



# UNCTAD RESEARCH PARTNERSHIP PLATFORM

## COMPETITION LAW AND THE STATE

**Volume 2:** Appendix of sample statutory excerpts



**UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT**

UNCTAD Research Partnership Platform Publication Series

**COMPETITION LAW AND THE STATE**

**Competition laws' prohibitions of anti-competitive State acts  
and measures**

**Volume 2: Appendix of sample statutory excerpts**

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## **Note**

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## **Foreword on the Research Partnership Platform**

Considering the important role of research and policy analysis in the development of appropriate policies and legislation responding to the challenges faced in the area of competition and consumer protection, UNCTAD created the **Research Partnership Platform (RPP)** in 2010. The UNCTAD RPP is an initiative that aims at contributing to the development of best practices in the formulation and effective enforcement of competition and consumer protection laws and policies so as to promote development.

The RPP brings together research institutions, universities, competition authorities, business and civil society, and provides a platform where they can undertake joint research and other activities with UNCTAD, exchange ideas on the issues and challenges in the area of competition and consumer protection faced particularly by developing countries and economies in transition. Currently, the Platform hosts over sixty institutions consisting of research institutes, universities, non-governmental organizations, corporate affiliates and competition agencies.

The role of UNCTAD is to facilitate and provide guidance on the research and analysis, as well as other activities, to be undertaken by members of RPP. UNCTAD benefits from the research findings in responding to the challenges faced by developing countries through its technical assistance and capacity-building activities.

This publication is the fourth in the UNCTAD RPP Publication Series.

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## I. Introduction

The role of the State in the market has a significant impact upon the way competition functions within a jurisdiction. This UNCTAD RPP Project set out to study and map the extent to which competition laws apply to anti-competitive acts and measures by States. The background to the study and its history are set out below. Thereafter we provide an appendix of sample excerpts from competition statutes that prohibit or control anti-competitive State acts.

The study is elaborated in the article, Eleanor M. Fox and Deborah Healey (2014): *When the State Harms Competition—The Role for Competition Law*, 79(3) Antitrust Law Journal, p. 769.

### The State in the Market

The role that the State plays, both formally and informally, within a jurisdiction is dictated by factors that are political, cultural, and historical, and may relate to the stage of a nation's economic development. In a market-friendly environment with a strong commitment to competition law and policy the State can contribute to enhancing markets. State intervention can also have the opposite impact. There are a number of ways that the State may act to impede or hinder market competition, some of which can be addressed by competition law and some of which must be addressed, if at all, by broader competition policy.

In jurisdictions with deficient governance and corrupt leaders, the scope of competition law is limited by ineffective law and enforcement. Where most of the significant actors in a jurisdiction are State bodies, competition law is a very small part of the picture. The State itself may be the problem directly or as the facilitator of cartels. In many developing countries with traditions of statism and cronyism, corruption and discrimination may accompany weak institutions, a lack of funding, high barriers to entry and weak capital markets. The blockage of markets by the State or in complicity with private business is common.

Even in market-friendly environments, State acts may be a matter of concern. They are likely to be more permanent and harder to overcome than private restraints. Attacking private restraints may in itself lead to pressure by business on government to implement public restraints, thus rounding the circle.

The most obvious example of State market impact is seen in anti-competitive conduct by State-owned businesses, which are a historical legacy even in some of the most developed jurisdictions and a substantial part of economic life in developing countries. States or State entities might conduct business in competition with the private sector. If these State businesses are not covered by competition laws or sector specific competition provisions, they may harm competition and consumers with impunity.

A further category of State impact on the market is distortive regulation. States need the ability to regulate in the public interest, but they often make laws and regulations without considering their impact on competition. These laws or regulations may be by way of sectoral regulation, authorizing or approving particular conduct (and sometimes conferring on the authorized private actor a "State action defense"). In some cases they may be adopted with specific anti-competitive purposes. The State and its entities can also be co-conspirators in distortive tendering or bid rigging.

Even in jurisdictions in which competition laws apply squarely to the State and its businesses, the relevant enforcement agencies may not have the will, independence, resources or

capacity to enforce the laws against them. Thus, there may be law on the books without proper implementation.

Each of the outlined categories demands a legal or policy response to ensure that privilege is constrained and markets work efficiently and fairly. Appropriate responses vary according to the political economy of the particular jurisdiction and its stage of development.

### **The RPP Project**

The Competition and Consumer Policies Branch of the United Nations Conference on Trade and Development (UNCTAD) established the Research Partnership Platform (RPP) in 2010. The RPP was devised to bring together researchers from academia, research institutions, competition authorities, business and civil society to exchange ideas and undertake joint research projects with UNCTAD on the issues of competition law and enforcement, and consumer protection.

In 2011 the authors, along with Michal Gal of University of Haifa Faculty of Law, Kusha Haraksingh of the University of the West Indies, and Mor Bakhom of the Max Planck Institute, formed a research group to study the extent to which competition laws reach anti-competitive acts and measures by States. Ulla Schwager and Ebru Gökçe participated on behalf of UNCTAD. The team drafted a questionnaire, which was distributed by the UNCTAD Competition and Consumer Policies Branch to competition authorities and their members. The competition agencies of 35 jurisdictions, or in some cases a researcher, answered the questionnaire. Most questionnaires were ultimately completed or reviewed by a competition agency.

The results span six continents. Seven participants are members of the European Union. Twelve are developed countries, three are transitional countries and 19 are developing countries. Classified by income, one country is low income, 16 are middle income and 17 are high income.

The data show a surprisingly wide breadth of competition laws, including coverage of SOEs in general, coverage of entities (often SOEs) to which the State has granted special and exclusive privileges, and in some cases coverage of corrupt procurement practices, which are often biased in favour of SOEs.

Our study reveals the wide extent to which SOEs are covered by competition laws and confirms the shift across the world to a more copious pro-competition policy including growing appreciation of the market harm caused by unjustified State restraints.

The authors thank all of the respondents to the questionnaire and others who assisted with answers and translation. Also, we thank our collaborators at UNCTAD, Ulla Schwager and Ebru Gökçe, for their assistance with conducting the information gathering. We also thank Graham Mott of UNCTAD for his assistance in compiling this volume. We list below the jurisdictions covered by the questionnaire and the many individuals in the various countries who answered the questionnaire, reviewed answers, or assisted in answering.

Thereafter, we present an appendix of sample excerpts from competition statutes that prohibit or control anti-competitive State acts. The summary of the data culled from the questionnaire answers, is provided in Volume 1 of this study.

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### **Jurisdictions that responded to the questionnaire**

Australia, Barbados, Brazil, China, European Union, France, Greece, Guyana, Hong Kong (China), Hungary, India, Italy, Jamaica, Japan, Kazakhstan, Kenya, Republic of Korea, Lithuania, Malaysia, Mauritius, Mexico, Pakistan, Peru, Poland, Russian Federation, Serbia, Seychelles, Singapore, Spain, Sweden, Switzerland, Trinidad & Tobago, Tunisia, Turkey, United States

### **Individuals who responded to the questionnaire, reviewed answers, or otherwise assigned**

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## II. Appendix of Sample Statutory Excerpts

### Samples of competition laws that prohibit anti-competitive State acts and measures

This appendix\* collects excerpts from antitrust statutes, most of which are referenced in the questionnaire answers summarized in the other publication of this study. The excerpts provide samples of statutory language that covers various State restraints. The excerpts may be useful to jurisdictions that are adopting or revising their own competition laws.

#### 2.1. Coverage, including public or State-owned enterprises (SOEs)

In many if not most jurisdictions, the competition law is applicable to all persons and entities, public or private; although exemptions may follow later in the law. See, for an explicit example of coverage, the Brazilian Law.<sup>1</sup>

<b>Brazil: Law N° 12.529 of November 30, 2011</b>	<b>Lei N° 12.529, De 30 De Novembro de 2011</b>
<b>Article 31</b>	<b>Article 31</b>
This law applies to individuals or legal entities of public or private law, as well as to any association of entities or individuals, whether de facto or de jure, even temporarily, incorporated or unincorporated, even if engaged in business under the legal monopoly system.	Esta Lei aplica-se às pessoas físicas ou jurídicas de direito público ou privado, bem como a quaisquer associações de entidades ou pessoas, constituídas de fato ou de direito, ainda que temporariamente, com ou sem personalidade jurídica, mesmo que exerçam atividade sob regime de monopólio legal.
<i>Available at:</i> <a href="http://www.oabsp.org.br/comissoes2010/regulacao-economica/legislacao/LAW%20No%2012529%202011%20-English%20version%20from%2018%2005%202012.pdf/at_download/file">http://www.oabsp.org.br/comissoes2010/regulacao-economica/legislacao/LAW%20No%2012529%202011%20-English%20version%20from%2018%2005%202012.pdf/at_download/file</a>	<i>Available at:</i> <a href="http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12529.htm">http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12529.htm</a>

\* The editors thank Noga Blickstein for her excellent assistance in compiling this document.

<sup>1</sup> See Fox & Healey (2014), p. 776

Similarly, the competition law of Peru provides:<sup>2</sup>

<p><b>Peru: Legislative Decree approving the Repression of Anti-competitive Conducts Law, Legislative Decree N° 1034, 2008</b></p> <p><b>Article 2. Scope of Subjective Application.</b></p> <p>2.1. This Law is applicable to natural or legal persons, business associations, autonomous properties or other companies whether public or private, State or not, profitable or non-profitable, that in the market supply or demand good or services or whose affiliates, associates or members perform such activities. It is also applicable to those who perform the administration, management or representation of the above-mentioned entities, provided that these have participated during the planning, performing or execution of the administrative offense.....</p>	<p><b>Decreto Legislativo que aprueba la Ley de Represión de Conductas Anticompetitivas, Decreto Lesgislativo N° 1034</b></p> <p><b>Artículo 2. Ámbito de aplicación subjetivo.</b></p> <p>2.1. La presente Ley se aplica a las personas naturales o jurídicas, sociedades irregulares, patrimonios autónomos u otras entidades de derecho público o privado, estatales o no, con o sin fines de lucro, que en el mercado oferten o demanden bienes o servicios o cuyos asociados, afiliados, agremiados o integrantes realicen dicha actividad. Se aplica también a quienes ejerzan la dirección, gestión o representación de los sujetos de derecho antes mencionados, en la medida que hayan tenido participación en el planeamiento, realización o ejecución de la infracción administrativa. ...</p>
<p><i>Available at</i></p> <p><a href="http://www.apeccp.org.tw/doc/Peru/Competition/Legislative%20Decree%201034.pdf">www.apeccp.org.tw/doc/Peru/Competition/Legislative %20Decree%201034.pdf</a></p>	<p><i>Available at</i></p> <p><a href="http://www.indecopi.gob.pe/repositorioaps/0/2/par/leyesclc/dl1034.pdf">http://www.indecopi.gob.pe/repositorioaps/0/2/par/leyesclc/dl1034.pdf</a></p>

<sup>2</sup> Ibid.

In Lithuania the act covers "economic entities." It defines "economic entities" as:

<p><b>Lithuania: Republic of Lithuania Law on Competition, 23 March 1999 No. VIII-1099 (as last amended on 22 March 2012 No. XI-1937)</b></p> <p><b>Article 3. Definitions ...</b></p> <p>17. Economic entity shall mean an enterprise, a combination of enterprises (associations, amalgamations, consortiums, etc.), an institution or an organization, or other legal or natural persons which perform or may perform economic activities in the Republic of Lithuania or whose actions affect or whose intentions, if realised, could affect economic activity in the Republic of Lithuania. Entities of public administration of the Republic of Lithuania shall be considered to be economic entities if they engage in economic activities.</p>	<p><b>LIETUVOS RESPUBLIKOS KONKURENCIJOS ĮSTATYMAS 1999 m. kovo 23 d. Nr. VIII-1099</b></p> <p><b>Vilnius</b></p> <p><b>3 straipsnis. Pagrindinės šio įstatymo sąvokos ...</b></p> <p>17. Ūkio subjektas – įmonės, jų junginiai (asociacijos, susivienijimai, konsorciumai ir pan.), įstaigos ar organizacijos arba kiti juridiniai ar fiziniai asmenys, kurie vykdo ar gali vykdyti ūkinę veiklą Lietuvos Respublikoje arba kurių veiksmai daro įtaką ar ketinimai, jeigu būtų įgyvendinti, galėtų daryti įtaką ūkinei veiklai Lietuvos Respublikoje. Lietuvos Respublikos viešojo administravimo subjektai laikomi ūkio subjektais, jeigu jie vykdo ūkinę veiklą.</p>
<p><i>Available at</i> <a href="http://kt.gov.lt/en/index.php?show=antitrust&amp;antitrust_doc=law_competition">http://kt.gov.lt/en/index.php?show=antitrust&amp;antitrust_doc=law_competition</a></p>	<p><i>Available at</i> <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=421825">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=421825</a></p>

In India, the competition law covers all persons and enterprises. A subsequent provision confers a power to exempt an enterprise that performs a sovereign function, but only in respect of the sovereign function.<sup>3</sup> Below is the power-of-exemption clause.

**India: The Competition Act, 2002**

**No. 12 of 2003**

*Power to exempt*

54. The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

(a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;

(b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;

(c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government: Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

*Available at*

[http://www.cci.gov.in/images/media/competition\\_act/act2002.pdf?phpMyAdmin=QuqXb-8V2yTtoq617iR6-k2VA8d](http://www.cci.gov.in/images/media/competition_act/act2002.pdf?phpMyAdmin=QuqXb-8V2yTtoq617iR6-k2VA8d)

Case law makes clear that even a Ministry can be sued under the Indian competition law if it performs commercial functions such as running a railroad, e.g., *Union of India v. Competition Comm'n of India*, W.P.(C) No. 993/2011, 27 (Feb. 23, 2012), *available at* [indiankanoon.org/doc/99613527](http://indiankanoon.org/doc/99613527).<sup>4</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, p. 776–777.

Antitrust laws may give certain protections from antitrust to firms in strategic sectors – which firms are often or usually SOEs – but the law may still require firms not to impair the interests of consumers. See, for example, the Chinese Anti-Monopoly Law:<sup>5</sup>

<p><b>China: Anti-Monopoly Law of the People's Republic of China, 2008</b></p> <p><b>Article 7</b></p> <p>With respect to the industries that are under the control of the State-owned economic sector and have a bearing on the lifeline of the national economy or national security and the industries that exercise monopoly over the production and sale of certain commodities according to law, the State shall protect the lawful business operations of undertakings in these industries, and shall, in accordance with law, supervise and regulate their business operations and the prices of the commodities and services provided by them, in order to protect the consumers' interests and facilitate technological advance.</p> <p>The undertakings mentioned in the preceding paragraph shall do business according to law, be honest, faithful and strictly self-disciplined, and subject themselves to public supervision, and they shall not harm the consumers' interests by taking advantage of their position of control or their monopolistic production and sale of certain commodities.</p>	<p><b>中华人民共和国反垄断法</b> (2007年8月30日第十届全国人民代表大会常务委员会第二十九次会议通过)</p> <p><b>第七条</b></p> <p>国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。</p> <p>前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。</p>
<p><i>Available at</i> <a href="http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045909.shtml">http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045909.shtml</a></p>	

Also see public undertakings, *infra*, and especially the law of the European Union, Treaty on the Functioning of the European Union (*TFEU*) Article 106(1).

<sup>5</sup> *Ibid.*, p. 778.

## 2.2. Public undertakings and enterprises granted special or exclusive rights or privileges

With respect to such undertakings, the Member States of the European Union (EU) may not adopt any measure contrary to the competition provisions of the Treaty.<sup>6</sup>

**European Union: Treaty on the Functioning of the European Union (EEC treaty of 1957, as amended and renamed by Treaty of Lisbon, effective as of December 1, 2009)**

### **Article 106 (1)**

In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109 [the non-discrimination and the competition rules].

Moreover, undertakings entrusted with particular State tasks are subject to the competition rules of the European Treaty insofar as this application will not obstruct their performance:

### **Article 106 (2)**

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. ....

Also, EU Member States commit not to undermine Treaty law and to facilitate its tasks:<sup>7</sup>

**European Union: Treaty on European Union (1992, as amended by Treaty of Lisbon, effective December 1, 2009)**

**Article 4.3** ... Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

See also the law of India and China under part 1.

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<sup>6</sup> Ibid., p. 780–781.

<sup>7</sup> Ibid., p. 781.

### 2.3. Public procurement

The Russian Federation's competition law prohibits anti-competitive practices and processes regarding requests for and granting of tenders.<sup>8</sup> Thus:

<p><b>Russian Federation: Federal Law on Protection of Competition, № 135-FZ of 26 July, 2006 (As amended in 2011)</b></p> <p><b>Article 17. Antimonopoly Requirements for Tenders, Requests for Price Quotations for the Goods</b></p> <p>1. The actions that lead can lead to prevention, restriction or elimination of competition in the course of tender, requests for price quotations for the goods (further on referred to as a request for quotations) are prohibited, including:</p> <ol style="list-style-type: none"><li>1) coordination of activities of the participants of tenders, quotation requests by the tenders' organizers or customers;</li><li>2) creation of preferential conditions for participation in the tender, a request for quotations to one or several Participants, including by means of access to information, unless is determined otherwise by the Federal Law;</li><li>3) violation of the order of procedure of estimation of a winner or winners of the tender, request for quotations;</li><li>4) participation of the organisers of a tender, a request for quotations and (or) of members of staff of the tender organisers or customers in the tender, the request for quotations.</li></ol> <p>2. Alongside with the established by Part 1 of this Article prohibitions concerning tender, request for quotations procedures, if the tender's organizers or the tender's</p>	<p><b>РОССИЙСКАЯ ФЕДЕРАЦИЯ ФЕДЕРАЛЬНЫЙ ЗАКОН О ЗАЩИТЕ КОНКУРЕНЦИИ</b></p> <p><b>Статья 17. Антимонопольные требования к торгам</b></p> <p>1. При проведении торгов запрещаются действия, которые приводят или могут привести к недопущению, ограничению или устранению конкуренции, в том числе:</p> <ol style="list-style-type: none"><li>1) координация организаторами торгов или заказчиками деятельности его участников;</li><li>2) создание участнику торгов или нескольким участникам торгов преимущественных условий участия в торгах, в том числе путем доступа к информации, если иное не установлено федеральным законом;</li><li>3) нарушение порядка определения победителя или победителей торгов;</li><li>4) участие организаторов торгов или заказчиков и (или) работников организаторов торгов или работников заказчиков в торгах.</li></ol> <p>2. Наряду с установленными частью 1 настоящей статьи запретами при проведении торгов, если организаторами или заказчиками торгов являются</p>
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<sup>8</sup> *Ibid.*, p. 785.

<p>customers are federal executive authorities, executive authorities of the subjects of the Russian Federation, bodies of local self-government, public extra-budgetary funds, as well as during tenders' procedure on placement of orders for goods, works and services for State and municipal needs it is forbidden to restrict access to participation in tenders, requests for quotations which is not provided for by the Federal Laws or other statutory legal acts.</p> <p>3. Alongside with the established by Part 1 and 2 of this Article prohibitions concerning tenders, request for quotations procedures on placement of orders for goods, works and services for State and municipal needs it is forbidden to restrict competition by means of including in the tenders' lots structure of production (goods, works, services) which technologically and functionally are not connected with goods, works, services which provision, execution, rendering are the subject of the tender, request for quotations.</p> <p>4. Violation of the rules established by this Article is a ground for the court to admit invalid the relevant tender, request for quotations and the transactions concluded in the result of such tender, request for quotations, including at the suit of the antimonopoly body.</p>	<p>федеральные органы исполнительной власти, органы исполнительной власти субъектов Российской Федерации, органы местного самоуправления, государственные внебюджетные фонды, а также при проведении торгов на размещение заказов на поставки товаров, выполнение работ, оказание услуг для государственных или муниципальных нужд запрещается не предусмотренное федеральными законами или иными нормативными правовыми актами ограничение доступа к участию в торгах.</p> <p>3. Наряду с установленными частями 1 и 2 настоящей статьи запретами при проведении торгов на размещение заказов на поставки товаров, выполнение работ, оказание услуг для государственных или муниципальных нужд запрещается ограничение конкуренции между участниками торгов путем включения в состав лотов продукции (товаров, работ, услуг), технологически и функционально не связанной с товарами, работами, услугами, поставки, выполнение, оказание которых являются предметом торгов.</p> <p>4. Нарушение правил, установленных настоящей статьей, является основанием для признания судом соответствующих торгов и заключенных по результатам таких торгов сделок недействительными, в том числе по иску антимонопольного органа.</p>
<p>Available at <a href="http://en.fas.gov.ru/legislation/legislation_50915.html">http://en.fas.gov.ru/legislation/legislation_50915.html</a></p>	<p>Available at <a href="http://fas.gov.ru/legislative-acts/legislative-acts_9498.html">http://fas.gov.ru/legislative-acts/legislative-acts_9498.html</a></p>



In some jurisdictions, a statute empowers the competition commission to demand reforms in procurement procedures when it discovers administrative involvement in bid rigging. For example, the Japanese bid-rigging law gives such powers to the Japanese Fair Trade Commission:<sup>9</sup>

<p><b>Japan: Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc.</b> Act No. 101 of July 31, 2002</p> <p><b>Article 3 (Demand for improvement measures to the heads of Ministries and Agencies)</b></p> <p>(1) The Fair Trade Commission may, when it recognizes involvement in bid rigging etc. as a result of its investigation of bid rigging cases, demand that the Heads of Ministries and Agencies etc. implement improvement measures on the administration of bidding and contracts that are necessary for eliminating the said involvement in bid rigging etc. (hereinafter simply referred to as "improvement measures").</p> <p>(2) The Fair Trade Commission may, when it finds it particularly in cases where it finds involvement in bid rigging etc. as a result of its investigation of bid rigging etc. cases (even when said involvement in bid rigging etc. has already been eliminated), demand that the Heads of Ministries and Agencies etc. implement improvement measures to ensure that said involvement in bid rigging etc. is eliminated.</p> <p>(3) The Fair Trade Commission shall, in making demands under the provisions of the preceding two paragraphs, deliver written statements describing the content of the said demand and the reasons thereof to the Heads of Ministries and Agencies etc.</p>	<p><b>入札談合等関与行為の排除及び防止並びに職員による入札等の公正を害すべき行為の処罰に関する法律</b></p> <p><b>(各省各庁の長等に対する改善措置の要求等)</b></p> <p><b>第三条</b> 公正取引委員会は、入札談合等の事件についての調査の結果、当該入札談合等につき入札談合等関与行為があると認めるときは、各省各庁の長等に対し、当該入札談合等関与行為を排除するために必要な入札及び契約に関する事務に係る改善措置（以下単に「改善措置」という。）を講ずべきことを求めることができる。</p> <p><b>2</b> 公正取引委員会は、入札談合等の事件についての調査の結果、当該入札談合等につき入札談合等関与行為があつたと認めるときは、当該入札談合等関与行為が既になくなっている場合においても、特に必要があると認めるときは、各省各庁の長等に対し、当該入札談合等関与行為が排除されたことを確保するために必要な改善措置を講ずべきことを求めることができる。</p> <p><b>3</b> 公正取引委員会は、前二項の規定による求めをする場合には、当該求めの内容及び理由を記載した書面を交付しなければならない。</p>
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<sup>9</sup> *Ibid.*, p. 785.

<p>(4) The Heads of Ministries and Agencies etc. shall, when they receive a demand under the provisions of paragraph 1 or paragraph 2, perform the necessary investigation, and shall, when it becomes evident that there is or was the said involvement in bid rigging etc., implement the improvement measures, based on the results of the said investigation, necessary to eliminate the said involvement in bid rigging etc. or to ensure that the said involvement in bid rigging etc. has been eliminated.</p> <p>(5) The Heads of Ministries and Agencies etc. may, when it finds it necessary in the investigation of the preceding paragraph ask the Fair Trade Commission to provide data and other necessary cooperation.</p> <p>(6) The Heads of Ministries and Agencies etc. shall publicize the results of the investigation of paragraph 4 and the content of the improvement measures implemented under the provisions of the same paragraph, and notify the Fair Trade Commission thereof.</p> <p>(7) The Fair Trade Commission may, when it finds it particularly necessary in cases where it has received notification under the preceding paragraph, express its opinions thereon to the Heads of Ministries and Agencies etc.</p>	<p>4 各省各庁の長等は、第一項又は第二項の規定による求めを受けたときは、必要な調査を行い、当該入札談合等関与行為があり、又は当該入札談合等関与行為があったことが明らかとなったときは、当該調査の結果に基づいて、当該入札談合等関与行為を排除し、又は当該入札談合等関与行為が排除されたことを確保するために必要と認める改善措置を講じなければならない。</p> <p>5 各省各庁の長等は、前項の調査を行うため必要があると認めるときは、公正取引委員会に対し、資料の提供その他必要な協力を求めることができる。</p> <p>6 各省各庁の長等は、第四項の調査の結果及び同項の規定により講じた改善措置の内容を公表するとともに、公正取引委員会に通知しなければならない。</p> <p>7 公正取引委員会は、前項の通知を受けた場合において、特に必要があると認めるときは、各省各庁の長等に対し、意見を述べることができる。</p>
<p>Available at <a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=128&amp;vm=04&amp;re=02">www.japaneselawtranslation.go.jp/law/detail/?id=128&amp;vm=04&amp;re=02</a></p>	

Under Spain's competition law, the National Competition Commission is empowered to file a request asking the administrative body to correct its behavior, and, if the administrative body does not respond satisfactorily, to bring a judicial action against it. This provision is the basis for challenging anti-competitive procurement practices.<sup>10</sup>

<p><b>Spain: Competition Act 15/2007, 3 July 2007 (Official State Gazette No. 159, of 4th July 2007)</b></p> <p><b>Article 4. Conduct exempt by law</b></p> <p>...</p> <p>2. The prohibitions of this chapter shall apply to situations restricting competition which are derived from the exercise of other administrative powers or are caused by the action of public authorities or public companies without this legal protection.</p> <p><b>Article 12. The National Competition Commission</b></p> <p>...</p> <p>3. The National Competition Commission is legally authorised to bring actions before the competent jurisdiction against administrative acts and regulations from which obstacles to the maintenance of effective competition in the markets are derived.</p>	<p><b>Ley N° 15/2007, de 3 de julio de 2007, de Defensa de la Competencia</b></p> <p><b>Artículo 4. Conductas exentas por ley</b></p> <p>....</p> <p>2. Las prohibiciones del presente capítulo se aplicarán a las situaciones de restricción de competencia que se deriven del ejercicio de otras potestades administrativas sean causadas por la actuación de los poderes públicos las empresas públicas sin dicho amparo legal.</p> <p><b>Artículo 12. La Comisión Nacional de la Competencia</b></p> <p>...</p> <p>3. La Comisión Nacional de la Competencia está legitimada para impugnar ante la jurisdicción competente actos de las Administraciones Públicas sujetos al Derecho Administrativo y disposiciones generales de rango inferior a la ley de los que se deriven obstáculos al mantenimiento de una competencia efectiva en los mercados</p>
<p><i>Available at</i>  <a href="http://www.cncompetencia.es/Portals/0/PDFs/Normativa_Estatal/47ing.pdf">http://www.cncompetencia.es/Portals/0/PDFs/Normativa_Estatal/47ing.pdf</a></p>	<p><i>Avialbe at</i>  <a href="http://www.wipo.int/wipolex/en/text.jsp?file_id=220927">http://www.wipo.int/wipolex/en/text.jsp?file_id=220927</a></p>

<sup>10</sup> Ibid., p. 786.

In Poland, the competition law prohibits procurement requests-to-bid that are discriminatory or have an anti-competitive effect, and the President of the Competition Office is tasked with cooperating with criminal authorities.<sup>11</sup>

<p><b>Poland: Act of 16 February 2007 on competition and consumer protection</b></p> <p><b>Article 6</b></p> <p>1. Agreements which have as their object or effect elimination, restriction or any other infringement of competition on the relevant market shall be prohibited, in particular those consisting in:</p> <p>7) collusion between undertakings entering a tender, or by those undertakings and the undertaking being the tender organiser, of the terms and conditions of bids to be proposed, particularly as regards the scope of works and the price.</p> <p><b>Article 31</b></p> <p>The scope of the activities of the President of the Office shall include: ...</p> <p>16) co-operating with the Head of the National Crime Information Centre in the scope essential for the fulfilment of his statutory tasks</p>	<p><b>USTAWA z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów</b></p> <p><b>Art. 6</b></p> <p>1. Zakazane są porozumienia, których celem lub skutkiem jest wyeliminowanie, ograniczenie lub naruszenie w inny sposób konkurencji na rynku właściwym, polegające w szczególności na: ...</p> <p>7) uzgadnianiu przez przedsiębiorców przystępujących do przetargu lub przez tych przedsiębiorców i przedsiębiorcę będącego organizatorem przetargu warunków składanych ofert, w szczególności zakresu prac lub ceny.</p> <p><b>Art. 31</b></p> <p>Do zakresu działania Prezesa Urzędu należy: ...</p> <p>16) współpraca z Szefem Krajowego Centrum Informacji Kryminalnych w zakresie niezbędnym do realizacji jego zadań ustawowych</p>
<p><i>Available at</i>  <a href="http://www.uokik.gov.pl/download.php?plik=7618">http://www.uokik.gov.pl/download.php?plik=7618</a></p>	<p><i>Available at</i>  <a href="http://www.uokik.gov.pl/download.php?id=149">http://www.uokik.gov.pl/download.php?id=149</a></p>

<sup>11</sup> Ibid., p. 785–786.

## 2.4. Free Movement

In several countries, competition law prohibits restraints on the free movement of goods from other localities. For example, the Chinese Anti-Monopoly Law explicitly prohibits administrative and other public bodies from limiting entry of goods or discriminating against goods from other provisions:<sup>12</sup>

<b>China: Anti-Monopoly Law, supra</b>	
<p><b>Article 33</b> Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to impede the free flow of commodities between different regions by any of the following means:</p> <p>(1) setting discriminatory charging items, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;</p> <p>(2) imposing technical specifications or test standards on non-local commodities, which are different from those on local commodities of similar types, or taking discriminatory technical measures, such as repeated test and repeated certification, against non-local commodities, for the purpose of restricting the access of non-local commodities to the local market;</p> <p>(3) adopting a special practice of administrative licensing for non-local commodities, for the purpose of restricting the access of non-local commodities to the local market;</p> <p>(4) erecting barriers or adopting other means to prevent non-local commodities from coming in or local commodities from going out; or</p> <p>(5) other means designed to impede the free flow of commodities between regions.</p>	<p><b>第三十三条</b> 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：</p> <p>（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；</p> <p>（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；</p> <p>（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；</p> <p>（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；</p> <p>（五）妨碍商品在地区之间自由流通的其他行为。</p>

<sup>12</sup> Ibid., p. 787.

<p><b>China: Anti-Price Monopoly Regulations (2011, National Development and Reform Commission)</b></p> <p><b>Article 20</b></p> <p>Administrative authorities or organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power so as to hinder the free inter-regional circulation of goods by engaging in any of the following practices:</p> <p>(1) imposing discriminatory charges on non-local goods;</p> <p>(2) imposing discriminatory charge rates for non-local goods;</p> <p>(3) Setting discriminatory prices for non-local goods;</p> <p>(4) Other price setting or charges levies that hinder the free circulation of goods.</p>	<p><b>反价格垄断规定</b></p> <p><b>第二十条</b></p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品的自由流通：</p> <p>(一) )对外地商品设定歧视性收费项目；</p> <p>(二) )对外地商品实行歧视性收费标准；</p> <p>(三) )对外地商品规定歧视性价格；</p> <p>(四) )妨碍商品自由流通的其他规定价格或者收费的行为。</p>
<p><i>Available at</i>  <a href="http://www.brics2011.org.cn/english/jzlt_en/jzfg_en/201107/t20110726_111640.html">http://www.brics2011.org.cn/english/jzlt_en/jzfg_en/201107/t20110726_111640.html</a></p>	

In Mexico, the States are prohibited by the constitution from acting in ways that will affect people or goods crossing internal borders. The competition commission is empowered to issue opinions finding violations of these constitutional provisions, and its opinions can be followed by an action of unconstitutionality brought by the competition commission.<sup>13</sup>

<p><b>Mexico: Federal Economic Competition Law, 2014</b></p> <p>...</p> <p><b>Article 95.</b> The resolutions in which the Commission determines the existence of barriers to free competition or essential inputs, shall be notified to the agencies charged with overseeing the corresponding sector, in order to ensure that, within their competence and in accordance with the procedures provided by the existing law, they determine the appropriate measures to achieve competitive conditions.</p> <p>When the Commission becomes aware of acts or rules issued by a State, the Federal District, or a Municipality, which may be contrary to the provisions, inter alia, of Articles 28 and 117, Sections IV, V, VI and VII of the Constitution of the United Mexican States, or that encroach the powers of the Federation, it shall inform the Head of the Federal Executive Branch, through its Legal Adviser, so as the former, if deemed appropriate, initiates a constitutional controversy, or to the entity responsible, if deemed appropriate, may bring an action of unconstitutionality.</p> <p>The Commission shall state the grounds on which it considers that the acts or rules mentioned in the previous paragraph contravene the cited constitutional provisions.</p> <p>If the Federal Government does not consider it appropriate to initiate a constitutional controversy, its Legal</p>	<p><b>LEY FEDERAL DE COMPETENCIA ECONÓMICA</b></p> <p><b>TEXTO VIGENTE a partir del 07-07-2014</b></p> <p>...</p> <p><b>Artículo 95.</b> Las resoluciones en las que la Comisión determine la existencia de barreras a la competencia y libre concurrencia o de insumos esenciales, deberán ser notificadas a las autoridades que regulen el sector del que se trate para que, en el ámbito de su competencia y conforme a los procedimientos previstos por la legislación vigente, determinen lo conducente para lograr condiciones de competencia.</p> <p>Cuando la Comisión tenga conocimiento de actos o normas generales emitidas por un Estado, el Distrito Federal, un Municipio, que puedan resultar contrarios a lo dispuesto, entre otros, por los artículos 28 y 117, fracciones IV, V, VI y VII de la Constitución Política de los Estados Unidos Mexicanos o que invadan facultades de la Federación, lo hará del conocimiento del Titular del Ejecutivo Federal, por conducto de su Consejero Jurídico, para que aquél, de considerarlo pertinente, inicie una controversia constitucional, o del órgano competente para que éste, de considerarlo procedente, interponga una acción de inconstitucionalidad.</p> <p>La Comisión expresará los motivos por los cuales considera que los actos o normas generales mencionados en el párrafo anterior contravienen los citados preceptos constitucionales.</p> <p>En caso de que el Ejecutivo Federal no considere pertinente iniciar una controversia constitucional, su</p>
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<sup>13</sup> The law prior to a recent amendment is referred to in Fox & Healey (2014), p. 787.



<p>Adviser shall publish the reasons for its determination.</p> <p>In the event that the Commission becomes aware of acts or general provisions of an independent constitutional entity, the Congress of the Union, or the Federal Executive Branch, which violate the exercise of their powers, it may bring a constitutional controversy in terms of the provisions of paragraph I of Section I of Article 105 of the Political Constitution of the United Mexican States.</p>	<p>Consejero Jurídico, deberá publicar los motivos de su decisión.</p> <p>En el caso de que la Comisión tenga conocimiento de actos o disposiciones generales de algún órgano constitucional autónomo, del Congreso de la Unión, o del Ejecutivo Federal, que vulneren el ejercicio de sus atribuciones, podrá interponer controversia constitucional en términos de lo previsto por el inciso I), de la fracción I, del artículo 105 de la Constitución Política de los Estados Unidos Mexicanos.</p>
	<p><i>Available at</i>  <a href="http://www.diputados.gob.mx/LeyesBiblio/pdf/LFC E.pdf">http://www.diputados.gob.mx/LeyesBiblio/pdf/LFC E.pdf</a></p>



In the Russian Federation, free movement within the country is a part of the competition law:<sup>14, 15</sup>

<p><b>Russian Federation: Federal Law on Protection of Competition, supra</b></p> <p><b>Article 1. Subject and Objectives of this Federal Law ...</b></p> <p>2. Objectives of this Federal Law are to ensure common economic area, free movement of goods, protection of competition, and freedom of economic activity in the Russian Federation and to create conditions for effective functioning of the goods markets.</p>	<p><b>Статья 1. Предмет и цели настоящего Федерального закона ...</b></p> <p>2. Целями настоящего Федерального закона являются обеспечение единства экономического пространства, свободного перемещения товаров, свободы экономической деятельности в Российской Федерации, защита конкуренции и создание условий для эффективного функционирования товарных рынков.</p>
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<sup>14</sup> See Fox & Healey (2014), p. 789.

<sup>15</sup> Also see *infra*, part 5, Russian competition law, Article 15(3). State bodies are prohibited from "imposition of bans or introduction of restrictions concerning free movement of products on the territory of the Russian Federation, other restrictions of the rights of economic entities for sale, purchase, other acquisition, and exchange of commodities."

The competition law of Kazakhstan similarly identifies "free flow of goods and free economic activity in the Republic of Kazakhstan" as one of its purposes, and it prohibits State action obstructing trade:<sup>16</sup>

**Kazakhstan: Law of the Republic of Kazakhstan on Competition, 25 December 2008**

**Article 1. Subject Matter and Purpose of this Law**

2. The purposes of this Law are to protect the competition, create conditions for efficient functioning of commodity markets, ensure unity of economic space, free flow of goods and free economic activity in the Republic of Kazakhstan ....

**Article 33. Antitrust actions of the State authorities**

1. Anti-competitive actions by State authorities such as the adoption of acts or decisions, written or verbal instructions, conclusion of agreements or other actions that resulted or may result in restriction or elimination of competition or infringement on consumers' lawful rights, unless such actions are envisaged in the laws of the Republic of Kazakhstan, shall be prohibited and deemed fully or partially invalid in accordance with the procedure established in the legislation of the Republic of Kazakhstan.

2. The following shall be deemed to be anti-competitive actions of the State authorities, including:

...

3) setting bans or restrictions with regard to free movement of goods, other restrictions of the rights of a market entity for sale of goods;

...

8) limitation of entry to the commodity market, exit or removal of market entities from the commodity market.

*Available at*

<http://azk.gov.kz/details/ndownload.php?fn=2&lang=eng>

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<sup>16</sup> Ibid., p. 789.

## 2.5. Abuse of Government Power to Harm Competition, and Competitive Neutrality

Some countries' competition laws prohibit certain anti-competitive acts of State bodies and prohibit State bodies from granting privileges. For example, the Chinese Anti-Monopoly Law prohibits any administrative organ or organization empowered by a law or administrative regulation from engaging in anti-competitive practices.<sup>17</sup> The Chinese competition authorities do not have the power to enforce this law; they may make recommendations to the superior agencies of the offenders, who may request that the behavior be changed. Private parties may challenge such abuses in courts, as confirmed by an amendment to the Administrative Procedure Law.<sup>18</sup> Here are the proscriptions in China's AML against abuse of administrative monopoly.

<b>China: Anti-Monopoly Law, supra</b>	
<p><b>Article 32</b> Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to require, or require in disguised form, units or individuals to deal in, purchase or use only the commodities supplied by the undertakings designated by them.</p> <p><b>Article 33</b> [see part 4 supra.]</p> <p><b>Article 34</b> Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to exclude non-local undertakings from participating, or restrict their participation, in local invitation and tendering by imposing discriminatory qualification requirements or assessment standards, or by refusing to publish information according to law.</p> <p><b>Article 35</b> Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to exclude non-local undertakings from making investment or restrict their investment locally or exclude them from establishing branch offices</p>	<p><b>第三十二条</b>  <b>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。</b>            ...</p> <p><b>第三十四条</b>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。</p> <p><b>第三十五条</b>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地</p>

<sup>17</sup> *Ibid.*, p. 788–790.

<sup>18</sup> Available in Chinese at [http://www.npc.gov.cn/npc/xinwen/2014-11/02/content\\_1884662.htm](http://www.npc.gov.cn/npc/xinwen/2014-11/02/content_1884662.htm), effective May 1, 2015.

<p>locally or restrict their establishment of such offices, by treating them unequally as compared with the local undertakings, or by other means.</p> <p><b>Article 36</b> Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to compel undertakings to engage in monopolistic conducts that are prohibited by this Law.</p> <p><b>Article 37</b> Administrative organs may not abuse their administrative power to formulate regulations with the contents of eliminating or restricting competition.</p>	<p>投资或者设立分支机构。</p> <p>第三十六条行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。</p> <p>第三十七条行政机关不得滥用行政权力，制定含有排除、限制竞争内容的规定。</p>
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In the Russian Federation, Articles 4, 15 and 16 prohibit granting privileges and certain other abuses of administrative powers:

<p><b>Russian Federation: Federal Law on Protection of Competition, supra</b></p> <p><b>Article 4</b></p> <p><b>Basic Definitions Used in this Federal Law ...</b></p> <p>20) State or municipal preferences means granting advantages to economic entities by the federal executive bodies, the authorities of the constituent territories of the Russian Federation, local self-government bodies, other agencies or organizations exercising the functions of those bodies, which put them in more advantageous conditions for economic activity, by transferring State or municipal property, other objects of civil rights or by providing property allowances; State or municipal guarantees;</p> <p><b>Article 15</b></p> <p>Prohibition of Acts and Actions (Inactions) of Federal executive authorities, Public Authorities of the Subjects of the Russian Federation, Bodies of Local Self-Government, Other Bodies or Organizations Exercising the Functions of the Above-Mentioned Bodies, Organisations Involved in Providing Public or Municipal Services as well as Public Extra-budgetary Funds, the Central Bank of the Russian Federation that Restrict Competition</p> <p>1. It is forbidden for the federal executive authorities, public authorities of the subjects of the Russian Federation, bodies of local self-government, other bodies or</p>	<p><b>Статья 4.</b></p> <p><b>Основные понятия, используемые в настоящем Федеральном законе</b></p> <p>20) государственные или муниципальные преференции - предоставление федеральными органами исполнительной власти, органами государственной власти субъектов Российской Федерации, органами местного самоуправления, иными осуществляющими функции указанных органов органами или организациями отдельным хозяйствующим субъектам преимущества, которое обеспечивает им более выгодные условия деятельности, путем передачи государственного или муниципального имущества, иных объектов гражданских прав либо путем предоставления имущественных льгот, государственных или муниципальных гарантий; (в ред. Федеральных законов от 17.07.2009 N 164-ФЗ, от 06.12.2011 N 401-ФЗ)</p> <p><b>Статья 15</b></p> <p>Запрет на ограничивающие конкуренцию акты и действия (бездействие) федеральных органов исполнительной власти, органов государственной власти субъектов Российской Федерации, органов местного самоуправления, иных осуществляющих функции указанных органов органов или организаций, организаций, участвующих в предоставлении государственных или муниципальных услуг, а также государственных внебюджетных фондов, Центрального банка Российской Федерации</p> <p>1. Федеральным органам исполнительной власти, органам государственной власти субъектов Российской Федерации, органам местного самоуправления, иным</p>
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<p>organizations exercising the functions of the above-mentioned bodies, organizations involved in providing public or municipal services as well as public extra-budgetary funds, the Central Bank of the Russian Federation to pass acts and (or) exercise actions (lack of action) which lead or can lead to prevention, restriction, elimination of competition, except the cases of passing acts or exercising of actions (lack of action) provided for by the Federal Laws, in particular, the following is forbidden:</p> <p>1) introduction of restrictions concerning creation of economic entities in any sphere of activity as well as imposition of bans or introduction of restrictions concerning exercising specific activities or production of certain types of products;</p> <p>2) unreasonably preventing activities of economic entities, in particular, by establishing requirements to goods or economic entities that are not provided for by the legislation of the Russian Federation;</p> <p>3) imposition of bans or introduction of restrictions concerning free movement of products on the territory of the Russian Federation, other restrictions of the rights of economic entities for sale, purchase, other acquisition, exchange of commodities;</p> <p>4) issuing requests to economic entities on priority supply of products for a certain category of purchases (customers) or on conclusion of contracts in priority order;</p> <p>5) imposing restrictions for purchasers of products on the choice of economic entities</p>	<p>осуществляющим функции указанных органов органам или организациям, организациям, участвующим в предоставлении государственных или муниципальных услуг, а также государственным внебюджетным фондам, Центральному банку Российской Федерации запрещается принимать акты и (или) осуществлять действия (бездействие), которые приводят или могут привести к недопущению, ограничению, устранению конкуренции, за исключением предусмотренных федеральными законами случаев принятия актов и (или) осуществления таких действий (бездействия), в частности запрещаются:</p> <p>1) введение ограничений в отношении создания хозяйствующих субъектов в какой-либо сфере деятельности, а также установление запретов или введение ограничений в отношении осуществления отдельных видов деятельности или производства определенных видов товаров;</p> <p>2) необоснованное препятствование осуществлению деятельности хозяйствующими субъектами, в том числе путем установления не предусмотренных законодательством Российской Федерации требований к товарам или к хозяйствующим субъектам;</p> <p>3) установление запретов или введение ограничений в отношении свободного перемещения товаров в Российской Федерации, иных ограничений прав хозяйствующих субъектов на продажу, покупку, иное приобретение, обмен товаров;</p> <p>4) дача хозяйствующим субъектам указаний о первоочередных поставках товаров для определенной категории покупателей (заказчиков) или о заключении в приоритетном порядке договоров;</p> <p>5) установление для приобретателей товаров ограничений выбора хозяйствующих</p>
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<p>which provide such products;</p> <p>6) proving priority access to information for an economic entity;</p> <p>7) granting State or municipal preferences in breach of Chapter 5 of this Federal Law;</p> <p>8) creating discriminatory conditions;</p> <p>9) fixing and (or) charging payments not provided for by the law of the Russian Federation for rendering public or municipal services as well as services that are necessary and mandatory for rendering public or municipal services;</p> <p>10) giving instructions to economic entities about acquiring the goods, except cases provided for by the law of the Russian Federation.</p>	<p>субъектов, которые предоставляют такие товары;</p> <p>6) предоставление хозяйствующему субъекту доступа к информации в приоритетном порядке;</p> <p>7) предоставление государственной или муниципальной преференции в нарушение требований, установленных главой 5 настоящего Федерального закона;</p> <p>8) создание дискриминационных условий;</p> <p>9) установление и (или) взимание не предусмотренных законодательством Российской Федерации платежей при предоставлении государственных или муниципальных услуг, а также услуг, которые являются необходимыми и обязательными для предоставления государственных или муниципальных услуг;</p> <p>10) дача хозяйствующим субъектам указаний о приобретении товара, за исключением случаев, предусмотренных законодательством Российской Федерации.</p>
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**Article 16 of the Russian Federation law** prohibits State or local bodies from concerted practices that:

<p>lead or can lead to prevention, restriction or elimination of competition, in Particular, to:</p> <p>1) increase, decrease or maintaining of prices (tariffs) except the cases when such agreements are provided for by Federal Laws or statutory legal acts of the President of the Russian Federation, statutory legal acts of the Government of the Russian Federation;</p> <p>2) economically, technologically or in any other way unjustified establishment of different prices (tariffs) for the same commodity;</p> <p>3) division of the goods market according to the territorial principle, volume of sale or purchase of commodities, range of sold products or composition of sellers or purchasers (customers);</p> <p>4) restriction of entry into a goods market (exit from a goods market) or removal of economic entities from it.</p>	<p>... приводят или могут привести к недопущению, ограничению, устранению конкуренции, в частности к:</p> <p>1) повышению, снижению или поддержанию цен (тарифов), за исключением случаев, если такие соглашения предусмотрены федеральными законами или нормативными правовыми актами Президента Российской Федерации, нормативными правовыми актами Правительства Российской Федерации;</p> <p>2) экономически, технологически и иным образом не обоснованному установлению различных цен (тарифов) на один и тот же товар;</p> <p>3) разделу товарного рынка по территориальному принципу, объему продажи или покупки товаров, ассортименту реализуемых товаров либо по составу продавцов или покупателей (заказчиков);</p> <p>4) ограничению доступа на товарный рынок, выхода из товарного рынка или устранению с него хозяйствующих субъектов.</p>
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The Ukrainian competition law prohibits States and local and administrative bodies from engaging in certain practices that might have the effect of prevention, elimination, restriction or distortion of competition. The general prohibition, Article 15(1), was added to the law when the following language replaced former Article 6.<sup>19, 20</sup>

<p><b>Ukraine: Law of Ukraine “on Protection of Economic Competition”, 2001</b></p> <p><b>Article 15. Anti-competitive Actions of Bodies of State Power, Bodies of Local Self-government, Bodies of Administrative and Economic Management and Control</b></p> <p>1. The issue of any acts (decisions, orders, directions, enactments, etc.), the making of written or verbal instructions, the conclusion of agreements or any actions or inactivity of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control (a collegiate body or an official) which resulted or can result in the prevention, elimination, restriction or distortion of competition shall be considered as anti-competitive actions of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control.</p> <p>2. In particular, the following actions of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control shall be considered as anti-competitive ones:</p> <ul style="list-style-type: none"> <li>• prohibition against or the prevention from establishing new enterprises or performing entrepreneurship in other organization forms in any sphere of activities and the placing of restrictions on performing certain activities, on the production, purchase or sale of certain types of products;</li> </ul>	<p><b>ЗАКОН УКРАЇНИ Про захист економічної конкуренції</b></p> <p><b>Стаття 15. Антиконтурентні дії органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю</b></p> <p>1. Антиконтурентними діями органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю є прийняття будь-яких актів (рішень, наказів, розпоряджень, постанов тощо), надання письмових чи усних вказівок, укладення угод або будь-які інші дії чи бездіяльність органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю (колегіального органу чи посадової особи), які призвели або можуть призвести до недопущення, усунення, обмеження чи спотворення конкуренції.</p> <p>2. Антиконтурентними діями органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю, зокрема, визнаються:</p> <p>заборона або перешкоджання створенню нових підприємств чи здійснення підприємництва в інших організаційних формах у будь-якій сфері діяльності, а також встановлення обмежень на здійснення окремих видів діяльності, на виробництво, придбання чи реалізацію певних видів товарів;</p>
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<sup>19</sup> *Ibid.*, p. 782.

<sup>20</sup> Also see Russian law, *supra*, Article 15(1)(7).

<ul style="list-style-type: none"> <li>• direct or indirect compulsion of economic entities to join associations, concerns, inter-branch, regional or other forms of unions of enterprises or the coordinated concentration of economic entities in other forms;</li> <li>• direct or indirect compulsion of economic entities to join associations, concerns, inter-branch, regional or other forms of unions of enterprises or the coordinated concentration of economic entities in other forms;</li> <li>• any action directed towards the centralised distribution of products and the distribution of markets between economic entities according to the territorial principle, according to the assortment of products, according to the volume of their sale or purchase or according to the circle of consumers or sellers;</li> <li>• establishment of a prohibition to sell certain products from one region of the country to another or the granting of permission to sell products from one region to another only in a certain volume or provided that certain conditions are met;</li> <li>• granting of such privileges or other advantages to some economic entities or groups of economic entities that place them in a privileged position in comparison with that of competitors, which results or can result in the prevention, elimination, restriction or distortion of competition;</li> <li>• such an action that results in the creation of unfavourable or discriminatory conditions of activities for certain economic entities or groups of economic entities in comparison with the relevant conditions created for competitors;</li> <li>• an action establishing such prohibitions and restrictions of the independence of enterprises that are not provided for by laws of Ukraine, including prohibitions and restrictions in terms of the purchase or sale of products,</li> </ul>	<p>пряме або опосередковане примушення суб'єктів господарювання до вступу в асоціації, концерни, міжгалузеві, регіональні чи інші форми об'єднань або здійснення узгоджених дій концентрації суб'єктів господарювання в інших формах;</p> <p>пряме або опосередковане примушення суб'єктів господарювання до пріоритетного укладення договорів, першочергової поставки товарів певному колу споживачів чи першочергового їх придбання у певних продавців;</p> <p>будь-яка дія, спрямована на централізований розподіл товарів, а також розподіл ринків між суб'єктами господарювання за територіальним принципом, асортиментом товарів, обсягом їх реалізації чи закупівель або за колом споживачів чи продавців;</p> <p>встановлення заборони на реалізацію певних товарів з одного регіону країни в іншому або надання дозволу на реалізацію товарів з одного регіону в іншому в певному обсязі чи за виконання певних умов;</p> <p>надання окремим суб'єктам господарювання або групам суб'єктів господарювання пільг чи інших переваг, які ставлять їх у привілейоване становище стосовно конкурентів, що призводить або може призвести до недопущення, усунення, обмеження чи спотворення конкуренції;</p> <p>дія, внаслідок якої окремим суб'єктам господарювання або групам суб'єктів господарювання створюються несприятливі чи дискримінаційні умови діяльності порівняно з конкурентами;</p> <p>дія, якою встановлюються не передбачені законами України заборони та обмеження самостійності підприємств, у тому числі щодо придбання чи реалізації товарів, ціноутворення, формування програм</p>
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<p>setting of prices, the charting of programmes relating to activities and development, the use of profits.</p> <p>3. Anti-competitive actions of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control shall be prohibited and shall entail responsibility according to laws.</p> <p><b>Article 16. Prohibition Against Delegating Authorities of Bodies of State Power and Bodies of Local Self-Government</b></p> <p>It shall be prohibited for bodies of State power and for bodies of local self-government to delegate some authorities to associations, enterprises, and other economic entities if this results or can result in the prevention, elimination, restriction or distortion of competition.</p> <p><b>Article 17. Prohibition Against the Inducement to Commit Violations of the Laws on protection of Economic Competition and Against the Legalisation of Them</b></p> <p>Such actions or inactivity of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control (a collegiate body or an official) that induce economic entities, bodies of State power, bodies of local self-government, bodies of administrative and economic management and control to violate the laws on protection of economic competition or that create conditions for committing violations of that sort or for legalising them shall be prohibited.</p>	<p>діяльності та розвитку, розпорядження прибутком.</p> <p>3. Вчинення антиконкурентних дій органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю забороняється і тягне за собою відповідальність згідно з законом.</p> <p><b>Стаття 16. Заборона делегування повноважень органів влади та органів місцевого самоврядування</b></p> <p>Органам влади та органам місцевого самоврядування забороняється делегування окремих владних повноважень об'єднанням, підприємствам та іншим суб'єктам господарювання, якщо це призводить або може призвести до недопущення, усунення, обмеження чи спотворення конкуренції.</p> <p><b>Стаття 17. Заборона схилення до порушень законодавства про захист економічної конкуренції та їх легітимації</b></p> <p>Забороняються дії чи бездіяльність органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю (колегіального органу чи посадової особи), що полягають у схиленні суб'єктів господарювання, органів влади, органів місцевого самоврядування, органів адміністративно-господарського управління та контролю до порушень законодавства про захист економічної конкуренції, створенні умов для вчинення таких порушень чи їх легітимації.</p>
<p><i>Available at</i>  <a href="http://www.amc.gov.ua/amku/doccatalog/document;jsessionid=C1C7AB1FABB574BD5805320F15BCEACC?id=94745&amp;schema=main">http://www.amc.gov.ua/amku/doccatalog/document;jsessionid=C1C7AB1FABB574BD5805320F15BCEACC?id=94745&amp;schema=main</a></p>	<p><i>Available at</i>  <a href="http://www.amc.gov.ua/amku/control/main/uk/publish/article/100571">http://www.amc.gov.ua/amku/control/main/uk/publish/article/100571</a></p>

In Kazakhstan, the creation of State monopoly is limited as described in Article 32 of the competition law.

**Kazakhstan: Law on Competition, supra**

**Article 5. State Policy in the Sphere of Competition**

1. Main directions of the State policy in competition area shall be developed by the Government of the Republic of Kazakhstan and implemented by the antimonopoly authority.
2. The central and local executive authorities shall participate in the implementation of the State policy in competition area within their mandate defined by this Law and other legal acts of the Republic of Kazakhstan.
3. State authorities shall within their competence contribute to the development of competition and shall not perform any actions that have adverse effect on the competition.

**Article 32. State monopoly**

1. The Government shall be entitled to restrict competition in those spheres where the sale of goods at the competitive market may have an adverse effect on the constitutional order, national safety, protection of public order, human rights and freedoms, health of the population by legally providing the government with the exclusive right to produce and (or) sale, purchase and use of commodity.
2. The exclusive right shall be exercised through the creation of an entity of State monopoly. Only a State enterprise may be the entity of State monopoly, which was established by decision of the Government of the Republic of Kazakhstan.
3. The entity of the State monopoly shall not be allowed to:
  - 1) produce goods that do not relate to the State monopoly, except for the activity technologically related with the production of the goods;
  - 2) hold shares (participation interests) in the authorized capital, or otherwise participate in the activity of legal entities;
  - 3) reassign the rights related to State monopoly
4. when introducing the State monopoly the following conditions shall be observed:
  - 1) market entities shall be informed of this decision no less than 6 months prior to its validity;
  - 2) market entities producing, selling or using this commodity shall have the right to sell this commodity during the 6 month period after the State monopoly becomes effective, with the exception of transactions the fulfillment of which exceeds the indicated period;
  - 3) market entities shall be compensated for losses incurred as a result of the introduction of a State monopoly in accordance with the civil legislation of the Republic of Kazakhstan

*Available at*

<http://azk.gov.kz/details/ndownload.php?fn=2&lang=eng>

Also, Lithuanian law imposes an obligation on entities of public administration to ensure freedom of fair competition. It also prohibits actions by entities of public administration that grant privileges to or discriminate against any individual economic entities or their groups.<sup>21,22</sup>

<p><b>Lithuania: Republic of Lithuania Law on Competition, supra</b></p> <p><b>Article 4. Duty of Entities of Public Administration to Ensure Freedom of Fair Competition</b></p> <p>1. In carrying out the assigned tasks related to the regulation of economic activities within the Republic of Lithuania, entities of public administration must ensure freedom of fair competition.</p> <p>2. Entities of public administration shall be prohibited from adopting legal acts or other decisions which grant privileges to or discriminate against any individual economic entities or their groups and which give or may give rise to differences in the conditions of competition for economic entities competing in a relevant market, except where the difference in the conditions of competition may not be avoided when meeting the requirements of the laws of the Republic of Lithuania.</p>	<p><b>4 straipsnis. Viešojo administravimo subjektų pareiga užtikrinti sąžiningos konkurencijos laisvę</b></p> <p>1. Viešojo administravimo subjektai, įgyvendindami pavestus uždavinius, susijusius su ūkinės veiklos reguliavimu Lietuvos Respublikoje, privalo užtikrinti sąžiningos konkurencijos laisvę.</p> <p>2. Viešojo administravimo subjektams draudžiama priimti teisės aktus arba kitus sprendimus, kurie teikia privilegijas arba diskriminuoja atskirus ūkio subjektus ar jų grupes ir dėl kurių atsiranda ar gali atsirasti konkurencijos sąlygų skirtumų atitinkamoje rinkoje konkuruojantiems ūkio subjektams, išskyrus atvejus, kai skirtingų konkurencijos sąlygų neįmanoma išvengti vykdant Lietuvos Respublikos įstatymų reikalavimus.</p>
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<sup>21</sup> See Fox & Healey (2014), p. 790.

<sup>22</sup> Also see Poland, Japan, and Spain, supra.

## 2.6. Other anti-competitive State Measures

In the European Union, Member State anti-competitive measures and acts can run afoul of TFEU Articles 101 (agreements), 102 (abuse of dominance), 106 (undertakings charged with a special responsibility must abide by the competition law, see supra), and TEU Article 4(3) (special responsibility of the member States to facilitate the competition provisions of the treaty)(and the anti-subsidy provisions, which are not covered herein). If not a violation of the competition law, unnecessarily restrictive State measures are normally prohibited by the free movement law.

## 2.7. Authorizations of the competition commission to challenge State anti-competitive acts and measures

Some competition laws authorize the competition authority to challenge anti-competitive measures taken by the State, its subdivisions, or its administrative bodies.<sup>23</sup> For example, Italy has granted the Italian Antitrust Authority power to challenge State anti-competitive administrative measures.<sup>24</sup>

<p><b>Italy: Law no. 287, 10 October 1990, Competition and Fair Trading Act</b></p> <p><b>Section 21-bis</b></p> <p><i>The Authority's powers over administrative provisions creating distortions to competition</i></p> <p>[Introduced by Section 35 of Decree Law 201/2011, which was converted with modifications from Law no. 214 of 22 December 2011 on the "Conversion to law, with modifications, of Decree Law no. 201 of 6 December 2011 on urgent measures for the growth, equity and consolidation of public finances."]</p> <p>1. It is admissible for the Authority to take legal action whenever the general administrative provisions, regulations or measures of any public administration infringe on the laws protecting competition and the market.</p>	<p><b>Legge 10 ottobre 1990, n. 287 - Norme per la tutela della concorrenza e del mercato</b></p> <p><b>Article 21-bis.</b></p> <p><i>Poteri dell'Autorità garante della concorrenza e del mercato sugli atti amministrativi che determinano distorsioni della concorrenza</i></p> <p>[Inserito dall'articolo 35 del decreto-legge 201/2011 convertito, con modifiche, dalla Legge 22 dicembre 2011, n. 214 recante "Conversione in legge, con modificazioni, del decreto-legge 6 dicembre 2011, n. 201, recante disposizioni urgenti per la crescita, l'equità e il consolidamento dei conti pubblici"]</p> <p>1. L'Autorità garante della concorrenza e del mercato è legittimata ad agire in giudizio contro gli atti amministrativi generali, i regolamenti ed i provvedimenti di qualsiasi amministrazione pubblica che violino le norme a tutela della concorrenza e del mercato.</p>
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<sup>23</sup> See Fox & Healey (2014), p. 794.

<sup>24</sup> Ibid., p. 795.



<p>2. Should the Authority determine a provision issued by a public administration to infringe on the laws protecting competition and the market, a reasoned opinion indicating the specific nature of said infringement shall be issued within sixty days. Should the public administration fail to comply with the opinion within sixty days of notification, the Authority may lodge an appeal through the Avvocatura dello Stato within the following thirty days.</p> <p>3. Rulings enacted pursuant to subparagraph 1 are subject to the rules and regulations in Chapter IV, Title V of Legislative Decree no. 104 of 2 July 2010.</p>	<p>2. L'Autorità garante della concorrenza e del mercato, se ritiene che una pubblica amministrazione abbia emanato un atto in violazione delle norme a tutela della concorrenza e del mercato, emette, entro sessanta giorni, un parere motivato, nel quale indica gli specifici profili delle violazioni riscontrate. Se la pubblica amministrazione non si conforma nei sessanta giorni successivi alla comunicazione del parere, l'Autorità può presentare, tramite l'Avvocatura dello Stato, il ricorso, entro i successivi trenta giorni.</p> <p>3. Ai giudizi instaurati ai sensi del comma 1 si applica la disciplina di cui al Libro IV, Titolo V, del decreto legislativo 2 luglio 2010, n. 104</p>
<p><i>Available at</i>  <a href="http://www.agcm.it/en/comp/1727-law-no-287-of-october-10th-1990.html">http://www.agcm.it/en/comp/1727-law-no-287-of-october-10th-1990.html</a></p>	<p><i>Available at</i>  <a href="http://www.agcm.it/normativa/concorrenza/4531-legge-10-ottobre-1990-n-287-norme-per-la-tutela-della-concorrenza-e-del-mercato.html">http://www.agcm.it/normativa/concorrenza/4531-legge-10-ottobre-1990-n-287-norme-per-la-tutela-della-concorrenza-e-del-mercato.html</a></p>

In Mexico, the Competition Commission may issue non-binding opinions regarding programs and policies of public authorities.<sup>25</sup>

<p><b>Mexico: Federal Economic Competition Law, supra</b></p> <p><b>Article 12</b></p> <p>The commission shall have the following powers:</p> <p>...</p> <p>XII. Issue an opinion when deemed appropriate or upon request of the Federal Executive Branch, either directly or through the secretariat, or upon request of an interested party, regarding adjustments to programs and policies carried out by public authorities, in the event they can have adverse effects on the free competition process and the economic competition in accordance with applicable law, without these opinions having binding affects. The cited opinions must be published;</p>	<p><b>Artículo 12</b></p> <p>La Comisión tendrá las siguientes atribuciones:</p> <p>...</p> <p>XII. Emitir opinión cuando lo considere pertinente, o a solicitud del Ejecutivo Federal, por sí o por conducto de la Secretaría, o a petición de parte, respecto de los ajustes a programas y políticas llevados a cabo por Autoridades Públicas, cuando éstos puedan tener efectos contrarios al proceso de libre concurrencia y competencia económica de conformidad con las disposiciones legales aplicables, sin que estas opiniones tengan efectos vinculantes. Las opiniones citadas deberán publicarse;</p>
	<p><i>Available at</i>  <a href="http://es.wikisource.org/wiki/T%C3%ADtulo_Quinto_De_los_Estados_de_la_Federaci%C3%B3n_y_del_Distrito_Federal">http://es.wikisource.org/wiki/T%C3%ADtulo_Quinto_De_los_Estados_de_la_Federaci%C3%B3n_y_del_Distrito_Federal</a></p>

<sup>25</sup> Ibid., p. 784.



Under Lithuania's law,<sup>26</sup> the Competition Council has power to investigate violations of the competition law by entities of public administration, to request their compliance with the law, and, in the event of a failure to comply, to appeal to the court.

<p><b>Lithuania: Law on Competition, supra</b></p> <p>...</p> <p><b>Article 18. Functions and Powers of the Competition Council</b></p> <p>1. The Competition Council shall: ...</p> <p>3) Examine the conformity of the legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 of this Law [supra, at part 3] and, if there are grounds, apply to the entities of public administration with a request to amend or repeal the legal acts or other decisions restricting competition. In case of failure to comply with the requirement, the Competition Council shall have the right to appeal against the decisions of entities of State administration, except for the statutory acts issued by the Government of the Republic of Lithuania, to the Supreme Administrative Court of Lithuania, and against the decisions of entities of municipal administration and other entities of public administration— to the regional administrative court;</p> <p>...</p> <p><b>Article 22. Infringements Investigated by the Competition Council</b></p> <p>1. According to the procedure specified in this section the Competition Council shall investigate:</p> <p>1) conformity of legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 [supra at part 5] of this Law;</p>	<p>...</p> <p><b>18 straipsnis. Konkurencijos tarybos funkcijos ir įgaliojimai</b></p> <p>1. Konkurencijos taryba: ...</p> <p>3) nagrinėja, ar viešojo administravimo subjektų priimti teisės aktai ar kiti sprendimai atitinka šio įstatymo 4 straipsnyje nustatytus reikalavimus ir, jeigu yra pagrindas, kreipiasi į viešojo administravimo subjektus su reikalavimu pakeisti ar panaikinti teisės aktus ar kitus konkurenciją ribojančius sprendimus. Jeigu reikalavimas neįvykdytas, Konkurencijos taryba turi teisę valstybinio administravimo subjektų sprendimus, išskyrus Vyriausybės norminius teisės aktus, apskųsti Lietuvos vyriausiajam administraciniam teismui, savivaldybių administravimo subjektų ir kitų viešojo administravimo subjektų sprendimus – apygardos administraciniam teismui;</p> <p>...</p> <p><b>22 straipsnis. Konkurencijos tarybos tiriami pažeidimai</b></p> <p>1. Šiame skyriuje nustatyta tvarka Konkurencijos taryba tiria:</p> <p>1) viešojo administravimo subjektų priimtų teisės aktų ar kitų sprendimų atitiktį šio įstatymo 4 straipsnio reikalavimams; ...</p>
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<sup>26</sup> *Ibid.*, p. 784.

6) infringements in case of failure to comply with requests to provide information or failure to provide information in a timely manner, also in case of provision of incorrect or incomplete information or, in the cases provided for in this Law, failure to provide information within the established time limit, damaging or tearing off the seal affixed in accordance with Point 4 of Paragraph 1 of Article 25, obstruction of the officials of the Competition Council in carrying out the investigation, or non-compliance with the sanctions or obligations imposed by resolutions of the Competition Council as well as obligations assumed by economic entities in accordance with Point 2 of Paragraph 3 of Article 28 of this Law. This procedure shall not apply to investigation of violations in case of failure or failure to comply in time with the obligations imposed by resolutions of the Competition Council to amend or repeal legal acts or other decisions restricting competition in breach of the requirements of Article 4 of this Law. These violations shall be investigated in accordance with the Competition Council's procedures.

6) pažeidimus, kai nurodymai pateikti informaciją nevykdomi ar vykdomi ne laiku, pateikiama neteisinga ar ne visa informacija, šio įstatymo numatytais atvejais informacija nepateikiama nustatytu laiku, pažeidžiamas ar nuplėšiamas antspaudas, uždėtas pagal šio įstatymo 25 straipsnio 1 dalies 4 punktą, kliudoma Konkurencijos tarybos pareigūnams atlikti tyrimą arba nevykdomos Konkurencijos tarybos nutarimais paskirtos sankcijos ar įpareigojimai, taip pat ūkio subjektų priiimti įsipareigojimai pagal šio įstatymo 28 straipsnio 3 dalies 2 punktą. Ši tvarka netaikoma tiriant pažeidimus, kai nevykdomi ar vykdomi ne laiku Konkurencijos tarybos nutarimais paskirti įpareigojimai pakeisti ar panaikinti teisės aktus ar kitus konkurenciją ribojančius sprendimus, pažeidžiančius šio įstatymo 4 straipsnio reikalavimus. Šie pažeidimai tiriami Konkurencijos tarybos nustatyta tvarka.

