



DRAFT
Competition Law

[Preamble]

Chapter I
General Provisions

Article 1
Object

This law establishes the legal framework for competition in Timor-Leste.

Article 2
Scope

1. This decree applies to all economic activities conducted on a permanent or occasional basis in the private, public, and cooperative sectors.
2. Subject to the international obligations of the Democratic Republic of Timor-Leste, this decree applies to restrictive practices of competition that occur within national territory or that may have effects therein.
3. The sectors of oil, gas, and minerals are excluded from the scope of this decree.
4. The exclusion of the sectors referred to in the previous paragraph is subject to annual review by the **National Petroleum Authority and the National Mineral Authority** that will assess whether the conditions and circumstances justifying

the exclusion of these sectors persist, proposing to the **Government** the maintenance or revocation of this exclusion.

Article 3

Concept of Company

1. For the purposes of this law, a company is considered any entity engaged in economic activity, regardless of its legal status and mode of financing.
2. For the purpose of this law, it is considered a single company any set of entities that, although legally distinct, constitute an economic unit or maintain interdependence links among them, due to, namely:
 - a) Majority capital participation;
 - b) Ownership of more than half of the votes attributed by holding social shares;
 - c) Ability to appoint more than half of the members of the management or supervisory body;
 - d) Power to manage their respective business.

Article 4

Competition Authority

1. Compliance with the legal framework for competition is ensured by the Competition Authority, designated as CA, which, for this purpose, has sanctioning, supervisory, and regulatory powers as established in this law and its statutes.
2. The statutes of the CA are approved within 90 days after the entry into force of this decree. The regulation approving the statutes sets the deadline for the installation of the CA and the appointment of its Board of Directors, within 120 days after the entry into force of this law.
3. Sectoral regulatory authorities and CA cooperate with each other in the application of competition legislation, as provided for by law, and may, for this purpose, enter into bilateral or multilateral cooperation protocols.

Article 5

Cooperation

1. Sectoral regulatory authorities and the CA cooperate with each other in the application of competition legislation, as provided for by law, and may, for this purpose, enter into bilateral or regional cooperation protocols.
2. All public entities, particularly the services of the direct, indirect, or autonomous administration of the State, as well as sectoral regulatory authorities, have the duty to report to the CA facts that may qualify as restrictive practices of competition of which they become aware.

Chapter II

Restrictive Practices of Competition

Article 6

Horizontal Restrictive Practices

1. Agreements between companies, concerted practices between companies, and decisions of associations of companies in a horizontal relationship that aim to prevent, distort, or significantly restrict competition in the whole or in part of the national market are prohibited. This includes practices such as:
 - a) Directly or indirectly fixing purchase or sale prices or any other transaction conditions;
 - b) Limiting or controlling production, distribution, technical development, or investments;
 - c) Allocating markets or sources of supply;
 - d) Forming coalitions or engaging in other concerted practices to gain advantages, interfere, or influence the outcomes of public tenders for the supply of goods or services;
 - e) Limiting or preventing the entry of new companies into the market.
2. Agreements between companies and decisions of associations of companies prohibited by the preceding paragraph are null and void, except in cases considered justified under Article 8.
3. A restrictive practice is considered horizontal when the agreement, concerted practice, or decision of associations of companies occurs between competing and potential companies.

Article 7

Vertical Restrictive Practices

1. An agreement between companies in a vertical relationship is prohibited if it has the effect of preventing or substantially reducing competition in a market, particularly those that consist of:
 - a) Systematically or occasionally applying discriminatory pricing conditions or other conditions related to equivalent situations;
 - b) Directly or indirectly refusing the purchase of goods and the provision of services;
 - c) Subordinating the conclusion of contracts to the acceptance of additional obligations that, by their nature or commercial practices, are not connected to the object of those contracts;
 - d) Subordinating commercial relations to the acceptance of unjustifiable or anti-competitive commercial terms and conditions;
 - e) Imposing minimum resale prices, discounts, payment conditions, minimum or maximum quantities, profit margin, or any other conditions of marketing with third parties on distributors;
 - f) Discriminating against suppliers or consumers of goods through differentiated pricing, operational sales conditions, or service provisions;
 - g) Conditioning the sale of goods or services on the acquisition of other goods or services;

- h) Imposing excessive prices or unjustifiably increasing the price of a good or service.
- 2. A "vertical relationship" is considered the relationship between a company and its suppliers, its customers, or both.

Article 8

Justification of Agreements, Concerted Practices and Decisions by Associations of Undertakings

- 1. Agreements between companies, concerted practices between companies, and decisions of associations of companies referred to in the preceding articles may be considered justified if they contribute to improving the production or distribution of goods or services or promoting technical or economic development, provided that cumulatively:
 - a) Reserve to the users of those goods or services a fair share of the resulting benefit;
 - b) Do not impose on the companies concerned any restrictions that are not essential to achieve these objectives;
 - c) Do not give these companies the possibility of eliminating competition in a substantial part of the market for the relevant goods or services.
- 2. It is the responsibility of the companies or associations of companies invoking the benefit of justification to prove that the conditions set out in the preceding paragraph are met.
- 3. Practices provided for in Articles 6 and 7 may be subject to prior assessment by CA, according to a procedure to be established by regulation to be approved by that authority in accordance with its statutes.

Article 9

Dominant Position

- 1. A company is considered to have market power when it has the ability to control prices, exclude competition, or behave, to a significant extent, independently of its competitors, customers, or suppliers.
- 2. A company is dominant in a market when:
 - a) It holds at least 45% of that market;
 - b) It holds at least 35%, but less than 45% of that market, unless it can demonstrate that it does not have market power; or
 - c) It has less than 35% of that market but has market power.

Article 10

Abuse of Dominant Position

- 1. The abusive exploitation by one or more companies of a dominant position in the national market or in a substantial part thereof is prohibited.
- 2. It may be considered abusive, namely:
 - a) Imposing, directly or indirectly, inequitable purchase or sale prices or other transaction conditions;

- b) Limiting production, distribution, or technical development to the detriment of consumers;
- c) Applying unequal conditions to commercial partners in the case of equivalent services, thereby placing them at a disadvantage in competition;
- d) Making the conclusion of contracts contingent on the acceptance, by other contracting parties, of supplementary provisions that, by their nature or in accordance with commercial practices, are not connected to the object of those contracts;
- e) Refusing access to a network or other essential infrastructures controlled by it, against appropriate remuneration, to any other company, provided that, without such access, this company cannot, for factual or legal reasons, operate as a competitor of the company in a dominant position in the upstream or downstream market, unless the latter demonstrates that, for operational or other reasons, such access is impossible under reasonable conditions.

Article 11 **Abuse of Economic Dependence**

1. The abusive exploitation by one or more companies of the state of economic dependence in which any supplying or customer company finds itself concerning them, due to the lack of an equivalent alternative, is prohibited to the extent that it may affect the functioning of the market or the structure of competition.
2. The following cases, among others, may be considered as abuse:
 - a) The adoption of any of the behaviors provided for in paragraphs a) to d) of Article 10(2);
 - b) The unjustified, total or partial, termination of an established commercial relationship, taking into account previous commercial relationships, recognized practices in the branch of economic activity, and contractual conditions established.
3. For the purposes of paragraph 1, it is understood that a company does not have an equivalent alternative when:
 - a) The supply of the relevant good or service, including distribution services, is ensured by a limited number of companies; and
 - b) The company cannot obtain identical conditions from other commercial partners within a reasonable period.

Article 12 **Abuse of Buying Power**

1. Any conduct that constitutes an abuse of buying power in the market or a substantial part thereof is prohibited.
2. "Buying power" is understood as the influence exerted by a company or group of companies in the buyer position of a product or service to:

- a) Obtain the most favorable conditions from a supplier; or
 - b) Impose a long-term opportunity cost, including losses or unearned benefits, which, if incurred, would be significantly disproportionate to any long-term cost for the company or group of companies.
3. Whenever the CA determines that a sector or company is experiencing or is likely to experience an abuse of buying power, it may monitor the sector's or company's activities and ensure compliance by imposing prudential and information requirements.
4. The CA may require industries and sectors where cases of abuse of buying power are likely to occur to develop a binding code of conduct.
5. In assessing any complaint regarding abuse of buying power, the CA shall take into account all relevant circumstances, including:
 - a) The nature and determination of contractual conditions between the companies involved;
 - b) The payment requested for access to infrastructure; and
 - c) The price paid to suppliers.
6. Behaviors that constitute abuse of buying power include:
 - a) Unjustifiable delays in payment to suppliers, in violation of agreed-upon payment terms;
 - b) Unilateral termination or threats of termination of a commercial relationship without prior notice or with an excessively short notice period and without objectively justifiable reason;
 - c) Refusal to receive or return any goods or part thereof without justified reason, in violation of agreed-upon contractual conditions;
 - d) Transfer of costs or risks to suppliers of goods or services, imposing the obligation to finance the cost of a promotion of goods or services;
 - e) Transfer of commercial risks that should be borne by the buyer to the suppliers;
 - f) Demand for unfavorable preferential conditions from suppliers or imposition of limitations on supplies to other buyers;
 - g) Reduction of purchase prices, even if in a reduced but significant amount, when there is difficulty of substitution by alternative buyers or lowering prices below competitive levels; or
 - h) Increase in the prices of production factors by a buying company with the aim of excluding competitors from the market.
7. When investigating complaints of abuse of buying power, the CA must take into consideration any existing agreement, whether written or not, between a buying company and the supplying company.
8. The CA will publish the code of conduct, which will be developed in consultation with stakeholders and relevant government agencies.

Article 13

Coordination with Sectoral Regulatory Authorities in the Scope of Restrictive Competition Practices

1. Whenever the CA becomes aware of facts occurring in a domain subject to sectoral regulation that may qualify as restrictive competition practices, it

- immediately informs the competent sectoral regulatory authority, based on the subject matter, for it to express its opinion within a deadline set by the CA.
2. In cases involving restrictive practices affecting a market subject to sectoral regulation, the adoption of a condemnation decision by the CA is preceded by a non-binding prior opinion from the respective sectoral regulatory authority, to be issued within a deadline set by the CA.
 3. The failure to issue a non-binding opinion within the deadline established in paragraph 1 of this article does not prevent the CA from making a final decision.
 4. Whenever, within the scope of their respective responsibilities and without prejudice to the provisions of Article 5(2), a sectoral regulatory authority examines, either on its own initiative or at the request of regulated entities, issues that may constitute a violation of the provisions of this law, it immediately informs the CA, providing essential information.
 5. Before the adoption of a final decision, the sectoral regulatory authority notifies the CA of the draft decision, for the CA to express its opinion within a set deadline.
 6. In cases provided for in the preceding paragraphs, the CA may, by reasoned decision, suspend its decision to initiate an inquiry or continue the process for a period it deems appropriate.

Chapter III **Control of Company Concentrations**

Article 14 **Company Concentration**

1. For the purposes of this law, a concentration of companies is considered to exist when there is a lasting change of control over all or part of one or more companies, resulting from:
 - a) The merger of two or more companies or parts of previously independent companies;
 - b) The direct or indirect acquisition of control over all or parts of the share capital or assets of one or more other companies by one or more companies or by one or more persons who already control at least one company.
2. The creation of a joint venture constitutes a concentration of companies within the meaning of subparagraph b) of the preceding paragraph, provided that the joint venture performs the functions of an autonomous economic entity in a lasting manner.
3. For the purposes of the provisions of the preceding paragraphs, control arises from any act, regardless of its form, that implies the possibility of exerting, on a lasting basis, individually or jointly, and taking into account the factual or legal circumstances, a decisive influence on the activities of a company, namely:
 - a) The acquisition of all or part of the share capital;
 - b) The acquisition of ownership, use, or enjoyment rights over all or part of the assets of a company;

- c) The acquisition of rights or the conclusion of contracts that confer a decisive influence on the composition or deliberations or decisions of the organs of a company.
- 4. The following shall not be considered a concentration of companies:
 - a) The acquisition of shares or assets by the insolvency administrator within the scope of an insolvency process;
 - b) The acquisition of shares with mere functions of guarantee or satisfaction of credits.

Article 15

Prior Notification

- 1. Company concentration transactions are subject to prior notification when carried out in the energy, transportation, telecommunications, and financial services sectors, and as a result of their completion, the direct or indirect acquisition of control, as defined in paragraph 3 of the preceding article, occurs for one or more companies with:
 - a) A combined market share exceeding 25% at the national level; or
 - b) Combined annual revenues exceeding USD 10 million (ten million United States dollars).
- 2. Concentration transactions covered by this law must be notified to the CA after the conclusion of the agreement and before their completion, as applicable, after the date of the disclosure of the preliminary announcement of a public tender offer or exchange offer, or the disclosure of an announcement of the acquisition of a controlling interest in a publicly traded company on a regulated market, or in the case of a concentration transaction resulting from a procedure for the formation of a public contract, after the definitive award and before its completion.
- 3. The completion of a concentration transaction subject to prior notification is prohibited before notification or, if notified, before the CA decision of non-opposition.

Article 16

Assessment of Concentration Transactions

- 1. Concentration transactions, notified in accordance with the provisions of the preceding article, are assessed with the aim of determining their effects on the competition structure, taking into account the need to preserve and develop effective competition in the national market or a substantial part thereof in the interest of intermediate and final consumers.
- 2. In the assessment referred to in the preceding paragraph, the following factors shall be taken into account, in particular:
 - a) The structure of the relevant markets and the existence or absence of competition by established companies in those markets or in distinct markets;

- b) The position of the companies concerned in the relevant markets and their economic and financial power compared to that of their main competitors;
 - c) The market power of the buyer to prevent the reinforcement, in relation to the company resulting from the concentration, of situations of economic dependence as provided in Article 11 of this law;
 - d) Potential competition and the existence, legally or factually, of barriers to entry into the market;
 - e) The choices available to suppliers, customers, and users;
 - f) The access of different companies to sources of supply and markets;
 - g) The structure of existing distribution networks;
 - h) The evolution of the supply and demand for the products and services in question;
 - i) The existence of special or exclusive rights granted by law or resulting from the nature of the traded products or provided services;
 - j) The control of essential infrastructures by the companies concerned and the possibility of access to these infrastructures offered to competing companies;
 - k) The evolution of technical and economic progress that does not constitute an obstacle to competition, provided that the concentration transaction directly yields efficiency gains benefiting consumers.
- 3. The notifying party may, at any time, propose commitments to ensure the maintenance of effective competition.
 - 4. The CA rejects the commitments if it considers that the conditions or obligations to be assumed are insufficient or inadequate to prevent competition barriers that may result from the concentration of companies or have uncertain feasibility.

Article 17

Coordination with Sectoral Regulatory Authorities in the Context of Concentration Control

- 1. Whenever a concentration of companies has an impact on a market that is subject to sectoral regulation, the CA, before making a decision to conclude the procedure, requests that the respective regulatory authority issue a non-binding opinion on the notified operation, setting a reasonable deadline for this purpose, not less than 15 days.
- 2. The provisions of the preceding paragraph do not prejudice the exercise by sectoral regulatory authorities of the powers conferred on them by law, within the framework of their specific responsibilities, regarding the concentration in question.
- 3. The non-issuance of a binding opinion within the deadline established in paragraph 1 of this article does not prevent the CA from making a decision to conclude the procedure.

Article 18

Decision

1. Concentrations of companies that are not likely to create significant barriers to effective competition in the national market or a substantial part thereof are authorized.
2. In the case of a concentration operation that is likely to create significant barriers to effective competition in the national market or a substantial part thereof, the CA may:
 - a) Refuse approval;
 - b) Approve it if the commitments undertaken by the notifying company are adequate to address competition concerns raised by the concentration operation;
 - c) Approve it if the operation significantly enhances the international competitiveness of the companies participating in it;
 - d) Approve it if the conditions of Article 8 are met.
3. The CA may order the withdrawal or reversal of a concentration operation that, subject to approval by the CA under Article 15, has not been notified and results in significant barriers to effective competition in the national market or a substantial part thereof.
4. The CA notifies the companies, prior to adopting a decision regarding the concentration operation, and must:
 - a) State the facts and grounds of the projected decision;
 - b) Provide a reasonable period, unless exceptional and duly justified circumstances apply, not less than thirty days, for submitting observations to the CA;
 - c) Consider any observations.
5. Without prejudice to the provisions of the preceding paragraph, a decision to approve with commitments, under subparagraph b) of paragraph 2 of this article, is preceded by public consultation in which any person can participate.
6. The CA may establish procedures, rules, and guidelines specifying the content of the notification of the concentration operation and the procedures related to the approval of a notifiable concentration under Article 15.

Chapter IV

Supervision and Market Monitoring

Article 19

Market Studies and Surveys by Economic Sectors and Types of Agreements

1. The AC may conduct market studies and surveys by economic sectors and types of agreements that are deemed necessary for:
 - a) Supervision and monitoring of markets;
 - b) Verification of circumstances indicating distortions or restrictions of competition.
2. The conclusions of the studies are published on the CA's website, and they may be preceded by public consultation initiated by the CA.
3. In cases where the market studies and surveys referred to in paragraph 1 concern economic sectors regulated by sectoral regulatory authorities, their conclusions must be preceded by a request for a non-binding opinion from the respective

sectoral regulatory authority, with the CA setting a reasonable deadline for this purpose.

4. The failure to issue a non-binding opinion within the deadline established in the previous paragraph does not prevent the CA from concluding the market study and survey to which the request for an opinion relates.
5. The CA may request from companies, associations of companies, or any other individuals or entities all the information it deems relevant.

Article 20

Recommendations

1. When the CA concludes the existence of circumstances or conducts affecting competition in the analyzed markets or economic sectors, it shall, in the conclusion report of market studies, sectoral surveys, or by type of agreement, or in inspection and audit reports:
 - a) Identify the market circumstances or company conducts or associations of companies affecting competition and to what extent;
 - b) Specify the behavioral or structural measures considered appropriate for their prevention, removal, or compensation.
2. Whenever the study and its respective report focus on a market subject to sectoral regulation, the CA must inform the sectoral regulatory authorities of the circumstances or conducts affecting competition and the possible measures to correct the situation.

Chapter V

Offenses and Sanctions

Article 21

Qualification

Without prejudice to criminal liability and administrative measures, offenses against the rules set out in this law that determine the imposition of fines or other penalties constitute a misdemeanor punishable under the terms provided for in this chapter.

Article 22

Applicable Rules

The process for offenses under Articles 6, 7, 9 to 12, and 15(3) is governed by this law and, subsidiarily, by the legal framework for administrative offenses.

Article 23

Administrative Sanctions

1. The CA may apply administrative sanctions to legal entities that violate the provisions of this law.
2. Administrative sanctions include fines and other administrative measures, such as warnings or written orders.

3. Fines can be imposed by the CA.
4. The CA notifies the legal entity, outlining the facts and grounds for the imposition of administrative sanctions and ensuring due process.
5. The following constitutes an offense punishable by a fine that cannot be less than 1% nor exceed 5% of the turnover of the previous year, for each of the companies involved:
 - a) Failure to provide information or providing false, inaccurate, or incomplete information in response to the CA requests in the exercise of its supervisory or sanctioning powers;
 - b) Failure to cooperate with the CA or obstructing its exercise of investigative and inspection powers;
 - c) Unjustified failure to appear for those who have been duly notified to participate in procedural proceedings.
6. The following constitutes an offense punishable by a fine that cannot be less than 1% nor exceed 10% of the turnover in the last year, for each of the companies involved that has participated in the prohibited conduct described in Articles 6, 7, and 9 to 12 or violated the provisions of Article 15(3) of this law.
7. The CA, prior to imposing any sanctions, always respects the principle of due process, ensuring that the alleged offender is given the opportunity to present arguments in their defense during the relevant administrative process.
8. For the purposes outlined in the preceding paragraph, the CA notifies the alleged offender before adopting a decision to apply an administrative sanction, and must:
 - a) Outline the facts and grounds for the administrative sanction;
 - b) Allow a reasonable period, not less than thirty days unless exceptionally and duly justified, for the alleged offender to submit, in person or in writing, observations to the CA;
 - c) Consider the presented observations.
9. Negligence is punishable.

Article 24

Determination of the Measure of Sanctions

The application of any administrative sanctions takes into account:

- a) The gravity and duration of the infringement;
- b) Whether it is a repeated offense;
- c) Whether there were damages to competitors or consumers;
- d) Whether the person to be penalized will benefit from the conduct and the financial resources of each person;
- e) Any mitigating circumstances;
- f) Other factors that, due to their relevance, the CA considers admissible.

Article 25

Prescription

1. The procedure for infringement of Articles 6, 7, 9 to 12, and 15, paragraph 3, expires by prescription after:

- a) Three years, in cases provided for in Article 23, paragraph 5,
 - b) Five years, in all other cases.
2. The prescription period for sanctions is five years from the day the decision determining their application becomes final or res judicata.

Article 26

Appeal

Decisions of the CA provided for in this law are subject to appeal to the Administrative, Fiscal, and Auditing Courts, in accordance with Law No. 25/2021 of December 2.

Chapter VI

Final Provisions

Article 27

Repealing Provision

Articles 34 and 35 of Decree-Law No. 15/2012, of March 28, are hereby repealed.

Article 28

Entry into Force

This law shall enter into force 120 days after its publication, with the exception of Article 4, paragraph 2, which enters into force on the day following the publication of the law.