

PARLAMENTUL
REPUBLICII MOLDOVA



ПАРЛАМЕНТ
РЕСПУБЛИКИ МОЛДОВА

L A W
on the protection of competition

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The Parliament adopts this organic law.

This law sets out the organizational and legal bases for the protection of competition, and measures for the prevention, limitation and suppression of monopolist activity and unfair competition in product markets in the Republic of Moldova.

Chapter I

GENERAL PROVISIONS

Article 1. Field of Application of This Law

(1) This law regulates relations that exercise influence on competition in product markets, that involve the participation of economic entities, authorities of central and local public administrative bodies, as well as citizens.

(2) This law acts on the entire territory of the Republic of Moldova. It shall also apply in cases when the actions of economic entities of the Republic of Moldova outside of its borders lead, or may lead, to limitation of competition in product markets.

(3) This law shall not extend to the relations regulated by norms of juridical protection of the objects of industrial property, or author's and adjacent rights, with the exception of cases when these norms and rights are used for limitation of competition.

(4) This law also regulates relations that appear in the capital markets if legislation on financial institutions and on securities does not provide otherwise.

(5) Relations in the activities of state entities and natural monopolies are regulated by other normative acts, with the exception of cases when the activity of such entities leads to the limitation of competition in product markets.

(6) If an international agreement (treaty) to which the Republic of Moldova is a part sets out other rules than those provided in the legislation on protecting competition, the rules of the international agreement (treaty) have priority.

Article 2. Main Notions

In this law, the main notions have the following meaning:

product – product of activity (including works and services) with the same consumption value intended for sale or exchange;

product market – field of circulation of products with the same consumption value within the territory of the Republic of Moldova;

economic entities – physical and legal personalities, who carry out entrepreneurship activity within the territory of the Republic of Moldova;

decision-maker – a person who in an economic entity, regardless of the form of property, permanently or temporary, lawfully, through appointment or due to a particular task, is allotted with rights and duties in order to accomplish the functions of the public authorities or actions of an administrative-regulatory and economic-organizational nature;

dominant market position - exceptional position of an economic entity in the product market, which allows it, alone or with other economic entities, to have a decisive influence on the general conditions of product supply in the appropriate market or to hamper access to the market for some others economic entities.

The position of an economic entity whose share on a certain product market does not exceed 35 percent cannot be considered as dominant;

competition – the competition of economic entities, when their independent actions effectively limit the possibility of any one of them to have a unilateral influence on the general conditions for product supply in the relevant market;

unfair competition – any actions of economic entities aiming at obtaining unjustified advantages in entrepreneurship that cause or may cause damages to other economic entities or may cause damage to their business reputation;

monopolistically low price (dumping) – a price that is lower than the product's cost, at which an economic entity with dominant position in the market sells aiming at eliminating competitors or increasing its share of the market for that product;

monopolistically high price – excessive price of a product, at which an economic entity, using its dominant position on the market, sells it;

state monopoly - situation when a limited number of economic entities are allotted by the public administration authorities with exceptional right or rights to conduct economic activity in a field of production, transportation, retail or acquisition of goods (services);

natural monopoly – situation when the production, transportation, retail, or acquisition of goods, groups of interchangeable goods, or provision of specific forms of services, due to natural, economic or technological reasons, is under the direct or indirect control of one or several economic entities.

[Art.2 modified by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

Chapter II COMPETITION

Article 3. State Policy in the Field of Competition

The state recognizes fair competition as one of the basic factors of economic development. In the field of competition, the state carries out a policy aimed to ensure free entrepreneurial activity and to protect fair competition.

Article 4. Basic Principles of Protection of Competition

(1) Economic entities have a right to free competition within the framework of legislation, traditions and rules of correctness and honest business.

(2) An economic entity is not allowed to use its rights for purposes of the limitation of competition, abuse of dominant position and infringement of the legitimate interests of consumers.

(3) The authorities of central and local public administration are obligated to contribute to the development and protection of fair competition.

(4) The state shall provide protection of rights and interests of economic entities and citizens (consumers) from monopolistic activity and unfair competition.

Chapter III ANTI-COMPETITIVE ACTIONS

Article 5. Forms of Anti-competitive Actions

Anti-competitive actions include:

- a) monopolistic activity:
 - abuse of dominant position in the market;
 - anti-competitive agreements among economic entities;
- b) unfair competition;
- c) activity of the public administration authorities that limits competition.

Article 6. Abuse of a Dominant Position in the Market

The actions of an economic entity with a dominant market position, and also the actions of several economic entities who possess such a position in totality, that lead or may lead to the limitation of competition and/or harm the interests of other economic entities and physical persons are forbidden, including such as:

- a) imposing on a contracting party conditions which are purposefully unfavorable to it, or are not the object of the contract (unjustified requirements regarding the transfer of financial resources, other kind of products, as well as property rights);
- b) imposing on a contracting party to conclude a contract only on the condition of the acquisition (sale) of some other goods or of abstention from the acquisition of goods from other economic entities, or of selling goods to other economic entities or consumers;
- c) maintaining an artificial deficit of goods in the market through purposeful reduction, limitation or interruption of production, in spite of the presence of favorable conditions for their production, the withdrawal of goods from the circulation, the accumulation of goods or by other measures;
- d) applying some discriminatory measures to a contracting party, that would place it in an unfavorable position with respect to other economic entities;
- e) establishing some restrictions on resale prices of goods;
- f) creating obstacles to market access (output from the market) by other economic entities;
- g) establishing low monopolistic prices (dumping);
- h) establishing high monopolistic prices;
- i) unjustified refusal to conclude a contract with some buyers (beneficiaries) when there is the possibility of producing or supplying the respective goods.

Article 7. Anti-Competitive Agreements among Economic Entities

(1) It is forbidden and is considered as null, as stipulated, integrally or partially, any agreement (coordinated action) concluded in any form among competing economic entities that jointly possess a share that exceeds 35 percent of the market for a certain product if these agreements (coordinated actions) result or may result in the limitation of competition, including directed towards:

- a) the establishment (maintenance) of prices (tariffs), discounts, mark-ups (additional payments), or price increases with the purposes to harm the interests of competitors;
- b) increasing, reducing or maintaining prices at auctions;
- c) carrying out auctions under collusion;
- d) the division of a market according to the territorial principle, by the volume of sales or purchases, by the assortment of retailed goods or by the categorization of sellers or buyers (beneficiaries);
- e) limitation of production or delivery, including by setting out quotas;
- f) limitation of access to the market, elimination from the market of other economic entities in their positions as sellers of certain goods or elimination of their consumers (beneficiaries);

g) unjustified refusal to conclude contracts with certain sellers or consumers (beneficiaries).

(2) It is forbidden and is considered as null, as stipulated, integrally or partially, any agreement (coordinated action) of non-competitive economic entities, one of which possesses a dominant position on the market, and the other one is its supplier or buyer (beneficiary), if such an agreement (coordinated actions) leads or may lead to the limitation of competition, including directed towards:

- a) limitation of sales-territory or of the circle of consumers;
- b) establishing restrictions on the resale prices of goods sold to the buyer;
- c) prohibiting economic agents from utilizing goods produced by competitors.

(3) It is forbidden and is considered as null, as stipulated, integrally or partially, any agreement (coordinated action) of non-competitive economic agents that are not one to another suppliers or buyers, among which all or at least one possesses a dominant position in the market for a certain product, if such an agreement (coordinated action) leads or may lead to the limitation of competition in the market.

(4) In exceptional cases, the agreements (coordinated actions) of economic entities stipulated in par.(3) may be considered as legitimate if the economic entities prove that the beneficial effect of their action will exceed the negative consequences for the respective product market.

(5) Economic entities that are going to conclude an agreement with the features mentioned in par.(1) and (2) may ask the National Agency for the Protection of Competition for an opinion on the agreement's compliance with the legislation. If the opinion is positive, the agreement between the economic entities shall be recognized as being in compliance with the legislation if they follow the conditions mentioned in opinion.

(6) The request addressed to the National Agency for the Protection of Competition must have attached the information necessary for making an opinion. The requirements regarding the nature and form of presentation of such information, and the way of considering applications are set out by the National Agency for the Protection of Competition.

(7) An economic entity is prohibited from coordinating the activity of another economic entity if this action leads or may lead to the limitation of competition. Otherwise, the National Agency for the Protection of Competition has the right to ask, in the manner stipulated by the legislation, for liquidation of the economic entity that carries out coordinated actions.

[Art.7 modified by Law no.322-XVI from 15.12.05, in forces since 06.01.06]

Article 8. Unfair Competition

(1) An economic entity is forbidden to carry out deeds of unfair competition, including:

- a) dissemination of false or uncertain information that may cause damages to another economic entity and/or may harm its reputation;
- b) deception of buyers regarding the nature, method and place of production, qualities of consumption, usefulness of consumption, quantity and quality of goods;
- c) making an unfair comparison for publicity purposes of goods produced or commercialized by it with those of other economic entities;
- d) unauthorized integral or partial utilization of the trade brand, service label or other objects of industrial property of another economic entity, or to copy the form, packing and external aspect of the product of another economic entity;
- e) illegal acquisition, use or disclosure of information which constitutes a commercial secret of another economic entity.

(2) Economic entities, their associations, as well as public organizations of entrepreneurs and consumers have the right to ask the National Agency for the Protection of Competition for protection against unfair competition.

Article 9. Actions of the Public Administration Authorities That Limit Competition

- (1) The public administration authorities do not have the right to:
- a) forbid the creation of new economic entities in any field of activity, to also establish bans of certain practices or on production of some goods, with the exception of those cases stipulated by legislation;
 - b) give directives to an economic entity about the priority to be given to entering contracts, or delivering goods to certain categories of buyers, with the exception of cases stipulated by legislation;
 - c) unjustifiably give some economic entities tax or other kinds of privileges, to place them in a privileged position with respect to other economic entities that work in the same product market;
 - d) establish other discriminating or privileged conditions for the activity of some economic entities.
- (2) The public administration authorities are forbidden to issue decisions on:
- a) centralized distribution of goods, with the exception of those cases that concern the accomplishment of state functions for the social protection of consumers;
 - b) establishing interdictions on the commercialization of goods from one region of the republic of Moldova to another one;
 - c) limitation of the rights of economic entities in acquisition or commercialization of goods;
 - d) establishment of other interdictions and restrictions, not provided by law, that limit the independence of economic entities.
- (3) In exceptional cases, the public administration authorities may issue decisions on those matters enumerated in par.(2), for purposes of overcoming the consequences of natural calamities and catastrophes and preventing epidemics, in accordance with legislation.
- (4) It is prohibited and is considered as null, in full or partially, as established, any agreement (coordinated action) between a public administration authority and another similar authority, including a foreign one, or an economic entity, that hampers the development of competition and harms the legitimate interests of consumers, including agreements (coordinated action) directed towards:
- a) the increase, decrease or maintenance of prices and tariffs at certain level;
 - b) the division of a market according to the territorial principle, or by the volume of sales or acquisitions, by the assortment of commercialized goods or by the categories of sellers or buyers (beneficiaries);
 - c) the creation of barriers to entry into a market, limitation of access to a market or elimination from a market of economic entities.
- (5) It is forbidden to create ministries or other central public administration authorities for the purpose of monopolizing the production or commercialization of goods, as well as to give existing ministries or other central public administration authorities powers that lead to or may lead to the limitation of competition when exercised.

[Art.9 modified by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

Chapter IV

THE NATIONAL AGENCY FOR THE PROTECTION OF COMPETITION.

ITSTASKS AND FUNCTIONS

Article 10. The Authority for Protecting Competition

(1) In order to promote state policy in the field of protecting competition, and to limit and suppress the anti-competitive activity of economic entities or public administration authorities, as well as to supervise the application of legislation regarding the protection of competition, an authority for protecting competition is created – that is the National Agency for the Protection of Competition (hereinafter the Agency).

(2) The Agency carries out its activity and issues decisions independent of other public administration authorities.

(3) The Regulation of the National Agency for the Protection of Competition, set forth in the attachment, an integral part of this law, is approved.

Article 11. The Tasks of the Agency

The main tasks of the Agency are the following:

- a) promotion of the state policy in the field of protection of competition;
- b) prevention, limitation and retrenchment of anti-competitive activity;
- c) accomplishment of state control in observance of legislation regarding the protection of competition.

[Art.11 modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 12. The Functions of the Agency

The Agency accomplishes the following functions:

- a) develops and promotes the state policy directed toward protection and development of competition and limitation of monopolistic activity;
- b) presents to the Government proposals and draft normative acts concerning the improvement of Law on the Protection of Competition and the mechanism for its realization;
- c) determines if a dominant market position exists;
- d) supervises compliance with Law on the Protection of Competition by economic entities, public administration authorities and decision-makers;
- e) adopts, within the limits of its competence, decisions in cases regarding violations of the Law on the Protection of Competition;
- f) issues, to economic entities, executory orders for the cessation of violations of the Law on the Protection of Competition and/or the elimination of their consequences, the dissolution, or modification of contracts that contradict the Law on the Protection of Competition;
- g) issues for public administration authorities executory orders for cancellation or modification of illegal acts adopted by them, for cessation of violations, as well as for dissolution or modification of contracts that contradict the Law on the Protection of Competition;
- h) develops expertise regarding the feasibility of creating free economic areas;
- i) adopts decisions regarding the application of penalties to economic entities and their leaders, as well as to decision-makers from public administration authorities, for anti-competitive actions and for non-fulfillment of the Agency's orders, or for other violations of the Law on the Protection of Competition;
- j) brings cases before the courts, including to impose penalties on an economic entity for the portion of profit obtained as a result of the violation of the Law on the Protection of Competition, it participates in the process of examination of cases concerning the application and violation of the Law on the Protection of Competition;
- k) develops regulations, directives, and methodologies, which ensure the uniform application of legislation in the field of protecting competition and to accomplish the tasks entrusted to the Agency;
- l) cooperates with appropriate agencies from other countries and with international organizations in the area of limitation and suppression of anti-competitive activities;
- m) contributes to the exchange of information with other states.

[Art.12 as amended by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 13. Access to Information

(1) In order to fulfill the functions entrusted to them, the Agency's workers have the right of free access into the premises and the territory of public administration authorities and economic entities, with the exception of the living quarters of physical persons, but, on the basis of written demands, they may get acquainted with necessary documents.

(2) The interior police are obligated to render assistance to the Agency's workers in the execution of their official duties, ensuring access to information that is necessary for the realization of the functions entrusted on them.

Article 14. Supplying Information for the Agency

Economic entities and their leaders, as well as public administration authorities and their decision-makers are obligated to provide to the Agency, on its demand, the necessary documents, written and oral explanations, other information for the fulfillment of its functions, to create the conditions that Agency workers need in order to fulfill their functions.

Article 15. Agency's Obligations Concerning the Observance of Commercial Secrets

(1) Data that constitute commercial secrets, obtained by the Agency in fulfillment of its competencies, can be used only for these purposes, and they cannot be divulged.

(2) Losses caused by the Agency's workers divulging data that constitute commercial secrets shall be compensated in the manner established by legislation.

Chapter V

THE STATE CONTROL OVER THE STRUCTURE AND OPERATION OF THE PRODUCT MARKETS

Article 16. The System of State Control over Product Markets

Aiming at preventing the strengthening of dominant position in the market of some economic entities that could lead to the limitation of competition, aiming at preventing the abuse of a dominant position by an economic entity or by an association of economic entities, aiming at assuring the primordial interests of the state, the Agency shall exercise state control over product markets, including control over:

- a) the functioning of product markets;
- b) the modifications in the structure of product markets;
- c) the creation of transnational corporations and financial-industrial groups.

[Art. 16 modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 17. State Control over the Creation, Expansion, Reorganization, and Liquidation of Economic Entities, their Associations, Holdings, Transnational Corporations and Industrial-Financial Groups

(1) In order to prevent a possible abuse of dominant position in the market by some economic entities or to prevent restrictions on competition, the Agency conducts the state supervision of:

- a) the creation, expansion, confluence and merger of associations of economic entities;
- b) the creation, expansion, confluence and merger of holdings, transnational corporations and financial- industrial groups;
- c) the expansion, confluence and merger of economic entities, if this may lead to the creation of an economic entity whose share in the appropriate product market would exceed 35 percent.

(2) In the cases, provided by par.(1), the persons or authorities, that decide on creation, reorganization, liquidations of economic entities and their associations, submit to the Agency an application to get approval for creation, reorganization or liquidation of an economic entity, as well as documents with data necessary for making the decision. The requirements regarding the nature and form of submitting such information and the order of examination of the application shall be established by the Agency.

(3) The Agency, not later than 30 days from the moment of receiving the application and necessary documents, reports to the applicant in written form about the decision taken. In a case when there is need for additional verification of submitted information or for clarification of some data, the Agency may prolong this period, but for not more than 15 days.

(4) In relation to the application mentioned in par.(2), the Agency has the right to:

a) reject it if its satisfaction may lead to strengthening the dominant position of the economic entity, or to lessening competition, or if discovered that the information contained in the documents is false;

b) grant the application, even in a case with the possibility of the mentioned negative consequences, if the persons or authority that decides on the creation, reorganization or liquidation of economic entities and their associations prove that the positive effect from their actions will exceed the negative consequences for the appropriate product market.

(5) State registration and re-registration of economic entities and their associations, mentioned in this article, without approval by the Agency, is forbidden.

[Art.17 modified by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 18. State Control over the Procurement of Stock (Shares in Social Capital) of Economic Entities

(1) When it is established that an economic entity possesses a dominant position in the market, the Agency exercises control over:

a) the acquisition of control of the voting stock (share in social capital) in this economic entity;

b) the acquisition by an economic entity of control (share in social capital) of another economic entity, which operates on the same product market.

(2) To complete the transactions mentioned in the par.(1), persons and economic entities are obligated to submit to the Agency an application to receive the appropriate approval and the required data, in accordance with the information list approved by the Agency.

(3) The state control over the completion of transactions, stipulated in this article, shall be exercised by the Agency in those cases when there are premises specified in Art.19 par.(2).

(4) The Agency has the right:

a) to reject an application if its satisfaction may lead to strengthening of an economic entity's dominant position in the market or to limitation of competition, as well as in the case of submitting a false or unauthentic information which is important for making a decision;

b) to satisfy the application:

- if the conditions for assuring competition are fulfilled;

- even with the risk of limiting competition, if the participants in the transaction prove that the positive effect from their actions will exceed the negative consequences in the appropriate product market.

(5) Transactions, completed in violation of an order established by this article, may be acknowledged ineffective on the Agency's request.

[Art.18 modified by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 19. The Forced Break Up of Economic Entities

(1) If an economic entity that occupies a dominant position in a market violates a provision of this law concerning abuse of a dominant position in a market two times or more, then the Agency has the right to adopt a decision to bring this case before a court for a forced break up or separation from its composition of one or several structural subdivisions with status of legal persons, if this leads to the development of competition and if for a forced break up there are the following conditions:

a) the possibility of organizational and/or territorial isolation of subdivisions;

b) the absence of a close technological interaction between the divided subdivisions of the economic entity;

c) the possibility of delimitation of spheres of activity of the economic entities, structural subdivisions or units within the framework of narrow specialization in the production of particular goods;

d) the impossibility, due to certain economic or political reasons, to involve other suppliers in the appropriate product markets.

(2) The fulfillment of state control over the break up of economic entities presupposes the presence of:

a) the fundamental methods and concepts;

b) the appropriate procedure for carrying out the works;

c) a feasibility study regarding the economic effectiveness and social and economic consequences of the planned measures;

d) the appropriate normative acts.

(3) The Agency's order regarding the forced break up of economic entities has to be fulfilled in the time and with conditions provided by the appropriate decision.

(4) The way of forced break up shall be established by the Agency.

[Art.19 modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 20. Control over Price Formation in Product Markets

(1) Prices for goods and tariffs on services shall be established by the process of free competition.

(2) In product markets where free competition is limited or is absent, the Government has the right to:

a) regulate prices in order to prevent cases of abuse of dominant position in the market;

b) introduce control over prices in case of exceptional situations, established according to the legislation in force.

[Art.20 modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 21. Protectionist and Stimulating Measures

In order to protect domestic producers, to satisfy state needs in the most important forms of production, or to develop competition, the state may sometimes take some temporary protectionist or stimulating measures.

Article 22. State Measures Applicable to Producer-Enterprisers

(1) In order to assure state security and to resolve the consequences of natural calamities and industrial catastrophes, as well as with other purposes established by legislation, the Government may apply to monopolist producer-enterprisers, or to main producers of most important kinds of products, an obligatory state order, may force them to supply goods to a certain consumer, as well as other measures.

(2) In all cases, the volume of goods, to which the measures for state control are extended, cannot exceed 50 percent of the volume of the manufactured good, and the period of regulation – three months.

(3) In the cases set forth in par.(1), the Government must provide the enterprise, which carries out the state order, with the necessary materials and raw material, and also to make payment for goods at prices that are not lower than its cost price.

[Art.22 modified by Law no.322-XVI since 15.12.05, in force since 06.01.06]

Chapter VI

RESPONSIBILITY FOR VIOLATING THE LAW ON THE PROTECTION OF COMPETITION

Article 23. Responsibility for Violating the Law on the Protection of Competition

(1) For violation of the legislation on protecting competition, economic entities, their leaders, and decision-makers from the public administration authorities bear responsibility in accordance with the Code of Administrative Offenses.

(2) The losses, caused by an economic entity to another economic entity or to other persons by violating this law, shall be compensated, in accordance with Civil Code, by the economic entity that caused them.

Chapter VII

ADOPTION, EXECUTION AND APPEALS OF THE DECISIONS (ORDERS) OF THE AGENCY

Article 24. Grounds for the Agency to Investigate Cases Regarding a Violation of the Law on the Protection of Competition

(1) Before a decision on a violation of the legislation on protecting competition is issued, the Agency is obligated to investigate, as established, the case of the violation of legislation.

(2) The case of a violation shall be considered following an application made by an economic entity, organizations and associations of entrepreneurs and consumers, or by the public administration authorities. The Agency has the right to examine the case ex officio on the basis of materials at its disposal concerning a violation of the legislation.

Article 25. Consideration by the Agency of Cases Involving Violations of the Law. The Adoption of Decisions on Them

(1) The order of investigation of cases concerning a violation of the Law on the Protection of Competition and making decisions on them shall be established by the Agency.

(2) The decision issued by the Agency, after the consideration of a case, shall be sent in written form, in 5 days after adoption, to the interested persons.

Article 26. The Manner of Complying with a Decision (Order) of the Agency

(1) A decision (order) of the Agency shall be carried out by the economic entity, its leader, public administration authority and decision-makers in the time mentioned in it.

(2) In case of non-compliance with a decision (order) concerning the cancellation or modification of an action adopted in violation of the legislation with a view toward restoring the situation that existed before the violation, the Agency has the power to bring such case before a court in order to declare it to be non-binding, in full or in part, or to impose the restoration of the situation existing before the violation.

(3) In case of non-fulfillment of the decision (order) regarding the dissolution or modification of a contract that contradicts the legislation or regarding the conclusion of a contract with an economic entity, the Agency has the right to bring the case before the court for modifying or dissolving the contract or for declaring it to be non-binding in full or in part.

(4) The penalties, applied by the Agency to economic entities, their leaders, decision-makers shall be raised into the budget.

(5) If the leaders of an economic entity or decision-makers of the public administration authority evade payment of a penalty or a penalty is paid in a smaller amount than indicated in the decision (order), the agency has the right to bring the case before the court in order to raise the penalty in the budget.

[Art.26 modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

Article 27. The Manner and Grounds for Appealing a Decision (Order) of the Agency

(1) Economic entities and their leaders and public administration authorities and their decision-makers have the right to appeal to a court in order to declare decisions (orders) of the Agency non-binding, in whole or in part, in case of their nonconformity to the legislation or of their adoption in violation of the Agency's competence or the stipulated procedures.

(2) An appeal to a court does not suspend the obligation to comply with the decision (order) of the Agency during the period of its examination in the court, if the court does not decide otherwise.

(3) A decision (order) of the Agency may be appealed for a period of 6 months from the day of its issuance, with exception of the requirements to which the term of prescriptions is not extended.

Chapter VIII
FINAL AND TRANSITORY PROVISIONS

Article 28. Transitory Provisions

Before being adjusted to this law, the legislative acts and other normative acts shall apply as much as they do not contradict it.

Article 29. The Duties of the Government

The Government within a two month period shall:

- submit proposals for adjusting legislation in force to the present law;
- adjust its normative acts to the present law.

PRESIDENT OF THE PARLIAMENT

Dumitru DIACOV

Chişinău, 30th of June 2000.

No. 1103-XIV.

REGULATION of the National Agency for the Protection of Competition

I. General Principles

1. The National Agency for Protection of Competition (hereinafter referred to as the Agency) is created to promote the state policy in the field of the protection of competition, in order to limit and suppress the anti-competitive activity of economic entities and public administration authorities, as well as to exercise control over implementing the Law on the Protection of Competition.

2. The Agency is a permanent public administration authority, having the status of a juridical person, and in its activity is independent from other structures of public administration.

[Item 2 as amended by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

3. The Agency is guided by the Constitution of the Republic of Moldova, by this law, other normative acts and by this regulation.

4. The Agency has its own balance, bank accounts, including in foreign currency, a stamp with the state coat of arms of the Republic of Moldova and name.

[Item 4 as amended by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

5. The Agency's personnel, the forms and systems of remuneration are established by the Agency's Administrative Council.

6. In order to achieve its goals, the Agency shall cooperate with other central and local public administration authorities.

II. The main tasks of the Agency

7. The main tasks of the Agency are:

- a) to promote the state policy in the field of the protection of competition;
- b) to prevent, limit and suppress anti-competitive activity;
- c) the state control over the observance of the Law on the Protection of Competition and advertising.

[Item 7 as amended by Law no.322-XVI from 15.12.05, in force since 06.01.06]

III. Functions of the Agency

8. The Agency, in accordance with the assumed tasks, accomplishes the following functions:

- a) develops and promotes the state policy, directed toward protection and development of competition and limitation of monopolistic activity;
- b) presents to the Government proposals and draft normative acts for the improvement of the Law on the Protection of Competition and the mechanism for its realization;
- c) determines if a dominant position in a market exists;
- d) supervises compliance by economic entities, public administration authorities and decision-makers with the Law on the Protection of Competition;
- e) adopts, within the limits of its competence, decisions in cases of violations of the Law on the Protection of Competition;
- f) issues, to economic entities, executory orders for cessation of violations of the Law on the Protection of Competition and/or the elimination of their consequences, dissolution or modification of contracts that contradict the Law on the Protection of Competition;
- g) issues, to public administration authorities, executory orders for cancellation or modification of illegal acts adopted by them, for cessation of infringements, as well as for dissolution or modification of contracts that contradict the Law on the Protection of Competition;
- h) develops expertise regarding the feasibility of creating free economic areas;

i) adopts decisions regarding the imposition of penalties on economic entities and their leaders, as well as on decision-makers from the public administration authorities, for anti-competitive actions and for non-compliance with Agency orders, and for other violations of the Law on the Protection of Competition;

j) brings cases before a court, including to impose penalties on economic entities for the portion of profit obtained as a result of the violation of the Law on the Protection of Competition, and it participates in the process of investigating cases concerning the application and violation of the Law on the Protection of competition;

k) develops regulations, directives, and methodologies, that ensure the uniform application of legislation in the field of protecting competition and the accomplishment of the tasks entrusted to the Agency;

l) cooperates with the appropriate agencies from other countries and with international organizations with a view to limiting and suppressing anti-competitive activities;

m) contributes to the exchange of information with other states.

[Item 8 as amended by Law no.322-XVI from 15.12.05, in force since 06.01.06]

IV. Access to the information

9. In the exercise of their functions, the Agency's workers have the right of free access into the premises and the territory of public administration authorities, economic entities, with the exception of the living quarters of physical persons, as well as the right to get acquainted with the necessary documents.

10. Data that constitute commercial secrets, obtained by the Agency in the fulfillment of its competencies, can be used only for these purposes and they cannot be divulged.

In case an Agency's worker discloses data that constitute commercial secrets, the losses caused thereby shall be compensated in the manner established by the legislation.

V. Administration of the Agency

11. The Agency is governed by the Administrative Council. It is a collegial body and consists of 7 members, including the General Director and his/her 2 deputies.

12. The General Director and the deputies shall be appointed by the Parliament for a period of 5 years on the recommendation of the President of the Parliament upon a prior positive opinion by the line parliamentary committee. The rest of the members of the Administrative Council shall be appointed by the General Director on a contract basis for a period of 5 years.

[Item 12 as modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

13. The Administrative Council shall issue decisions in the form of resolutions, orders and instructions which are signed by the General Director or his/her deputies.

The resolutions create and dissolve the Agency's branches and representations, issue and withdraw permissions on demand, confirm and annul documents, render and withdraw competences, issue decisions on investigated cases concerning violations of the Law on the Protection of Competition, and determine if an economic entity in a market has a dominant position.

The resolutions shall be the basis for legal actions in cases of violation of the Law on the Protection of Competition, as well as for carrying out verifications and expertise.

The prescriptions shall cancel transactions and actions of economic entities and their associations; shall oblige public administration authorities to abolish or modify normative acts, or to cease activities: shall impose prescriptions on economic entities and public administration authorities to take actions or not to allow their accomplishment; or, shall issue warnings and apply penalties.

[Item 13 as amended by the Law no.322-XVI from 15.12.05, in force since 06.01.06]

14. The decisions of the Administrative Council shall be adopted with a majority vote of its members and can be brought before it in accordance with the legislation. Each member of the Council is entitled to a single vote.

15. The members of the Administrative Council have to be citizens of the Republic of Moldova, have high education in economics or law and experience of at least 5 years in the field of economics.

16. The General Director and his/her deputies may be dismissed by the Parliament, at the request of the President of the Parliament, in case of:

- a) resignation;
- b) expiration of the term in office;
- c) cessation of citizenship of the Republic of Moldova;
- d) incapacity to carry out the duties due to the state of health;
- e) election to another position;
- f) sentence to imprisonment, applied upon a final decision of the court;
- g) violation of law.

17. The Administrative Council:

- a) develops the drafts of legislative acts and other normative acts;
- b) issues opinions on the drafts of legislative acts and other normative acts regarding the functioning of product markets and the development of competition;
- c) considers and issues opinions on proposals made by public administration authorities;
- d) undertakes, within its competencies, measures to protect competition;
- e) takes legal actions in cases of violations of the Law on the Protection of Competition and issues decisions on them, approves the objects of control and the materials prepared following the controls;
- f) formulates prescriptions, adopts decisions in regard to the application of penalties and their size;
- g) issues decisions on applications, complaints and proposals;
- h) issues other decisions within the limits of its competencies.

The members of the Administrative Council bear personal responsibility for the decisions taken by the Council and the performance of the functions entrusted on them.

[Item 17 as modified by Law no.322-XVI from 15.12.05, in force since 06.01.06]

18. The General Director:

- a) organizes the activity of the Agency and that of the Administrative Council;
- b) summons and chairs the meetings of the Administrative Council;
- c) approves the Agency's regulations of internal order;
- d) hires the Agency's personnel and approves the functional duties of the Agency's personnel;
- e) issues orders and ordinances regarding the activity of the Agency's staff and supervises its realization;
- f) establishes, in accordance with the structure, form, and system of remuneration approved by the Administrative Council, the minimal quantum of the basic salary, the additional payments and premiums, the stimulation and sanction measures;
- g) signs decisions, orders regulations and other normative acts approved by the Administrative Council of the Agency;
- h) signs the Agency's warnings and prescriptions, decisions regarding legal actions and the application of penalties, opinions and replies to the requests in the applications of economic entities and public administration authorities ;
- i) signs financial, banking documents, reports of the Agency and bears personal responsibility for the financial and economic activity of the Agency;

j) represents the Agency's interests in relations with legal personalities from the Republic of Moldova and abroad, and concludes contracts on issues that fall within the competence of the Agency;

k) assures the training and retraining of the personnel, organizes the technical and material equipment of the Agency.

19. Once a year the General Director shall present to the parliament a report on the Agency's activity during the past year.

20. In case of a temporary absence of the General Director, his/her functions shall be exercised by one of the deputies.

21. The members of the administrative council are not entitled:

a) to be members of administrative councils, boards of directors, divisions, audit committees and other administrative bodies of economic entities;

b) to practice any other remunerable activity, with the exception of scientific, pedagogical and creative activities;

c) to receive financial or material compensation from enterprises and entrepreneurs;

d) to perform his/her duties with the purpose of advertising.

VI. The Budget of the Agency and the financial year

22. Yearly, by the 15th of November, the Agency shall set out its budget for the upcoming year proceeding from the following resources:

a) state financing, as provided by the state budget for that year;

b) fees for consideration of applications;

c) part of the applied penalties;

d) incomes from publications;

e) other sources stipulated by legislation.

23. The fees for the consideration of applications are the following:

20 minimal salaries – for applications concerning the creation of associations of economic entities, holding companies, transnational companies and financial-industrial groups;

15 minimal salaries – for applications concerning the extension, merger and confluence of economic entities, in cases provided by the Law on the Protection of Competition, for changing the constitutive documents;

12 minimal salaries – for applications concerning the procurement of the controlling share of stock (shares in social capital) of an economic entity with a dominant position in the market and concerning the procurement by an economic entity with a dominant position in the market actions (shares in social capital) of an economic entity that operates in the same product market;

10 minimal salaries – for applications regarding the expansion, merger and annexation of economic entities;

5 minimal salaries – for applications regarding the violation of the legislation in force concerning the protection of competition.

[Item 23 as amended by Law no.322-XVI from 15.12.05, in force since 06.01.06]

24. The Agency shall transfer to its account 20 percent of the amount received in the form of penalties. The size of the penalty shall be established according to the Code of Administrative Offenses.

25. On an annual basis, by the 1st of March, the Agency prepares a financial report with the data about all revenues on its business account and about the expenditures from this account during the past year. The financial report is presented to the Parliament.

VII. Transparency of the activity

26. The Administrative Council assures the transparency of its activity. To that end, all interested sides shall be informed beforehand of the agenda of the Council's meeting.

27. Agency decisions that are of general interest shall be published in the Official Gazette of the Republic of Moldova.

28. The annual report regarding the Agency's activity shall be published in the Official Gazette of the Republic of Moldova and in central press.

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