

Law on Competition Protection & Monopoly Prevention

Date: 30 January, 2010

Chapter One General Provision

Basis

Article 1:

This law has been enacted pursuant to the provisions of Article 11 of the Constitution of the Islamic Republic of Afghanistan.

Purposes

Article 2:

The purposes of this law are to:

- Protect sound competition.
- Prevent unsound competition, unfair agreements, decisions as well as implementation of unfair contracts restricting, disrupting or preventing competition in the markets of goods, services and products.
- Prevent influence of monopolist entrepreneurs in the market.

Scope of Application

Article 3:

All, natural or legal, persons of the private sector (domestic and foreign) operating in Afghanistan shall abide by the provisions of this law.

Terminologies

Article 4:

In this law, the following terms shall have the meanings stated below:

- 1. Ministry:** Means the Ministry of Commerce and Industries.

2. **Market:** A place where buyers and sellers offer or exchange goods and services.
3. **Goods:** Means movable and immovable commodities (processed commercial products, production goods, agriculture goods, natural resources, mineral materials) which are exchanged (transacted) and used.
4. **Services:** Intangible product (insurance, banking, transport, telecommunication, training etc.) the production outcome of which is not distinguishable and can be offered, exchanged and used.
5. **Entrepreneur:** Natural or legal person who processes, produces or sells commodities or offers services in the market.
6. **Merchant:** Any person, including individuals and companies holding business qualification engaged in one or more commercial transactions under his name and made this business as his/her occupation and profession.
7. **Partnership:** Means association of two or more than two persons working or doing business jointly in accordance with the related articles of association and distribute its profits and losses.
8. **Organization or Factory:** Means an economic unit operating in procession, production, distribution or exchange of goods or services and enjoys legal personality.
9. **Competition:** Means a situation wherein a number of independent producers, buyers and sellers for producing, buying or selling of similar commodities or services operate in such a manner that none of them has the power of determining quantity and price in the market independently. Competition amongst entrepreneurs in markets of goods and services enables them to take economic decisions independently.
10. **Monopoly:** Means a situation with the following conditions:
 - A) Entry of new persons to the market is confronted with impediments and restrictions.
 - B) Ratio existence of a person, organization, factory or company is specified in market supply and demand to the extent able to determine price or quantity in the market.

11. **Dominant Economic Status:** means a situation where at the market, power of price determination, quantity of supply, demand of goods and services or conditions of contracts are at disposal of one or more persons or a group of persons or companies.
12. **Merger: means** a legal action based on which two or more than two organizations, factories and/or firm establish a single and new legal personality by revoking their previous legal personality or one or more than two organizations, factories and/or companies merge into another company by revoking their legal personality.
13. **Controlling Company:** is a company that manages and controls economic activities of other companies in a market through possessing shares or capital or other ways. .
14. **Directors and responsible Persons of the company:** consist of board of directors, board of executive and similar titles or any other person who undertake responsibility of decision making in the company in accordance with the effective laws, articles of association of the company or under the order of a court.
15. **Authority:** means Afghanistan National Competition Authority (ANCA).
16. **Board:** is the National Competition Board.
17. **Revising Panel:** is a panel established as per provisions of this law and, as required, revises decisions of the Board.

Chapter Two

Anti-competitive Practices

Prohibiting and Limiting Competition

Article 5:

Any kind of understanding and agreement (written, electronic or oral), collective acts amongst traders, entrepreneurs and contracts of collective acts of trader unions or entrepreneurs which directly or indirectly prohibit, prevent, disrupt or limit competition in the market of goods and services or intend to do so for their own purpose shall be

illegal and prohibited and shall be prosecuted in following cases pursuant to provisions of this law:

1. Determining purchase and sale prices or manner of their determination directly or indirectly at the market.
2. Limiting or controlling supply and demand of goods and services (production, purchase and sale) in the market or their determination out of the market.
3. Demanding different conditions from persons who set up similar transactions and have equal rights, obligations and authorities.
4. Obligating party to the transaction to conclude the contract with third parties or imposing conditions of contract on them.
5. Postponing conclusion of contract to make other parties to accept supplementary commitments which does not have any relevancy with the subject of contract.
6. Dividing market of goods and services into two or more persons or groups.
7. Restricting access of outsiders from contract, understanding or agreement at the market.
8. Separating markets of goods and services, dividing or controlling all kinds of resources or factors of market.
9. Limiting competitive activities of traders or entrepreneurs or confining activities of firms, organizations and factories at the market through distortions or other pressures and treatments or potential prevention of entry of new persons into the market.
10. Existence of such agreement which may not be ascertained; market rate has been changed or balance of supply and demand or activity areas of entrepreneurs are similar to those markets that prevent, disrupt or limit competition and there is probability that entrepreneurs or traders involve in collective acts, each party to the suit may vindicate by proving that he/she has not involved in these activities provided that it is based on economic, reasonable and logical facts.
11. Where one or more than one person create prevention, distortion or limitation in competition through adverse accomplishments, decisions, contracts or agreements or through misusing his/her position in one or more specific markets of goods and

- services, they shall be obligated to compensate any kind of losses in accordance with the provisions of this law.
12. Obligating to purchasing other goods or services along with goods and services being purchased.
 13. Exhibiting a commodity or service for purchasers who act as mediators, however, presenting goods and services, other than those being exhibited, to relevant buyers.

Unfair Commercial Practices

Article 6:

Unfair commercial practices include the followings and should their exercise lead to interruption of competition, they shall be prohibited.

1. Collectively refraining from accomplishing a transaction or limiting quantity of goods or services which are subject of transaction.
2. Forcing other persons to refrain from transaction and limiting their dealings with their competitors.
3. Supplying or demanding similar goods or services, with prices charged discriminately between two or more parties or difference of price between different areas, in spite of equal conditions of the transaction and its costs.
4. Supplying goods or services with lower price than their cost price in a manner causing serious harm to others or prevent entry of new persons into market.
5. Granting award, gift, discount and so on which incur serious harm to others. Competition Board shall undertake responsibility of their identification.
6. Oral or written seductive statements or the following sceptical treatment committed by persons:
 1. Shows untruly his/her goods and services with special quality, quantity, class, sample and standard or misrepresent goods or services of his/her competitors.
 2. Introduce second hand, renewed or old goods as new ones.
 3. Existence of services after sale, commitment to change, maintenance, repair of goods or parts of them, or repetition or permanency of services to create a specific conclusion, whereas such possibilities do not exist.

4. Deceives people in terms of prices of goods or services that have been/are offered.
7. Associating sale of goods or providing services to the purchase of other goods or services.
8. Forcing the other party to a deal with a third party, in case it is related to supply and demand of other goods or services.
9. Dealing with the other party provided that the said party abstain from dealing with the competitor.
10. Storing and wasting goods or abstaining from their sale and also abstaining from providing services in a manner that storing, wasting or abstaining from sale of goods and services lead to artificial rise of prices in the market.
11. Offering goods or services which do not conform to compulsory standards advertised by competent authorities such as usage, composition, quality, contents, design, manufacture, completion or package.
12. Persuading, inciting or enforcing one or more stakeholders, capital owner, director or employees of a competing organization or company by exerting suffrage, transferring shares, disclosing secrets or similar methods to exercise an action which is harmful to his/her/its competitor.
13. Interfering in dealings of competing traders, organizations or companies by preventing conclusion of contracts, persuasion of breaching the contract or other similar methods.
14. Misusing of the economic dominant situation shall not be allowed in the following forms:
 1. Determining, protecting or changing price of goods or services with unusual manner.
 2. Imposing unfair contract conditions.
 3. Limiting amount of supply or demand to increase or decrease market price.
 4. Creating obstacles to complicate entry of new competitors or omit traders, organizations or competitor companies in a particular activity.

5. Subjecting contracts to acceptance of conditions which do not have any relation with subject of such contracts from viewpoint of protection and commercial tradition.
 6. Taking possession of capital and companies provided that such condition leads to disruption of competition.
15. Setting condition to supply of goods or services to purchaser shall not be allowed in the following instances:
1. Enforcing purchaser to accept the determined sale price or preventing his/her free intention in determining sale price.
 2. Bounding purchaser that traders, organizations or companies have to buy goods or services from him/her with sale price of certain goods or services.
 3. Enforcing purchaser to limit free intention of third traders, organizations or companies with other means in determining sale price of goods or services
16. Illegal use of any internal information of competitors in commercial, financial, and technical affairs in his/her own interest or in the interest of third parties shall be prohibited.

Performance of duty in more than one post

Article 7:

Director or staff of an organization or a company may not at the same time be incumbent of a post in another company or organization which, consequently, incurs limitation or disruption of competition in one or more markets.

Scope of ownership of shares or capital

Article 8:

Natural or legal person may not possess capital or shares of other companies or organizations in a manner that causes disruption of competition in one or more markets.

The following cases shall be excepted from what mentioned above:

1. Possessing shares or capital of a company or organization which deals with sale and purchase of securities.
2. Owning or achieving mortgage rights in relation to shares and capitals of active companies and organizations in the markets of goods or services, provided it does not cause exercise of suffrage in these companies or organizations.
3. In cases where shares or capitals have been possessed under emergency conditions provided the Board is informed maximally within one month from the date of possession and shall not remain more than the time determined by the Board in possession of the organization or company.

Non-mergence of companies and organizations

Article 9:

A company or an organization shall not have the right to merge unilaterally, bilaterally or multilaterally in the following cases:

1. If during mergence or whereupon, unfair trade methods are applied.
2. If prices of goods or services increase whereupon unusually.
3. If mergence causes intense concentration in the market (Determination of intense concentration is undertaken by Competition Board).
4. Where mergence causes establishing a controlling organization or company in the market.
5. Should companies and organizations fail to operate due to non-mergence, they shall be excepted of this.

Taking direction from Competition Board

Article 10:

Organizations and companies are bound to take directions from the Board in the following instances:

1. Should an organization or a company think that possession of another company or organization's shares and capitals are included in Article 8.
2. Should mergence is included in one of the clauses of Article 9.

Response to applicants

Article 11:

The Board is bound to study each instance provided for in Article 10 maximally within a month from the date of application receipt and announce the result to the applicant in writing. In case the Board does not send response within the specified period of time, the applicant is allowed to take actions stipulated in his/her application.

Intellectual properties

Article 12:

1. Monopoly rights and privileges resulting from intellectual properties should not incur violation of provisions of Articles 5 through 7 of this law.
2. In case of violation of prohibition issue stipulated in paragraph 1 of this article, the Board is authorized to adopt the following decisions:
 1. Issue direction to the owner of monopoly rights with regard to cessation of activity or non-exercise of monopoly rights inter alia limiting term of exercise of monopoly rights.
 2. Prevent party to the contract, agreement or reconciliation related to monopoly rights to perform all or part of terms and obligations stipulated in them.
 3. Revoking contracts, agreements or understanding related to monopoly rights in case of ineffectiveness of subject's measures stipulated in clauses 1 and 2 of this article.

Granting governmental privileges

Article 13:

Any kind of governmental assistance and grant of material and immaterial privileges and exemption exercised discriminately and incur dominance of one or more traders, organizations or companies in the market or disruption in the competition shall be prohibited.

Dominating circumstances in the market

Article 14:

Misuse by one or more traders, entrepreneurs, companies or organizations of dominant circumstances and their influence in the market of goods or services across or part of the country where they operate or misuse through understandings, agreements and contracts with others or through collective acts shall be totally prohibited.

Exemption and exceptional circumstances

Article 15:

Afghanistan National Competition Board may adopt decision, in case of existence of the following conditions, to exempt agreements of collective acts amongst traders, entrepreneurs or decisions and contracts of traders and entrepreneurs' unions as follows:

1. Ensuring new economic and technical growth and developments in terms of production or distribution of merchandise or provision of services.
2. Non-prevention of competition from major market sectors.
3. Securing consumer interests from these materials.
4. Non-limitation of competition more than what is required to achieve objectives stipulated in paragraph 1 and 3 of this article.

Chapter Three

National Competition Authority

Establishment of the Authority

Article 16:

Afghanistan National Competition Authority hereafter referred to as "Authority" shall be established within MoCI pursuant to provisions of this law the central office of which will be located in Kabul and its agencies will be established in the provinces.

Organizational structures

Article 17:

The Authority shall consist of the following sections:

1. Administrative Panel

2. Afghanistan National Competition Board
3. Revising Panel

Legal personality

Article 18:

1. The Authority which enjoys independent legal personality shall be the highest executive authority and its Chairmann who, at the same time, is Chairmann of Afghanistan National Competition Board and elected according to Article 21(2) of this law, undertakes responsibility to implement and abide by provisions stipulated in this law.
2. The Authority shall have two deputy chairmen as follow:
 1. A deputy in professional affairs who is at the same time member and deputy Chairmann of Afghanistan National Competition Board and is appointed in this post by the Board in accordance with the provision of Article 21 of this law.
 2. A deputy in administrative affairs appointed by Chairmann of the Authority, confirmed by MoCI and approved by Presidential Office.

Duties and Authorities

Article 19:

1. Chairman of ANCA shall have the following duties and authorities:
 1. Overseeing and assessing Authority officials' tasks in accordance with their job description.
 2. Preparing, organizing and submitting performance report of the Authority to competent authorities and publishing it through mass media, as required.
 3. Ensuring organization and coordination of Competition Board leadership which is the highest decision making source of the Authority, and its service units.
 4. Specifying agenda, date and time of holding meetings of the Board and conducting the meetings.

5. Overseeing and supervising implementation of Board decisions and ensuring their enforcement and implementation.
 6. Scrutinizing and adopting decisions with regard to proposals submitted to the Board for study and investigation.
 7. Controlling preparation and provision of annual budget, calculating revenues and costs, regulating annual working report of the Authority for Board and ensuring collection of revenues, record of costs and implementing the budget.
 8. Submitting specific proposals on decisions and verdicts to adopt competitive policy, draft relevant laws, regulations, bills and procedures.
 9. Regulating working relations and coordinating affairs with ministries, governmental organizations and private sector.
 10. Regulating and performing other issues which are, within the framework of this law, duties of the Chairmann and are not included in the abovementioned instances.
2. Duties of administrative and professional deputies of the Authority shall be regulated by a separate bill.

Chapter Four

Afghanistan National Competition Board

Establishment of the Board

Article 20:

1. Afghanistan National Competition Board hereinafter referred to as “Board” shall be established within National Competition Authority of MoCI to protect sound competition and prevent monopoly through organizing and developing markets of goods and services.
2. The Board shall be independent in implementing and accomplishing its duties, and no organization, body or authority, except for Revising Panel, may issue a decree or order that affect final decisions and verdicts of the Board under Article 46 (1).

Composition and selection of Board members

Article 21:

The Board shall have seven members one of whom performs duties as Chairmann and the other one as deputy Chairmann.

1. Composition of members:

1. One judge selected by Chief Justice and approved by the President from amongst experienced judges.
2. Three elite and experienced economists proposed jointly by Minister of Commerce and Industries and Minister of Economy and approved by the President.
3. One experienced lawyer in legal and economic affairs proposed by Minister of Justice and approved by the President.
4. Two clear –sighted persons and connoisseurs in commercial and industrial affairs proposed by Minister of Commerce and Industries and approved by the President.

2. Selection of Chairman and Professional Deputy of the Board:

Chairman of the Board shall be appointed amongst economists from members and Professional Deputy of the Board pursuant to provision stipulated in paragraph 1(2 and 3) of this article unanimously by Board members, proposed by Ministry of Commerce and Industries and approved by the President.

3. Requirements of selecting members:

Persons selected as member of the Board shall have the following qualifications:

1. Shall be citizen of Islamic Republic of Afghanistan.
2. Shall not be less than 30 years and not more than 60 years of age.
3. Shall have at least a master degree in the fields of economics, law and Shariah (Islamic Studies)
4. Shall have at least 20 years of working experience for members (connoisseurs and clear-sighted persons).

5. Shall not have been convicted for a penal offence.

Swearing ceremony

Article 22:

After having been selected, the Chairman and members of the Board shall take an oath in the presence of Chief Justice of IRA that they will perform, during their tenure, the assigned duties with honesty and protect highest interests of the country and will not allow themselves and others to act contrary to the provisions of this law.

Term of Service

Article 23:

(1) Based on the following conditions, term of service of Chairman, deputy Chairman and members of the Board shall be four years:

- 1 – A member whose term of service is completed may be reappointed as member in the Board.
- 2 – In the case of vacancy of Chairmanship and membership positions in the Board due to any reason, before completion of term of service, the appointments shall take place within one month for the mentioned vacant positions. A person, who replaces the previous member, shall complete his/her term of service according to the provisions of this article.
- 3 – Based on paragraph (1) of this article, the tenure of Chairman and members of the Board shall not end before terms of their service are completed, unless a competent court has issued the order for termination of their office due to misusing the position and non implementing the provisions of this law, or their term of office become subject to the followings:
 - Death, suffering from disease that can not be treated, physical or mental inability that may prevent performance of assigned duties.
 - Unjustified absence in the Board for more than two consecutive months or three inconsecutive months, with recognizing by the Board.
 - Compulsive resignation recognized by the board.

- (2) If a member of the Board resigns with his/her own will or if there are reasons for resignation of members based on paragraph (1) of this article, the issue is referred to the appointing authority along with the description of related reasons and documents by the Chairman or deputy of the Board to introduce a new member. The relevant authority shall introduce, maximally within one month from the receipt of notification, a new member to the Board according to the provisions of Article 21 of this law.

Chapter Five

Meetings of National Board

Quorum and issuance of verdict

Article 24:

- (1) Meetings of the Board shall be held under the supervision of Chairman of National Board and at his/her absence under the supervision of Professional Deputy Chairman with the presence of at least four other members of the Board.
- (2) Decisions of the Board shall be valid with the majority votes of members present at meeting and decisions of the Board shall be formalized at least by votes of four members.
- (3) If the required quorum was not completed at the first meeting to issue an award and the Chairman assure the presence of all members at the second meeting, in this case the award is issued based on absolute majority of participants at the meeting. In the case of equal votes at the second meeting, the votes of the side to which the Chairman belongs shall prevail.
- (4) Decisions of the Board shall be recorded in a registry book which has serial number and its pages have been stamped and which is allocated for this purpose. Signature of all member of the Board shall be taken with regard to every decision made.

Confidentiality of Meetings

Article 25:

Meetings and decisions of the National Board shall be confidential and none of the members present in the meeting may refrain from casting vote. Members who are present in hearing session shall participate in related meeting.

Procedure of Meetings

Article 26:

Chairman of National Board shall preside over the meetings and in his/her absence Professional Deputy shall specify issues of discussion and Chairman of the meeting shall collect votes and at the end adds his/her own vote to it.

Commencement of Meetings

Article 27:

Meetings of the Board shall convene from the date on which parties to the suit are notified in writing.

Issues Included in the Decision

Article 28:

Decision shall include the following points:

- Names and last names of participants of the meeting.
- Names and last names of reviewing and investigating panel.
- Complete Identification of parties to the suit.
- Summary of Issues.
- Summary of reviewing and discussions of the meeting.
- Assessing all evidences and documents presented.
- Recording negative votes, if any.
- Conclusion of adopting decisions and issuance of verdicts in accordance with the provisions of this law.
- Decisions of the meeting shall be clearly and explicitly described to be understandable for parties to the suit.
- Publishing decisions through mass media, if the Board decides so.

Issuing Written Award

Article 29:

- (1) Decisions made at presence of Chairman of National Board, Professional Deputy or by the participating members at the meeting shall be written and signed in accordance with Article 24 (4) of this law.
- (2) Members opposed to the adopted decision, may present their votes collectively or individually; documents shall be kept in the archive of the ANCA and a copy of it shall be delivered to the parties to be signed and the other copy shall be sent to Publication Office of the ANCA for publication.

Chapter Six

Duties and Authorities of the Board

Position of the Board

Article 30:

In all cases and with regard to all issues of discussion under this law, the Board shall have the position of complainant (claimant) and may refer to a competent court for compensation of losses to the public interest.

Scope of Authority

Article 31:

- (1) Assessment, interrogation and investigation regarding activities of traders, organizations, companies, and associations shall be done on the request of claimants or initiatives of the Board. Where it is proved that provisions of this law have been contravened, necessary measures shall be taken to end contravention of law and those who are responsible for violation of law shall be fined according to the provisions of this law.
- (2) The Board may assess applications of exemption, false statements and granting exemption certificate for agreements.
- (3) The Board shall determine facts and cases inclusive in anti competition practices stipulated under provisions of Articles 5-7 of this law.

- (4) The Board shall identify granting exemptions under this law, and adopt decisions about it.
- (5) To implement goals of this law, the Bboard shall draft and develop regulations and guidelines as following:
 - Facilitation of competition, prevention, control and removal of monopolies.
 - Preventing exert of influence in determining prices and quantity and regulating the conditions to have access to market of goods and services.
 - Regulating internal affairs of the Board.

Inspection and Investigation

Article 32:

- (1) In carrying out of its assigned duties, the Board shall have the authority, if required, to inspect traders, organizations, companies, associations and entrepreneurs and issue permit for entry into premises, reservoirs, warehouses, means of transportation and inspection of economic activities, goods and services, offices and documents.

Inspection of General Assemblies` Meetings, Board of Directors and Board of Executives of the above mentioned entrepreneurs and collection of required information shall be among the mentioned powers of the Board.

- (2) The Board shall have the authority, in accomplishing assigned duties, to carry out necessary assessments with regard to issues related to this law and address complaints by making use of the following measures:
 - 1- Summon and obligate any person whose presence is deemed necessary in the Board or its representative offices for carry out assessments.
 - 2- Summon witnesses to the Board and hearing their testification.
 - 3- Summon and obligate natural and legal persons from private (internal or domestic) to present reports, information, evidence, documents and records related to antimonopoly practices including written or electronic ones.
 - 4- Invite experts and connoisseurs and receive their opinions on necessary instances.
 - 5- Referring the inspection and inspection order to professional and experienced people.

- 6- Referring the inspection and issuing order under this law, in addition to the member of Supreme Court (judge member of the Board), to one of the three judges who are appointed and introduced by the Chief Justice based on the request of National Board.

Sanctions

Article 33:

- (1) Chairman or members of the Board shall not hold any other official or private assignment, engagement in business, share in firms or economic institutions until the end of their duties in the Board.
- (2) Chairman and members of the board, before their assignment to the board, shall return all documents which they have in their possession to their owners. In case of disclosure of the issue or a documented claim by a claimant, the member shall lose his/her membership.
- (3) Performing duties in associations whose purposes are social cooperation shall be excluded.
- (4) Chairman, members and staff of the Board shall not disclose or use the information and secrets regarding the ANCA and other authorities as well as secrets of entrepreneurs, traders, or their associations which they have received during implementation of this law, for their own interest or in the interest of others. Those who leave the Board will also fall in this category.

Decisions Nullifying Anti Competitive Practices

Article 34:

After receiving the complaints and accomplishing necessary inquiries, if the Board comes to a conclusion that one or more than one cases of anti competitive practices stipulated in Articles 5-7 of this law, have been violated by traders, institutions, companies or a group of them, then the Board may take necessary decisions as following:

- 1- Repeal any written, electronic or oral understanding, agreement or contract which manifests anti competitive practices stipulated in provisions of articles 5 -7 of this law.

- 2- Prevent parties to the agreement or agreements related to it, from continuing anti competitive practices.
- 3 – Prevent repeating any kind of anti competitive practices.
- 4 – Announce decisions and results of the above measures through mass media to ensure more transparency of the market.
- 5 – Adopt decision with regard to restoration of share or capital of traders, institutions or firms acquired contrary to provision of Article 8.
- 6 – Adopt decision with regard to suspension or repealing any type of merging which have taken place contrary to provisions of Article 9; or adopting decision with regard to dissolution of the merged firms.
- 7 – Make suggestion to competent authorities regarding apprehension and confiscation of goods which have been obtained through anti competitive practices stipulated in provisions of Articles 5 - 7.
- 8 – Adopt decision to trader, institution or firm or with regard to inactivity in a particular area or in a particular area of a region or special regions.
- 9 – Adopt decision with regard to articles of association or minutes of meeting of General Assembly or Board of Directors and developing necessary reform bills and recommending them to Council of Ministers for approval.
- 10 – Obligate traders, institutions and firms or a group of them to abide by the minimum of supply and limits of specified prices.

Addressing the Complaints

Article 35:

- (1) The Board shall be the authority to adjudicate anti competitive practices directly or based on complaints by any person including legal or natural persons, Office of Attorney General and its relevant provincial and central offices, Control and Audit Office of Council of Ministers, governmental organizations, entities and institutions, guilds, associations of consumers' right protection and other non governmental organizations. The Board may investigate and review the complaints to determine anti competitive practices and shall take necessary decisions accordingly.

- (2) To address the subject of complaints, the Board shall fix the time of inspection and announce it to the parties. The parties may introduce themselves or their advocate or submit their defense note to the Board.
- (3) The method of inspection, investigation and registration of questionnaires shall be determined in accordance with the regulation proposed by the Board and approved by the Council of Ministers.
- (4) The Board shall develop regulations and procedures related to this law and submit its annual performances report on the implementation of this law to the MoCI and publish it through mass media.

Rejection or approval of the complaints

Article 36:

- (1) Where the Board deems necessary, it shall consider the issue of complaint serious and reviewable and shall inform the complainants in written that their application was serious and assessment will be started on the complaint.
- (2) If the Board rejects application on the ground of its imperfectness, the complainant may refer to Revising Panel or to a competent court.

Commencement of Review

Article 37:

- (1) If the Board decides for reviewing, it may summon reporter or reporters for investigation. Investigation shall be carried out under the supervision of Chairman of related section of the Board. The period for investigation shall be at least 3 months and, when required, it may be extended for only one another period.
- (2) The Board shall inform the parties about commencement of reviewing within 15 days from the date of issuing award and requests them to submit, within 30 days, their written paper repelling the claim to the Board.
- (3) The Board shall send the notice, according to type of claim, along with adequate information to the parties and reviewing process shall commence in specified time.

Primary Reviewing

Article 38:

- (1) The Board may at its own initiative or on the basis of requests, while keeping the order of dates, decides to start reviewing directly or start primary reviewing to adopt decision, regardless of the fact whether reviewing should be started or not.
- (2) Where it is decided to start primary reviewing, then Chairman of the Board shall assign one or more experts from amongst his/her professional staff as reporters.
- (3) The reporter who has been assigned to carry out primary reviewing shall in writing submit, within 30 days, report on information or evidences collected by him/her to the Board.
- (4) To assess the obtained information, the Board shall convene a session and make decision, within ten days from the receipt of report of primary reviewing, on whether to start addressing the issue or not.

Evidences, Documents, and their announcement to the parties

Article 39:

- (1) Reporters shall not exert influence when investigation is carried out to obtain information and accomplish assessment.
- (2) During the specified period, reporter may request provision of any kind of information from parties to the suit and related sites.
- (3) During investigation and adjudication by the Board, person or persons who claim that provisions of this law have been violated may, at any time, present information and evidence to the Board.
- (4) Parties to the suit who are informed that investigation and adjudication will be started against them, may request copy of the papers with related to them..
- (5) The Board may not take decision with regard to issues that parties to the suit have not been informed about and they have the right to defend.

- (6) The report prepared at the end of reviewing process shall be delivered to all members of the Board, parties to the suit, and those who have violated the provisions of this law shall be informed to submit their written defense note to the Board within 30 days.
- (7) Investigation panel must present their writing opinion on defense note submitted by parties to the suit within 15 days and shall also inform the members of the Board and parties to the suit.

Parties to the suit may respond within 30 days to opinions presented. Where there are justified reasons by the parties to the suit, the period may extend only for one time.

- (8) Defense notes of parties to the suit which are not submitted to the panel in due time shall not be considered.

Hearing of the Case

Article 40:

Hearing of the case shall take place just after announcement of preparedness by the parties based on defense note that they have the right that their claim must be heard. The Board may decide on its own initiative to conduct hearing session. Hearing of the case shall take place within a period of minimum 30 days and maximum 60 days from the date on which reviewing process is completed. Invitation letter to hear parties shall be sent 30 days prior to hearing of the case.

Principles for Hearing of the Case

Article 41:

- (1) The Board may conduct hearing session publicly or as they deem appropriate (including use of electronic registration means.).
- (2) Hearing session shall be conducted under the Chairmanship of the Chairman of the Board or in his/her absence under the chair of his/her Professional Deputy with the participation of at least 4 members of the Board. Hearing session shall be

completed in few short sessions and different sessions at the same day shall be deemed as one session.

- (3) Parties to the suit may use, one week before receiving the notice, the evidences of proof in hearing session. A party to the suit, who is not using evidences of proof in the specified period of time, shall not be given any notice.
- (4) Parties to the suit may use any kind of evidences and proofs during the hearing session.
- (5) In case of violation of the provisions of this law, parties to the suit or their representatives may prove their dissatisfaction for violation of this law before convening the sessions and inform the Board.

Final Award

Article 42:

- (1) Decision shall be made at the same day after hearing the case. Otherwise the decision shall be described within 15 days along with its reasons. In cases where the parties have not requested hearing and also the panel does not decide on its own initiative about hearing, the final decision shall be adopted by the Board within 30 days after the completion of reviewing process.
- (2) Where parties are not present in the hearing session, decision shall be made within one week in their absence.

Chapter Seven

Panel of Revising

Composition of Revising Panel

Article 43:

Conditions to select revising panel hereafter referred to as 'Panel' are as bellow:

- (1) The panel shall be established within the National Competition Board and shall be comprised of three persons as following:

1 – One judge from the Supreme Court who is selected by the Chief Justice and order of president as the Chairman of panel.

- 2 - One skillful and experienced economist who is proposed by Minister of Economy and approved by the president, as member.
- 3 – One connoisseur and clear-sighted person in commercial and industrial activities who is proposed by the Minister of Commerce and industries and approved by the President, as member.
- (2) Panel members shall be selected in accordance with the provisions of Article 21 (3) of this law.

Appeal for Revision

Article 44:

Appeal by any parties to the suit for revising final decision of the Board shall be valid within the period specified in this law.

Revising the Decisions of the Board

Article 45:

- (1) Revising the decisions of the Board by the assigned panel shall be done within 20 days from the date of notification to the beneficiary in accordance with provision of Article 47 of this law. This period shall be 2 months for those residing outside the country.
- (2) Where revision could not be accomplished within anticipated time according to the provision of paragraph (1) of this article, or decisions of the Board was approved by the panel, the decision shall be final.

Decisions of the Panel

Article 46:

- (1) The panel may approve, amend, modify or repeal decision of the Board or adopt independent decision. After approval by the Chairman of the panel, decisions of the panel shall be final and binding.
- (2) Decisions of the panel shall be adopted based on majority votes of its members.

If required, the panel may invite the parties for explanations. In this case, the parties may attend in person or send their agents or send their defense note. Otherwise, decisions shall be taken based on related evidences and documents.

Chapter Eight

Manner of Execution of Decisions of the Board and Panel

Execution of Decisions

Article 47:

Decisions of the Board shall be enforceable after notification to beneficiaries and appealing for revision by beneficiary under Article 45, may not prevent execution of the decision. The beneficiary may request, within 20 days, from panel the suspension of execution of the decisions made by the Board. The panel shall consider the request immediately and order suspension of the decision of the Board after receiving necessary security.

Compensation for losses

Article 48:

Natural persons incurring losses as a result of anti competitive acts stipulated in this law may refer to a competent court to be compensated for his/her loss. The court will pass a judgement in compliance with provisions of this law so that his/her loss is compensated provided that the applicant has presented a confirmative document from the Authority indicating exercise of anti competitive acts, along with his/her application to the court.

Obligations and limitations

Article 49:

Members of the Board, the Panel as well as staff of the Authority and its offices shall have the following obligations and limitations:

- 1- Not participating in meetings and decision making process in cases where members of the Board or the Penal or staffs of the Authority are beneficiary in them.

- 2- Members of the Board, the Panel, staff of the Authority as well as offices of its representation and persons who have been already working in these posts may not disclose internal information of organizations, firms and traders or persons obtained during carrying out of their duties or use them clandestinely in their own interest or in the interest of third parties. Perpetrators shall be punished in accordance with the provisions of this law.
- 3- Members of the Board, the Panel, staff of the Authority and its agencies may not, prior to making decisions, express views in writing or orally on violations of the provisions of this law by traders, organizations, firms or a group of them.

Chapter Nine

Punishment

Violation of the Board decisions

Article 50:

No body or authority shall violate decisions of the Board or the Panel made according to Article 34 of this law. Violators, in addition to implementing decisions of the board, shall be convicted to imprisonment not less than 6 months and not more than 3 years or a fine not less than 100,000 AFN and not more than 1,000,000 AFN or both punishments.

False statements

Article 51:

Any person who makes false statements and resorts to provide forged documents and evidences, or refrain to state realities in the following cases shall be convicted to enforceable imprisonment not less than 3 months and not more than 1 year or a fine not less than 50,000 and not more than 500,000 AFN or both punishments as decided by the court:

- 1- Making false statements during verification of anti-competitive practices including inspection and investigation process.

- 2- Refraining from expression of realities effective in decisions made by the Board and the Panel.
- 3- Submitting forged or unreal evidences and documents to the Authority, the Panel or its agencies.
- 4- Changing, distorting or annihilating information, evidences and documents related to anti-competitive practices.
- 5- Where false documents, evidences or statements lead to receipt of licence from the Board under provisions of this law, the competent court, in addition to penalty provided for in this article, shall issue the order of amendment and annulment of decision of the Board or the Panel on the request of beneficiary.

False witness

Article 52:

(1) Where a witness, expert, connoisseur or a clear-sighted person is requested under provisions of this law to witness or express his/her opinion but he/she deliberately witnesses contrary to the reality in a manner that is effective in the decisions of the Board or the Penal, he/ she shall be convicted to enforceable imprisonment not less than 1 year and not more than 3 years or a fine not less than 200,000 AFN and not more than 1,000,000 AFN or both punishments.

(2) Where a person submits a formal complaint to the Board or a competent court with the intention to harm commercial and professional credibility of traders, organizations, firms or their directors and owners, however his/her claim is proved incorrect after investigation, the claimant in addition to conviction to compensate for intellectual loss shall be sentenced to imprisonment not less than 6 months and not more than 2 years or a fine not less than 100,000 AFN and not more than 600,000 AFN or both punishments.

Disclosure of information

Article 53:

Any person or persons, who are bound according to provisions of this law to maintain the internal information of traders, firms, organizations and other persons,

publish or disclose the information, or use it in his/her own interest or in the interest of third parties shall be convicted, as the case may be, to enforceable imprisonment not less than 6 months and not more than 2 years or a fine not less than 100,000 AFN and not more than 600,000 AFN or both punishments in addition to conviction to compensate for losses caused by disclosure of information.

Misusing provisions of this law

Article 54:

Members of the Board, the Panel, staff of the Authority in the centre and its agencies or any other person, who misuses this law to damage financial interests or commercial and professional credit of other natural or legal persons shall be convicted to enforceable imprisonment not less than 3 years and not more than 5 years or a fine not less than 1,000,000 AFN and not more than 1,500,000 AFN or both punishments in addition to conviction to compensate for material and immaterial losses.

Carrying out inquiry and investigation

Article 55:

Where a person prevents staff of the Authority or its agencies from carrying out of inquiry and investigation, he/she shall be convicted to a fine not less than 100,000 AFN and not more than 500,000 AFN, and in case of recidivism, the punishment shall be doubled.

Punishment of legal persons

Article 56:

- (1) In case of perpetration of crimes under articles 50 through 55 of this law, legal persons and their directors during perpetration of crime shall be convicted, as the case may be, to punishment provided for natural persons.
- (2) Where the crime perpetrated by legal person is proved to be the result of intention or fault of its staff, in addition to what is contained in paragraph (1), the legal person shall also be found responsible according to the case.

- (3) Directors or staff of the legal entity shall be excused of punishment provided they prove that crime has been occurred without their intention and they all have made their efforts to prevent occurrence of the crime or have notified the competent authorities immediately after having been informed of the occurrence of crime.

Severe punishment

Article 57:

Should there be severer punishments provided for in other laws with respect to crimes under provisions of this law, the provisions of those laws shall prevail.

Adjudicating the Crimes

Article 58:

Crimes provided for under articles 50 through 55 of this law shall be adjudicated out of turn in the relevant courts according to standing regulations and context of this law.

Chapter Ten

Miscellaneous Provisions

Compensation for losses

Article 59:

- (1) Persons who incurred losses as a result of prevention, distortion or competition limitation shall be entitled to be compensated for losses or its equivalent amount as well as differences of paid costs they used to pay during the non-existence of competition limitation in the market of goods.
- (2) If the amount of loss may not be determined on the basis of documents, it shall be calculated and determined according to its balance of previous year.
- (3) In case the loss arises from the agreements or decisions made by the parties which includes intentional action of one of the parties, the competent court, taking into account the request of the harmed person, shall issue a verdict that perpetrator/s

shall pay threefold equivalent compensation for the loss of the harmed person from the interests they gained or likely to be gained.

Hoarded commodities

Article 60:

Where the Authority finds that situations have arisen in the market of goods and services due to hoarding of goods, it shall refer the issue to Anti-Hoarding Commission.

Enforcement of the Law

Article 61:

This law shall enter into force from the date of its endorsement and shall be published in the Official Gazette. Upon its enforcement, all provisions contrary to this law shall be abrogated.