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限制性商业惯例法规手册

贸发会议秘书处的说明

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导 言

1. 《管限制制性商业惯例的一套多边协议的公平原则和规则集》F节第6(c)款规定编制《限制性商业惯例法规手册》。

2. 此外,限制性商业惯例政府间专家组第十二届会议请贸发会议秘书处继续编制和更新限制性商业惯例法规手册(TD/B/40(2)/2-TD/B/RBP/98,附件一)。

3. 据此,秘书处编写了本说明,内载立陶宛、挪威和葡萄牙对各自限制性商业惯例法规的评注以及这些法规的正文。应该注意到,挪威和葡萄牙通过了新的法律;葡萄牙的旧法规已刊登在1988年6月29日的贸发会议手册(TD/B/RBP/49),挪威的旧法规则载于1991年8月14日的贸发会议手册(TD/B/RBP/82)。

4. 至此,贸发会议秘书处已印发了324个国家对各自限制性商业惯例法规的评注以及这些法规的正文,这些国家是:比利时、巴西、加拿大、智利、丹麦、芬兰、法国、德国、意大利、牙买加、肯尼亚、立陶宛、巴基斯坦、波兰、葡萄牙、大韩民国、挪威、西班牙、斯里兰卡、瑞典、大不列颠及北爱尔兰联合王国、美利坚合众国、委内瑞拉。

5. 贸发会议负责干事在1994年5月3日所发照会中请尚未这样做的国家或自上次向贸发会议秘书处递交来文以来已颁布新的限制性商业惯例法规或修改了原有法规的国家按照提供的格式(见下文)向贸发会议秘书处提交有关的法规,法院裁决和论。为便利以一种以上的联合国正式语文载录法规正文,请各国按政府间专家组的请求尽可能以联合国的一种或多种其他语文提交法规正文。

6. 贸发会议秘书处感谢为手册的编制提供材料的国家,并再次请尚未这样做的国家按贸发会议负责干事的请求提供材料。

手册稿件格式

- A. 说明颁布法规的理由。
- B. 说明法规的目标以及最初的法规颁布以来的演变程度。
- C. 说明受管制的惯例、行动或行为,并说明每一项的:
 - (a) 管制类型,例如:明令禁止、原则上禁止、或具体案件具体审查;
 - (b) 此项管制对《原则和规则》D节第3和4段所列惯例、行动或行为的涵盖程度,以及任何可能受管制的其他惯例、行动或行为,包括专门用于保护消费者的管制办法--例如,关于误导型广告的管制办法--所涵盖的其他惯例、行动或行为。
- D. 说明法规的适用范围,示明:
 - (a) 是否对所有货物交易和服务交易一律适用,若非如此,则示明哪些交易不适用;
 - (b) 是否适用于无论发生在何处但在该国有影响的所有惯例、行动或行为;
 - (c) 是否取决于存在某项协议或取决于该协议生效。
- E. 说明执法机制(行政和/或司法机制),示明是否订有通知协议和登记协议,以及(各)机构的主要权力。
- F. 说明任何并行的或补充性的法规,包括与其他国家达成的、涉及在限制性商业惯例领域开展合作或解决争端的程序的条约或谅解。
- G. 说明行政和/或司法机构作出的主要决定以及涵盖的具体问题。
- H. 简明文献目录,列出法规和主要决定的出处,以及政府的解释性出版物、或法规,或其中的具体章节。

一、立陶宛政府对于其1992年11月1日竞争法和管制价格 与竞争办事处(P.C.O.)的第785号法令的评述

立陶宛共和国竞争法于1992年11月1日生效。为确保监督对法律的遵守,自1993年2月10日起建立了经济部领属下的价格与竞争办事处,(P.C.O.),该办事处已配备了工作人员并开始实际工作。

A. 说明有必要制订该法律的原因

立陶宛共和国正在进行复杂的经济改革,目的是对中央计划经济予以改造使其过渡到市场经济。在实施改革的过程中,在很大的范围内放开了价格,这样就可以确保经济实体能自行决定其经济事务及消费者有可能在选择上实现自主。国营经济部门的私有化过程一直在并行展开并且至今尚未完结。上述改革是在过去遗留下来的高度集中和高度垄断的经济结构仍然存在的情况下进行的。

实际上,在价格放开的过程中出现了与市场支配力很强及滥用重大经济实体的支配地位有关的问题。而且存在着各经济实体之间互相协议并联合定价和分配市场的做法。因此,为了进一步推动改革和经济发展有必要通过竞争法并监督对该法律的遵守以便防止有可能限制竞争的行动。在奠定竞争法的基础方面,工业化国家在发展市场经济上的一般经验发挥了十分重要的作用。国际组织的借鉴作用也同样重要。考虑到必须使立陶宛融入世界和区域经济体系,诸如欧洲自由贸易区和世界银行及欧洲经济共同体成员国的具体经验尤为重要。

使竞争法和惯例与现有的世界和区域惯例融洽地协调是实现融合目标的一个必要因素。

B. 说明法律的适当目标和补充性正当法令

竞争法的主要目标是防止抑制商业的惯例(反竞争行为)以便为了在商品市场上切实展开竞争创造条件。因此,该法律为经济实效和消费者的福利奠定了基础。

自1992年11月1日生效以来,竞争法未有任何变动。

C. 说明能够予以管制的适当惯例

立陶宛共和国竞争法含有禁止在市场上占有支配地位的经济实体以已经限制或可能限制竞争,从而可能侵犯经济利益的方式行动。

而且,立陶宛共和国竞争法规定禁止下列行为:

- 经济实体之间协议(一致行动)限制或抑制竞争;
- 国家权力机关的政府对竞争的限制(也为法律所禁止);
- 不公平竞争;
- 如果集中以后可能形成市场支配地位并且竞争受到限制或可能在以后受到限制,则应管制和禁止市场结构出现集中的情况。

禁止滥用市场支配地位

法律规定,如果某些产品的市场份额不足百分之四十,则经济实体不得被视为占支配地位的实体。经济实体受禁行动的抽样清单载于竞争法。该清单包括:

- (1) 有关对竞争经济实体企图进入市场设置障碍的活动;
- (2) 将竞争者推出,使其成为市场的竞争经济实体;
- (3) 歧视合伙人和为第三者定介。

总结:这些是限制竞争并且为法律所禁止的纵向和横向行动。

竞争法第5条“受禁行动的例外情况”同时规定,如果由竞争法所正式禁止的占支配地位经济实体的活动经证明造成如下情况,则可被视为符合法律的规定:

- 消费者价格的持续降低;
- 货物质量的提高。

这条实际上意味着,应分别调查和评估滥用支配地位的各种具体情况。

1993年竞争理事会通过决议,另外又规定了市场支配地位的标准。

而且,我们预计将通过管理滥用市场支配地位情况的正当法令。

禁止经济实体之间限制或抑制竞争的协议(一致行动)

竞争法中载有限制或抑制竞争的受禁协定和一致行动的样本清单。这些包括有关固定价格、生产量、根据属地原则分配市场的协定以及有关销售和购买货物量、货物类型、买方或卖方类别等的协议。而且,将竞争者挤出市场和对他们进入市场

设置障碍(并且通过协议排挤竞争者和给他们设置障碍)以及拒绝与某些卖方或买方缔结合同也被视为违法并为法律所禁止。

在竞争法中,还有一个作为限制或抑制竞争的受禁协议(一致行动)例外规则的第5条这条意味着应该分别审议(调查)协议(一致行动)的每一种具体情况并从法律上予以评估。

禁止国家权力机构和政府机关限制竞争

禁止权力机关作如下决定:

- (1) 限制经济实体的独立性或缔结经济合同;
- (2) 阻止建立和重组或整顿现有的经济实体;
- (3) 扶植或压制具体的经济实体或在其它情况下限制竞争。

本禁令反映了向市场经济过渡的具体情况并在不影响其它法律所规定的国家机构职权的情况下皆为有效。

禁止不公平竞争的活动

该法律禁止经济实体传播(也包括宣传)可能给另一经济实体造成损失或损害该经济实体声誉的使人产生误解、不适当和受到曲解的材料。

还禁止通过散布有关货物质量、使用特点、生产场所和远近、销售数量和价格等的虚假材料而使消费者产生误解。任意使用名称、商标名称或标志、产品包装形式或其它经济实体的外部形式也归因于受禁不公平竞争的惯例。而且,禁止经济实体从事与工业间谍有关的行动。

在有关受禁不公平竞争方面不得有任何例外。1993年竞争理事会批准了“监督不公平竞争执行的命令”,该命令对约束不公平竞争的行动作了详细的规定,进行了法律评估并规定了经济制裁。

管制市场结构的集中

该法律载述,如果反映有可能合并的一些经济实体所从事经济行动的参数总和超过法律所确定的某种界限,而这些经济实体在采取任何市场集中的步骤之前都必须将预计的结构集中情况通知价格和竞争办事处。如果合并后可能产生能够支配市

场的高度集中的新市场,即,至少拥有百分之四十的市场份额的市场;则价格和竞争办事处应该防止集中。

该法律规定,作为例外,立陶宛共和国政府可以书面许可形式颁布非常命令允许未获价格和竞争办事处批准的市场结构的集中。

1993年,‘管制市场结构集中情况’的法令预计将得到批准,该法令应该能够详细确定管制集中的规则。

D. 竞争法适用范围的特点

该法律适用于调整由于在立陶宛共和国境内限制竞争和不公平竞争的行动所产生的关系。

调整不同经济领域运作和经济关系的竞争法规定,该法律在与立陶宛共和国其它法律没有抵触的情况下均有效力。它意味着,竞争法规制着一切类型的经济--商业活动,其它法律和国际条约所规定的适当情况除外。

E. 适用本法律和机构基本权利的机制

在立陶宛共和国内,由价格和竞争办事处执行对竞争法遵守情况的监督,办事处主任由政府指定。特别竞争理事会由7名成员组成,任期3年,负责决定与竞争有关并受本法律管辖的问题。立陶宛共和国政府根据消费者以及科学、商业和工业组织的建议指定其中四名成员。

价格和竞争办事处负责调查限制竞争(不公平竞争)的行动并将结论报告给竞争理事会,该理事会负责决定是否发生了上述行动违反竞争法的情况。

如果假定属实,则竞争理事会有权决定对经济实体予以经济制裁。制裁额可确定为至多达经济实体年度总收入的百分之十。对提交使人误解的材料的经济实体可课以相当于年度总收入百分之三的罚款。而且,对国家政府机构和经济实体的官员无视竞争理事会规定的义务或拖延履行这些义务以及提交使人误解的材料、竞争理事会课以最多相当于上述官员3个月平均收入的罚款。竞争理事会征收的罚款应转归国家预算。

标准法令详细规定了因违反竞争法而对经济实体进行的制裁。

对竞争理事会的决定,可以向法院提出上诉。

对由于违反本法令并且因为其他经济实体的过错而给经济实体或消费者带来的

损失必须由后者通过法律所确定的程序追偿。

F. 说明正当法令以及与其他国家的协议

竞争法的执行书由竞争理事会颁发,根据立陶宛国会的决定,竞争理事会享有这项权利,至1993年6月为止,立陶宛共和国政府批准了价格和竞争办事处与竞争理事会的章程、竞争理事会批准了监督不公平竞争惯例的决议。

我们预计将制订有关分别与各国及欧洲自由贸易区成员国进行自由贸易诸条约的竞争规则和合作命令。

同时,上述条约中的竞争规则和合作条款均尚未生效。

G. 一般决定和上文讨论的具体问题的特点

自从价格和竞争办事处开办4个月以来,唯有办事处活动的年度报告尚未编撰。在这一期间,价格和竞争办事处在监督竞争法和价格法的执行及促进竞争方面展开了活动。获得指派的主要任务是编制竞争法的正当法令和有关方法的材料,也负责监督竞争法各项规定的执行情况。这种监督的方向是分析各个主要经济领域的市场情况和调查经济实体的申诉。在结束这些调查之后,将编制的材料提交给竞争理事会,由该理事会分别作出决定。自一九九三年二月十一日以来,对立陶宛共和国的各种法律价格和竞争办事处提出了某些修正。价格和竞争办事处责成某些经济实体向办事处提供了财政和价格报告。违反竞争法的大多数是占支配地位的经济实体。根据竞争法,对其中某些实体进行了制裁和罚款的处理。

对各个主要经济领域市场的分析从未间断过。

今后,价格和竞争办事处的活动还将转向解决竞争问题。

H. 说明法律渊源和基本裁决的简短书目

为供参考起见,我们提供了立陶宛共和国竞争法的英语译本以及由立陶宛共和国政府批准的价格和竞争办事处和竞争理事会章程的非正式英语译本。可惜我们还没有关于这两个正当法令的评论的正式译本。

在竞争政策领域的技术合作

竞争政策领域技术合作的主要目标是吸取实行市场经济的工业化国家在竞争机构方面的经验以及培训立陶宛共和国价格和竞争办事处的工作人员。

这一目标基本上是通过与国际组织和其他国家的主管竞争机构建立联系而实现的。

自1992年11月以来,与诸如欧洲经济共同体的经济委员会、“灯塔”计划基金会和经合发组织等国际组织保持了关系。我们还在竞争领域与丹麦签署了合作协议。

然而,最为发达的合作形式是举办讲习班和培训班,参加了在维尔纽斯由美国司法部反托拉斯司和美国联邦贸易委员会的专家举办的为期两周的讲习班以后,立陶宛共和国价格和竞争办事处的雇员获益非浅。参加这些讲习班的不仅有价格和竞争办事处的雇员,而且还包括其他部门的代表。

而且,在本报告所述及的期间内,价格和竞争办事处的几个雇员得到了参加在维也纳举办的讲习班的机会,从而使得他们有可能扩大在竞争政策领域的知识(这些讲习班包括在市场定义、滥用支配地位、属地协议等方面的计划)。

这些讲习班和培训班的效果是价格和竞争办事处的雇员获得了在应付国外竞争问题和为解决具体问题借鉴经验上所必需的一切技能。

应该指出,这类合作几乎完全是依靠来自各种来源的资助。

在立陶宛进行长期考察的丹麦竞争机构的顾问为价格和竞争办事处的雇员解决最近的问题提供了帮助。

而且,立陶宛共和国价格和竞争办事处已开始与波兰共和国反托拉斯机构展开合作。最近,编制了与这些国家在竞争和反托拉斯政策的领域内进行合作的协议规划。预计将在最近签署这些协议。

然而,必须注意到,以往与外国在竞争政策的领域内合作得不够。缺乏在国外的实践并且与其他国家竞争机构之间的合作不够。

二、挪威政府对于其1993年6月11日第65号“竞争法”的评述

A. 新的立法需要

1993年6月11日通过了新的竞争法。该竞争法将于1994年1月1日生效。自生效之日起,1953年以来作为挪威价格和竞争政策之根据的价格法即告废除。¹

自1950年代以来经济贸易和工业的结构发生了急剧的变化。由于需要增加效率,单位不断扩大,商业活动也越来越集中。而且,自从价格法通过以来,政府管理机构的组织和经济政策手段变化很大。价格法令的宗旨有着相当深远的影响,而且该法令的规定在某种程度上证明是战后经济政策的手段。

在价格和竞争政策上任务和责任的分配发展得很快,也变化得很快。在某些时候,价格政策和价格管理的问题属特别机构管辖,例如有关药物价格的卫生管理局。另一方面,挪威竞争机构被赋与主动关心上述问题的义务,并且是为了查明其他官方机构所散发的建议是否可能影响竞争政策而有资格评论这些建议的主管机构。

1993年6月11日的价格政策法将与竞争法同时生效。价格政策法负责批准对价格的调整。而且,该法继续进行对不合理价格的禁止。

B. 价格法的宗旨

价格法的宗旨是“为有效竞争提供必要的条件以实现对社会资源的有效利用”。这意味着它的目标是有效地利用资源,而竞争则被视为实现这一目标的手段。“有效地利用资源”意指国民经济的效率。挪威竞争机构的任务是通过防止抑制竞争和促进消费者的价格意识而确保商业活动以有效竞争为本。

除了禁止串通价格、串通投标和维持转售价格以外还禁止瓜分市场。原来只需要提供有关消费品销售价格的材料,现在也需要提供有关服务价格的材料了。

另一个重要任务是提请注意公共措施对竞争的抑制影响,例如提出旨在增加竞争和为新的竞争者加入竞争提供便利的建议。

¹ 1953年1日的价格法载于以前印发的1991年8月14日贸发会议手册汇编,文件TD/B/RBP/82。

人们认为,为有效竞争提供必要的条件以实现有效地利用社会资源是确保消费者能得到公平价格,选择自由和有可能影响货物和服务供应的主要假定之一。相信竞争政策是实现消费政策关键目标的一个重要基础是顺理成章的事。

C. 由竞争管理局管制的商业条件、协议和行动

竞争法规定禁止串通定价、加价和减价。这些禁令适用于服务和货物的销售,但不适用于购买。然而,在涉及禁止的规定上有若干一般的例外情况。而且,挪威竞争管理局可以规定免受禁止的例外情况。

供应商不得确定或寻求影响承销商的价格。这一规定适用于货物和服务。然而,如果价格根据建议而明确规定,则个别的供应商可以为承销商货物或服务的销售规定建议价格。

该法令还规定,竞争管理局对可能限制竞争的协议、商业条件和行动有权予以干预。

1. 禁令

禁令的范围包括具有约束力和获得建议的协议或安排。禁令所涉情况如下:

串通定价、加价和减价及其影响,

串通投标及其影响,

串通或运用影响以实现对市场的瓜分,

禁令所针对的市场瓜分包括区域划分、消费者划分、定额分配、专业化或数量限制。

禁止从事确定或鼓励上述抑制的联合企事业

2. 例外情况和豁免情况

对上文1.中所提及之禁令,有若干一般的例外。这些例外适用于如下情况:

就具体项目进行协作和提出联合投标或提议联合供应货物或服务

所有者与公司及其共同所有的公司之间的协作

专利和设计许可证协议

以许可证提供方和许可证接受方缔订的协议规定许可证接受方使用注册专利或设计的权利从而确定对竞争的抑制情况可运用例外的规定。

在销售农业、林业和渔业产品上的协作

竞争管理局可以规定免受上文1.中所提及的禁令的约束。例如,在对竞争的抑制意味着有关市场的竞争将会增加,或者在对竞争的抑制对竞争影响甚微时可准予免除。

3. 干预对竞争的有害限制

该法令赋予竞争管理局干预可能限制竞争的协议、商业条件和行动的职权。除其他事项外,竞争管理局所可能禁止的行为如下:维持或加强市场支配地位、拒绝交易、限制消费者的选择和使得生产、分配或销售更为昂贵的抑制因素,或不准竞争者进入市场。有关干预的决定可能包括颁布禁令和命令,或给予有条件的准许。决定可涉及价格管制。

该法令还授权竞争管理局干预收购企业。

4. 有关竞争的相关立法

除竞争法和价格政策法外,规定有关抑制竞争的重大规则主要是“Markedsforingsloven”(1972年管制销售和协议条款的法令)。该法令的宗旨意味着经商者有义务按照“公平商业用法”的标准行事并应该避免可能危害消费者利益或对消费者来说不合理的行动和销售。维护消费者利益的还包括挪威的“Markedstrdet”(市场理事会)和维护消费者个人权利者协会,挪威消费者机构就是由这两个机构所组成。还设有关心消费者利益的各种申诉委员会。

D. 竞争法令的实质范围和管辖区域

竞争法令在有关实质范围和管辖区域上并无任何重大的修改。

1. 实质范围

竞争法令适用于任何性质的商业活动,而不论活动所涉的货物或服务的类型,且

不论这是否私营活动或由中央或地方政府机构开展的活动。

本法令不适用于为他人服务的工资或工作条件。

2. 管辖区域

本法令涵盖了在挪威境内具有影响的商业条件、协议和行动。然而,通过与外国或国际组织协议也可扩大法令的管辖区域。这类协议也可将该法令的范围局限在一个范围有限的领域内。

E. 实施和监督竞争法的规则

1. 提供材料和进行调查的义务

任何人均有义务向竞争管理局提供该局为按照竞争法的规定开展其工作所需的材料。为调查起见,可调阅一切类型的商业文件、会议记录、笔记以及技术援助材料。

可不论保密的义务而提供上述材料。在其它情况下,征税估值机构、税收机构和有义务监督政府对商业活动的管理机构负有保密义务。这类义务也不应该影响拥有文件的这类机构为供调查而提交这些文件。

2. 取 证

凡怀疑竞争法遭到违犯,则竞争管理局可要求进入企业亲自寻找证据。预审法庭和拥有即决裁判管辖权的法庭应该就这类取证作出裁决。

在作出裁决时,不让受裁决影响者有发言的权利,在实际取证前,又不得将裁决告诉受裁决影响者。

3. 限期罚金

为确保根据竞争法令所作出的各项裁决得到遵守,竞争管理局可以裁定:在情况得到纠正之前裁决所针对的企事业应向国家支付限期罚金。例如,在要求取消对

竞争的有害限制的命令未得到遵守时该管理局可征收限期罚金。

4. 放弃收益

对违反竞争法令的情况，竞争管理局可颁布令状，责令放弃因违反该法令而获得之收益。如果无法确定收益的多寡，则应大约确定其数额。竞争管理局发布命令的决定不被视为根据公共行政法而作出的一项单独的裁决。接受令状中的提议是扣押收益的基础。如果接受方拒绝了令状中的提议，则可将案件提交法院。

5. 刑事规定

对违反竞争法令的情况，竞争管理局可将案件报告给公诉机关。对违反该法令的情况可处以罚款或监禁的惩罚。放弃收益的要求可列为刑事案件的一部分。根据加重处罚的法律，对违反该法令的情况可处以至多六年的监禁。对违反法令提供帮助者也须受到惩罚。

F. 与外国的协议

在通过1992年11月27日的特别法令之后，欧洲经济区协定的竞争规则成了挪威竞争立法的一部分，并且将在欧洲经济区协定生效的同一天生效。

欧洲经济区协定规定设立欧洲自由贸易区法院和独立的欧洲自由贸易区监督管理局。与欧洲经济区协定1992年5月2日在波尔图签署的同一天签署了建立了这两个机构的一份协定，这份协定将与欧洲经济区协定在同一天生效。欧洲自由贸易区监督管理局的主要任务将是确保欧洲经济区国家尊重他们根据欧洲经济区协定所承担的义务，而且经济经营人遵守与公平竞争有关的欧洲经济区规则。

自1991年以来，挪威和其它欧洲自由贸易区的国家与中东欧的几个国家及其它国家缔结了协定。这些协定包含与企业有关的竞争规定。各方承诺铲除与协定不符的抑制竞争的现象，因为这些抑制现象阻碍了贸易的进行。对这种情况，挪威竞争管理局已被授权具体负责。这也适用于挪威与爱沙尼亚、拉脱维亚和立陶宛缔结的双边自由贸易协定。

三、葡萄牙政府对1993年10月29日关于其 “竞争法”第371/93号法令的评述²

A. 说明采用该立法的原因

欧洲一体化进程的步调加快及各国经济互相渗透的程度加深促成了经济活动重要领域的放宽限制、取消管制和私营化，新法律的目的是对这些情况在葡萄牙经济结构和实际运作上引起的重要变化采取对策。

B. 说明该立法的目标

葡萄牙保护和促进竞争的立法的目标是努力将开放经济的新情况纳入竞争政策的实际框架之中，这种开放经济目前国际化的程度正在不断加深、竞争活力越来越大，从而有助于加强供求上的自由和进入市场的机会、保持各经济代理人之间关系的平衡，促进经济的一般目标并维护消费者的利益。

C. 说明受到管制的各种惯例、行动或行为

(a) 管制的类型

竞争法规定了两种管制：

- 限制竞争的行为，即，协议、共同惯例和滥用支配地位或经济依赖关系，除非根据经济平衡的标准被视为合理，否则均须受禁止原则的支配；
- 企事业的集中须事先提交给管制机构审查。

(b) 本管制所涵盖的实际作法的范围

竞争法禁止，在目标或效果上会阻碍、限制或扭曲在全国整个或部分市场上的竞争的协议、共同惯例、联合决定、滥用支配地位和滥用经济依赖关系。

² 关于保护竞争的第422/83号法的前一个立法载于1993年6月23日贸发会议手册汇编，文件TD/B/RBP/49。

如果在具体货物或服务市场上，或在相当一部分这种市场上，企业的集中有可能以阻碍限制或扭曲竞争的方式建立或巩固支配地位，则必须禁止企事业的集中。

D. 说明该立法的适用范围

- (a) 竞争法适用于所有经济活动，包括在私营、公营和合作部门中开展的长期或临时活动。

就公共服务业而言，本法不适用于在特许合同的范围和规定的条件下获得国家优惠待遇的企事业。

- (b) 本法适用于对一国境内的竞争或可能在该国境内具有影响的竞争施加的限制。

E. 说明执行机制

葡萄牙基本上有如下四个负责竞争政策的机构：竞争和价格总署、竞争理事会、法院和商业部。

竞争和价格总署是一个基本负责组织和对国内反竞争惯例的事务展开调查的机构，并负责代表国家参加国际组织和机构在与竞争有关的事务上所开展的活动。

竞争理事会是一个独立的机构，其权限包括在有关限制性竞争惯例的做法上拥有决定权，该理事会由一名主席和四名或六名常设成员组成，主席由地方执法官或检察院的其它成员担任，常设成员由公认具有工作能力的人选中指定担任。

法院是负责受理对竞争理事会的裁决不服之上诉的实体。

商业部是负责有关业务活动之集中的决策实体，若决定遇到反对或必须附带若干条件和义务，通常由商业部和受到该项集中之影响的经济活动的有关部委联合作出。

F. 说明并行或补充性的立法

除了1993年10月28日第371/93号法令外，还有如下几个与实施竞争规则有关的文书，即：

- 10月27日 DL 433/82和10月17日 DL 356/89，规定有关协议、一致做

法、行会决定和滥用经济权力等方面的手续。

- 由11月15日 DL 422/91 批准的行政程序守则是管制合并程序的补充。
- 10月29日 Portaria 1097/93, 规定竞争理事会据以宣布企事业间的协议和一致做法合法与否的条件。

G. 说明行政和/或司法机构采取的重大决定

自1984年建立以来, 竞争理事会这个负责决定有关保护竞争问题的实体、对竞争和价格总署送交的有关竞争诉讼, 已作出了45项裁决。

根据371/93号法令, 允许就竞争理事会的裁决向法院提出上诉。在1984至1993年期间, 对竞争理事会的裁决提起上诉的有21起。

在有关实施合并规章方面, 竞争和价格总署向商业和旅游部通报了涉及合并的70起活动。竞争和价格总署是根据371/93号法令设立的一个咨询机构。

H. 书目

在有关保护竞争方面，可参考下列以葡萄牙文出版的书刊：

- Direto da Concorrenca(aspectos gerais), 1982, 240 pgs., from J. Simoes Patricio:
- Da livre Concorrenca a Defesa da Concorrenca, Historia e conceitos base da legislacao da defesa da concorrencia 1985, 195 pgs., from Maria do Rosario Rebordao Sobral e Joao Eduardo Pinto Ferreira.
- O Direito da Concorrência em Portugal, Legislação nacional da concorrência comentada e comparada com o direito comunitário e de vários países, 1986, 362 pgs., from Maria Belmira Martins, Maria José Bicho e Azeem Remtula Bangy.
- Política Comunitária da Concorrência. Um estímulo aos empresários portugueses, 1989, 235 pgs., from Teresa Ricou, Eduardo Lopes Rodrigues.
- O Acto Único Europeu e a Política de Concorrência, 1990, 589 pgs., from Eduardo Lopes Rodrigues.

Annex I

LITHUANIA

A. Law on Competition of 1 November 1992

Chapter 1

General provisions

Article 1. Objectives

1. This Law shall regulate the relations which arise from activities of economic entities, officials representing them, and bodies of State authority or government which restrict competition or compete unfairly in the commodity markets of the Republic of Lithuania, as shall also define the responsibility for these activities if they violate the interests of the consumers or the economy.

The Law shall apply to the regulation of the relations throughout the territory of the Republic of Lithuania which result from competition - restricting activities or unfair competition, which the exception of relations regulated by other laws.

Article 2. Basic Definitions

Definitions of concepts used in this Law:

'Economic entities' - legal and natural persons engaged in commercial-economic activity, regardless of its character, the form of property and the type of enterprise.

'Goods' - the result of activity, i. e. production and service meant for realization.

'Market' - the aggregate of certain goods involved in purchase-sales processes on the territory and parts of the Republic whose qualities, used and price are compared in such a way that producers and consumers can substitute one for the other in the process of manufacturing and consumption.

'Competition' - emulation during which economic entities, by acting independently in the market, restrict one another's abilities to attain a dominant position in the market, and promote the production and increase the effectiveness of goods necessary to consumers.

'Dominant position' - the position of an economic entity in the market which allows for the possibility to unilaterally and decisively influence that market. The economic entity cannot be considered to have a dominant position if its market share of certain goods is no more than 40 per cent.

'Market concentration' - the merger of two or more economic entities or the acquisition by one economic entity of the right to have either all or part of the total capital of another economic entity at its disposal, as well as the conclusion of contracts which have influence over the managing decisions made by one of the economic entities, due to which a dominant position in the market is attained and competition is restricted.

Chapter 2

Activities which Restrict Competition

Article 3. Prohibition of Abusing the Dominant Position

1. Activities of economic entities having a dominant position in the market which restrict or may restrict competition by infringing economic interests shall be prohibited.

2. Economic entities shall be prohibited from engaging in the following activities which restrict competition:

- 1) creating hindrances for competing economic entities to enter the market or to develop the activities of already existing ones;
- 2) abusing a dominant position by excluding the competing economic entities from the market;
- 3) restraining production, decreasing the amount volumes of sales and purchase of goods, or suspending trade with the intention to create a shortage in the market or to influence prices, and consequently harming the consumers;
- 4) anticipating discriminating economic conditions in contracts of an identical nature with different partners; and
- 5) establishing fixed selling prices to the third persons in contracts with suppliers or purchasers.

Article 4. Prohibition of Agreements (Coordinated Activities) between Economic Entities which Restrict or Impede Competition

Agreements or coordinated activities between the competing economic entities (or potential competitors) shall be prohibited if they restrict or impede competition. Considered as such shall be agreements and coordinated activities concerning:

- 1) prices (including those established by auctions or tenders), discounts, markups and other payments;
- 2) volume of production;
- 3) division of the market according to territorial principle, volume of sales and purchases, types of goods, groups of purchasers and sellers, or otherwise;

- 4) restriction of other economic entities from being ousted from or entering into the market (or part of it); and
- 5) refusal of conclude a contract with certain sellers or purchasers.

Article 5. Exceptions to Prohibited Activities

The activities enumerated in Articles 3 and 4 of this Law may be considered to be agreement with the Law if it is proved that they result in:

- 1) steady reduction of consumer prices; or
- 2) improvement of the quality of goods.

Article 6. Prohibition of Bodies of State Authority and Government from Restricting Competition

1. Bodies of state authority and government shall be prohibited from adopting standard acts or carrying out activities which restrict the independence of economic entities or the conclusion of economic contracts, which impede the foundation, reorganization or restructuring of existing economic entities, or which grant privileges to or discriminate separate economic entities, or which otherwise restrict competition.

2. Heads of bodies of state authority and government shall be prohibited from taking up commercial - economic activities, owning personal enterprises, or holding position in managing bodies of economic entities.

Chapter 3

Unfair Competition

Article 7. Prohibition of Activities of Unfair Competition

Economic entities shall be prohibited from carrying out the following activities of unfair competition:

- 1) the propagation of misleading, inaccurate and distorted information (including advertisement) which may cause another economic entity or its reputation to suffer;
- 2) the misleading of consumers through false information regarding the quality of goods, the characteristics of utilization, the place and manner of production, and the amount and price of sale;
- 3) the willful use of the name, product name, trade-mark, marking, or form of product packaging or appearance of another economic entity; and
- 4) the acquisition, use and publishing without consent of information concerning the industrial and commercial acti-

vities and scientific - technical investigations and results of an economic entity.

CHAPTER 4
Control of Activities which are Unfair
or which Restrict Competition

Article 8. The Institution of Price and Competition Control

The functions of supervision of observance of this Law as well as the Law on Prices within the Republic of Lithuania shall be executed by the Institution of Price and Competition, the director of which shall be appointed by the Government.

The Competition Council shall be formed to adopt decisions related to issues of prices and competition within the scope of this Law. The Competition Council shall consist of 7 members who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recommendations of consumer, scientific, business and industrial organizations, and the others shall be assigned from the Institution of Price and Competition. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote. The regulations of both the Competition Council and the Institution of Price and Competition shall be approved by the Government.

With the aim of protecting the economy and consumer rights, the Institution of Price and Competition shall observe the situation in the market and fluctuations of market prices, shall accumulate information concerning possibilities for meeting consumer needs, shall periodically provide recommendations to the Government on the formation of price policies, and shall perform other functions established in its regulations.

The Institution of Price and Competition shall have the right to obtain information from both economic entities and managing bodies as well as explanations - oral or written - which are necessary to carry out the functions established in this Law and in the regulations of the Institution.

Article 9. Powers of the Institution of Price and Competition

The Institution of Price and Competition, upon establishing that economic entities or managing bodies have violated this Law, shall compile material concerning the issue and present it to the Competition Council for the adoption of a

decision. On the basis of the Competition Council's decision, the Institution of Price and Competition may seek the termination of illegal practices through negotiations with the economic entity, if they have resulted minor negative changes (decrease in efficiency of production and distribution of goods, restriction of free trade) and provided that circumstances do not object to negotiation. Upon reaching an agreement, its results and terms for the termination of illegal practices shall be concluded in writing.

In other cases or if an agreement is not reached through negotiation, the Institution of Price and Competition has the right to:

- 1) obligate economic entities to terminate agreements and practices which violate the Law;
- 2) adopt a decision to lower the prices if they have increased as a consequence of practices prohibited in this Law;
- 3) obligate that illegal use of a company name, trade mark, product marking or inaccurate indication of a product's origin be terminated, and may detain goods due to those infringements; and
- 4) apply to either the Government of Lithuania or the court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

CHAPTER 5

Protection of Competition in the Process of Concentration of Market Structures

Article 10. Control of the Concentration of Market Structures

If by virtue of agreement or acquisition of a controlling interest the maximum concentration of market structures (concentration of capital), which is established by the Competition Council, is exceeded, the party or parties involved in the concentration must notify the Institution of Price and Competition before undertaking any steps which may alter permanent market structure and degree of its concentration.

The Institution of Price and Competition, upon receiving notification from the interested economic entities about a planned concentration of market structures, must adopt a decision concerning the granting of permission within one month.

Upon an agreement between the parties, the deadline for the adoption of the decision may be extended, but for no longer than 9 months.

If within the indicated periods of time the Institution of Price and Competition does not take a decision, the economic entities shall acquire the right to carry out the planned concentration of market structures.

Article 11. Permitted and Prohibited Concentrations of Market Structures

Upon the execution of a concentration of market structures which has not announced in advance and for which permission of the Institution of Price and Competition was not granted, economic sanctions prescribed by Article 12 of this Law shall be applied.

Permission to concentrate market structures which has not been approved by the Institution of Price and Competition may be granted by the written decision of the Government of the Republic of Lithuania. Such permission may be granted if the parties involved in the concentration provide substantiation proving that this action will result in the increase of economic efficiency of production or competitiveness of goods, which cannot be achieved in any ways other than by the suggested concentration of market structures.

CHAPTER 6

Responsibility for Violations of the Law

Article 12. Consequences of Violating the Law

Decisions of the bodies of State government regarding violation of the Law may be appealed to the court.

Economic entities, having violated this Law, must:

- 1) execute the institutions of the Institution of Price and Competition to discontinue the activities, restore the previous situation, terminate or alter the agreement, and fulfill other obligations;
- 2) recover the losses incurred by a partner; and
- 3) fulfill the sanctions imposed by the Competition Council as provided by this Law.

The Competition Council have the right to:

- 1) impose fines comprising up to 10 per cent of the total annual gross income on economic entities for infringement of Articles 3, 4, 7, 10 and 11 of this Law, nonobservance of the agreement concerning the termination of illegal practices, or intentional failure or untimely compliance with obligations and instructions;

- 2) impose fines amounting up to 3 per cent of the annual gross income on economic entities for submission of misleading information; and
- 3) impose fines equaling up to 3 months average earnings on officers of bodies of State government and economic entities for the intentional failure or untimely compliance with the directions issued by the Institution of Price and Competition as prescribed by this Law, or for submission of misleading information.

Article 13. Exaction of Fines

Fines shall be transferred to the State budget within one month of the date that the economic entity or officer receives the decision of the Institution of Price and Competition to impose a fine.

A fine shall be exacted from the income of an economic entity without suit.

Article 14. Appeal against Decisions of the Institution of Price and Competition

Economic entities, managing bodies and officers may, within one month of the date the decision of the Institution of Price and Competition is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions of the Institution of Price and Competition unless the court stipulates otherwise.

Decisions of the Institution of Price and Competition and their motives shall be publicly announced.

Article 15. Procedure of Recovering Losses

Losses incurred by economic entities or consumers due to violation of this Law must be compensated for in the procedure established by law.

Losses incurred by economic entities due to decisions made by bodies of State authority and government or the Institution of Price and Competition which violate the requirements of this Law shall be compensated with the funds of either the respective bodies of government or the State budget, and shall later be exacted from the violators.

Losses shall be exacted by suit.

Vytautas Landsbergis
President
Supreme Council
Republic of Lithuania
Vilnius
15 September 1992
No. 1-2878

Supreme Council of the Republic of Lithuania

RESOLUTION

on the Entry into Force of
the Law on Competition

The Supreme Council of the Republic of Lithuania resolves:

1. To establish that the Law on Competition shall enter into force on November 1, 1992.
2. To commission the Government of the Republic to prepare, prior to the enforcement of this Law, the executive acts required for its implementation and to approve the regulations of both the Competition Council and the Price and Competition Institution.
3. To commission the Ministry of Justice of the Republic of Lithuania to prepare a draft of amendments of the Code of Violations of Administrative Law which are connected with the enforcement of the Law on Competition.
4. To grant the Competition Council and the Price and Competition Institution the right to interpret the application of the Law on Competition.

Vytautas Landsbergis
President
Supreme Council
Republic of Lithuania
Vilnius,
15 September 1992
No. 1 - 2879

B. Decree No. 785 on the Price and Competition Office of
the Republic of Lithuania

Regulations of State Price and
Competition Office

I. General provisions

1. The State Price and Competition office shall be the executive body of the Republic of Lithuania in the fields of competition promotion and price policy (with the exception of direct state pricing control).

The State Price and Competition office shall develop and pursue the competition policy, exercise control over unfair and competition restrictive activities within the territory of the Republic of Lithuania.

2. The activities of the State Price and Competition office shall be based on the Constitution of the Republic of Lithuania (The Provisional Basic Law), Law on Competition, Law on Prices and other laws, decrees and directives of the Government of Lithuania as well as these regulations.

The State Price and Competition office within its scope shall organize the enforcement of the Law on Competition, Law on Prices and other standard acts, generalize the ways of their application, provide proposals concerning the improvement of these laws and submit them to the Government of the Republic of Lithuania.

3. The State Price and Competition office shall be a legal person shall have the seal with the Lithuanian State Emblem and its name as well as accounts with the banks of Lithuania.

4. The representatives from separate districts of the Republic of Lithuania shall be included into the State Price and Competition office.

II. Objectives and functions of the State Price and Competition Office

5. The principal objectives of the State Price and Competition office shall be as follows:

5.1. formulation of the state policy which promotes competition and involves anti-monopolistic measures, participation in formulating the price policy which is directly regulated by state;

5.2. carrying out of supervising functions regarding the observance of the Law on Competition and Law on Prices, with the exception of direct price regulation implemented by the state;

5.3. coordination of the interests of both the Lithuanian economy and consumers by putting stop to:

5.3.1. abuses of dominant position;

5.3.2. anti-competitive agreements (coordinated activities) between economic entities;

5.3.3. restriction of competition by bodies of state authority and government;

5.3.4. activities of unfair competition;

5.3.5. unpermissible market concentrations;

5.4. provision of methodological and informational assistance regarding price and competition issues;

5.5. investigation of market structure, level of concentration and fluctuations of market prices;

5.6. interpretation of the Law on Competition.

6. The State Price and Competition office by realizing the commissioned objectives shall :

- 6.1. present proposals to the Government concerning formulation of the competition and price policy;
- 6.2. control application and execution of the Law on Competition and Law on Prices as well as other standard acts regarding the issues on competition and prices (with the exception of direct state pricing control);
- 6.3. prepare the draft laws and other standard acts on issues regarding competition and prices, within its scope make the examination of draft laws and other standard acts;
- 6.4. carry out investigations and prepare material concerning determination of dominant enterprises, abuse of dominant position, prohibited agreements, unfair Competition or mergers (amalgamations), provide proposals regarding charge of fines and application of sanctions upon violation of the Law on Competition as well as adoption of standard acts and submit them to the Competition Council for making decisions;
- 6.5. supervise and analyse the Lithuanian market structure, level of concentration, economic juncture, market price fluctuations and possibilities of meeting consumer needs, collect and analyse information about economic juncture of foreign markets, level of world prices and their dynamics, furnish information to state government institutions and interested economic entities;
- 6.6. supervise economic-financial activities of dominant enterprises;
- 6.7. present proposals to the Government regarding restructuring (splitting) of monopolistic enterprises, which abuse dominant position;
- 6.8. within its scope provide methodological professional and informative assistance to legal and natural persons;
- 6.9. analyse written complaints of legal and natural persons on issues concerning competition and prices;
- 6.10. upon realization objectives and functions of the office organize and direct the work of its representatives in separate districts of the Republic of Lithuania;
- 6.11. upon investigation of problems related to competition and prices, maintain contacts with respective economic interstate organizations, foreign economic missions and international funds.

III. Rights and obligations of The State Price and Competition Office

7. The State Price and Competition office shall be entitled to:

- 7.1. from economic entities, government institutions and statistical organizations receive financial and other documents (or corresponding copies), information as well as oral or written explanations necessary for the realization of the objectives provided for in the regulations;
- 7.2. obligate dominant economic entities to notify in the established manner the State Price and Competition office about the prospective price change of goods and apply compulsory rules and order in establishing prices of goods;
- 7.3. within its scope issue standard acts;
- 7.4. publish information and carry on publishing-commercial activities regarding price and competition issues;
- 7.5. take part at the meetings of corresponding state government institutions, in which the issues in the field of competition and prices are discussed;
- 7.6. establish commissions and working groups comprising the representatives and specialists from ministries, other state institutions, local municipalities, scientific and training institutions as well as invite necessary experts and foreign specialists to analyse the issues regarding the work of the State Price and Competition office;
- 7.7. interpret the Law on Competition;
- 7.8. have the right to carry out market investigations and examinations according to the orders of economic entities and other natural and legal persons, establish tariffs for services;
- 7.9. organize the meetings of the Competition Council and inform about them the members of the Competition Council and other interested parties.

8. The State Price and Competition office shall be obliged to ensure security of economic entities and commercial secrets. Officials are responsible for that according to the order established by the laws of the Republic of Lithuania.

10. Organization of work of the State Price and Competition Office

9. The State Price and Competition office shall be run by Director, which shall be appointed or relieved of his post by the Prime Minister of the Republic of Lithuania.

The Director of the State Price and Competition office shall have deputy directors, which are appointed or relieved of their posts upon the proposal of the Prime Minister of the Republic of Lithuania.

10. The Director of the State Price and Competition office shall:

10.1. be personally responsible for realizing the commissioned objectives;

10.2. confirm the structure and staff of the office, fix the salaries not exceeding the wage fund settled by the Government of the Republic of Lithuania;

10.3. approve the regulations (bylaws) of the subdivisions of the office;

10.4. accept for a job and dismiss heads of the subdivisions and employees of the office;

10.5. impose disciplinary punishments or inducements for the employees of the office;

10.6. exercise other powers provided for by the laws.

11. The functions of the Director shall be performed by one of the deputy directors in case the Director is absent.

12. The State Price and Competition office, taking into account the existing laws of the Republic of Lithuania, decrees and directives of the Government of the Republic of Lithuania and upon execution of them shall issue decrees, instructions and other acts as well as organize and control their enforcement. If necessary, the State Price and Competition office in cooperation with other ministries, departments and state institutions shall issue common standard acts. All the standard acts of the State Price and Competition office adopted by the Competition Council shall be compulsory to the ministries, departments, state institutions, government bodies of municipalities and economic entities.

3.3. improvement of the list of goods markets and dominant enterprises;

3.4. upon adoption of decisions the Competition Council shall observe the following principles:

3.4.1. defence of the interests of the consumers and economy of Lithuania;

3.4.2. prohibition from abusing a dominant position;

3.4.3. prohibition of agreements (coordinated activities) which restrict or impede competition;

3.4.4. prohibition of bodies of state authority and Government from restricting competition;

3.4.5. prohibition from unfair competition activities;

3.4.6. protection of competition upon concentration of market structures.

III. Rights of the Competition Council

4. The Competition Council after having analysed the material provided by the State Price and Competition office shall be entitled to:

4.1. adopt the decisions on the violations of the Law on Competition, which are as follows:

4.1.1. abuse of a dominant position;

4.1.2. agreements (coordinated activities) between economic entities which restrict or impede competition;

4.1.3. restriction of competition by bodies of state authority and government;

4.1.4. unfair competition;

4.1.5. concentration of market structures;

4.2. after having determined the violations of the Law on Competition, which have been committed by the officials of the state government institutions and economic entities, apply the following sanctions:

4.2.1. impose fines comprising up to 10 per cent of the total annual gross income on economic subjects for infringements provided for in paragraphs 7.1.1, 7.1.2, 7.1.4 and 7.1.5, non observance of the agreement concerning the termination of illegal activities, intentional failure or untimely compliance with obligations and instructions;

4.2.2. impose fines amounting up to 3 per cent of the annual gross income on economic entities for submission of misleading information;

4.2.3. impose fines equalling up to 3 months average earnings on officers of bodies of state government and economic entities for the intentional failure or untimely compliance with the directions issued by the State Price and Competition office pursuant to the Law on Competition, or for submission of misleading information;

4.2.4. obligate economic entities to terminate agreements and practices which violate the Law on Competition;

4.2.5. obligate to lower the prices if they have increased as a consequence of practices prohibited in this Law;

4.2.6. obligate to terminate the illegal use of a company name, trade mark, product marking or inaccurate indication of a product's origin, or to detain goods due to those infringements;

4.2.7. apply to either the Government of Lithuania or the Court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

5. The Competition Council shall hold conferences, symposiums and seminars on issues concerning the supervision of the Law on Competition and competition policy, in which representatives from government institutions shall participate.

6. Within its powers, the Competition Council shall grant the right to the State Price and Competition office to analyse some issues concerning competition and adopt decisions.

IV. Organization of work of the Competition Council

7. The Competition Council shall consist of 7 members, who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recommendations of consumer, scientific, business and industrial organizations, one shall be assigned from the

Department of State Control, and the others, on the proposal of the office, from the State Price and Competition office.

8. The Competition Council shall be headed by the Chairman, if he is absent - by the deputy chairman. The deputy chairman shall be elected by the Competition Council by majority vote, if the meeting is attended by no less than 5 members.

9. The Chairman of the Competition Council shall be appointed by Prime Minister of the Republic of Lithuania.

10. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote of the members present at the meeting, if it is attended by no less than 5 members of the Council. The decisions shall be adopted by a nominal vote. Under equal number of votes, the decision shall be adopted by the chairman of the Competition Council.

11. Means for the remuneration of the work of the members of the Competition Council shall be included into the maintenance assignments of the State Price and Competition office.

12. The meetings of the State Price and Competition office shall be held, if necessary, on the initiative of the State Price and Competition office but not less than once a month.

13. All the interested parties shall have the right to attend the meetings of the Competition Council. In case of need the Competition Council may decide to hold a closed meeting.

14. The State Price and Competition office shall announce about the meeting the Competition Council and the issues to be discussed to the members of the Competition Council and interested parties not later than within 5 days.

15. The material of the Competition Council shall be drawn up by the protocol, which shall be signed by the Chairman of the Competition Council and the secretary of the meeting.

46. The Competition Council shall interpret the Law on Competition of the Republic of Lithuania and adopt decisions, which shall be presented as decrees. The interpretations and decrees of the Competition Council shall be obligatory to economic entities, governments institutions and officers.

47. Decisions of the State Price and Competition office and their motives shall be publicly announced.

48. Economic entities, managing bodies and officers may, within one month of the date the decision of the State Price and Competition office is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions of the State Price and Competition office, unless the court stipulates otherwise.

A. Act No. 65 of 11 June 1993 relating to Competition in Commercial Activity
(the Competition Act)

CHAPTER 1 INTRODUCTORY PROVISIONS

Section 1-1 The purpose of the Act

The purpose of the Act is to achieve efficient utilization of society's resources by providing the necessary conditions for effective competition.

Section 1-2 Definitions

- a) By "commercial activity" in this Act is meant any kind of economic activity, permanent or occasional, which is carried out against payment. By "undertaking" is meant any individual or enterprise that engages in commercial activities.
- b) By "group of companies" in this Act is meant an ownership structure whereby a company owns so many stocks or shares in another company that it represents a majority of the votes. The former company is regarded as the parent company and the latter as a subsidiary. A company is also regarded as belonging to a group of companies when a parent company along with a subsidiary, or when one or more subsidiaries together, own as many stocks or shares as mentioned in the first sentence.
- c) By "price" in this Act is meant any kind of payment, regardless of whether other terms such as remuneration, fee, emolument, freightage, rate, rent or the like are used.
- d) By "goods" in this Act is meant real estate and movables, including ships, aircraft, gas, electricity and other energy carriers.
- e) By "services" in this Act is meant all services, including rights, which are not goods.

Section 1-3 The substantive scope of the Act

The Act applies to any kind of commercial activity, regardless of the kind of goods or services the activity concerns, and irrespective of whether it is private or carried out by central or local government authorities.

The Act does not apply to wage or working conditions in the service of others.

Section 1-4 Relationship to decisions by the Storting and other Acts

Provisions issued pursuant to this Act must not conflict with decisions passed by the Storting. Where a matter that comes under this Act also comes under provisions concerning regulation and supervision in other Acts, the King may issue specific provisions for the mutual limitation of jurisdiction of the authorities involved.

Section 1-5 The territorial extent of the Act

The Act applies to terms of business, agreements, and actions which have effect, or are liable to have effect, in the Realm of Norway.

Insofar as they only have effect, or are liable to have effect, outside the Realm, terms of business, agreements, and actions are not covered by the Act unless the King so decides.

The extent of the Act may be broadened by agreement with a foreign State or an international organization. Such an agreement may also restrict the extent of the Act in a limited field.

The King shall decide whether and to what extent provisions issued in, or pursuant to, this Act shall apply to Svalbard.

Section 1-6 The duration of decisions pursuant to the Act

In general decisions pursuant to this Act shall have effect for a specified period. The effective period for each decision shall normally not exceed 5 years, and never be longer than ten years. Decisions may be renewed.

CHAPTER 2 THE ORGANIZATION AND DUTIES OF THE COMPETITION AUTHORITIES

Section 2-1 The organization of the competition authorities.....

The competition authorities are the King, the Ministry and the Norwegian Competition Authority (hereafter referred to as the Competition Authority).

The Competition Authority is responsible for day-to-day supervision in accordance with this Act. The King may issue specific provisions concerning the organization and activities of the Competition Authority, including determining that public or private bodies or individuals shall assist the Authority.

The day-to-day management of the Competition Authority shall be the responsibility of the Director General of the Authority.

Section 2-2 The duties of the competition authorities

The competition authorities shall supervise competition in the various markets. Among other things they shall:

- a) Check that the prohibitions and requirements of the Act are adhered to and grant exemptions where the purpose of the Act calls for this.
- b) Intervene where necessary against anti-competitive behaviour and acquisition of enterprises.
- c) Implement measures to increase the markets' transparency.
- d) Call attention to the restraining effects on competition of public measures, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.
- e) When required, assist other authorities in monitoring adherence to other rules where infringements may have harmful effects on market and competition conditions.

CHAPTER 3 PROHIBITION OF, AND INTERVENTION AGAINST, RESTRAINTS ON COMPETITION. EXCEPTIONS AND EXEMPTIONS

Section 3-1 Prohibition of collaboration and influence on prices, markups and discounts

Two or more undertakings must not, in connection with the sale of goods or services by agreement or concerted practices, or by any other conduct liable to influence competition, fix or seek to influence prices, markups or discounts except for normal cash discounts. By "normal cash discounts" is meant discounts in connection with cash payment or payment within 30 days. A rate of over 3 per cent shall in no case be regarded as a normal cash discount.

Likewise, one or more suppliers of goods must not fix or seek to influence prices, discounts or markups for the recipients' sale of goods or services.

The prohibitions in the first and second paragraphs also encompass guidelines with contents that are contrary to these paragraphs. The prohibitions encompass both binding and recommended agreements or arrangements.

The prohibitions in the second and third paragraphs shall not prevent the individual supplier of goods from providing recommended prices for the recipients' sale of goods or services. In all such communications the supplier must explicitly define such prices as recommended.

Undertakings must not influence suppliers with respect to the calculation of recommended prices.

Section 3-2 Prohibition of collaboration and influence on tenders

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by other conduct liable to influence competition, fix or seek to influence prices, calculations of volume or other terms connected with tenders, allocation of tenders, or direct or seek to induce any undertaking to abstain from submitting a tender.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

Section 3-3 Prohibition of collaboration on, or use of influence to achieve, market sharing

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by any other conduct liable to influence competition, fix or seek by using influence to achieve market sharing in the form of area division, customer division, quota distribution, specialization or limitation of quantity.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

The provisions of this Section shall not prevent an individual supplier from agreeing market sharing with, or determining market sharing for, his recipients.

Section 3-4 Prohibition of associated undertakings determining or encouraging restraints

Associations of undertakings must not themselves determine or encourage restraints mentioned in Sections 3-1 to 3-3 or restraints that conflict with decisions under Sections 3-8 to 3-10.

The prohibition in the first paragraph applies correspondingly to board members, employees' representatives and employees in such associations.

Section 3-5 Exceptions in connection with joint projects

The prohibitions in Sections 3-1, 3-2 and 3-4 shall not prevent two or more undertakings collaborating on individual projects and submitting a joint tender or offer for joint supply of goods or services.

This exception applies only where it is made clear in the offer what the collaboration involves and who the collaborating parties are.

Section 3-6 Exceptions for collaboration between owner and company and companies with common owners

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints between owner and company where the owner has more than 50 per cent of stocks, shares or corresponding equity stakes giving voting rights. This exception also applies to collaboration and restraints between companies in the same group of companies.

Section 3-7 Exceptions for patent and design licence agreements

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not apply to restraints on competition that are determined between licensor and licensee by an agreement stipulating the licensee's right to utilization of a registered patent or design.

Section 3-8 Exceptions for collaboration on sales of agricultural, forestry and fisheries products

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints in connection with the sale or supply of Norwegian agricultural, forestry or fisheries products from producers or producers' organizations in agriculture, forestry or fisheries.

Section 3-9 Exemptions from the prohibitions of the Act

The Competition Authority may, through individual decisions or regulations, grant exemption from the prohibitions in Sections 3-1 to 3-4 provided that:

- a) restraints on competition mean that competition in the market concerned will be increased,
- b) increased efficiency must be expected to more than compensate for the loss due to restriction of competition,
- c) restraints on competition have little significance for competition, or
- d) there are special grounds for doing so.

Conditions may be imposed for exemption.

Exemption may be revoked if the conditions for exemption are not fulfilled or the prerequisite for exemption is no longer present.

Section 3-10 Intervention against anti-competitive behaviour

The Competition Authority may intervene against terms of business, agreements and actions where the Authority finds that these have the purpose or effect of restricting, or are liable to restrict, competition contrary to the purpose of Section 1-1 of the Act.

The first paragraph encompasses for example terms of business, agreements and actions that can:

- a) maintain or strengthen a dominant position in a market with the help of anti-competitive methods, or
- b) restrict clients' choices, make production, distribution or sales more expensive, bar competitors, refuse dealing with or deny membership of associations of undertakings.

By refusal to deal is also meant that an undertaking is only willing to engage in trading activities on specific terms.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. The decision may also involve regulation of undertakings' prices.

Decisions intended for municipal or county-municipal bodies shall be made by the King.

Section 3-11 Intervention against acquisition of enterprises

The Competition Authority may intervene against acquisition of enterprises where the Authority finds that the acquisition in question will create, or strengthen, a significant restriction of competition contrary to the purpose of Section 1-1.

By acquisition is also meant mergers, acquisition of stocks or shares and partial acquisition of enterprises.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. Among other things the Competition Authority may:

- a) prohibit acquisition of the enterprise and issue such provisions as are necessary for achievement of the purpose of the prohibition,
- b) require disposal of stocks or shares acquired as a stage in the acquisition of the enterprise, or
- c) stipulate such conditions as are necessary to counteract the acquisition of the enterprise restricting competition contrary to the purpose of efficient utilization of resources; cf. Section 1-1.

Before intervention can be carried out under this Section, the Competition Authority must have attempted to arrive at an amicable solution with the undertaking or undertakings.

The Competition Authority may intervene against acquisition of enterprises within six months after such an agreement on acquisition has been concluded. Where special grounds so indicate, the Authority may intervene within one year of the same date.

Undertakings that wish to ascertain whether intervention is to be expected may notify the final agreement on acquisition to the Competition Authority. Should the Authority, within three months of receiving such notification, not advise that intervention may take place, it cannot decide to intervene under the terms of this Section. Should the Authority advise that intervention will take place, the time limits in the fifth paragraph will apply in the normal manner to the Authority's further procedure.

The time limits that are imposed in this Section are of no significance for procedure concerning complaints. The Competition Authority may issue specific provisions concerning notification arrangements in the sixth paragraph.

CHAPTER 4 PRICE-LABELLING AND INFORMATION TO THE PUBLIC

Section 4-1 Price-labelling etc.

Undertakings that sell goods retail to consumers shall, as far as practically possible, provide information on prices so that they can be easily seen by customers. The same applies to the sale of services to consumers.

Through individual decisions or regulations the Competition Authority may issue specific provisions for the implementation of the duty to provide price information under the first paragraph, and similarly it may make exceptions from this duty.

In order to facilitate customers' assessment of the prices and quality of goods and services, the Competition Authority may also require undertakings to implement measures in addition to those resulting from the requirements of the first paragraph. Decisions concerning information measures may for example involve a duty to carry out labelling, to hang up notices or to provide other information on prices, business terms, quality and other properties. The decision may also entail imposing requirements for sorting and provisions for measurement and weight and information on price per unit of measurement (unit prices) for goods that are offered for sale.

Section 4-2 Information to the public concerning restraints on competition

In order to carry out its duties in accordance with this Act, the competition authorities may, irrespective of the rules concerning confidentiality in Section 13 first paragraph item 2 of the Public Administration Act, publicize information on terms of business and collaboration that have the purpose or effect of restricting competition. The undertaking's legitimate interest in maintaining its business secrets must be taken into account. Information to the public under the provisions of the first sentence shall nevertheless not apply to information concerning technical devices or procedures.

CHAPTER 5 EFFECTS IN RELATION TO CIVIL LAW

Section 5-1 Invalidity

Agreements that conflict with prohibitions under this Act are invalid between the parties.

Such invalidity only applies to the extent that prohibitions in this Act are infringed, unless under Section 36 of the Contracts Act it would be unreasonable to make the rest of the agreement valid.

CHAPTER 6 THE DUTY TO PROVIDE INFORMATION AND SANCTIONS

Section 6-1 The duty to provide information and investigation

All are required to give the competition authorities the information demanded by these authorities in order to perform their tasks in accordance with the Act, including the investigation of any possible infringement of this Act or decisions pursuant to this Act, or the investigation of other price and competition conditions. It may be required that such information be given in written or oral form within a specified time limit both by individuals, undertakings and by groups of undertakings.

On the same conditions as those stated in the first paragraph, the competition authorities may, for the purpose of investigation, demand that all types of business documents, minutes of meetings and other written material be handed over to them.

The competition authorities shall be given access to computers or other technical aids in order to gain access to information that is available through the use of such aids.

Information required in accordance with the first paragraph may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

The duty to provide information and submit to investigation applies even if a decision to secure evidence as stated in Section 6-2 has been made.

The King may issue specific provisions concerning the duty to provide information and investigation.

Section 6-2 Securing of evidence

When there are reasonable grounds for assuming that this Act or decisions pursuant to this Act have been infringed, the Competition Authority may demand access to real property, fittings and other movables in order to look for evidence. The competition authorities may confiscate such evidence for closer investigation if necessary.

An application for permission to secure evidence must be submitted by the Competition Authority to the court of examination and summary jurisdiction. The case shall be brought before the court of examination and summary jurisdiction at the place where it is most practical to do so. The court shall reach a summary decision. The decision shall be reached without the person who is affected by the decision having the right to make a statement, and without his being informed of the decision before the securing of evidence is implemented. An appeal

against the decision shall have no postponing effect on its implementation. Sections 200, 201 first paragraph, Sections 117-120 cf. Sections 204, 207, 208, 209, 213 and Chapter 26 of the Criminal Procedure Act shall apply correspondingly.

The Competition Authority may require assistance by the police to implement the decision concerning securing of evidence.

Where there is no time to await the decision of the court, the Competition Authority may demand that the police close off those areas where the evidence may be located, until the court's decision is given.

The King may issue specific provisions for the securing of evidence and treatment of surplus information.

Section 6-3 Examination of documents

In relation to the Competition Authority no one has right of access to information, documents or other evidence in cases concerning infringement of this Act or decisions pursuant to this Act obtained in accordance with Sections 6-1 or 6-2. When the Competition Authority has issued a writ giving an option of relinquishment of gain under Section 6-5, the provisions of the Public Administration Act concerning the right of the parties to acquaint themselves with the documents in the case shall apply.

Section 6-4 Period penalty payment

In order to ensure that individual decisions pursuant to this Act are adhered to, the Competition Authority may determine that the undertaking against which the decision is directed shall pay a period penalty payment to the State until the situation has been rectified.

The penalty shall not take effect before the time limit for appeal has passed. If the decision is appealed against, no penalty shall take effect before the appeal is decided.

The decision to impose period penalty payments is a basis for attachment.

Section 6-5 Relinquishment of gain

Where a gain has been achieved by infringement of this Act or decisions pursuant to this Act, the undertaking which has made such a gain may be required wholly or partly to relinquish it. This shall also apply when the undertaking which makes the gain is different from the offender. Where it is impossible to establish the size of the gain, the amount shall be determined approximately.

Where the undertaking is a company that is part of a group of companies, the company's parent company and the parent company of the group of companies to which the company belongs shall bear a secondary liability for the amount.

The Competition Authority may issue a writ giving an option of relinquishment of gain in accordance with this Section. The decision to issue such a writ shall not be regarded as an individual decision pursuant to the Public Administration Act. The writ shall have a time limit for acceptance of up to two months. Acceptance of the option is a basis for attachment. If the option is not accepted the Competition Authority may, within three months of the expiry of the time limit for acceptance, bring action against the undertaking in the judicial district where the undertaking may be sued. The case shall be dealt with in accordance with the Act relating to Judicial Procedure in Civil Cases. Mediation in the conciliation board is not necessary.

The right to claim relinquishment of gain is statute-barred after ten years. Further, the provisions of the Act No. 18 of 18 May 1979 relating to the Limitation of Claims shall be applied to the extent that they are appropriate.

Where the infringement is dealt with by the prosecuting authority or the court pursuant to the Act No. 25 of 22 May 1981 relating to Legal Procedure in Criminal Cases, the claim for relinquishment of gain may be included as a claim for confiscation under Section 34 of the Penal Code.

Section 6-6 Penal provisions

Any person shall be liable to fines or to imprisonment for up to three years who intentionally or negligently:

- a) infringes Sections 3-1, 3-2, 3-3, 3-4 or 4-1 first paragraph,
- b) infringes decisions pursuant to Sections 3-10, 3-11 or 4-1 second paragraph,
- c) fails to comply with orders pursuant to Sections 6-1 or 6-2,
- d) gives incorrect or incomplete information to the competition authorities, or
- e) contributes to infringement as stated in litrae a to d.

Under aggravating circumstances imprisonment for up to six years may be imposed. When deciding whether aggravating circumstances exist, emphasis shall be placed among other things on the danger of substantial damage or inconvenience, the gain expected from the infringement, the extent and duration of the infringement, the degree of guilt demonstrated, whether an attempt was made to conceal the infringement by using falsified accounts or similar documents, and whether the offender has previously been convicted of any infringement of legislation concerning economic regulation.

Section 6-7 Res judicata

Where an option has been accepted or judgement has been passed that is legally binding under Section 6-5, no action may be brought under Section 6-6 for the same infringement. Similarly no action may be brought under Section 6-5 where a legally binding decision exists under Section 6-6 or Section 34 of the Penal Code.

CHAPTER 7 ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENT OF OTHER ACTS

Section 7-1 Entry into force

The Act shall enter into force from the date decided by the King.

Section 7-2 Transitional provisions

Administrative regulations, rules and directives pursuant to Acts that have been repealed under Section 7-3 No. 2 and No. 3 shall still apply to the extent that they are appropriate, until the King repeals or amends them pursuant to this Act, pursuant to the Act relating to Price Policy or by special provision.

Individual decisions pursuant to the Act No. 4 of 26 June 1953 relating to Control of Prices, Profits and Restraints on Competition and the Act No. 3 of 9 July 1948 relating to Maintenance of Price and Rationing Regulations etc. shall be maintained in the period stipulated in the decisions until they are amended or repealed pursuant to this Act or by special provision of the King.

In addition the King may issue such transitional provisions as are necessary.

Section 7-3 Repeal and amendment of other Acts

When this Act enters into force, the following Acts shall be repealed or amended:

NORWAY

**B. Act No. 66 of 11 June 1993 relating to Price Policy
(The Price Policy Act)**

Section 1 Authorization of price regulation

When it is necessary in order to promote socially justifiable price developments, the King may make:

- 1) decisions on maximum prices, minimum prices, price freezes, price calculations, discounts, maximum markups, delivery and payment terms and other provisions on prices, profit margins and terms of business, or
- 2) decisions on the obligation to notify changes in the quantities in item 1.

The King shall submit reports to the Storting concerning particularly important regulations made in accordance with the first paragraph.

Section 2 Unreasonable prices and terms of business

It is prohibited to take, demand or agree on prices that are unreasonable. Nor shall terms of business that have an unreasonable effect on the other party, or that obviously conflict with the general interest, be demanded, agreed on or maintained.

By "price" in this Act is meant any kind of payment, regardless of whether other terms such as remuneration, fee, emolument, freightage, rate, rent or the like are used.

Section 3 Supervisory authorities and the duty to provide information

The Norwegian Competition Authority or whoever the King decides shall check that Section 2 and decisions pursuant to Section 1 are adhered to. The King may issue specific provisions concerning how the supervision shall be carried out.

All are required to give the supervisory authorities the information and hand over the documents for investigation demanded by these authorities in order to perform their tasks in accordance with the Act, including the investigation of any possible infringement of this Act or decisions pursuant to this Act, or the investigation of other price conditions etc. It may be required that such information be given in written or oral form within a specified time limit both by individuals, undertakings and by groups of undertakings. If necessary the police may be required to assist in ensuring submission of the material that the supervisory authorities have need of.

The person under supervision is obliged to allow the supervisory authorities to inspect enterprises, other real properties and movables.

The supervisory authorities shall be given access to computers or other technical aids in order to gain access to information that is available through the use of such aids.

Information required in accordance with the second paragraph may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

Section 4 Penal provisions

Any person shall be liable to fines or to imprisonment for up to three years who intentionally or negligently:

- a) infringes Section 2 of this Act or decisions pursuant to Section 1 of this Act,
- b) fails to comply with orders to provide information and/or to collaborate in investigation pursuant to Section 3,
- c) gives incorrect or incomplete information to the supervisory authorities, or
- d) contributes to infringement as stated in litrae a to c.

A person who has purchased an object or right or received a service on illegal terms may only be punished for complicity if he or she has incited or misled someone to commit the infringement.

Under aggravating circumstances imprisonment for up to six years may be imposed. When deciding whether aggravating circumstances exist, emphasis shall be placed among other things on the danger of substantial damage or inconvenience, the gain expected from the infringement, the extent and duration of the infringement, the degree of guilt demonstrated, whether an attempt was made to conceal the infringement by using falsified accounts or similar documents, and whether the offender has previously been convicted of any infringement of legislation concerning economic regulation.

In a provision issued pursuant to Section 1 it may be prescribed an infringement of the provision shall not be punishable.

Section 5 Confiscation

Where someone has taken a higher price than is legally permissible under the provisions made in, or pursuant to, this Act, an amount may be confiscated which is assumed to correspond to the additional price obtained. This applies regardless of whether the situation may involve criminal liability.

Confiscation of the additional price shall be effected either from the person who has taken the illegal price, or from the party he or she has acted on behalf of or to the advantage of, or from both.

Deduction shall be made for the amount that the person liable has paid back to the injured party, or that the person liable is obliged by the judgement or the writ giving an option of confiscation to pay back.

Where a public tax has been paid on the amount confiscated, a deduction shall be made corresponding to the tax paid.

Where the person liable is a company that is part of a group of companies, the company's parent company and the parent company of the group of companies to which the company belongs shall bear a secondary liability for the amount confiscated. By "group of companies" here is meant enterprises that are a part of an ownership structure as stated in Section 1-2 of the Companies Act and Section 1-2 first paragraph litra h; cf. the second paragraph, of the Act relating to General Partnerships, etc.

The right to bring an action claiming confiscation under this Section shall lapse when ten years have expired since the additional price was obtained.

Section 6 Repayment of illegal additional price

A person who has paid a higher price than is lawful may demand that the excess price be repaid if he or she cannot under the circumstances be said to have a significant degree of co-liability for the infringement.

Any demand that the agreed price shall be reduced to a lawful price, or any demand for repayment of the excess price, shall not give the second party the right to annul the agreement where:

- 1) it is a matter of commercial sales of objects or services to consumers, or
- 2) annulment would seem unreasonable taking into account the degree of guilt demonstrated by both parties and circumstances in general.

Section 7 Entry into force, etc.

The Act shall enter into force from the date decided by the King.

The King shall decide whether and to what extent provisions issued in, or pursuant to, this Act shall apply to Svalbard.

Section 8 Amendment of other Acts

When this Act enters into force, the following amendments shall be made to other Acts:

Decree-Law No. 371/93 of the 29 October 1993 on
protection and promotion of competition

After 9 years in force, Decree-Law No.422/83 of 3 December has in general terms achieved the aims laid down when it was published. But it now requires amendment to accommodate it better to the new national and international context and to enable its aims to be implemented more effectively, thereby fulfilling the requirements of paragraph f) of Article 81 of the Constitution.

Profound changes have in fact taken place in the structure and functioning of the Portuguese economy through the liberalisation, deregulation and privatisation of important areas of economic activity, through advances in the process of European integration and through the appearance of new players who have brought about important changes in the business sector and have altered the relations between market forces.

The growing interaction between economies and the integration of national markets have made rationalisation between different national competition policies essential and an indispensable condition for the promotion of competitiveness in national economies.

This Act aims to integrate within a legal framework for competition policy the specific development of an open economy that is involved in the developing process of internationalisation and the drive for competition and which will contribute to the unhindered formation of supply and demand and market access, to balance in the relations between economic undertakings, to the encouragement of the general aims of economic and social development, to an increase in the competitiveness of business undertakings, and to safeguards for the interests of consumers.

The Act includes, therefore, innovative aspects which are marked by a global and systematic character which guarantees their essential coherence.

Thus, in addition to dealing with "restrictions on competition, this Act is concerned with concentrations of undertakings and addresses the matter of State aid, filling in the framework set by the main instruments of Community policy for the protection of competition.

With respect to restrictive practices on competition, it is important to point out the introduction of the concept of economic dependence. Abuse in taking advantage of economic dependence was considered a restriction on competition only if it was practised by undertakings which had a dominant position in the market for goods or services. This prevented the imposition of sanctions if the abuse was practised by undertakings which had great economic power but which did not hold a dominant position in their market. It is stressed, however, that the object in creating this concept is to punish abuse, not conduct that is aimed at more effective competition, such as results from adopting better business conditions.

The rules for prior notification of the establishment of concentrations of undertakings, until now regulated by Decree-Law No.428/88 of 19 November, have undergone profound changes. Following closely (EEC) Regulation No.4064/89, of the Council, of 21 December 1989, published subsequent to that Decree-Law, the procedures have been modified, the scope of application has been widened and difficulties of interpretation arising from the previous Act have been resolved. At the same time, in line with the more recent legislation of other Community countries, the underlying policy has been adjusted. Now the aim is to cover only those concentrations which have a major impact on the market, by making it possible to check whether, as a result of such concentrations, a dominant position would be created or strengthened which might hinder effective competition in the market. In this way, the thresholds to the application of the Act have been considerably extended.

Thus:

In accordance with the legislative authority conferred upon it by Law No.9/93, of 12 March, and under the provisions of paragraphs a) and b) of no.1 of Article 201 of the Constitution, the Government decrees as follows:

CHAPTER I

RULES APPLYING TO COMPETITION

SECTION I

GENERAL PROVISIONS

Article 1

Scope of the Act

1. This Act applies to all economic activities, whether lasting or occasional, undertaken in the private, public and cooperative sectors.
2. Subject to the international obligations of the Portuguese State, this Act applies to restrictions on competition which occur in the national territory or which may have an effect within it.
3. Restrictions on competition that derive from specific laws are exempt from the application of this Act.

SECTION II

PROHIBITED PRACTICES

Article 2

Agreements, concerted practices and association decisions

1. Agreements and concerted practices between undertakings and decisions by associations of undertakings, in whatever form, which have the object or effect of preventing, distorting or restricting competition in the whole or part of the national market are prohibited, in particular those which have the effect of:
 - a) directly or indirectly fixing selling or purchase prices or interfering with the setting of prices by the free market, leading to prices that are artificially high or low;
 - b) directly or indirectly fixing other trading conditions at the same or different stages of the economic process;

- c) limiting or controlling production, distribution, technical development or investment;
 - d) sharing markets or sources of supply;
 - e) applying, whether systematically or occasionally, dissimilar conditions, in respect of prices otherwise, in relation to equivalent transactions;
 - f) directly or indirectly refusing to purchase or sell goods or to pay for services;
 - g) making the conclusion of contracts 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 contracts.
2. Agreements or decisions prohibited under this Article are void unless they are considered justified under the provisions of article 5.

Article 3

Abuse of a dominant position

1. Abuse by one or more undertakings of a dominant position within the national market, or a substantial part of it, with the object or effect of preventing, distorting or restricting competition, is prohibited.
2. A dominant market position in regard to specific goods or services arises where:
 - a) an undertaking operates in a market in which it is not exposed to significant competition or it has the preponderant market share in relation to its competitors;
 - b) two or more undertakings operate in concert in a market in which they are not exposed to significant competition or they have a preponderant market share in relation to third parties.
3. While taking into account, in each particular case other-factors relating to the undertakings and the market, it shall be presumed that:

- a) an undertaking is within paragraph a) of the previous number if it has a share of at least 30 per cent of the national market in specific goods or services;
 - b) undertakings are within paragraph b) of the previous number if, together, they hold in the national market in specific goods or services:
 - i) In the case of 3 or fewer undertakings, a combined share of at least 50%;
 - ii) In the case of 5 or fewer undertakings, a combined share of at least 65%.
4. An abuse is considered present if any of the behaviour set out in no.1 of article 2 are met.

Article 4

Abuse of economic dependence

Also prohibited is the abuse, by one or more undertakings, of a position of economic dependence upon a supplier or buyer as the result of the absence of an equivalent alternative, namely when their actions take any of the forms set out in no.1 of article 2.

Article 5

Economic balance

1. Restrictive practices on competition which contribute to improvements in the production or distribution of goods or services or promote technical or economic development may be considered justified if:
- a) they reserve for users of those goods or services a fair share of the resulting benefits; and
 - b) they do not impose on the undertakings in question any restrictions which are not essential for the attainment of these objectives; and
 - c) they do not provide the undertakings in question with the opportunity to eliminate competition in a substantial part of the market in the goods and services in question.

2. Practices specified in article 2 may be the subject of prior evaluation by the Council for Competition according to procedures to be established by decree by the Minister responsible for Trade.

Article 6

Undertakings

For the purposes of this Section, a combination of undertakings, although distinct in legal terms, is to be considered a single undertaking if it maintains interdependent or hierarchical links between the undertakings by means of rights or powers described in no.2 of article 9.

SECTION III

Concentrations of undertakings

Article 7

Prior notification

1. Prior notification is required where action is taken to establish a concentration of undertakings which fulfils one of the following conditions:
 - a) the creation or strengthening, as a result of the concentration, of a share higher than 30% of the national market in specific goods or services, or in a substantial part of it;
 - b) a turnover in Portugal of the undertakings involved in the concentration of more than thirty thousand million escudos in the preceding financial year, after deduction of tax directly related to the turnover.
2. The provisions of this Section do not apply to credit institutions, finance or insurance companies.
3. Prior notification shall be given before the legal transactions required for the establishment of the concentration are concluded and before the announcement of any public offer to acquire.

4. Until tacit or express authorisation is given for the concentration, legal transactions to establish it have no validity.

Article 8

Market share and turnover

1. In calculating market share and turnover for the purposes of article 7, the turnover of the following is to be taken into account:
 - a) the undertakings involved in the concentration;
 - b) the undertakings in which they hold, directly or indirectly:
 - a majority share of the capital,
 - more than half the votes,
 - the power to appoint more than half the members of the governing or supervisory boards,
 - the power to direct the business of the undertaking;
 - c) the undertakings which hold undertakings that participate in rights or powers set out in paragraph b);
 - d) the undertakings in which an undertaking referred to in paragraph c) holds rights or powers set out in paragraph b);
 - e) the undertakings in respect of which undertakings referred to in paragraphs a) to d) together hold rights or powers set out in paragraph b).
2. Despite the provisions of the previous number, if the concentration is made up by the acquisition of parts of an undertaking or parts of a combination of undertakings, only that turnover which relates to the undertaking or undertakings, or their parts, that are the subject of the transaction shall be taken into account with regard to the seller or sellers.
3. The turnover referred to in paragraph b) of no.1 of the previous article comprises the value of products sold and services provided to undertakings and consumers in Portuguese territory, but it does not include transactions carried out between the undertakings mentioned in no.1.

Article 9

Concentrations of undertakings

1. A concentration of undertakings is to be treated as occurring:
 - a) when two or more previously independent undertakings merge;
 - b) when one or more persons who already control at least one undertaking, or when one or more undertakings, take over direct or indirect control of a combination or parts of one or several other undertakings;
 - c) when two or more undertakings create a common undertaking, if that undertaking is intended to be an autonomous economic entity of a continuing nature and does not have the object or effect of coordinating competition behaviour between the founding undertakings or between those undertakings and the common undertaking.
2. For the purposes of the previous number, control is to be treated as arising from any act, whatever form it takes, which offers the possibility of exerting, whether separately or in concert with others, a decisive influence, in the given legal and factual circumstances, on the activities of an undertaking, namely:
 - a) acquisition of all or any part of the capitalstock;
 - b) acquisition of rights of property, use or enjoyment in the whole or parts of the assets of an undertaking;
 - c) acquisition of rights, or conclusion of contracts, which confer the power in respect of the composition or in the decision-making of the governing body of an undertaking.
3. The provisions with respect to concentrations do not apply to:
 - a) acquisition of shares within the framework of a special procedure for reconstruction of undertakings;
 - b) acquisition of shares for the purposes of guaranteeing or satisfying credits.

Article 10

Prohibition of concentrations

1. Unless authorised under the provisions of the following number, agreements to set up a concentration of undertakings that is subject to prior notification are prohibited if, in the market in specific goods or services, or a substantial part of it, they create or strengthen a dominant position in ways that are likely to prevent, distort or restrict competition.
2. Agreements to set up concentrations of undertakings of the kind referred to in the previous number may be authorised to the extent that:
 - a) they fall within the provisions of article 5;
 - b) the international competitiveness of the undertakings in the concentration is significantly increased.

SECTION IV

STATE AID

Article 11

State aid

1. Aid to undertakings that is provided by the State or any other public body must not restrict or have a significant effect upon competition in the whole or part of the market.
2. At the request of an interested party, the Minister responsible for Trade may examine aid as described in the previous number with a view to proposing to the relevant Minister measures aimed at maintaining or re-establishing competition.
3. For the purposes of this article, the following are not considered to be aid:
 - a) compensation, in whatever form, provided by the State in payment for the provision of a public service;

- b) benefits provided under the terms of incentive programmes or other specific schemes approved by the Government or the Assembly of the Republic.

CHAPTER II

ORGANS FOR THE PROTECTION OF COMPETITION

Article 12

Directorate-General for Competition and Prices

1. The Directorate-General for Competition and Prices has the following functions:
 - a) to identify practices which may breach the current law, to institute and conduct the appropriate legal processes and to ensure that decisions taken are complied with;
 - b) to undertake, with respect to concentrations subject to prior notification, the appropriate processes under the provisions of this Act;
 - c) at the request of the Competition Council, to carry out the studies necessary for the formulation of an opinion under paragraph c) of no. 1 of article 13;
 - d) to undertake sectorial studies, in the matter of competition, which appear to be necessary;
 - e) to propose, to the responsible organ, measures which are regarded as appropriate for the proper functioning of competition;
 - f) to impose fines in cases where that power is expressly conferred upon it by this Act.
2. The Directorate-General for Competition and Prices also has the following functions:
 - a) to perform the functions conferred upon the authorities of the Member-States by the regulations made under Article 87 of the Treaty creating the European Economic Community, namely by Regulation (EEC) No.4064/89, of the Council, of 21 December 1989, without prejudice to the authority of other bodies;

- b) to participate in activities promoted by bodies and international institutions in the matter of competition;
 - c) to institute the appropriate processes for the purposes of article 11.
3. Without prejudice to the provisions of Sections I and II of Chapter III, the Directorate-General for Competition and Prices, in performing the functions conferred by no. 1 and paragraph a) of the previous number, may request any undertakings or associations of undertakings, as well as bodies with which they have links, to provide commercial, financial or other necessary information and documents, within time limits which it considers reasonable and convenient.
4. The Directorate-General for Competition and Prices may also request any central, regional or local administration to provide any information which it considers necessary for the performance of its functions.

Article 13

Functions of the Council for Competition

1. The Council for Competition has the following functions:
- a) to decide on the appropriate processes to be instituted with respect to restrictive competition practices prohibited by this Act, and to others referred to it by the Directorate-General for Competition and Prices when acting under paragraph a) of no. 2 of the previous article;
 - b) to formulate opinions, at the request of the Minister responsible for Trade, in proceedings with respect to concentrations subject to prior notification;
 - c) to give its advice on questions relating to competition at the request of the Minister responsible for Trade;
 - d) to provide guidance to the Minister responsible for Trade in matters within the scope of this Act;

- e) to participate in activities^v initiated by international bodies and institutions which are within its functions;
 - f) to impose fines in cases where it has the legal authority so to do.
2. For the purpose of formulating its opinions under paragraph c) of the previous number, the Council for Competition may request the Directorate-General for Competition and Prices to undertake appropriate studies.
3. The Council for Competition shall present to the Minister responsible for Trade an annual report of its activities, to which is annexed all decisions reached by it; the report is to be published in the Official Journal.

Article 14

Composition of the Council for Competition

1. The Council for Competition shall comprise a president and 4 or 6 voting members, who shall be appointed, by dispatch, by the Prime Minister, acting on the recommendation of the Ministers responsible for Justice and for Trade.
2. The president shall be a magistrate or a judicial officer from the Public Legal Service, who shall be appointed for a renewable period of 3 years, with the authorisation of the Superior Council for the Judiciary or for the Public Legal Service, as the case may be.
3. In the selection of the voting members, due regard shall be had to ability and suitability to perform the functions of the post.
4. The president of the Council for Competition may, when he considers it necessary, invite other persons with special knowledge of matters to be discussed, or representatives of the Public Service or other bodies with relevant interest in those matters, to participate in meetings of the Council without the right to vote.

5. Without prejudice to the provisions of the previous number, the president may summon a representative of the Institute of Consumers to participate in meetings of the Council at which matters of special relevance for consumers are to be discussed.

Article 15

Remuneration and expense allowances

1. The members of the Council shall receive, in addition to any other remuneration, a monthly allowance, at a level to be set, by joint dispatch, by the Ministers responsible for Finance and for Trade, as provided by current legislation.
2. The members of the Council and others who participate in its meetings under the provisions of nos.4 and 5 of the previous article, shall be entitled to an allowance for travel and towards expenses, as provided by the law.

Article 16

Operating costs

The operating costs of the Council for Competition shall be borne from funds appropriated for this purpose in the budget of the Secretariat-General of the Ministry responsible for Trade.

Article 17

Support

- . The Secretariat-General of the Ministry responsible for Trade shall provide the Council with all the administrative support it requires to enable it fully to perform its functions.

2. The Minister responsible for Trade, on the recommendation of the president of the Council for Competition, shall designate the officials from the Secretariat-General, or from any other service in the Ministry, who are to have particular duties in connection with the Council; one of the officials, of senior rank and preferably legally qualified, shall perform the functions of the secretary to the Council for Competition.

Article 18

Internal regulations

The Council for Competition has power to make, and amend, regulations to govern its internal proceedings; the regulations, after approval by the Minister responsible for Trade, are to be published in the Official Journal.

Article 19

Secrecy

1. In performing its functions the Directorate-General for Competition and Prices shall maintain the utmost secrecy and shall comply with the rules on confidentiality by which it is bound.
2. The members of the Council for Competition and the invited persons referred to in no.4 of article 14 are subject to the rules on confidentiality applicable to civil servants, with respect to facts about which they are informed in the course of performing their functions.

Article 20

Disqualifications

The members of the Council for Competition are subject to the same disqualifications as apply in respect of judges.

CHAPTER III

PROCEDURES

SECTION I

PROCEDURES IN RESPECT OF AGREEMENTS, CONCERTED PRACTICES, DECISIONS BY ASSOCIATIONS AND ABUSES OF ECONOMIC POWER

Article 21

Applicable rules

1. The process with respect to breaches of the provisions of articles 2, 3 and 4 shall be conducted in accordance with the provisions of this Section and, subject to those, of Decree-Law No.433/82 of 27 October.
2. The provisions of this Section apply also, but with necessary modifications, in relation to the performance of the functions specified in paragraph a) of no. 2 of article 12 and in the final part of paragraph a) of no.1 of article 13.

Article 22

Notice of breaches

1. When the Directorate-General for Competition and Prices becomes aware, by any means, of practices which may be prohibited by articles 2, 3 and 4, it shall take steps to identify those practices and, once it has credible evidence of their existence, it shall institute and conduct appropriate proceedings.
2. All central, regional and local administrative services and all public institutions are under a duty to inform the Directorate-General of facts in their possession which may constitute evidence of restrictive competition practices.

Article 23

Investigatory functions

1. Subject to the restrictions set out in this Section, the Directorate-General for Competition and Prices, when performing its lawful functions, enjoys the same rights and is subject to the same duties as the criminal police service and, in particular, may:
 - a) question the legal representatives of undertakings or of associations of undertakings involved, and request them to provide documents and other information that it considers convenient or necessary to elucidate the facts;
 - b) question the legal representatives of other undertakings or associations of undertakings and any other persons whose testimony it considers pertinent, and request them to provide documents and other information;
 - c) search for, examine and seize copies or extracts of written matter and other documentation, on the premises of undertakings or associations of undertakings involved, in places which are private or not freely accessible to the public, when that procedure is considered necessary in order to obtain evidence;
 - d) request, through the appropriate ministerial offices, any other public administration services, including the criminal police, to provide such collaboration as it shows to be necessary for the full performance of its functions.
2. The procedures set out in paragraph c) of the previous number are dependent on the issue of a warrant authorising their execution issued by a judicial authority upon a prior request from the Directorate-General for Competition and Prices showing just cause; a decision on that request shall be handed down within 48 hours.
3. The officials who implement the procedures set out in paragraphs a) to c) of no.1 shall carry with them:
 - a) in the cases in paragraphs a) and b), credentials issued by the Director-General of Competition and Prices, in which the purpose of the procedure shall be stated;

- b) in the case in paragraph c), credentials specified in the previous paragraph and the warrant mentioned in no.2.
4. Without prejudice to the provisions of no.4 of article 37, the officials mentioned in the previous number may request the assistance of the police authorities, should that become necessary.

Article 24

Suspension of prohibited practices

1. At any moment in the proceedings, and as soon as the investigation indicates that the practice which is the subject of the procedure is seriously damaging to economic and social development or to the interests of trading parties or of consumers, the Council for Competition may, on the proposal of the body conducting the procedure, showing reasoned grounds, order immediate preventive measures for the suspension or modification of the practice in question.
2. The measures authorised by this article shall last no longer than 90 days, subject to extension, on one occasion only, for the same period.
3. The Council for Competition shall request an opinion from the Bank of Portugal, and, if it considers it necessary, from the Commission of the Stock Exchange, under article 88 of the General Regime of Credit Institutions and Financial Undertakings, approved by Decree-Law No.298/92 of 31 December; the opinion shall be issued within 7 days.
4. Where the practices of insurance companies are in question, the Council for Competition shall request an opinion from the Portuguese Institute of Insurance on the activities of the insurer which is the subject of the proceedings; the opinion shall be issued within 7 days.

Article 25

Hearings

1. During the proceedings, the Directorate-General for Competition and Prices shall conduct oral or written hearings in order that the accused undertakings or associations of undertakings may state their position with respect to the matter on which a decision is to be taken and to the evidence presented and may request supplementary investigations which they consider appropriate.
2. In the hearing under the previous number, the Directorate-General for Competition and Prices shall safeguard the legitimate interests of the undertakings by not disclosing business secrets.
3. The Directorate-General for Competition and Prices may refuse a supplementary investigation if it is clear that the evidence requested is irrelevant or the request is aimed at delaying the proceedings.
4. After the hearing under no.1, the Directorate-General for Competition and Prices may, of its own initiative, undertake a supplementary investigation; any evidence obtained shall be subject to the right of reply.

Article 26

Conclusion of proceedings

1. Once the proceedings are concluded, the Directorate-General for Competition and Prices shall draw up its final report and transmit the matter to the Council for Competition for decision.
2. The Council for Competition may, when it considers it necessary, request that the Directorate-General for Competition and Prices conduct supplementary proceedings, or may undertake them itself.
3. If the accused undertakings are credit institutions or finance companies, or their associates, the Council for Competition shall request an opinion from the Bank of Portugal and, if it considers it necessary, from the Stock Exchange Commission, under article 88 of the General Regime for Credit Institutions and Financial Undertakings; an opinion shall be issued within 30 days.

4. In the case of insurance or pension fund management companies, the opinion referred to "in the previous number shall be requested from the Portuguese Insurance Institute, which shall provide it within 30 days.

Article 27

Decisions of the Council for Competition

1. The Council for Competition, in its decision, may:
 - a) order the case to be closed;
 - b) declare the existence of a restrictive practice in competition and, in that event, order the offender to take measures required to bring that practice, or its effects, to an end within a specified period of time;
 - c) impose the fines set out in no.2 of article 37.
2. The Council for Competition shall order the offender to publish the decision in the Official Journal and in a newspaper that has a national or regional or local circulation, depending on the reach of the market in which the practice, which gave rise to the contravention, was identified and on its seriousness or effects.
3. The Council for Competition shall send a copy of all decisions taken under the provisions of no.1. to the Minister responsible for Trade and to the Directorate-General for Competition and Prices.

Article 28

Appeals

1. An appeal against a decision of the Council for Competition shall be made to the Lisbon District Court.
2. An appeal under the previous number has no suspending effects for the irregular conduct, except where it concerns the imposition of a fine or a publication order under no. 2 of the previous article; in these cases the measures may be suspended.

SECTION II

PROCEDURES WITH RESPECT TO THE CONTROL OF CONCENTRATIONS OF UNDERTAKINGS

Article 29

Applicable rules

The procedure with respect to the control of concentrations is set out in this Section as supplemented by the Code of Administrative Procedure.

Article 30

Notifications

1. The prior notification of actions to establish concentrations required by no.1 of article 7 shall be given to the Directorate-General for Competition and Prices.
2. Notification shall be given:
 - a) In cases of a merger or establishment of common control, by the group of participating undertakings;
 - b) In other cases, by the undertaking or by the persons intending to acquire control of the combination or of parts of one or more undertakings.
3. The following information must be provided in a notification:
 - a) the identity of the individuals or corporations participating in the actions to establish the concentration;
 - b) the nature and legal form of the concentration;
 - c) the types of goods and services to be provided;
 - d) a list of the undertakings which have interdependent or hierarchical links with the participants resulting from the rights or powers set out in paragraph b) of no.1 of article 8;

- e) the market share that will result from the concentration, and details of how that share was calculated;
- f) the turnover in Portugal of the participating undertakings and of those referred to in no.1 of article 8, by reference to the preceding financial year;
- g) the annual reports and accounts of the participating undertakings relating to the three preceding financial years;
- h) an indication of the main competitors;
- i) an indication of the main customers and suppliers;
- j) such other information which the parties to the notifications consider relevant in the particular case to determining whether the conditions set out in the paragraphs of no.2 of article 10 are fulfilled.

Article 31

Procedures

1. The Directorate-General for Competition and Prices, after conducting the appropriate proceedings, shall pass the process to the Minister responsible for Trade within 40 days after the date of receiving the notification.
2. If, during the course of the proceedings, the information set out in the notification is found to be incomplete in terms of the provisions of no.3 of the previous article, or if the provision of additional information is thought to be advantageous, the Directorate-General for Competition and Prices shall communicate that fact to the parties to the notification, and shall set them a reasonable time limit by which they must complete, correct or provide the information in question.
3. Without prejudice to the provisions of paragraph d) of no.2 of article 37, the same procedure shall be followed if false information is included in the notification.

4. A communication under no.2 suspends the time limit set in no. 1 with effect from the day following the dispatch of the notification to the day when the Directorate-General for Competition and Prices receives the requested information.
5. During its proceedings, the Directorate-General for Competition and Prices may request any other undertakings or association of undertakings to provide all information it considers appropriate within time limits that it considers reasonable.
6. The Directorate-General for Competition and Prices shall hold a written hearing with respect to the parties to the notification up to 10 days before the end of the time limit set by no.1.
7. Supplementary investigations of evidence may be requested, during the written hearing, by the parties to the notification, which, if granted, shall result in the suspension of the time limit set in no.1.
8. The suspension referred to in the previous number shall begin on the day following the receipt by the Directorate-General for Competition and Prices of the request for supplementary investigations and end on the day they are concluded.
9. The provisions of the previous numbers apply, with necessary modifications, but without affecting the provisions of paragraph c) of no.3 of article 37, to actions to establish concentrations of which the Directorate-General for Competition and Prices becomes aware and of which it has not received prior notification; in that case, the time limit set by no.1 shall be 90 days, beginning on the date of the formal initiation of proceedings.

Article 32

Communications or tacit authorisation

1. If the concentration in question is considered likely to have a negative effect on competition under the criteria set out in no.1 of article 10, the Minister responsible for Trade shall pass the process to the Council for Competition for its opinion, within 50 days after the date of receipt by the Directorate-General for Competition and Prices of the notification mentioned in no.1 of article 7, and shall, on the same date, communicate that fact to the parties to the notification.

2. If no communication is sent within the time limit prescribed by the final part of the previous number, this shall be regarded as a decision not to oppose the establishment of the concentration.
3. In calculating the time limit set by no.1, days during which time limits for the conduct of proceedings were suspended under the provisions of nos.4 and 8 of the previous article shall not be counted.

Article 33

Opinions of the Council for Competition

Within 30 days after the date of the receipt of the process by the Council for Competition, it shall return it to the Minister responsible for Trade, with its opinion, in which it shall:

- a) assess whether the concentration is likely to have a negative effect on competition under the criteria in no.1 of article 10;
- b) consider whether, in the particular case, the condition set out in no.2 of article 10 are met.

Article 34

Decisions

1. Within 15 days after the date of the receipt of the opinion of the Council for Competition, the Minister responsible for Trade may decide:
 - a) not to oppose the concentration;
 - b) not to oppose the concentration, subject to the imposition of conditions and obligations appropriate for the maintenance of effective competition;

- c) to prohibit the concentration and, if it is already established, to order appropriate measures to create effective competition, namely, the separation of the undertakings or of the combined assets or the ending of the control.
2. Decisions under paragraphs b) and c) of the previous number shall be presented in the form of a joint dispatch from the Minister responsible for Trade and the Minister responsible for the economic activities affected by the concentration.
3. Legal transactions relating to a concentration are void to the extent to which they give effect to activities condemned by the joint dispatch which prohibited the concentration or imposed conditions on its establishment or ordered appropriate measures to create effective competition.

Article 35

Appeals

Appeals against decisions under paragraphs b) and c) of no. 1 of the previous article shall be heard by the Supreme Administrative Court.

Article 36

Special procedures

1. Without affecting the application of appropriate sanctions, if it is found that a decision not to oppose a concentration was based on false information in respect of matters essential to the decision, the Directorate-General for Competition and Prices shall, on its initiative, institute proceedings with a view to the application of measures referred to in paragraph c) of no.1 of article 34.
2. The provisions of articles 31 to 34 apply, with necessary modifications, in relation to the proceedings instituted under the previous number.

CHAPTER IV

SANCTIONS

Article 37

Fines

1. Without prejudice to any penal responsibility that may arise, breaches of the provisions of this statute are to be regarded as contraventions punishable with a fine in accordance with the following numbers.
2. Conduct restricting competition as described in articles 2, 3, and 4 is to be regarded as a contravention punishable with a fine of 100,000 escudos to 200,000 escudos.
3. The following contraventions are punishable with a fine of 100,000 escudos to 100,000,000 escudos:
 - a) failure to comply with an order of the Council for Competition under no.1 of article 24;
 - b) failure to comply with decisions made under paragraphs b) and c) of no.1 of article 34;
 - c) failure to provide prior notification of action to establish a concentration that is subject to prior notification under the provisions of no.1 of article 7;
 - d) providing false information in a notification given under no.1 of article 7;
 - e) providing false information in reply to a request under no.2 of article 31, or not providing information.
4. The following contraventions are punishable with a fine of 100,000 escudos to 10,000,000 escudos are:
 - a) obstructing an investigation under no.1 of article 23;
 - b) providing false declarations or information in reply to a request under paragraph b) of no.1 of article 23 or of no.4 of article 31.

5. The following contraventions are punishable with a fine of 50,000 escudos to 5,000,000 escudos:
 - a) providing false declarations or information in reply to a request under no.3 of article 12, or refusal to provide such declarations or information;
 - b) failure to comply with a publication order by the Council for Competition under no.2 of article 27.
6. Failure of the offender to comply with an order under paragraph b) of no.1 of article 27 shall lead to the institution of fresh proceedings with a view to fines being imposed under no.2 of this article.
7. A fine under paragraph b) of no.5 shall always be greater than the cost of the publication, which shall be carried out by the Secretary-General of the Ministry responsible for Trade.
8. Negligent conduct shall be punished.
9. When the offender is an individual, the sums specified in nos. 2 and 5 shall be reduced by half.

Article 38

Functions in respect of the imposition of fines

The Directorate-General for Competition and Prices has the function of imposing fines, except in the case of fines under no.2, paragraph a) of no.3, and paragraph b) of no.5, of the previous article, imposition of which is the function of the Council for Competition.

Article 39

Revenue from fines

Of the revenue from fines imposed in respect of breaches of this Act, 60% shall revert to the State, 30% to the Directorate-General for Competition and Prices and 10% to the Secretary-General of the Ministry responsible for Trade.

CHAPTER V
FINAL PROVISIONS

Article 40

Repeals

1. Decree-Law No.422/83, of 3 December, and supplementary legislation, Decree-Law No.428/88, of 19 November, and the Legal Dispatch No.59/87, of 9 July, are repealed.
2. Provisions which confer functions in respect of the protection of competition upon other bodies not referred to in articles 12 and 13 are repealed.
3. The provisions of Decree-Law No.422/83, of 3 December, apply to contraventions that occurred prior to the date on which this Act comes into force, but without affecting the application thereto of provisions of this Act which may be more favourable.

Article 41

Final and transitional provisions

1. The provisions of this Act do not apply to concentrations of undertakings that have been notified under the terms of Decree-Law No.428/88, of 19 November, in relation to which a decision is pending on the date on which this Act comes into force.
2. In the case of public services, this Act does not apply to undertakings legally awarded concessions by the State, within the scope and terms of the relevant concession contract.
3. The president and the voting members of the Council for Competition, as well as the officials and other personnel concerned in its functioning, continue in their posts under the terms of their respective appointments.

Article 42

Commencement

This Act comes into force on 1 January 1994.

Seen and approved by the Council of Ministers meeting of
15 July 1993.

The PRIME MINISTER,

The MINISTER FOR FINANCES,

The MINISTER FOR JUSTICE,

The MINISTER FOR TRADE AND TOURISM, .

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