyses carried out on its website.

Service of process

Article 41

In the proceedings against undertakings considered to be connected undertakings in accordance with Article 4 above, service on one undertaking shall be deemed to be service on all connected undertakings.

2. The acts of the Agency

Decision in case of prohibited agreements

Article 42

When the Agency finds that an agreement prevents, restricts or distorts competition in the relevant market within the meaning of Article 8 of this Law, it shall prohibit the enforcement of such agreement by means of decision.

By decision referred to in paragraph 1 above, the Agency shall order the parties to the proceedings to fulfil specific conditions or take specific measures referred to in Article 59 of this Law proportionate to the infringement committed, with a view to eliminating harmful effects and establishing effective competition in the market, as well as the time limits for the performance thereof.

Decision on the abuse of dominant position

Article 43

When the Agency finds the abuse of dominant position referred to in Articles 14 and 15 of this Law, it shall by means of decision:

- 1) establish dominant position of an undertaking and the practice of an undertaking in the relevant market abusing dominant position and preventing, restricting or distorting market competition, as well as the duration of the abusive practice;
- 2) prohibit the parties to the proceedings practices and actions abusing dominant position, and
- 3) order measures referred to in Article 59 of this Law and time limits for their implementation.

Interim Measures

Article 44

If the practices or acts which are subject to the proceedings pose a risk of irreparable damage to persons whom such practices and acts directly concern, the Agency may order interim measure to cease such practices or enforcement of such acts and/or obligation to take actions or refrain from actions preventing or eliminating their harmful effects.

Interim measure referred to in paragraph 1 above shall be ordered by the Director of the Agency by conclusion.

Interim measure referred to in paragraph 1 above may last until the decision of the Agency in those proceedings is adopted.

Accepting commitments

Article 45

During the proceedings and no later than 30 days from the day of delivering notice to the party referred to in Article 35 of this Law, the party to the proceedings may propose to the Agency measures, conditions and time limits to remove adverse effects of its acts or omissions to act.

If the Agency finds that the proposed measures, conditions and time limits referred to in paragraph 1 above are sufficient to re-establish effective competition in the market, it may, by decision, order implementation of the proposed measures, as well as the conditions and time limits for their implementation.

By decision referred to in paragraph 2 above, the Agency shall also set a time limit by which the party is obliged to submit evidence that the ordered measures and conditions were complied with within time limits set in the decision.

The Agency shall accept the measures, conditions and time limits referred to in paragraph 1 above provided that:

- 1) the impairment of competition lasted for a short time;
- 2) the party to the proceedings fully cooperates with the Agency;
- 3) the proceedings include a large number of parties, and
- 4) the cost-effectiveness of the proceedings is ensured.

The Agency may not accept measures, conditions and time limits referred to in paragraph 1 above, if the party to the proceedings generated considerable profit by the impairment of competition in question.

The Agency shall be obliged to re-open the proceedings of establishing infringement if it is established through control that the measures referred to in paragraphs 2 and 3 above are not implemented in the manner and within time limits set in the decision referred to in paragraph 2 above or if there has been a material change in any of the

circumstances on which the decision was based and/or if the decision was based on incorrect or false information.

3. Exemption proceedings

Assessment of Block Exemption

Article 46

The Agency may, *ex officio* or upon the request of an interested party, initiate proceedings for exemption from prohibition referred to in Article 11 of this Law.

If it is established in the proceedings referred to in paragraph 1 above that the agreement does not fulfil the conditions referred to in Articles 9 and 11 of this Law, the Agency shall prohibit or restrict the application of block exemption.

Approval of Individual Exemption

Article 47

The Agency shall adopt a decision on the exemption referred to in Article 12 of this Law within 120 days from the day of receipt of complete request.

The Agency shall reexamine the exemption referred to in paragraph 1 above which has been approved, if it establishes that:

- 1) the decision was based on incomplete or incorrect information;
- 2) material conditions on the market have changed substantially, and
- 3) one of the parties to the agreement does not comply with the measures ordered by the Agency.

Annulment, Revocation or Amendments to Individual Exemption

Article 48

If the Agency finds infringement referred to in Article 47 paragraph 2 of this Law, it shall:

- 1) revoke or amend the decision granting exemption, if the conditions on the market based on which the exemption was granted have changed substantially, or
- 2) annul the decision granting exemption, if the exemption is based on incomplete or incorrect data and information, the measures ordered by the Agency are not complied with, or if the exemption is being abused.

Obligations and duration of individual exemption

Article 49

The decision granting individual exemption may contain obligations and prohibitions.

An individual exemption shall be granted for a period of up to five years.

The Agency may extend the time period for an individual exemption upon the request of the parties to the agreement which shall be filed no later than four months before the expiration of the period for which the exemption referred to in paragraph 2 above was granted.

Upon the request of the parties to the agreement, an individual exemption may be extended for an additional period of up to five years, provided that the agreement fulfills the conditions referred to in Article 9 of this Law.

The time period referred to in paragraphs 2 and 4 above shall start to run from the day of adoption of the decision by the Agency.

4. Appraisal of Concentrations

Concentrations, information, obligation to notify and calculation of turnover

Article 50

The concentration referred to in Article 16 of this Law shall be implemented only on the basis of the approval which is issued by the Agency upon the request of the undertakings.

The request referred to in paragraph 1 above shall be submitted provided that:

- 1) the combined aggregate annual turnover of at least two parties to the concentration achieved in the market of Montenegro exceeds 5 million euros in the preceding financial year; or
- 2) the combined aggregate annual worldwide turnover of the parties to the concentration achieved in the preceding financial year exceeds 20 million euros, if at least one party to the concentration achieved one million euros in the territory of Montenegro in the same period.

The Agency may, after it learns of the concentration implemented, order the parties to the concentration to submit the request for issuance of the approval for implementation of a concentration if their combined market share in the relevant market of Montenegro exceeds 60%.

The burden of proof of the combined market share of the parties to the concentration shall lie with the Agency.

Intra-group turnover of the parties to the concentration shall not be taken into account when calculating the combined aggregate annual turnover referred to in paragraph 2 above.

Calculation of Sum of Income of Banks, Insurance Companies and Other Financial Institutions

Article 51

In the procedure of appraisal of concentrations involving banks, insurance companies and other financial institutions, as parties to concentrations, the sum of income referred to in Article 50 paragraph 2 of this Law, shall be calculated on the basis of the total income from their ordinary business operations in the financial year preceding the year in which the concentration is implemented, as follows:

- 1) for banks and other financial institutions, the sum of the following items of income shall be used, after deduction of direct taxes related to them:
 - a) income from interest rates and similar income;
 - b) income from securities which includes:
 - income from shares and other variable yield securities;
 - income from participating interests in business entities and
 - income from shares in affiliated business entities;
 - c) commissions receivable;
 - d) net profit on financial operations and
 - e) other operating income;

2) for insurance companies that perform insurance or re-insurance activities, the total value of gross premiums, after the deduction of taxes and parafiscal contributions charged by reference to the amounts of individual premiums or the total volume of premiums.

Request for issuance of the approval for implementation of a concentration

Article 52

The procedure for issuance of the approval for implementation of a concentration shall be initiated on the basis of the request of the party to the concentration to be submitted to the Agency.

The request referred to in paragraph 1 above shall be submitted no later than 15 days from the first of the following actions:

- 1) conclusion of the agreement or contract;
- 2) announcement of the public call, or bid or closing of the public bid, or
- 3) the acquisition of control.

The request referred to in paragraph 1 above may also be submitted when the undertakings demonstrate a serious intention to conclude an agreement, by signing a letter of intent, by announcing the intention to make a bid or in another manner preceding an action referred to in paragraph 1 above.

When the control over the whole or parts of one or more undertakings is acquired by another undertaking, the request shall be submitted by the undertaking acquiring the control, whereas in case of joint venture all undertakings concerned shall submit a joint request.

The undertakings making public bid pursuant to the law regulating takeover of joint stock companies shall be obliged to inform the Agency of the public bid, in case of acquisition of control referred to in Article 4 paragraph 3 of this Law.

The content and the manner of submitting request for issuance of the approval for implementation of a concentration shall be prescribed in more detail by the Ministry.

Publication of the Request for Approval of a Concentration

Article 53

The Agency shall be obliged to publish the information contained in the request for issuance of the approval for implementation of a concentration in the *Official Gazette of Montenegro*, including but not limited to:

- 1) the names of the undertakings parties to the concentration;
- 2) nature and manner of the concentration, and
- 3) economic sector within which the concentration is implemented.

Criteria for the Appraisal of a Concentration

Article 54

The Agency shall decide on the approval of the concentration by appraising the effects of concentration on prevention, restriction or distortion of effective competition in the

market of Montenegro, and in particular on creation or strengthening of a dominant position.

The appraisal referred to in paragraph 1 above shall be based on the following criteria:

- 1) the structure and concentration level of the relevant market;
- 2) actual and potential competitors;
- 3) market position of the parties to the concentration and their economic and financial power;
- 4) alternatives available to suppliers and users;
- 5) legal and other barriers to entry into the relevant market;
- 6) level of internal and international competitiveness of the parties to the concentration;
- 7) supply and demand trends for the relevant goods and/or services;
- 8) trends of technical and economic development and
- 9) the interests of consumers.

In addition to the request for issuance of the approval for implementation of a concentration, the parties to the concentration shall submit to the Agency, as a part of their notices, the documentation relevant to the determination of the facts referred to in paragraphs 1 and 2 above.

Initiation of proceedings concerning the appraisal of a concentration

Article 55

The proceedings for the appraisal of a concentration shall commence on the date of receipt of complete request for issuance of the approval for implementation of a concentration.

The provisions of Article 28 paragraphs 2, 3 and 4 and Articles 29 to 41 of this Law shall apply in the procedure for appraisal of a concentration.

Deciding upon the request for issuance of the approval for implementation of a concentration

Article 56

In the proceedings upon the request for issuance of the approval for implementation of a concentration, the Agency shall:

- 1) reject the request for approval of concentration if the conditions referred to in Article 50 of this Law are not fulfilled;
- 2) discontinue the proceedings if the applicant withdraws the request;

- 3) approve concentration if the appraisal of the effects based on criteria referred to in Article 54 of this Law determines that such concentration does not prevent, restrict or distort effective competition to a significant extent primarily by creating or strengthening a dominant position in the market.
- 4) approve concentration while ordering some supplementary measures, conditions and obligations which must be complied with by the parties to the concentration prior to or following the implementation of the concentration;
- 5) reject the request if the appraisal of the effects based on criteria referred to in Article 54 of this Law determines that such concentration would significantly impede effective market competition in the relevant market and particularly by creating a new dominant position or strengthening an existing dominant position.

The parties to the concentration shall be obliged to suspend the implementation of concentration until the Agency adopts the decision approving the intended concentration or until the expiration of time limits referred to in Article 62 paragraph 3 of this Law.

By way of exception from paragraph 2 above, the parties to a concentration may continue implementation of public sale in accordance with the law, provided that the undertaking taking over or acquiring control does not exercise its voting rights following the subscription of the shares or participating interests or does so only to maintain the value of the company taken over until the Agency issues the decision.

Upon a reasoned proposal of the acquirer for the purpose of protection of its rights or the assets of the company taken over referred to in paragraph 3 above, the Agency may decide on the request for issuance of the approval for implementation of a concentration in an urgent procedure.

The Agency shall annul the decision approving concentration if the decision was taken on the basis of incorrect or false information and facts.

Conditional approval of concentration

Article 57

If the Agency assesses that the implementation of a concentration would prevent, restrict or distort competition, it shall inform the applicant who submitted the request for issuance of the approval for implementation of a concentration of important facts, circumstances and conclusions on which the decision will be based so that the applicant can submit its observations.

In its observations referred to in paragraph 1 above, the applicant may propose measures it will implement pursuant to Article 56 paragraph 1 item 4 of this Law in order not to prevent, restrict or distort competition by the implementation of concentration.

If the Agency establishes that the proposed measures do not prevent, restrict or distort competition, it shall adopt the decision approving concentration and order implementation of measures and time limits for the implementation thereof, as well as the manner of control of the implementation of measures.

The Agency shall revoke the decision conditionally approving concentration if the parties to the concentration do not implement measures referred to in paragraph 3 above.

Measures for eliminating the effects of prohibited concentration

Article 58

In case of implementation of concentration without the approval of the Agency referred to in Article 50 paragraph 1 of this Law or a concentration implemented in contravention of the approval of the Agency referred to in Article 57 paragraph 3 of this Law, the Agency may by means of decision adopt necessary measures and set the time limits for the implementation of such measures.

By decision referred to in paragraph 1 above, in accordance with Article 59 of this Law, the Agency may, in particular:

- 1) order the disposal of acquired shares or participating interests in a company;
- 2) prohibit or limit the exercise of voting rights in respect of the shares or participating interests in business entities by the parties to the concentration, and order to end the control of a joint venture or other forms of acquisition of control referred to in Article 16 of this Law, which lead to prohibited concentration.

Behavioural and structural remedies

Article 59

By the decision establishing the impairment of competition the Agency may impose measures for removing the established impairment of competition or for preventing occurrence thereof or similar infringement and undertaking particular action or prohibition to undertake particular action (behavioural remedies).

The remedies referred to in paragraph 1 above must be proportionate to the gravity of the infringement committed and directly related to the acts or practices that caused the infringement.

If the existence of impairment of competition and a substantial risk of repeating the same or similar infringement as direct consequence of the structure of the undertaking has been established, the Agency may impose a remedy aimed at changing the

structure of the undertaking with a view to removing such risk (structural remedies), or restoring the structure which existed before the occurrence of established infringement.

Structural remedy shall only be imposed if it is not possible to impose equally or similarly effective behavioural remedy or if imposing behavioural remedy would be more burdensome for the undertaking than the specific structural remedy, or if a previously imposed behavioural remedy in respect of the same infringement was not fully implemented.

The structural remedies referred to in paragraph 3 above, may be measures of selling (transfer or disposal) the existing company, a part thereof or a group of companies to other persons who are not connected to the undertaking whom these measures concern; termination of the agreement on joint venture and establishment of a company; terminating personal connection (management bodies and decision-making bodies in a company) as well as other measures in accordance with the law.

5. Procedural fines

Periodic Fines

Article 60

The Agency shall impose on an undertaking which did not comply with the obligations ordered by conclusion a periodic fine in the amount from EUR 500 to EUR 5,000 for each day of non-compliance with the imposed obligations, and up to 3% of aggregate turnover achieved in the financial year preceding the year in which the proceedings have been initiated, if:

- 1) the undertaking fails to comply with the request of the Agency to supply or communicate required data or if it supplies or communicates incorrect, incomplete or false information referred to in Articles 39, 40 and 63 of this Law;
- 2) the undertaking fails to comply with an interim measure referred to in Article 44 of this Law;
- 3) the undertaking designates data or documentation as privileged communication in contravention of Article 34 of this Law;
- 4) the authorised persons or employees obstruct or otherwise prevent the authorised persons of the Agency to undertake actions referred to in Article 32 of this Law, and in particular with a view to concealing or destroying documents;

The amount of periodic fine and the time limit for payment shall be determined by the Agency by conclusion.

The time limit for starting to pay periodic fine may not be longer than 15 days from the day of receipt of conclusion determining periodic fine.

6. Decisions of the Agency

Publication of decision of the Agency

Article 61

The operative part of the decision referred to in Articles 42, 43, 56 paragraph 1 item 5 and Article 58 of this Law shall be published in the *Official Gazette of Montenegro* and on the website of the Agency.

Time limits for adopting decisions

Article 62

The Agency shall adopt decisions referred to in Articles 42 and 43 of this Law within 24 months from the day of service of the conclusion on initiating proceedings.

The time limit referred to in paragraph 1 above may be extended for a maximum additional 24 months if the decision has not been adopted for justified reasons within the time limit referred to in paragraph 1 above.

The Agency shall decide upon the request referred to in:

- 1) Article 56 paragraph 1 item 1 of this Law, within 25 working days from the day of submitting the request;
- 2) Article 56 paragraph 1 item 2 of this Law, within 25 working days from the day of withdrawing the request;
- 3) Article 56 paragraph 1 item 3 of this Law, within 105 working days from the day of submitting complete request;
- 4) Article 56 paragraph 1 item 4 of this Law, within 125 working days from the day of submitting complete request;
- 5) Article 56 paragraph 1 item 5 of this Law, within 130 working days from the day of submitting complete request.

If the Agency fails to adopt decision within the time limit referred to in paragraphs 1 and 2 above, the proceedings shall be discontinued.

If the Agency fails to adopt decision within the time limits referred to in paragraph 3 above, the request for issuance of the approval for implementation of a concentration shall be deemed granted.

Control of the enforcement of decision

Article 63

The Agency may request the undertaking to submit a report on the compliance with obligations, measures, conditions and time limits ordered by a decision based on this Law.

V. LEGAL PROTECTION

Complaint in the administrative dispute

Article 64

Administrative dispute may be instituted against decisions and conclusions adopted by the Agency in proceedings conducted pursuant to this Law.

Compensation for Damage

Article 65

The compensation for damage caused by the acts and practices constituting impairment of competition established by decision of the Agency in accordance with this Law shall be exercised in a civil suit before competent court.

VI. SUPERVISION

Article 66

The supervision of the enforcement of this Law and regulations adopted on the basis of this Law shall be carried out by the Ministry.

VII. PENAL PROVISIONS

Misdemeanours

Article 67

A fine in the amount from 1% to 10% of aggregate annual turnover in the financial year preceding the year in which a misdemeanour was committed shall be imposed on an undertaking if the undertaking:

- 1) negotiates the conclusion of, concludes or enforces an agreement preventing, restricting or distorting competition (Article 8 paragraph 1);
- 2) engages in the practice of abuse of a dominant position (Article 15);
- 3) implements prohibited concentration (Article 18);

- 4) does not suspend implementation of concentration until the Agency adopts decision approving intended concentration (Article 56 paragraph 2);
- 5) does not comply, fully or partially, with the measures, conditions and time limits imposed by decision (Articles 57, 58 and 59).

A fine in the amount from 1 000 euros to 4 000 euros shall also be imposed on the responsible person in an undertaking, as well as on the responsible person in a public body, state administration body, local administration body and local self-government body, if such body acts as an undertaking, for misdemeanours referred to in paragraph 1 above.

Article 68

A fine in the amount from 4 000 euros to 40 000 euros shall be imposed on an undertaking for misdemeanour if the undertaking fails to submit the request for issuance of the approval for implementation of a concentration within the period specified in Article 52 of this Law.

A fine in the amount from 1 000 euros to 4 000 euros shall also be imposed on the responsible person in an undertaking for misdemeanour referred to in paragraph 1 above.

Special powers of the Agency

Article 69

Against a party to the agreement referred to in Article 8 of this Law who in the proceedings conducted before the Agency enables finalisation of the proceedings and adoption of the decision regarding infringement referred to in Article 8 of this Law, the Agency may decide not to submit the request for initiating misdemeanour proceedings or withdraw the request already submitted or propose to the court during the proceedings more lenient punishment of the party to the agreement referred to in Article 8 of this Law, if the party to the agreement:

- 1) is the first to report to the Agency the existence of the agreement and submits valid evidence;
- 2) submits evidence of the existence of the agreement referred to in Article 8 of this Law to the Agency which at that moment had some knowledge thereof but did not have sufficient evidence;
- 3) reports existence of another prohibited agreement it is a party to or has immediate knowledge of, of which it has supplied evidence.

The provisions of paragraph 1 above shall not apply to a party to the agreement who initiated or organised conclusion or enforcement of the agreement referred to in Article 8 of this Law.

The Agency may, applying analogously the law regulating misdemeanour proceedings, propose to the party to the agreement referred to in Article 8 of this Law to conclude the agreement on admission of guilt.

Limitation period for initiating misdemeanour proceedings

Article 70

The proceedings for establishing impairment of competition referred to in Articles 67 and 68 of this Law may not be initiated if two years elapse from the day when the misdemeanour was committed.

Prosecution shall become barred by lapse of time in any case when four years elapse from the day when the misdemeanour was committed.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Time limit for appointing the Director of the Agency

Article 71

The Government shall appoint the Director of the Agency within 90 days from the day of entry of this Law into force.

Until the Director of the Agency is appointed, the duties of the Director shall be discharged by the Director of the Administration for Protection of Competition.

Dissolution of the Administration for Protection of Competition

Article 72

Until the Agency is registered in the Central Registry of Business Entities, the tasks of protection of competition shall be carried out by the Administration for Protection of Competition.

The Administration for Protection of Competition shall be dissolved on the day of registration of the Agency in the Central Registry of Business Entities.

On the day of its registration in the Central Registry of Business Entities the Agency shall take over fixed assets, existing documentation and staff of the Administration for Protection of Competition.

Proceedings in progress

Article 73

The proceedings initiated before the entry into force of this Law shall be finalised in accordance with the law pursuant to which they were initiated.

Secondary legislation

Article 74

Secondary legislation implementing this Law shall be adopted within six months from the day of entry into force of this Law.

Until the entry into force of the secondary legislation referred to in paragraph 1 above, secondary legislation adopted on the basis of the Law on Protection of Competition (Official Gazette of the Republic of Montenegro 69/05 and 37/07) shall apply, with the exception of the Rulebook on the content of notification of the agreement and the manner of record keeping (Official Gazette of the Republic of Montenegro 36/06), Rulebook on the form and content of application for registration of approved concentrations and the form and manner of keeping the register (Official Gazette of the Republic of Montenegro 36/06) and the Rulebook on the form and content of the request for initiating proceedings (Official Gazette of the Republic of Montenegro 36/06) which shall be repealed on the day of entry into force of this Law.

Repeal

Article 75

The Law on Protection of Competition (Official Gazette of the Republic of Montenegro 69/05 and 37/07) shall be repealed on the day of entry into force of this Law.

Article 28 item 4, Article 32 and Article 51 item 7 indent 2 of the Decree on Organisation and Operation of State Administration (Official Gazette of Montenegro 5/12) shall be repealed on the day of registration of the Agency in the Central Registry of Business Entities.

Entry into force

Article 76

This Law shall enter into force on the sixtieth day following that of its publication in the *Official Gazette of Montenegro*.