



## **Bulletin of the Republic**

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### **SUPPLEMENT**



#### **SUMMARY**

Assembly of the Republic:

#### **Law nr. 10/2013:**

Establishes the legal regime governing competition in pursuing Economic Activities



#### **ASSEMBLY OF THE REPUBLIC**

#### **Law nr. 20/2013**

In the light of the need to establish the legal regime governing competition, the Assembly of the Republic under provision nr. 1 of article 179 of the Constitution of the Republic decrees:

#### **Chapter I**

#### **General Provisions**

#### **SECTION I**

Definitions, objective and scope of application

#### **Article 1**

#### **Definitions**

The definitions of the terms used in this Law are to be found in the attached Glossary, which is an integral part of the Law.

## Article 2

### **Objective**

This Law regulates subjects related to competition in the exercise of economic activities

## Article 3

### **Scope of application**

1. The legal regime defined in this Law is applicable to all economic activities undertaken on national territory or having an affect on it.
2. This Law applies to both private and public enterprises.

## Article 4

### **Exceptions**

This Law does not apply to:

- a) collective agreements established or to be established with worker's organizations in terms of the current Labour Law;
- b) practices destined to achieve a non-commercial objective;
- c) agreements resulting from international agreements that do not prejudice the national economy;
- d) cases calling for the specific protection of a sector of the economy, benefiting the national interest or the consumer.

## SECTION II

### Regulation of competition

## Article 5

### **Competition Regulation Authority**

1. Compliance with the rules governing competition is ensured by a regulatory entity in which are represented the commercial associations, the trade unions and the consumers, within the limits of the legally granted powers and authorities.
2. The prohibition of anti-competitive practices as well as the control of the concentration of enterprises is enforced by the entity regulating competition, in accordance with the norms of the relevant process foreseen in this Law and in remaining applicable legislation.

## Article 6

### **Guarantee of autonomy**

The Competition Regulation Authority acts with independence and exemption, and the organic statute shall establish mechanisms to guarantee:

- a)* the promotion of the full realization of administrative and financial autonomy within the limits determined by law;
- b)* the prevention of conflicts of interest between the members of the deliberative bodies with respect to the matter subject to decision;
- c)* the participation of the various segments of society beyond the public sector in the executive and deliberative bodies;
- d)* the immobility of the members of the deliberative bodies until the end of their mandate;
- e)* the impartiality and independence of the members of the deliberative bodies.

## Article 7

### Sectoral regulatory entities

1. Sectoral regulatory entities work together with the Competition Regulation Authority in applying the legislation governing competition under the terms set out in this Law;
2. The Competition Regulation Authority and the sectoral regulatory entities initial collaboration agreements with a view to regulate the proceedings and the information exchange mechanisms.

## SECTION III

### Competition Regulation Authority

## Article 8

### **Powers**

The Competition Regulation Authority has the powers of supervision, regulation and sanction established in this Law and in its statutes.

## Article 9

### **Statutes**

The Statutes of the Competition Regulation Authority are approved by the Council of Ministers

## Article 10

### **Financing**

The financing of the Competition Regulation Authority is ensured by the contributions of the sectoral regulatory authorities and by the fees charged, by the State Budget and any other forms of financing, in terms to be defined in the Statutes.

#### Article 11

##### **Cooperation**

The sectoral regulatory authorities and the Competition Regulation Authority work together in the application of the competition legislation under the terms set out in the law, and to this end they may enter into bilateral or multilateral cooperation agreements, as the case may be.

#### Article 12

##### **Activity and financial year report**

1. Each year the Competition Regulation Authority elaborates the report concerning its activities, the exercise of its powers and authorities with respect to supervision, regulation and sanctioning, as well as the balance sheet and the annual management report of the previous financial year.
2. Once approved by the Competition Regulation Authority Council and with the dispatch of the Single Auditor, the report and additional documents referred to in the previous number are submitted prior to 30 April of each year for appreciation by the government, which in turn submits them to the Assembly of the Republic.
3. In case government appreciation does not take place, the balance sheet and the accounts are considered to be approved 90 days after their reception.
4. The Report, balance sheet and accounts are published in the Bulletin of the Republic within a period of 30 days after their explicit or tacit approval.

#### Article 13

##### **Scrutiny by the Assembly of the Republic**

1. The Assembly of the Republic will at least once a year conduct a plenary debate in Ordinary Session about the implementation of the competition policy.
2. Without prejudice to the competencies of the government concerning matters of competition policy, the members of the Competition Regulation Authority shall appear before the competent Committee of the Assembly of the Republic to:
  - a) be heard about the activities report;
  - b) provide information or clarifications about their activities or competition policy issues, whenever they will be requested to do so.

#### Article 14

### **Priority in conducting their mission**

1. In executing its legal powers the Competition Regulation Authority is guided by the criterion of public interest in the promotion and defence of competition and on the basis of this criterion it may attribute different degrees of priority to the treatment of issues that it is called upon to analyse.
2. The Competition Regulation Authority exercises its sanctioning powers whenever reasons of public interest in persecuting and punishing violations of the norms defending competition determine the opening of the contravention process in a particular case, taking in particular into account the priorities of the competition policy, the circumstances in fact and in law that have been presented as well as the seriousness of the violation, the probability of proving its existence and the extension of the necessary investigations.
3. During the last quarter of each year the Competition Regulation Authority publishes the priorities of the competition policy for the next year.

## **CHAPTER II**

### **Anti-Competitive Practices**

#### **SECTION I**

#### **Anti- competitive practices**

#### **Article 15**

#### **Typology of anti-competitive practices**

1. Anti-competitive practices are:
  - a) horizontal agreements;
  - b) vertical agreements;
  - c) the abuse of a dominant position.
2. Subject to the control of the Competition Regulation Authority under the terms of this Law are operations aimed at concentrating enterprises.

#### **Article 16**

#### **Relation between competitive enterprises**

The relation between competitive enterprises may be:

- a) A horizontal relation: a relation between enterprises that compete in the same sector, independently of the size of each one and of the form that competition takes;
- b) A vertical relation: a relation between an enterprise producing goods or providing services with other enterprises in the production chain, including consumers.

## Article 17

### **Horizontal agreements**

Agreements, decisions of associations of enterprises and practices agreed upon between enterprises in a horizontal relation are prohibited, provided their objective or effect is the impediment, distortion or restriction - in an appreciable manner - of competition in all or part of the national market, in particular:

- a)* the adoption of uniform or agreed commercial conduct;
- b)* direct or indirect fixing of purchase and selling prices or interference in their determination;
- c)* provoking of price oscillations without due cause;
- d)* direct or indirect fixing of other conditions of transactions realized in the same or different stages of the economic process;
- e)* limiting or controlling the production or distribution of goods, the provision of services, the investigation, the technical development or the investments for the production of goods or services or their distribution;
- f)* partitioning of markets or supply sources through the allocation of clients, suppliers, territories or types of goods and services;
- g)* forming of coalitions or developing other practices agreed upon in order to obtain advantages, interfering or influencing the results of public tenders for the supply of goods and services;
- h)* limiting or impeding of access of new enterprises to the market.

## Article 18

### **Vertical agreements**

Prohibited are agreements between enterprises or other subjects in a vertical relation that translate into:

- a)* the systematic or occasional application of discriminatory conditions with respect to prices or other equivalent services;
- b)* direct or indirect refusal, without just cause, to purchase or sell goods or provide services;
- c)* making the entering into agreements subject to acceptance of supplementary obligations that, due to their nature or based on commercial usage, are not related to the subject of those contracts;
- d)* make the sale of goods or the provision of services subject to the acceptance of payment conditions that differ from or are contrary to normal commercial usage and customs;
- e)* make commercial relations subject to the acceptance of unjustifiable or anti-competitive clauses and commercial conditions;

- f)* impose on distributors resale prices, discounts, payment conditions, minimum or maximum quantities, profit margins or any other marketing conditions vis-à-vis third parties;
- g)* discriminate suppliers or consumers of goods or services through the differentiated setting of prices or operational conditions governing sales or the provision of services;
- h)* make the sale of goods subject to the purchase of another good or the use of a service, or make the provision of services subject to the use of another service or the purchase of a good;
- i)* impose excessive prices or increase, without just cause, the price of a good or a service.

## Article 19

### **Abuse of dominant position**

1. The abusive exploitation by one or more enterprises of a dominant position in the national market or in a substantial part of that market, with the objective or resulting in the impediment, distortion or restriction of competition is prohibited.
2. Having a dominant position in the market of a certain good or service is understood to refer to:
  - a)* the enterprise that operates in a market where it does not encounter significant competition or where it is predominant with regard to its competitors;
  - b)* two or more enterprises that act jointly in a market where they do not encounter significant competition or where they are predominant with regard to third parties;
3. Considered abusive is, in particular:
  - a)* adopting any conduct referred to in articles 17 and 18;
  - b)* refuse to facilitate, against adequate remuneration, the access of any other enterprise to a network or other essential infrastructure controlled by the former, provided that without this access the latter will not succeed, for legal or factual reasons, to operate as a competitor of the dominant company in the upstream or downstream market, unless the dominant enterprise shows that such access is reasonably speaking impossible due to operational or other motives;
  - c)* totally or partially break a commercial relation in an unjustified manner;
  - d)* oblige or induce a supplier or consumer to not establish commercial relations with a competitor;
  - e)* unjustifiably sell merchandise below the cost price;
  - f)* import any goods below the costs practised in the exporting country.
4. Also constituting abusive behaviour is price discrimination applied to different purchasers, provided that:
  - a)* it is susceptible to impede, distort or restrict in an appreciable manner competition;
  - b)* it refers to equivalent transactions of goods or services of the same sort and quality;

- c) it refers to the sale price, discounts, payment conditions, loans granted or other services related to the supply of goods or the provision of services.

#### Article 20

##### **Abuse of economic dependency**

Also prohibited is the abusive exploitation by one or more enterprises of the economic dependency in which any supplier or client finds itself, which does not have an equivalent alternative, in particular when this leads to the adoption of any of the behaviours referred to in article 17.

#### Article 21

##### **Justification of forbidden practices**

1. The practices referred to in articles 17 and 18 and in nr. 1 of article 19 are considered justified, provided their objective is to:
  - a) contribute to improve the production or distribution of goods and services;
  - b) reduce prices to customers;
  - c) speed up economic development;
  - d) stimulate technological development and the innovation of national enterprises;
  - e) lead to a better allocation of resources;
  - f) promote national products and services;
  - g) promote exports;
  - h) promote the competitiveness of small and medium national enterprises;
  - i) contribute to the consolidation of national entrepreneurship;
  - j) promote the protection of intellectual property.
2. In all cases, the objectives indicated in the previous number may not imply the elimination of competition or the imposition on the enterprises in question of any restrictions that are not indispensable in order for these objectives to be achieved.

#### Article 22

##### **Exemption of the prohibition of anti-competitive practices**

1. The practices prohibited and justified in accordance with the previous article are exempt of the application of the provision in articles 17, 18 and in nr. 1 of article 19, provided this has been previously requested by the interested parties from the Competition Regulation Authority.

2. The request for exemption is subject to a previous assessment by the Competition Regulation Authority, in accordance with the procedural dispositions established in this Law and in other applicable legislation.
3. The Competition Regulation Authority determines the conditions and validity period of the granted exemption.

#### Article 23

##### **Control of company mergers**

The Competition Regulation Authority controls mergers of enterprises that consist in particular in the acquisition of:

- a) all or part of the capital stock;
- b) ownership or the right to use all or part of the assets of an enterprise;
- c) rights or the entering into agreements that grant a dominant influence on the composition or deliberations of an enterprise's bodies.

#### Article 24

##### **Duty of communication**

1. Mergers of enterprises are only subject to previous notification of the Competition Regulation Authority when they determine a share of the market, of the business volume or of annual turnover.
2. Mergers covered by the previous number are communicated to the Competition Regulation Authority within a period of seven working days after the entering into the agreement or the completion of the acquisition giving rise to the merger.
3. The market share or the business volume or the annual turnover indicated in nr. 1 as well as the calculation methods used are determined by the Council of Ministers.
4. The market share or the business volume or the annual turnover indicated in nr. 1 may be determined in general or per production or distribution sector.

#### Article 25

##### **Suspension of the merger operation**

1. A merger subject to previous notification may not be executed prior to the notification of the Competition Regulation Authority and prior to be explicitly or tacitly being decided that it will not be opposed.
2. The validity of any legal business realized without regard to the disposition in the previous number depends on the explicit or tacit authorization of the merger.

3. The Competition Regulation Authority grants derogation from compliance the obligations from nr. 1, upon a reasoned request by the enterprise or enterprises involved, to be submitted before or after the notification.
4. In case a previous notification has been submitted to the Competition Regulation Authority and it does not rule on the matter at hand within a period of sixty days, then it is to be understood that it does not oppose the merger notified, and the request has been tacitly approved.

#### Article 26

##### **Exemption of the duty of communication**

Mergers of enterprises not covered by nr. 1 of article 24 are only subject to notification in cases where this has been explicitly requested by the Competition Regulation Authority.

#### Article 27

##### **Investigation of mergers and communication upon request**

1. The Competition Regulation Authority sets in motion an investigation of the operations indicated in the previous article and requests their notification within a period of at most six months after the publication of the operation in those cases where the merger:
  - a)* is susceptible to impede, distort or restrict competition in an appreciable manner;
  - b)* has not benefited in any way from exemption based on the public interest.
2. The Competition Regulation Authority issues a final decision on the operation within a period of at most sixty days counting from the date of publication of the operation under the terms of article 51, which may consist of an approval, a conditional approval or a rejection.
3. While the decision on the operation is pending under the terms of the previous number, it may not be implemented.
4. The parties involved in a merger operation as indicated in the previous article may voluntarily at all time issue notifications concerning it, jointly or singularly.

## SECTION II

### Sanctions

#### Article 28

##### **Qualification**

Without prejudice to criminal liability and the administrative measures that would be taken, violations of the norms established in this Law, whose observance is ensured by the Competition Regulation Authority, are punishable under the terms of the provisions in this section.

## Article 29

### **Fines**

1. The participation of each one of the enterprises in question or of all enterprises jointly in prohibited conduct violating the provisions of nr. 1 of article 15, of articles 25 and 43 and of paragraph b) of nr. 1 and of nr. 3 of article 55, is an offence punishable by a fine that may not exceed 5% of the business volume of last year.
2. Offences punishable by a fine that may not exceed, for each one of the enterprises, 1% of the business volume of the previous year are:
  - a) the failure to communicate a merger operation subject to prior notification under the terms of article 24;
  - b) not providing information or providing false, incorrect or incomplete information in response to requests by the Competition Regulation Authority within the scope of its sanctioning or supervision powers;
  - c) non-collaboration with the Competition Regulation Authority or the obstruction of efforts by it to exercise the powers referred to in article 34.
3. The failure to appear as witnesses, without justification, of experts or representatives of the complaining or offending enterprise in proceedings for which they have been regularly notified, constitutes an offence punishable by a maximum fine of 10 times the minimum salary in the economic sector in question.
4. The application of the fine does not exempt the offender from meeting the obligation, in case this is still possible.

## Article 30

### **Determination and allocation of fines**

1. The fines referred to in the previous article are fixed, taking into consideration among other things the following circumstances:
  - a) the severity of the violation for maintaining an effective competition in the national market;
  - b) the completion or not of the violation;
  - c) bad faith of the offender;
  - d) advantages enjoyed by the offending enterprises as a result of the violation;
  - e) the reiterated or occasional character of the violation;
  - f) the degree of participation in the violation;
  - g) the collaboration offered to the Competition Regulation Authority until the completion of the administrative proceedings;
  - h) the behaviour of the offender in eliminating the forbidden practices and in compensating the damages caused to the competition.

2. The allocation of the proceeds of fines as set out in this Law will be determined by the Council of Ministers.

#### Article 31

##### **Additional sanctions**

Without prejudice to the provisions in article 29 and in case the seriousness of the violation or the public interest at last so justifies, the Competition Regulation Authority applies the following sanctions:

- a) the publication of the sanction being applied in the Bulletin of the republic or in a newspaper with major national, regional or local circulation, in accordance with the geographical market where the forbidden practice has had its effects, at the expense of the offender;
- b) the exclusion of the offender from participating in public tenders for a period of five years;
- c) the spin-off of the company, the transfer of shareholder control, the sale of assets, the partial cessation of activities or any other act or measure necessary to eliminate the harmful effects on the competition.

#### Article 32

##### **Periodic penalty payments**

The Competition Regulation Authority decides, when justified, to apply a periodic penalty payment for each day of delay, counting from the date determined in the decision, to an amount of at most 5% of the average daily business volume of the last year, in the following cases:

- a) non-adherence of the decision of the Competition Regulation Authority which imposes a sanction or orders the adoption of certain measures;
- b) failure to provide information or the provision of false information on the occasion of a previous notification of a merger operation involving enterprises.

#### Article 33

##### **Time-barring**

1. The proceedings per violation is extinguished by time-barring within a period of
  - a) Three years in the cases provided for in numbers 3 and 4 of article 29;
  - b) Five years in the remaining cases.
2. The limitation period of the sanctions is five years, counting from the day on which the decision determining its application becomes definitive or has acquired the authority of a final decision, with the exception of the case provided for in nr. 4 of article 29, whose period is three years.

## CHAPTER III

### Process

#### SECTION I

#### Inquiry

#### Article 34

#### **Inquiry and inspection powers**

1. While exercising its sanctioning and supervision powers the Competition Regulation Authority may:
  - a) interview the legal representatives of enterprises or of associations of enterprises involved, as well as request them to provide documents and other pieces of information that it deems convenient or necessary for the clarification of the facts;
  - b) interview the legal representatives of other enterprises or associations of enterprises and any other persons whose statements are deemed relevant, as well as to request them to provide documents and other pieces of information;
  - c) proceed at the premises of the enterprises or associations of enterprises involved with the search, analysis, gathering and apprehension of copies or extracts of written and other documentation, whether it is in a private place or not, or not freely accessible to the public [original unclear], whenever these investigations are necessary in order to obtain proof;
  - d) seal the premises of the enterprises in which are to be found or suspected to be found written or other documentation during the period and to the extent strictly necessary for the investigations referred to in the previous paragraph;
  - e) request from any other Public Administration services, including the criminal police organs, the collaboration that is necessary for the proper performance of its functions.
2. The investigations referred to in paragraph 9) of the previous number depend on the dispatch of the competent judicial authority.
3. The functionaries who conduct investigations abroad must be bearers of
  - a) in the case of paragraphs a) and b) of nr. 1, of the credentials issued by the Competition Regulation Authority, of which the purpose of the investigation is part;
  - b) in the case of paragraph c) of nr. 1, of the credentials referred to in the previous paragraph and of the dispatch referred to in the previous number.
4. Whenever it turns out to be necessary, the functionaries alluded to in the previous number may request the intervention of the police authorities.
5. Failure of the notified entities to appear and testify before the competition regulatory entity leads to the application of the sanctions established in the penal code and shall not prevent the process from continuing.

## Article 35

### **Rights of enterprises**

In its inquiry the Competition Regulation Authority shall observe clearly defined principles under terms to be regulated by the government, aimed at safeguarding the rights of enterprises, maintain an environment of trust and responsibility, especially with regard to:

- a)* obligation of professional secrecy;
- b)* obligation to state reasons;
- c)* obligation of minimum inclusion, to the extent it is necessary and justified;
- d)* dialogue, instruction and liability policy;
- e)* guarantees for the protection of business secrets and accountability of agents violating them.

## Article 36

### **Opening of an inquiry**

1. Whenever, by any means, the Competition Regulation Authority becomes aware of strong indications of anti-competitive practices it will open an inquiry, notifying in particular the party concerned and promoting the investigation of these practices and the agents involved.
2. The above may concern anti-competitive practices known by:
  - a)* public entities;
  - b)* private entities.
3. The verification of eventual anti-competitive practices is the initiative of the regulatory entities.

## Article 37

### **Inquiry**

1. The inquiry is undertaken by at least two persons, duly credited and appointed by the executive body of the Competition Regulation Authority.
2. Teams are created for the execution of inquiries of a multi-sectoral nature, which include staff from the Competition Regulation Authority in question or from other public entities.
3. The enterprise in question will be notified with regard to the inquiry being undertaken, its subject, purpose and duration.
4. The inquiry shall be undertaken in secrecy with a view to safeguarding the investigations and the reputation of the enterprises.

## Article 38

### **Conclusions of the inquiry**

1. The final inquiry report shall be submitted to the executive body within a period of five days after its completion.
2. The final report shall contain the observations, conclusions and recommendations.

#### Article 39

##### **Decision of the inquiry**

1. The executive body shall make a decision within a period of at most five working days, which may be one of the following:
  - a) file the process if it is understood that there are insufficient indications of wrongdoing;
  - b) initiate disciplinary action when it is concluded that there are sufficient indications of violations of the competition rules.
2. In case the inquiry has been instigated based on a denunciation of an interested party, the person in charge of the executive body may not file the process without previously notifying the complainant of his intentions, granting him a period of five days to express any reservations.

#### Article 40

##### **Coordination with the regulatory entities of the various sectors**

1. Whenever the Competition Regulation Authority under the terms provided for in article 38 of this Law takes note of facts that occurred in a domain subject to sector regulation and that are susceptible of being qualified as practices restricting competition, it will immediately communicate this knowledge to the regulatory entity of the sector in charge of these matters in order for it to express its opinion within a reasonable period of time determined by the latter entity.
2. Whenever within the scope of its powers, the regulatory entity of a sector evaluates unofficially or upon the request of regulated entities issues that may constitute a violation of the provisions in this Law, it shall immediately notify the competition regulatory entity about the process as well as about its various essential elements.
3. In the cases provided for in the previous numbers the Competition Regulation Authority suspends, by means of a reasoned decision, its option of instigating or pursuing an inquiry or a process during a period of time it deems adequate.
4. Prior to making a final decision the regulatory entity of the sector in question notifies the Competition Regulation Authority about the process, in order for the latter to express its opinion within a period of at most fifteen days.
5. When the period indicated in the previous number has expired without the Competition Regulation Authority having expressed an opinion the regulatory entity of the sector is to conclude that the former has no objections to make against its decision process and it shall immediately notify the enterprise(s) in question about the decision taken.

6. The recommendations of the Competition Regulation Authority are binding for the regulatory entities of the sectors.

## SECTION II

### Administrative Process

#### Article 41

##### **The investigation of a case**

1. In the notification referred to in paragraph b) of nr. 1 of article 40 the executive body offers the enterprises under investigation a period of thirty days in which these can express in writing their opinion about the formulated accusations and about other issues that may be of interest for the decision concerning the process, as well as about the evidence produced for which they request additional investigations deemed convenient.
2. The enterprises under investigation may at any moment prior to the closure of the investigation phase present proof in their interest, including new documents.
3. The enterprises under investigation may also request the executive body to hear witnesses.
4. The hearing in writing referred to in nr. 1 may, upon the request of the enterprises or the associations of enterprises under investigation be complemented or substituted by an oral hearing.
5. The executive body grants the request to conduct complementary investigations whenever the irrelevance of the requested proof is evident or its purpose is merely dilatory.
6. The executive body unofficially orders the undertaking of complementary investigations even after the hearing referred to in numbers 1 and 2, provided that it ensures the enterprises under investigation compliance with the principle *audi alteram partem*.
7. Upon completion of the investigation phase the enterprises under investigation receive notice that they, within a period of five days, are to present final allegations.
8. The investigation phase takes into account the legitimate interests of the enterprises by not divulging their business secrets.

#### Article 42

##### **Cautionary measures**

1. Whenever the investigation indicates that the practice being investigated is susceptible to cause imminent, serious and irreparable or difficult to redeem damages to the competition or the interests of third parties, the executive body at any moment during the inquiry or investigation preventively orders the immediate suspension of the practice in question or the taking of any other temporary measures necessary for the immediate repositioning of the competition or indispensable for the useful effect of the decision to be made at the completion of the process.

2. The measures provided for in this article are adopted by the executive body unofficially or upon request by any interested party and are in force until their revocation by the body in question in any case for a period of at most ninety days unless duly justified prorogation.
3. Without prejudice to the provisions in nr. 5, the adoption of the measures referred to in the previous numbers is preceded by the hearing of interested parties, unless such would endanger the objective or the efficiency of the measure.
4. Whenever the case concerns a market subject to sector regulation the executive body requests the previous opinion of the regulatory entity of the sector in question, which is issued within a period of at most five working days.
5. The provisions in the previous number do not impair the possibility of the executive body temporarily determining, in a case of emergency, the measures indispensable to the re-establishment or the upkeep of an effective competition.
6. Appeals against the decision made in terms of nr. 1 may be lodged within a period of five days at the deliberative body, without suspensive effect.

#### Article 43

##### Completion of the investigation

1. Upon completion of the investigation the executive body adopts measures based on the report of the investigative team and on the conclusions of the investigative process, which may amount to:
  - a) the closing of the case;
  - b) the conditional closing of the case;
  - c) admonition;
  - d) the referral of the case to the deliberative body for a final decision.
2. In case the process has been initiated based on a denunciation by any interested party, the decision indicated in paragraph a) of the previous number shall be immediately communicated to that party while granting it a period of at most fifteen days to express its opinion.

#### SECTION III

##### Analysis of the process

#### Article 44

##### **Appointment of rapporteur**

The assignment of the process is done by the person in charge of the deliberative body by appointing, by drawing lots, one of the members of the body, who will function as rapporteur.

## Article 45

### **Complementary investigations**

1. The rapporteur determines the conduct of complementary investigations, the hearing of witnesses or the request for new information as well as the granting to the prosecuted party of the possibility to produce new proof, when the existing elements from the notices are deemed insufficient for the formation of judgements.
2. The rapporteur requests the previous opinion of the regulatory entity of a sector whenever practices are concerned that affect the market regulated by that entity.

## Article 46

### **Final decision**

1. The plenary meeting of the deliberative body adopts a decision, which may amount to:
  - a) declaring the existence of a practice restricting competition and, where appropriate, the notification of the offender to adopt the measures indispensable for the cessation of the practice referred to or of its effects within a period to be determined by it;
  - b) admonition;
  - c) the application of fines and other sanctions provided for in this Law;
  - d) the authorization of an agreement by imposing terms and conditions;
2. The decision is to be justified and shall contain:
  - a) the specification of the facts constituting the violation that has been established and the indication of measures to be taken by the persons in charge in order to terminate it;
  - b) the period within which to comply;
  - c) the sanction.
3. The decision of the deliberative body is enforceable, with its execution being immediately pursued while the Public Prosecutor shall be subsequently notified about additional legal measures to be applied within the scope of its powers.
4. The internal regulations of the Competition Regulation Authority dispose complementarily on the administrative procedure.

## Article 47

### **Publication and verification of the decision**

1. The decision of the deliberative body is to be published in the Bulletin of the Republic.
2. The verification of compliance with the decision is the authority of the deliberative body.

## Article 48

### **Applicable regime**

The provisions referring to agreements between enterprises are applied, with the necessary adaptations, to merger operations.

### Article 49

#### **Previous communication**

The communication of merger operations of enterprises under the terms of article 24 is to take place in accordance with the form approved by the Competition Regulation Authority and shall contain the information and documents there required.

### Article 50

#### **Publication**

1. Within a period of five days counting from the date on which the communication was delivered the Competition Regulation Authority has the essential elements of the communication published in two newspapers with national circulation, at the expense of the authors.
2. The interested parties may present any comments within a period of at most fifteen days.

### Article 51

#### **Investigation of the process**

1. On the expiry of the period stipulated in nr. 2 of the previous article the Competition Regulation Authority completes the investigation of the process in question, within a period of thirty days counting from the date of the respective publication.
2. If in the course of the investigation it turns out to be necessary to provide additional information or documents or to correct those that have been provided already, the Competition Regulation Authority will notify the authors of the communication of this fact, and grant them a period within which they are to provide the information in question or make the necessary corrections.
3. The notification provided for in the previous number suspends the period referred to in nr. 1.
4. In the course of the investigation the Competition Regulation Authority requires any other public or private entities to provide the information it deems relevant for its decision concerning the process, and this information is to be provided within the periods it determines.
5. The provisions referring to the inquiry proceedings apply, with the necessary adaptations.

### Article 52

#### **Decision**

1. Before the end of the period referred to in nr. 1 of the previous article the person in charge of the deliberative body analyzes the final investigation report and proceeds to making a decision, which may determine:
  - a) that the operation in question is not covered by the previous obligation of communication referred to in article 24;
  - b) the referral of the case to the deliberative body for a final decision;
  - c) the start of an in-depth investigation when the merger operation in question is considered to be susceptible of creating or strengthening a dominant market position, which may lead to significant impediments of effective competition in the national market or in a substantial part of it.
2. Failing to adopt a decision within the period referred to in the previous number amounts to the decision not to oppose the merger operation.

#### Article 53

##### **In-depth investigation**

1. Within a period of at most sixty days counting from the date of the decision referred to in paragraph c) of nr. 1 of the previous number, the executive body proceeds with the complementary investigations it deems necessary.
2. To the investigation referred to in the previous number are applicable in particular the provisions in numbers 2 and 4 of article 52.
3. Before the end of the period determined in nr. 1 of article 52, the executive body decides:
  - a) that the operation in question is not covered by the obligation of previous communication referred to in this article;
  - b) to refer the process to the deliberative body for a final decision.

#### Article 54

##### **Decision of the deliberative body**

1. The deliberative body decides within a period of thirty days:
  - a) not to oppose the merger operation;
  - b) to forbid the merger operation, ordering, in case it has been realized already, the taking of measures adequate for the re-establishment of effective competition, in particular the separation of enterprises or of assets brought together or the cessation of control.
2. The decision referred to in paragraph a) of nr. 1 is taken whenever the deliberative body concludes that the operation, such as communicated or subsequent to alterations introduced by the authors of the communication, is not susceptible to the creation or strengthening of a dominant market position, which may lead to significant impediments of effective competition in the national market or in a substantial part of it.

3. The decisions taken by the deliberative body under the terms of paragraph a) of nr. 1 may be accompanied by the imposition of conditions and obligations destined to guarantee compliance with commitments assumed by the authors of the communication, with a view to ensure that effective competition is maintained.
4. To the decision referred to in paragraph a) of nr. 1 apply, with the necessary adaptations, the provisions in the numbers 2 and 3 of article 52.
5. Failing to adopt a decision within the period referred to in nr. 1 amounts to the decision not to oppose the merger operation.

#### Article 55

##### **Hearing of interested parties**

1. The decisions referred to in nr. 1 of article 53, in nr. 3 of article 54 and in nr. 1 of article 55 are made after previously hearing the authors of the communication and of the opposing parties.
2. When the decisions not to oppose the operation referred to in paragraph a) of nr. 1 of article 55 are not accompanied by an imposition of conditions or obligations, the competition regulatory entity may, in the absence of opposing parties, dispense with the hearing of the authors of the communication.
3. For the purposes of this article opposing parties are considered those who, within the scope of the proceedings, have expressed an opinion unfavourable to the realization of the merger operation in question.
4. The realization of the hearing of interested parties suspends the calculation of the periods referred to in nr. 1 of article 52 and in nr. 1 of article 53.

#### Article 56

##### **Communication of decisions concerning mergers**

1. The decisions about a merger operation of enterprises that has an impact on a market subject to sector regulation are preceded by a communication to the respective regulatory entity of the sector, granting it a period for it to express its opinion.
2. The provision in the previous number does not prejudice the exercise by regulatory entities of the sectors of the powers that, within the framework of their specific authority, are legally granted to them with respect to the merger operation in question.

#### Article 57

##### **Ex officio procedure**

1. Without prejudice to the application of the corresponding sanctions, subject to ex officio procedures are merger operations:

- a) whose realization the competition regularity entity is acquainted with and that, in non-compliance with this Law, have not been subject to previous communication;
  - b) that are based on an explicit or tacit decision not to oppose them, which in turn is based on false or imprecise information concerning circumstances that are essential for the decision in question, provided by participants in the merger operation;
  - c) that are shown not to comply, totally or partially, with the obligations or conditions imposed by the decision not to oppose them.
2. In the case provided for in paragraph a) of the previous number the Competition Regulation Authority notifies the enterprises in a situation of non-compliance, so that these proceed with the communication of the operation under the terms provided for in this Law, within the period determined by the Authority.
  3. In the cases provided for in paragraphs a) and b) of the nr. 1 the Competition Regulation Authority is not subject to the periods determined in nr. 1 of article 52 and in nr. 1 of article 55.
  4. In the cases provided for in paragraph c) of nr. 1 the decision of the Competition Regulation Authority to initiate an ex officio proceeding produces effect from the date of its notifying any enterprises or persons participating in the merger operation.

#### Article 58

##### **Nullity**

1. Legal acts related to a merger operation are null and void to the extent that they contradict decisions of the Competition Regulation Authority that has:
  - a) prohibited the merger operation;
  - b) imposed conditions on its realization;
  - c) ordered adequate measures to be taken for the re-establishment of effective competition.

#### SECTION V

##### **Proceedings for the granting of exemptions**

#### Article 59

##### **Applicable regime**

To the proceedings for the granting of exemptions are applied the provisions of the articles 63, 64 and 65, with the necessary adaptations.

#### Article 60

##### **Presentation of an exemption request**

1. One or more enterprises or associations of enterprises may request exemption of the application of this Law with respect to any agreement, decision or concerted practice, in whole or in part.
2. The exemption request must be presented using a form defined by the Competition Regulation Authority, accompanied by all information that is requested.
3. The exemption request is published in a national newspaper with major circulation, indicating:
  - a) the kind of exemption requested;
  - b) the request itself, so that interested parties may present, within a period of thirty days after publication, their opposition or any other observation deemed relevant and duly justified.
4. The exemption request is subject to the payment of fees.
5. The decision about the exemption request is published in the Bulletin of the Republic.

#### Article 61

##### **Analysis of the request**

1. After the expiry of the period indicated in the previous number or after completion of the discussion the Competition Regulation Authority proceeds with the analysis of the process.
2. The analysis of the process consists in the analysis of the formulated request, of the eventual options or of other observations that have been presented.
3. The analysis of the process also establishes whether the practice is justified under the terms of article 21.

#### Article 62

##### **Decision**

1. The executive body submits the analysis report to the deliberative body for decision, which may amount to:
  - a) the granting of the exemption request;
  - b) the rejection of the request to grant exemption, duly justified;
  - c) the exclusion of the agreement, decision or concerted practice from the category of those that need appreciation and authorization by the Competition Regulation Authority.
2. The decision from paragraph a) from nr. 1 indicates the validity period of the exemption and the eventual conditions to be satisfied.

#### Article 63

### **Revocation of exemption**

1. The Competition Regulation Authority revokes the decision on the benefit referred to in the previous article if it is found that:
  - a) the practice in question produces effects that are incompatible with the provisions in nr. 1 of article 21;
  - b) the exemption has been granted on the basis of incorrect or misleading information;
  - c) the conditions existing at the moment of granting the exemption have changed;
  - d) the conditions imposed under the terms of nr. 2 of the previous article have not been complied with.
2. The revocation of the exemption is preceded by a notification to the beneficiary and to any other interested parties and by the granting of a period of thirty days within which these may express their opinion.

### Article 64

#### **Exemption of norms of professional associations**

1. Professional associations duly recognized by the government whose internal rules may have the effect of impeding, distorting or restricting competition in the market in an appreciable manner, may request the granting of an exemption with respect to these rules.
2. The exemption is granted when the rule in question is essential to maintain:
  - a) professional standards;
  - b) the specific elements of the profession.
3. The norms defined in articles 59 to 63 apply, with the necessary adaptations.

### Article 65

#### **Exemptions concerning the exercise of intellectual property rights**

1. Holders of intellectual property rights may request the granting of an exemption with respect to an agreement or practice related to the exercise of intellectual property rights.
2. The norms defined in articles 59 to 63 apply, with the necessary adaptations.

## CHAPTER IV

### **Fees**

### Article 66

#### **Approval and updating of fee amounts**

The amounts of the fees to be applied in the proceedings realized before the Competition Regulation Authority are approved by a joint decree of the ministers who supervise the areas of Industry and Commerce, and of Finance.

#### Article 67

##### Forms of payment

1. It is incumbent upon the Competition Regulation Authority to define the forms of payment of the fees established under the terms of the previous article.
2. No act is deemed valid without the payment of the legally established fees.

### CHAPTER V

#### **Final and Temporary Provisions**

#### Article 68

##### **Regulation**

It is incumbent upon the Council of Ministers to regulate this Law within a period of 90 days after its entering into force.

##### **Entry into force**

This Law enters into force 90 days after its publication.

Approved by the Assembly of the Republic on 11 December 2012.

The Chairperson of the Assembly of the Republic, *Verónica Nataniel Macamo Dlhovo*

Promulgated on 20 March 2013

To be published.

The President of the Republic, *Armando Emilio Guebuza*.