

Law on Protection of Competition

Part I

General Provisions

Subject Matter

Article 1

This Law regulates mode, proceeding and measures for protection of competition on the relevant market and defines competencies of the body for protection of competition.

Impairment of Competition

Article 2

(1) Pursuant to this Law following acts and practices are considered to impair competition:

- 1) agreements, decisions of associations and concerted practice which prevent, restrict or distort competition;
- 2) abuse of dominant position; and
- 3) concentrations resulting in significant prevention, restriction or distortion of competition, primarily by creating or strengthening dominant position on the market.

(2) Restrictions of competition referred to in paragraph 1 of this Article shall be identified in each case pursuant to the degree and dynamic of changes in the structure of the relevant market, restrictions and availabilities for new competitors to equally access market, changes resulting in restricted supply of markets, degree of benefits for consumers and other circumstances which influence restriction of competition.

(3) Detailed criteria referred to in paragraph 1 of this Article shall be regulated by the state administration body competent for economy matters (hereinafter: the competent body).

Territorial Application

Article 3

This Law shall apply to acts and practices conducted in the territory of the Republic of Montenegro (hereinafter: Montenegro), that is acts or practices occurring as effect of acts or practices conducted abroad and which result in restriction of competition in the territory of Montenegro.

Personal Application

Article 4

(1) This Law shall apply to all legal entities and natural persons engaged in economic activity and trade of goods or services, which by their acts restrict or may restrict competition (hereinafter: undertakings), and in particular to:

- 1) enterprises and other business, regardless of their seat or permanent residence, and natural persons regardless of their nationality or permanent residence;
- 2) other subjects engaged, directly or indirectly, in a permanent, temporary or single economic activity and trade of goods or services, regardless of their legal status, nationality, seat or permanent residence (trade unions, business associations, sports organizations, institutions, cooperatives, exponents of intellectual property rights etc), and
- 3) state administration bodies and local self-government bodies, when directly or indirectly engaged in economic activity and trade of goods or services.

(2) This Law shall not apply to undertakings providing services of public interest, as well as to such organizations which on the base of act of the authorized body generate income from fiscal revenues, if the application of this Law would obstruct the performance of entrusted activities.

Application to Related Undertakings

Article 5

(1) For the purpose of this Law, related undertakings shall mean two or more undertakings related in such a manner that one undertaking directly or indirectly, legally or factually, exercises decisive influence on business decisions of the other undertaking especially on the grounds of holding majority share in initial capital, majority votes in management bodies, right to appoint more than half of the members of management bodies and the bodies authorized to act as proxies to undertakings, as well as agreements on transfer of management rights and employment contracts.

(2) Pursuant to the paragraph 1 of this Article, two or more related undertakings shall be considered as one undertaking.

Relevant Market

Article 6

(1) Relevant market, within the meaning of this Law, shall consider market comprising relevant product market within the relevant geographic market.

(2) A relevant product market, within the meaning of this Law, considers set of goods or services that can be substituted under the reasonable terms from the standpoint of

the consumers of goods or services, by reason of their characteristics, intended use and price.

(3) A relevant geographic market, within the meaning of this Law, considers the territory within which the undertakings take part in demand or supply process, and where there are homogeneous conditions of competition appreciably different from the conditions of competition in the neighboring territories.

(4) The competent body shall prescribe in greater details criteria for determining a relevant market.

Part II

Impairments of Competition on the Market

Chapter 1

Prohibited Agreements

Agreements Preventing, Restricting or Distorting Competition

Article 7

(1) Acts which for their object or effect have or may have prevention, restriction or distortion competition on the relevant market, within the meaning of this Law, are agreements, contracts, particular provisions of contracts, explicit or tacit agreements, concerted practices, decisions on the associations of undertakings (hereinafter: agreements).

(2) Agreements pursuant to paragraph 1 of this Article shall be prohibited and void, and in particular those that:

- 1) directly or indirectly fix purchase or selling prices or any other operating conditions;
- 2) limit or control production, market, technical development or investments;
- 3) share market or sources of supply;
- 4) apply dissimilar operating conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- 5) make the conclusion of contracts subject to acceptance of supplementary obligations, which by their nature and commercial usage and practice, have no connection with the subject of the contract.

(3) With exception to paragraph 2 of this Article, agreements between undertakings considered within the meaning of this Law to be related undertakings shall not be prohibited.

(4) Consorted practice referred to in paragraph 1 of this Article shall mean cooperation between undertakings achieved without conclusion of a formal

agreement and replacing competition on the relevant market, and which may take form of direct or indirect contact between undertakings with result in influence on market behavior.

Exemptions of Agreements

Article 8

Agreements referred to in paragraph (1) and paragraph (2) of Article 7 may be exempted from prohibition in case they contribute to improvement of the production or distribution or to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefit, and which:

- 1) impose only such restrictions which are necessary for the attainment of the above mentioned objectives, and
- 2) do not afford the possibility of eliminating competition in respect of the substantial part of subject goods or services.

Categories of Agreements

Article 9

Pursuant to Article 7 of this Law, agreements may be:

- 1) Horizontal agreements, i.e. agreements among existing or potential undertakings operating on the same level of production or distribution ;
- 2) Vertical agreements, i.e. agreements on terms of purchase, sale or resale among existing or potential undertakings not operating on the same level of production or distribution.

Decisions and measures of the competent body

Article 10

If the competent body, throughout official personnel, ex officio or at the request of interested party, establishes that the agreement prevents, restricts or distorts competition, it will issue decision establishing distortion of competition in accordance with Article 7 paragraphs 1 and 2 of this Law, and it can order party of the agreement to undertake the measures enabling the establishment of competition on the relevant market and removal of harmful consequences of the prohibited agreement, as well as deadlines for their execution.

Individual Exemption

Article 11

(1) The competent body throughout official personnel may, at the request of the parties to the agreement and pursuant to Article 8 of this Law, approve exemption of

agreement or part of that agreement form prohibition referred to in Article 7 paragraph 2 of this Law (hereinafter: individual exemption).

(2) The burden of proof on the existence of conditions for exemption referred to in paragraph 8 of this Law rests on claimant.

(3) The competent body shall prescribe detailed content of application for individual exemption.

Content and Validity of Individual Exemption

Article 12

(1) Individual exemption referred to in Article 11 of this Law is approved by decision that determines the time limit of exemptions, and which can determine conditions and prohibition together with deadline in which they have to be carried out.

(2) Time limit referred to in paragraph 1 of this Article is determined for the period not longer than necessary to return investment and accumulate reasonable profit, pursuant to the agreement referred to in Article 11 paragraph 1 of this Law.

(3) Individual exemption referred to in paragraph 1 of this Article, at the request of the party to the agreement, may be renewed if the agreement meets the requirements for exemption prescribed by Article 8 of this Law.

(4) Decision on renewal of individual exemption shall determine new time limit, which can not be longer than the time limit referred to in paragraph 2 of this Article, and it can contain conditions and prohibitions which have to be carried out.

(5) The request for renewal of individual exemption referred to in paragraph 3 of this Article shall be submitted to the competent body by the parties of the agreement, not later than 6 months prior to the expiry of granted exemption.

Cancellation, Annulment or Amendments of Individual Exemption

Article 13

Decision on individual exemption competent body may:

- 1) cancel or amend, if the circumstances on the basis of which the exemption was granted, have changed; or
- 2) annul, if the exemption was granted on the basis of inaccurate or false information, conditions determined have not been fulfilled, or the exemption is misused.

Exemptions by Categories of Agreements (Block Exemptions)

Article 14

(1) The Government shall specify conditions for exemptions by categories of agreements and define types of agreements which can be exempted from prohibition pursuant to paragraph 8 of this Law.

(2) Competent body by way of decision can prohibit agreement referred to in paragraph 1 of this Article if, at the request of interested party or ex officio, establishes that subject agreement does not comply with the conditions referred to in Article 8 of this Law.

(3) In the case referred to in paragraph (2) of this Article, burden of proof rests on applicant, that is the competent body.

Agreements of Minor Importance

Article 15

(1) Agreements of minor importance that do not have a significant impact on competition shall not be prohibited.

(2) The agreements referred to in paragraph 1 of this Article, within the meaning of this law, shall mean horizontal agreements between the undertakings whose total market share does not exceed 10% of the relevant market and vertical agreements between the undertakings whose total market share does not exceed 15% of the relevant market.

(3) Horizontal and vertical agreements that result in distortion of competition on relevant market due to cumulative effect of agreements network that have a similar effect on the market, shall be considered agreements of minor importance if total market share of those agreements does not exceed 5% of the relevant market.

Prohibited Restrictions of Competition

Article 16

(1) Horizontal agreements that directly or indirectly have the goal to: fix prices in the case of sale of products to third parties; restrict the sale; allocate the market or undertakings, that is final users, cannot be exempted pursuant to Article 14 and Article 15 of this Law.

(2) Vertical agreements that cannot be exempted from prohibition referred to in Articles 14 and 15 of this Law are those that, directly or indirectly, have the goal to:

- 1) impose restriction to a trader that leads him to sell goods or services at a fixed or minimum price;

- 2) restrict territory or undertakings, that is end users to whom a trader may sell good or services, except in the case of:
 - exclusive distribution or exclusive allocation of undertakings, that is end users;
 - restriction of sale to end users by wholesale trader;
 - restrict sale to unauthorized members of selective distributive network;
 - restriction of sale of components to competitors of suppliers of those components;
- 3) restrict sale to end users by members of selective distributive network;
- 4) restrict mutual supply among distributors within selective distributive network;
- 5) restrict supplier of components to sell the components as spare parts to end users and service providers.

(3) With exception to Article 15 of this Law, vertical agreements among competitors can not be exempted in the case that their goal results in restriction referred to in paragraphs 1 and 2 of this Article.

Obligatory Notification of Agreements

Article 17

(1) Parties to the agreement are obliged to notify the competent body on the agreement within the period of 15 days from the date of its conclusion, except the agreements concluded pursuant to Articles 14 and 15 of this Law.

(2) The form, content of the application and mode of recording the notified agreements shall be regulated by competent body.

Chapter 2

Abuse of dominant position

Notion of Dominant Position

Article 18

(1) An undertaking has a dominant position on a relevant market, within the meaning of this Law, if it has the power to behave independently of other undertakings, thus being in a position to make business decisions without taking into account business decisions of its competitors, suppliers, buyers or end users of its goods or services.

(2) Dominant position of an undertaking in a relevant market shall be appraised taking into account market share of that undertaking on the relevant market, market shares of its competitors on the same market, market power of potential competitors and barriers to entry in the relevant market, as well as possible dominant position of the buyer.

(3) An undertaking having a market share exceeding 50% in the relevant market shall be considered to have dominant position.

(4) Undertaking referred to in paragraph 3 of this Article has the right to claim not to be in dominant position, in which case burden of proof rests on that undertaking.

(5) An undertaking having a relevant market share below 50% may also be considered dominant in which case the burden of proof rest on the competent body, that is on claimant.

Collective Dominance

Article 19

(1) Two or more independent undertakings united, on the basis of their economic links on the relevant market, in such a way that they act jointly as a single undertaking on that market (collective dominance) may have dominant position.

(2) Collective dominance of two or more undertakings in a relevant market shall be appraised taking into account aggregate market share of those undertakings on the relevant market, market shares of its competitors on the same market, market power of potential competitors and barriers to entry in the relevant market, as well as possible dominant position of the buyer.

(3) Two or more undertakings having aggregate market share exceeding 60% in the relevant market, within the meaning of this Law, shall be considered to have collectively dominant position.

(4) Undertaking referred to in paragraph 3 of this Article has the right to claim not to have collectively dominant position, in which case burden of proof rests on undertaking.

(5) Two or more undertakings having aggregate relevant market share below 60% may be considered collectively dominant, in which case the burden of proof rest on the competent body, that is on claimant.

Prohibition of Abuse of Dominant Position

Article 19

(1) Abuse of dominant position on the relevant market shall be prohibited.

(2) The abuse of dominant position on relevant market of goods or services shall be considered to be acts which prevent, restrict or distort competition, and particularly those which:

- 1) directly or indirectly impose unfair purchase or selling price or other unfair trading conditions;

- 2) limit production, markets or technical development thus causing harm to consumers;
- 3) apply dissimilar conditions to identical transactions with different undertakings, thereby placing them at a competitive disadvantage on market;
- 4) make the conclusions of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial customs, have no connection with the subject of such contracts.

Decisions and Measures of the Competent Body

Article 21

(1) If the competent body, throughout official personnel, ex officio or at the request of interested party, establishes that the dominant position has been abused it will issue decision establishing distortion of competition in accordance with Article 20 of this Law, and it can order dominant undertaking to carry out the measures enabling the establishment of effective competition on relevant market and elimination of harmful consequences of abuse of dominant position, as well as deadlines for their execution.

(2) The decision referred to in paragraph 1 of this Article cannot order division of the undertaking, divestiture of its assets, shares or equity interest, termination of contract or waiving of rights enabling exercise of prevailing influence on operations of another undertaking.

Admissibility of Certain Acts

Article 22

(1) The competent body may, at the request of an undertaking with dominant position, issue a decision establishing that particular practice the undertaking intends to perform is not prohibited pursuant to Article 20, paragraph 2 of this Law.

(2) The competent body may cancel the decision from paragraph 1 of this Article, if the circumstances on the basis of which the decision was made, have changed, or to annual the decision if it was granted on the basis of inaccurate and false information.

Chapter 3

Control of concentrations

Concept of Concentration and Forms of Acquiring Control over Undertaking

Article 23

(1) Concentrations of undertakings shall be deemed to arise in the following situations:

- 1) establishment of a new undertaking by merger of two or more previously independent undertakings or their parts (merger);
- 2) when one or more natural persons that already have the control over at least one undertaking, or when one or more undertakings, acquire control over the entire or parts of other undertaking;
- 3) establishment and joint control by at least two independent undertakings over a new undertaking that performs on a lasting basis all the functions of an autonomous economic entity and has an access to market (joint venture).

(2) The control referred to in paragraph 1, items 2 and 3 of this Article shall be deemed to constitute decisive influence on undertakings' business activities, on the grounds of granted rights, contracts or any other legal or actual facts, in particular the following:

- 1) ownership over or disposal with the whole or part of the property of undertaking;
- 2) contractual authorization or any other grounds enabling decisive influence on composition, activities or decision making of another undertaking.

(3) It shall be considered that the undertaking has acquired control in case of being holder or bearer of rights referred to in paragraph 2 of this Article or in case such rights may be exercised otherwise.

(4) The forms of control referred to in paragraph 2 of this Article shall be assessed separately or in combination, whereas relevant legal and actual facts shall be taken into account but not the intention of interested parties.

(5) Two or more concentrations between the identical undertakings realized in the period of less than two years, shall be deemed to constitute one concentration while the date of occurrence of the last of these concentrations shall be considered as date of establishment of subject concentration.

Forms of Acquisition Not Considered To be Concentration

Article 24

1) The following shall not be considered as concentration of undertakings:

- 1) case where a banking or other financial institution, with the view of reselling them, temporarily acquires shares or other securities of an undertaking and sells them at the latest within 12 months upon acquiring them, provided that during that period the ownership status has not been used in order to influence undertaking's business decisions that concern its behavior toward competitors or it is used for that purpose exclusively with the intention to prepare the sale of the respective securities or assets of the undertaking;
- 2) case of acquisition of control over undertaking by the persons acting as bankruptcy or liquidation administrator pursuant to regulations governing bankruptcy and liquidation;

3) case where joint venture is aimed at coordination of market activities between two or more undertakings that remain independent, where such joint venture shall be assessed pursuant to provisions contained in Article 8 of this Law.

(2) The competent body may extend the period referred to in paragraph 1, item 1 of this Article up to 6 months, at the request of interested bank or other financial institutions that proves that sale of securities was not reasonably possible with that time period.

Request for Approval of Concentration

Article 25

(1) Concentration referred to in Article 23 of this Law shall be performed upon the acquired approval, issued at the request of an undertaking by the competent body.

(2) The request referred to in paragraph 1 of this Article shall be submitted provided that:

1) combined total annual income of all undertakings involved in concentration on the market of Republic of Montenegro exceeds the amount of 3 (three) million EUR according to the annual statements of the undertakings for the previous financial year; or

2) combined total annual income of undertakings involved in concentration realized on international market in the previous financial year amounts to 15 (fifteen) million euros according to final accounts of undertakings for the previous financial year, whereby at least one of undertakings involved in concentration is registered on the territory of the Republic of Montenegro.

(3) In the first year of business activities of the undertakings, the income referred to in paragraph 2 of this Article shall be calculated on the basis of income realized in the current financial year for the period of 12 months.

(4) For the purpose of calculating total annual income of the undertakings involved in concentration, income realized in mutual turnover between the undertakings involved in concentration shall not be taken into account.

(5) Form and contents of the request for issuing the approval of concentration shall be prescribed by the competent body.

Calculation of Annual Income for Banks, other Financial Institutions and Insurance Companies

Article 26

(1) Total annual income of undertakings concerned pursuant to Article 25 paragraph 2 shall be calculated in following manner:

- 1) for legal entities providing financial services, after deduction of value added tax (indirect taxes) and other taxes directly related to those items, the sum of following income items shall be used:
 - a) interest income and similar income;
 - b) income from securities:
 - income from shares and other variable yield securities
 - income from participating interest
 - income from shares in affiliated undertakings
 - c) due commissions
 - d) net profit from financial operations and
 - e) other operating income.

- 2) for insurance and other reinsurance companies, the value of gross premiums which shall comprise all amounts received and receivables in respect of insurance and reinsurance contracts issued by or on behalf of the insurance companies, after deduction of taxes charged by reference to the amounts of individual premiums or the total volume of premiums.

Method for Submitting the Request for Concentration Approval

Article 27

- (1) The request referred to in Article 25, paragraph 1 of this Law shall be submitted to the competent body within 7 days upon signing of the agreement, that is publishing of the public offer or acquiring control over the undertaking.

- (2) The request for control over concentration may be submitted also in case when the undertakings involved in concentration show a serious intention to conclude the contract, by signing the statement of intent, or when the undertaking announces the intention to make an offer to purchase shares.

- (3) In case the control over the entire or parts of one or more undertakings is acquired by another undertaking, the request referred to in paragraph 1 of this Article shall be submitted by a party acquiring the control, whereas in all other cases parties involved in concentration shall submit a joint request.

Publishing the Request for Concentration

Article 28

The competent body is obliged to publish the following data from the request in the Official Gazette of the Republic of Montenegro:

- 1) name of undertakings involved in concentration;
- 2) nature of concentration; and
- 3) sector of economy within which the concentration shall be made.

Criteria for Control of Concentration

Article 29

When assessing effects of concentration, the competent body shall evaluate whether such concentration creates or strengthens dominant position on the market thus considerably preventing, restricting or distorting competition, taking into account in particular:

- 1) structure of relevant market;
- 2) existing and potential competitors;
- 3) market position of undertakings involved in concentration and their economic and financial power;
- 4) possibility to choose supplier and consumer;
- 5) legal and other barriers to entry on market
- 6) domestic and international level of competitiveness of parties involved in concentration;
- 7) trends of supply and demand of relevant goods or services;
- 8) trends of technical and economic development and
- 9) consumers' interest.

Procedures upon the Request for Concentration Approval

Article 30

(1) The competent body shall, upon the request for concentration approval:

- 1) reject the request for concentration approval if the concentration does not fulfill requirements referred to in Articles 25 and 26 of this Law;
- 2) terminate the procedure if the applicant withdraws the request;
- 3) authorize concentration when assessment of its effects based on criteria prescribed in Article 29 of this Law, determines that such concentration shall not create or strengthen the dominant position the consequence of which would be prevention, restriction or distortion of competition to significant extent;
- 4) authorize concentration prescribing, on its own initiative or at the proposal of the undertakings that some supplementary conditions and obligations must be fulfilled by parties involved in concentration, within the fixed deadlines prior to or after the concentration has been carried out.
- 5) refuse to grant authorization for concentration when assessment of its effects on the basis of criteria from Article 29 of this Law determines that such concentration creates or strengthens dominant position on relevant market thus preventing, restricting or distorting competition to significant extent.

(2) Undertakings involved in concentration are obliged to stop realization of concentration until the competent body issues its decision authorizing the intended concentration or until the expiration of periods from Article 41 paragraph 4 of this Law within which the competent body is obliged to issue the decisions.

(3) The competent body can at the request containing explanatory note submitted by the party involved in concentration on temporary basis authorize the realization of concentration even before the decision referred to in paragraph 1 of this Article has been made, taking particularly into consideration consequences caused by termination of such concentration towards undertakings and third parties involved, as well as the degree of potential harm to competition caused by such concentration.

Cancellation, Annulment or Amendments of Decisions

Article 31

(1) The competent body shall in the course of procedure started ex officio or at the request of interested party, cancel the decision conditionally authorizing concentration if undertakings involved in concentration have not met supplementary condition or obligation pursuant to Article 30, paragraph 1, item 4), that is annul the decision authorizing, conditionally authorizing or prohibiting concentration if the decision has been granted on the ground of inaccurate or false information.

(2) The competent body shall in the course of procedure started ex officio or at the request of parties, amend the decision conditionally authorizing certain concentrations, when parties involved in such concentration cannot fulfill some of the conditions imposed on them by decision, owing to circumstances that could not be foreseen, avoided or removed.

Registry

Article 32

(1) Approved concentrations shall be registered within the competent body.

(2) The form and the content of the application and model and mode of keeping the registry referred in to paragraph 1 of this Article shall be regulated by competent body.

Part III

Implementation of the Law

Competencies

Article 33

Activities of the competent body shall be the following:

- 1) to follow competition on the market in general and markets of individual sectors of economy;
- 2) to suggest policy for competition protection and development and to implement and follow up its implementation;
- 3) to establish competition research methods;
- 4) to grant exemptions from prohibition of individual agreements and authorize concentration of undertakings, under the prescribed conditions, and solve other issues within its competency pursuant to this Law;
- 5) to take decisions in the procedure for determining impairment of competition prescribed by this Law;
- 6) to undertake measures toward undertakings and associations of undertakings for distortion of competition or to prevent such distortions, terminate already existing and eliminate harmful effects for undertakings and consumers;
- 7) perform other activities pursuant to this Law.

Collecting Information and Establishing Facts

Article 34

In the proceedings for protection of competition, competent body shall collect information and establish facts also by way of inspection supervision.

Application of the Law on General Administrative Procedure

Article 35

In the proceedings started for the purpose of protection of competition, for those issues not specifically being regulated by this Law, the provisions of the Law on General Administrative Procedure shall apply.

Conflict of Interest

Article 36

(1) In addition to cases envisage by the Law on General Administrative Procedure, a person conducting the procedure or deciding in the procedure for protection of

competition shall be exempted from participation in the procedure if he has ownership rights in a business organization that is party in the procedure.

(2) A party may request exemption of the person referred to in paragraph 1 of this Article, if there are other circumstances causing a justifiable doubt in his impartiality, and especially if he participates in managing the other party, his shareholder or management member, or he is in other close relationship or conflict with a party or person related to the party in the procedure.

(3) Former employee of the competent body dealing with protection of competition shall not have the right to represent any person in the procedure before the competent body two years after termination of their employment in the competent body.

Initiation of Proceedings

Article 37

(1) The competent body shall institute the proceedings when on the basis of collected data and acquired information concludes that there is a ground to believe that a practice performed impairs competition pursuant to this Law.

(2) The competent body shall initiate the proceedings on the basis of the request, submitted by undertakings between which an agreement has been concluded, for establishing that particular agreement is not prohibited pursuant to the provisions of this Law or for exempting a particular agreement from prohibition.

(3) The competent body may initiate the proceedings on the basis of the request, submitted by an undertaking engaged in practice or intending to practice it, for establishing that particular practice is not prohibited pursuant to the provisions of this Law on abuse of dominant position.

(4) The competent body may initiate the proceedings on the basis of the request for initiation of proceedings against an undertaking involved in practice causing prevention, restriction or distortion of competition pursuant to this Law, which may be submitted by:

- 1) undertakings to whom damage is made or can be made,
- 2) chamber of commerce, association of employers and entrepreneurs,
- 3) consumer protection association and
- 4) state administration body and body of local self-government.

(5) The competent body may initiate the proceedings on the basis of the request for approving concentration of undertakings submitted by:

- 1) parties to the concentration in case of merger or joint venture; or
- 2) undertaking acquiring the control over another undertaking or part of that undertaking, in all other cases.

(6) The competent body shall prescribe in greater the form and content of the request for initiation of proceedings.

Submitting of Data

Article 38

(2) The competent body shall be authorized to request from the undertakings concerned and other indirectly involved persons to submit in writing data significant to define state of facts for particular case within 15 days, unless the request allows a longer period of time.

(3) Person to whom such request has been made is not eligible to secrecy obligation in order to refuse disclosure of particular data, but is entitled to be indemnified for entire damage, including the lost profit, suffered due to disclosure of secret by the competent body to third unauthorized person.

Cessation of Proceedings

Article 39

Competent body shall pass conclusion for the cessation of the proceedings when from the collected evidence it is clear that certain act is not contrary to the provisions of this Law.

Termination of Proceedings

Article 40

(1) The competent body may issue a decision terminating proceedings instituted ex officio in case that competition has been impaired to insignificant extent, and party to the proceedings makes obligatory statement not to continue or repeat the practice or activities preventing, restraining or distorting competition.

(2) Termination of proceedings may not exceed period of six months.

(3) If a party against whom the procedure is conducted does not fulfill or breach the undertaken obligations before the expiration of period of 6 months or commits a new impairment of competition, the competent body shall continue the procedure.

Time Limits for Decision-Making

Article 41

(1) The competent body shall be obliged to make decision on proceedings conducted pursuant to provisions of this Law on agreements preventing, restricting or distorting

competition and abuse of dominant position within four months upon initiation of the proceedings.

(2) Exceptionally, the deadline referred to in paragraph 1 of this Article may be extended by a decision of the competent body.

(3) Appeal cannot be submitted against the decision referred to in paragraph 2 of this Article.

(4) The competent body shall be obligated to make a decision in the procedure of control of concentration within:

- 1) 25 business days when the decision in accordance with Article 30, paragraph 1, items 1 and 2 is made;
- 2) 115 business days when the decision in accordance with Article 30, paragraph 1, items 3 and 4 is made;
- 3) 130 business days when the decision in accordance with Article 30, paragraph 1, item 5 is made,

provided that the deadline is counted as of the day of request submission, that is day of its supplementation, if the request was originally submitted with incomplete data.

(5) When the competent body fails to make a decision within the deadline referred to in paragraphs 1, 2 and 4 of this Article, it shall be considered that acts and practices against which the proceedings are conducted are allowed under this Law.

Measures

Article 42

At the time competent body decides that agreement is resulting in prevention, restriction or distortion of competition, or that dominant position has been abused, it shall issue an order referred to in Articles 10 and 21 of this Law, namely:

- 1) temporarily, for a period not longer than three months, prohibit performing trade of certain goods or services on relevant market;
- 2) temporarily, for a period not longer than four months, prohibit conducting businesses if contrary to the prohibition referred in to Article 1 of this Article undertaking continues with performing trade of goods or services on the relevant market.

Part IV

Supervision

Article 43

The competent body shall be responsible for supervising the enforcement of this Law and other regulations by Law.

Part V

Penalty Clauses

Infringements

Article 44

(1) A pecuniary fine in the amount from 200-fold to 300-fold of the minimum wage in the Republic of Montenegro shall be imposed on enterprises and other business, state administration body and local self-government body, if it:

- 1) concludes or applies prohibited or void agreement thus causing prevention, restriction or distortion of competition (Article 7, paragraphs 1 and 2);
- 2) within the prescribed period of time fails to meet requirements from the decision allowing conditional individual exemption (Article 12 paragraphs 1 and 4);
- 3) does not sell the shares which it holds on a temporary basis with a view to reselling them within the set period of 12 months at the longest from the date of the acquisition of such shares, or within the extended period of time (Article 24 paragraph 1 item 1);
- 4) fails to submit to the competent body in prescribed form a required request for approving concentration, or performs concentration without granted approval (Article 25, paragraph 2 and Article 30, paragraph 1, items 1 and 5);
- 5) within the determined deadline, before or after concentration was realized, fails to meet additional requirements and obligations conditional for approved concentration (Article 30, paragraph 1, item 4);
- 6) does not stop realization of concentration for the time the competent body issues the decision approving intended concentration or until expiration of deadlines within which competent body was obliged to issue a decision (Article 30 paragraph 2)

(2) A pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage in the Republic of Montenegro shall be imposed, as well on natural person or other

responsible person of enterprises or other business, state administration body and local self-government body, for the infringements referred to in paragraph 1 of this Article.

(3) If the undertaking, by the infringement referred to in paragraph 1 of this Article, has incurred damage or has failed to fulfill the obligation or acquired illegal gain, the amount of pecuniary fine shall be up to 10-fold of the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

(4) If a natural person or responsible person in enterprises or other business, state administration body and local self-government body has acquired illegal gain greater than the prescribed maximum pecuniary fine or prescribed fine referred to in paragraph 2 of this Article, a pecuniary fine in the amount of up to two-fold of the acquired illegal gain shall be imposed.

Article 45

(1) A pecuniary fine in the amount from 150-fold to 200-fold of the minimum wage in the Republic of Montenegro shall be imposed on enterprises and other business, state administration body and local self-government body, which:

- 1) fails to notify an agreement within the 15 days of the day that it was concluded (Article 17);
- 2) fails to act in accordance with the request made by the competent body to submit or inform it on the requested data (Article 38);

(2) A pecuniary fine in the amount from 10-fold to 20-fold of the minimum wage in the Republic of Montenegro shall be imposed on natural person or other responsible person of enterprises or other business, state administration body and local self-government body, for the infringements referred to in paragraph 1 of this Article.

(3) If the undertaking, by the infringement referred to in paragraph 1 of this Article, has incurred damage or has failed to fulfill the obligation or acquired illegal gain, the amount of pecuniary fine shall be up to five-fold of the amount of incurred damage, unfulfilled obligation or acquired illegal gain.

(4) If a natural person or responsible person in enterprises or other business, state administration body and local self-government body has acquired illegal gain greater than the prescribed maximum pecuniary fine or prescribed fine referred to in paragraph 2 of this Article, a pecuniary fine in the amount of up to two-fold of the acquired illegal gain shall be imposed.

Protective Measures

Article 46

(1) For the infringement referred to in Articles 44 and 45 of this Law, protective measures, confiscation of the subject matter involved and prohibition to perform economic activities shall be imposed.

(2) Prohibition to perform economic activities referred to in paragraph 1 of this Article shall be imposed for a period of time from one month up to one year.

Part VI

Transitional and Final Provisions

Proceedings in Progress

Article 47

(1) The proceedings initiated under the regulations that cease to be in effect with the application day of this Law shall be completed in accordance with this Law.

(2) Parties to the agreements concluded until the effective date of this Law shall be obliged to notify them to the competent body within 130 days of the entry into force of this Law.

Bylaws

Article 48

Regulations by law necessary for implementation of this Law shall be adopted within six months of the entry into force of this Law.

Cessation of the Application of Existing Regulations

Article 49

On the first day of application of this Act, Antimonopoly Law (Official Gazette of FRY, no. 29/96) shall cease to apply.

Entry into Force

Article 50

This Law shall enter into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro, and shall apply from 1 January 2006.