

## ***UNOFFICIAL TRANSLATION***

### **CONSOLIDATED TEXT FROM THE OFFICIAL GAZETTE NO. 875 of December 10, 2003, AND COMPETITION LAW 21/19961**

#### **COMPETITION LAW**

**Article I - The Competition Law no. 21/1996, published in the Romanian Official Journal, Part I, no. 88 of April 30, 1996, with subsequent amendments and completions, shall be amended and completed as follows:**

##### **CHAPTER I General provisions**

###### **Article 1**

**The scope of this law is to protect, maintain and stimulate competition and a normal, competitive environment, with a view towards promoting consumers' interests.**

###### **Article 2**

**(1) The provisions of this law apply to acts and deeds that have or may have as an effect the restriction, prevention or distortion of competition, and were committed by:**

**a) undertakings or groups of undertakings, individuals or legal entities -- Romanian or foreign, irrespective of nationality or citizenship -- hereinafter "undertakings";**

**b) central or local public administration authorities, to the extent that they, by the decisions issued or regulations adopted, intervene in market operations, directly or indirectly influencing competition, except for situations when such measures are taken to enforce other laws or protect a major public interest.**

**(2) Where the undertakings described in par. (1)(a) become members of a group, regardless of its form (entente, coalition, group, block, federation, etc.), conventionally set up by accord, agreement, pact, protocol, contract, etc., either explicit and public or hidden and secret, but without legal personality, and if the acts and deeds provided for in par. (1) were committed while participating in such a group, the provisions of this law shall apply to each undertaking, according to the principle of**

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1 Changes are both of legal, and of orthographic nature meant to adapt the new text the new spelling system in place in the Romanian language. (*translator's note*)

proportionality.

**(3) The provisions of this law shall apply to the acts and deeds provided for in par. (1) when committed within Romanian territory and outside the Romanian territory, when they have effects within the Romanian territory.**

**(4) This law shall not apply to:**

- a) the labor market and labor relations;**
- b) the monetary market and the securities market, to the extent that free competition in these markets is subject to special regulations.**

### **Article 3**

**The administration and enforcement of this law are entrusted to the Competition Council, acting as an autonomous administrative authority, with authority vested in them for this purpose, in accordance with the conditions, procedures and limitations established by the following provisions.**

### **Article 4**

**(1) The prices of products and the tariffs of services and works shall be determined freely through competition, based on demand and supply. Prices and tariffs charged for natural-or legal monopoly activities shall be established and adjusted with the Ministry of Public Finance's advisory opinion, except those under other jurisdictions provided through special laws.**

**(2) In the economic sectors or markets where competition is precluded or substantially restricted by law or by the existence of a monopolistic position, the Government may institute, by decision, appropriate forms of price-control for periods not exceeding 3 years, which may be successively extended for periods not exceeding 1 year, if the circumstances that justified the adoption of the Government decision continue.**

**(3) For specific economic sectors and in exceptional circumstances, such as: crisis situations, major imbalance between demand and supply, and obvious market malfunctioning, the Government may enforce temporary measures to prevent or even block excessive price increases. These measures may be adopted by Government decision, for a period of 6 months, which may be successively extended for periods not exceeding 3 months, as long as the circumstances that justified the Government decision continue.**

**(4) For situations described in paragraphs (2) and (3), the Government intervention shall be made with Competition Council's advisory opinion.**

## CHAPTER II

### Anticompetitive Practices

#### Article 5

**(1) Any express or tacit agreements between undertakings or associations of undertakings, any decisions by associations of undertakings and any concerted practices, which have as their object or may have as their effect the restriction, prevention or distortion of competition on the Romanian market or on a part of it, shall be prohibited, especially those aimed at:**

- a) concerted fixing, directly or indirectly, of the selling or purchase prices, tariffs, rebates, markups, as well as any other terms of trading;**
- b) limiting or controlling production, distribution, technological development or investments;**
- c) allocating distribution markets or supply sources according to territorial criteria, sales-and-purchase volume or other criteria;**
- d) imposing unequal terms for equivalent services to trading partners, thus causing a competitive disadvantage to some of them;**
- e) conditioning the conclusion of contracts by imposing upon partners the acceptance of certain clauses stipulating additional services which, either by their nature or by commercial usage, do not relate to the object of such contracts;**
- f) participating, in a concerted manner, with rigged bids in auctions or any other forms of competitive tendering;**
- g) eliminating competitors from the market, limiting or preventing access to the market and the free exercise of competition between other undertakings, as well as agreements not to buy from or to sell to certain parties without reasonable justification.**

**(2) Agreements, decisions by associations of undertakings or concerted practices may be excepted from the prohibition stipulated in paragraph 1, if the conditions listed in paragraphs (a)-(d) and one of the conditions listed in paragraph (e) are met cumulatively, as follows:**

- a) the positive effects prevail over the negative ones or are sufficient to compensate the restriction of competition caused by the respective agreements, decisions by associations of undertakings or concerted practices;**
- b) customers or consumers are assured a benefit corresponding to that realized by the parties from the respective agreement, decision made by an association of undertakings or concerted practice;**
- c) the possible restrictions of competition are critical to obtain the expected advantages, and the respective agreement, decision made by an association of undertakings or concerted practice does not impose upon the parties restrictions that are not necessary to attain the objectives mentioned in letter e);**
- d) the respective agreement, decision made by an association of undertakings or concerted practice does not allow the undertakings or the associations of undertakings to eliminate**

competition from a substantial part of the product or service market in question;

e) the agreement, the decision made by an association of undertakings or concerted practice in question contributes, or may contribute to:

1. improving the production or distribution of goods, executing work operations or supplying services;
2. promoting technical or economic progress, improving the quality of goods or services;
3. consolidating the competitive position of the small and medium-sized undertakings on the domestic market;
4. charging, over the long run, substantively lower prices to the consumers.

(3) The exemptions provided for in par. (2) shall be granted by decision of the Competition Council for individual cases of agreements, decisions made by associations of undertakings or concerted practices, and they shall be established through Competition Council regulations for cases of block exemptions, decisions made by associations of undertakings or concerted practices. The undertakings or the associations of undertakings may request individual exemption from the Competition Council, showing that the conditions in par. (2) are met; the regime for requesting and granting individual exemption, deadlines, information to be presented, the period of exemption and the conditions of the individual exemption shall be established through Competition Council regulations and guidelines.

(4) Categories of agreements, decisions made by associations of undertakings or concerted practices that are exempted from the provisions in par. (1), as well as the criteria and conditions for qualification within the categories, are established through Competition Council regulations.

(5) Agreements, decisions made by associations of undertakings or concerted practices belonging to any of the categories exempted from the provisions of par. (1) are deemed legal, without the obligation to notify or to obtain a decision from the Competition Council. The undertakings or the associations of undertakings alleging the block exemption are held to prove they meet the conditions and the criteria provided in pars. (3) and (4).

(6) Decisions granting exemptions for agreements, decisions made by associations of undertakings or concerted practices, applying par. (2), shall specify the effective date, the period of exemption, and the conditions and obligations the beneficiaries must observe.

(7) Agreements, decision made by an association of undertakings or concerted practices  
An exemption granted in par. (6) for an agreement, partnership decision or concerted practice may be renewed upon request, if the required terms are still met, and may be revoked if the circumstances in which it was granted have changed; the decision granting exemption is null and void if it was granted on the basis of false, inaccurate or incomplete information.

## Article 6

Any abuse of a dominant position held by one or more undertakings on the Romanian market or

on a substantial part of it, by resorting to anticompetitive deeds, which have as an object or may have as an effect the distortion of commerce or the prejudice of consumers are prohibited. Such abusive practices are primarily those:

a) imposing, directly or indirectly, the sale or purchase prices, the tariffs or other inequitable contractual clauses, as well as refusing to deal with certain suppliers or customers;

b) limiting production, distribution or technological development, to the users' or consumers' disadvantage;

c) applying unequal terms for equivalent services to trade partners, thereby placing some of them at a competitive disadvantage;

d) making the conclusion of contracts subject to the acceptance by the other partners of supplementary obligations which, by their nature or according to commercial usage have no connection with the subject of these contracts;

e) importing such products and services that determine the overall price and tariff level in the economy, without the usual bids and technical-commercial negotiations;

f) charging excessive prices or charging predatory prices, below costs, with the aim of driving competitors out of the market or of selling on the export below production costs, recovering differences by imposing increased prices to the domestic consumers;

g) taking advantage of the state of economic dependence of another undertaking towards such an undertaking or undertakings and who does not have an alternative solution under equivalent conditions, as well as breaking contract relations for the sole reason that the partner is refusing to submit to certain unjustified commercial conditions.

## **Article 7**

(1) If the measures and sanctions applied by the Competition Council, in compliance with chaps. IV-VI, to an undertaking abusing its dominant position do not remedy the situation and prevent the abuse from repeating, the Competition Council, for the reason of serious damage to a major public interest, may request the Bucharest Court of Appeals to order adequate measures to remove its dominant position on the market; depending on the case, the court may issue an order:

a) invalidating contracts or contractual clauses through which an undertaking exploits, abusively, its dominant position;

b) invalidating the act or acts through which an economic concentration creates a dominant position, even if the legal act or acts at issue would have created a new legal entity;

c) restraining or prohibiting access to the market;

d) selling assets;

e) restructuring through division of the undertaking.

(2) By reference to the legal texts, the Competition Council shall specify the measure or measures to be ordered by the court, and shall not be allowed to request the court, in such a case, to take any one measure or all of them, and the court shall not order measures other than those specified in the request.

**(3) The court may order one or several of the measures provided for in par. (1) provided that, by doing so, any price increase is avoided or the undertaking's obligations to third parties are not affected.**

**(4) In the case of regies autonomes, commercial companies with majority state ownership, and of some public agencies or other public bodies conducting production, distribution or service activities, but without acting, in doing so, as a public authority, the Competition Council shall first refer the matter to the competent central or local administrative body to make a decision, in order to remedy the situation and prevent the abuse from repeating, through restructuring or other adequate means; the Competition Council may refer the matter to the competent Bucharest Court of Appeals only if the administrative body does not make a decision within 30 days after the referral.**

**(5) The following are considered major public interests and justify the Competition Council's request for any of the extreme measures to be ordered, as stipulated in par. (1): public safety, pluralism of independent undertakings, consumers' welfare, and prudential rules. The burden of proving serious damage to a major public interest resides with the Competition Council.**

**(6) For situations in par. (4), the competent public administrative body may intervene in the trial, in compliance with the Code of Civil Procedure.**

**(7) The decisions of the Bucharest Court of Appeals on the matters referred to in par. (1) or (4), may be appealed <sup>2</sup> to the High Court of Review by the Competition Council, by the undertakings subject to the measures ordered, and, in the situations stated in par. (4), by the competent public administrative body.**

## **Article 8**

- (1) The provisions of Arts.5 and 6 are not applicable to undertakings or groups of undertakings if their turnover for the fiscal year prior to the alleged anticompetitive behavior does not exceed the threshold annually set by the Competition Council, and:**
- if the market share of the undertakings or the group of undertakings involved in the agreement, the decision made by an association of undertakings or the concerted practice does not exceed 5% on any of the relevant affected markets, for cases of agreements, the decisions made by associations of undertakings of concerted practices among competing undertaking; or**
  - if the market share of each undertaking involved in the agreement, the decision made by an association of undertakings or the concerted practice does not exceed 10% on any of the**

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<sup>2</sup>Translator's note: In this Article, the Romanian text uses the word "recurs" which is a limited right of appeal, e.g., review the legal basis of the ruling of the lower court, and is not a right to a de novo trial.

relevant affected markets, for cases of agreements, the decisions made by associations of undertakings of concerted practices among undertakings which do not compete.

(2) The limitations provided for in par. (1) are not applicable to anticompetitive practices prohibited under Arts. 5 when they refer to prices, tariffs, market division agreements or auctions.

### Article 9

(1) Any actions by the central or local public administrative body are prohibited which have as an object or may have as an effect the restriction, prevention or distortion of competition, especially:

- a) making decisions which limit the freedom of trade or the undertakings' autonomy which are being exercised under the law;
- b) setting discriminatory business conditions to undertakings.

(2) The provisions in par. (1) are not subject to the exemption under Art. 2 par. 1 b.

(3) In case central or local public administration authorities do not abide by the Competition Council's decision, the latter may challenge the action before the Bucharest Court of Appeal.

Article 10 was abrogated.

## CHAPTER 11 ECONOMIC CONCENTRATIONS

### Article 11

(1) An economic concentration is realized by means of any legal act which, regardless of its form, either operates to transfer the ownership or the right of possession over the whole or part of an undertaking's property, his rights and obligations, or has as an object or an effect to enable an undertaking or a group of undertakings to significantly influence, directly or indirectly, another undertaking or several undertakings.

(2) An economic concentration takes place when:

- a) two or more previously independent undertakings merge;
- b) one or more persons, already holding control over at least one undertaking, or one or more undertakings directly or indirectly acquire control over one or more undertakings or parts of them, either through acquiring share capital or through acquiring assets, by contract or other means.

(3) The joint ventures, which have as an object or as an effect to coordinate the competitive behavior of the participant undertakings who remain independent, do not constitute a control-acquiring economic concentration, even when such acts would create joint economic entities. If the

**joint economic entity is a legal person who constantly functions as an autonomous economic entity, but without realizing a coordination of the competitive conduct between the founding undertakings or between the joint venture and the founding undertakings, then the operation is an economic concentration for the purposes of par. (2)(b).**

**(4) For purposes of this law, control results from rights, contracts or other elements that grants individually or taken together and considering *de facto* and *de jure* circumstances, the possibility to exercise decisive influence over an undertaking, especially through:**

- a) rights of ownership or of possession over the whole or part of an undertaking's assets;**
- b) rights or contracts that grant a decisive influence over the setting up, the deliberations or decision-making of an undertaking's management or board of directors.**

**(5) Control is acquired, according to pars.(2)-(4), by one or several individuals, or by one or several undertakings who are holding the rights or are beneficiaries of the contracts mentioned in par. (4), as well as those without such rights or contracts, provided they have the power to exert a decisive influence granting such rights and contracts.**

## **Article 12**

**An economic concentration does not arise when:**

**a) control is acquired and exercised by a liquidator nominated pursuant to a court order, or by any other person mandated by a public authority to accomplish the procedures cessation of payments, recovery, compositions, judicial liquidations or winding ups, forced executions on debt or other analogous procedures;**

**b) banks, credit or financial institutions and financial companies, financial investment service companies or insurance companies the normal activity of which include transactions and dealing in securities for their own account or the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities so that they may determine the competitive behavior of that undertaking or provided that they exercise such votes only with a view to achieving these securities, provided that the achievement of these securities takes place within one year of the date of acquisition; that period may be extended by the Competition Council on request where the requester can prove that the achievement of the securities was not reasonably possible within the period set;**

**c) control is acquired by the persons or undertakings under Art.11 par. (2) (b), provided that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management, executive management, and supervisory bodies of the undertaking in which they have holdings, only to maintain the full value of those investments without determining directly or indirectly the competitive conduct of the controlled undertaking.**

**d) the undertakings which are part of the same group perform restructuring and reorganization transactions within that group.**



### **Article 13**

Economic concentrations are illegal which, having the effect of creating or consolidating a dominant position, lead to or are likely to lead to a significant restriction, prevention or distortion of competition on the Romanian market or on a part of it.

### **Article 14**

(1) In order to establish their compatibility with a normal competitive environment, economic concentration operations are analyzed according to the following criteria :

- a) necessity to maintain and develop competition on the Romanian market, taking into account the structure of all markets in question and the existing or potential competition among undertakings from Romania or abroad;
- b) market share held by the undertakings, their economy and financial power;
- c) available alternatives for suppliers and users, their access to markets and supplies, as well as any legal or other barrier to entry on the market;
- d) the supply and demand trends for the relevant goods and services;
- e) the extent to which end-users' and consumers' interests are harmed;
- f) contribution to technical and economic progress.

(2) Economic concentrations susceptible of leading to a significant restriction, prevention or distortion of competition on the Romanian market or a part of it may be allowed if parties involved in the economic concentration can prove they meet cumulatively the following conditions:

- a) the concentration is to contribute to the increasing economic efficiency, enhancing production, distribution or technical progress or increasing export competitiveness;
- b) the positive effects of the concentration compensates for the negative effects restricting competition;
- c) to a reasonable extent, consumers benefit from the resulting gains, especially through lower real prices.

### **Article 15**

The provisions of this chapter do not apply to economic concentrations where the aggregate turnover of the undertakings concerned does not exceed 10 million Euro and there are not at least two undertakings involved in the operation to achieve, each in part, on the Romanian territory, a turnover exceeding 4 million Euro. The equivalent in lei shall be calculated at the exchange rate of the National Bank of Romania valid for the last day of the financial year prior to the operation.

### **Article 16**

(1) The economic concentrations exceeding the threshold stated under Art.15 are subject to control and must be notified to the Competition Council.

**(2) The economic concentrations realized through the merger of two or several undertakings must be notified by each of the involved parties; in the other cases, the notification must be made by the individual, the undertaking or undertaking who gain control over one or several undertakings or over part of them.**

**(3) The notification procedure, the terms, documents and data to be presented, the communications and observations to be submitted by the undertakings concerned shall be established through the regulations and guidelines adopted by the Competition Council.**

**(4) Until the Competition Council makes a decision as provided by Art. 51, the economic concentration shall not be put into effect.**

**(5) The Competition Council may grant, upon request, a waiver from the rule under par. (4); the application to grant a waiver must be reasoned. In its decision, the Competition Council shall take into account the effects of staying the economic concentration over one or several of the undertakings involved in the operation, or over a third party, and the effects on competition. This waiver may be subject to terms and conditions imposed to the parties and may be granted at any time, both before and after the notification.**

**(6) The validity of any transaction achieved in conflict with par. 4 shall depend upon the decision that the Competition Council shall make on the notified operation, according to Art. 51 par. 1 section b, to Art. 51 par. 2 section (a) or (b) or (c) or according to Art. 51 par. 3.**

### **CHAPTER III** **THE COMPETITION COUNCIL**

#### **Article 17**

**(1) The Competition Council is hereby set up as an autonomous administrative authority in the field of competition, a legal entity, which exercises its responsibilities according to the provisions of this law. The principle office of the Competition Council is in the city of Bucharest.**

**(2) The Competition Council's organizational and staff structure, its management responsibilities and staff functions shall be established through internal regulations adopted by the Competition Council.**

#### **Article 18**

**(1) The plenary session of the Competition Council is a collegial body and is made up of 7 members, as follows: on president, 2 vice-presidents and 4 competition counsellors. The President of Romania appoints the members of the Competition Council plenary session, at the proposal of the Government.**

**(2) The duration of the Competition Council members' term is 5 years, and they may be reappointed once at the most. Upon appointment of the first plenary session of the Competition Council after this law enters into force, one vice-president and 2 counsellors shall have a 2-year and a half term, set by appointment decree.**

**(3) The president, vice-presidents and the competition counsellors are required to have real independence and enjoy professional reputation and civic probity.**

**(4) The president must have previously had a leading position with wide responsibilities, in which he proved his professional and managerial capabilities.**

**(5) The vice-presidents and the 4 competition counsellors shall be selected among former judges of the High Court of Rescission and Justice, the Litigation Division or the Commercial Division, counsellors to the Court of Auditors, among university professors of economics or law, or well-known managers in the business field or high-ranking public servants.**

**(6) The status of Competition Council member is incompatible with other professional or consultancy position, with participation, directly or by proxy, in the management or administration of other public or private entities or with holding public positions or dignities, with the exception of teaching in higher education institutions. They cannot be appointed experts or arbitrators, either by parties or by courts or by other institutions.**

**(7) The members of the Competition Council's plenary session do not represent the authority that appointed them and are independent in their decision-making.**

**(8) The members of the plenary session of the Competition Council and competition inspectors cannot be members of a political party or other political organizations.**

**(9) A Competition Council plenary session member's term ends:**

**a) at its expiration;**

**b) by resignation;**

**c) by death;**

**d) in case of permanent impossibility to discharge one's duties for more than 60 consecutive days;**

**e) in case of an incompatible work status or an impediment such as those provided under pars. (6)-(8), according to the provisions of par. (12);**

**f) in case of revocation, for the violation of this law or for a criminal conviction, through a final court decision, for having committed a criminal offence.**

**(10) The members of the Competition Council's plenary session may be revoked, under par. 9 (f), by the appointing authority. Until a final criminal court decision is issued, they may be suspended by the same authority.**

**(11) In case of a vacancy on the Competition Council's plenary session because of one of situations referred to in par. 9 (b)-(f), in compliance with par. 1, a new member shall be nominated and appointed to the vacant position for the remainder of the term.**

**(12) The Competition Council members are required to notify the Council immediately of any situation of incompatible work status or impediment according to pars. (6)-(8), being by rights suspended from office from the moment this situation appeared, and if the situation lasts for more than 10 consecutive days, the member's term ends and pars. (10) - (11) are applied.**

### **Article 19**

**(1) Before starting to exercise his position, each member of the Competition Council shall take in front of the President of Romania, in the presence of the other appointed members and after the presidential appointing decree was read, the following oath:**

**“I swear to observe the Constitution and the laws of the country, to protect the interests of Romania and the fundamental rights and liberties of its citizens, to fulfill all responsibilities with honor, dignity, loyalty, responsibility and impartiality. So help me God.”**

**(2) The president of the Competition Council is the first sworn in.**

**(3) In case he does not take the oath within 30 days from the publication of the decree of appointment in the *Monitorul Oficial of Romania*, the member is by law withdrawn, and the procedure of nominating and appointing another person for the vacancy shall be resumed.**

### **Article 20**

**(1) The term of the Competition Council begins when the president of the Competition Council is sworn in and terminates 5 years calculated from that date.**

**(2) If the president of the Competition Council appointed for the next term will not have been sworn in according to Article 19 before the current term expires, members of the Competition Council shall continue their activities until the president of the Competition Council appointed for the next term is sworn in.**

### **Article 21**

**(1) The Competition Council functions, deliberates and makes decisions in plenary sessions and in commissions.**

**(2) Each commission is made up of 2 competition council members, as designated by the president of the Council for each particular case, and is headed by a vice-president of the Council.**

**(3) The President of the Competition Council orders investigations to take effect and appoints a rapporteur for each investigation.**

**(4) For the purposes of applying this law, the Competition Council examines in plenary sessions:**

- a) the investigation reports and possible objections to them, and decides which measures should be taken;**
- b) the authorization of economic concentrations;**

- c) notification to the courts related to the enforcement of Article 7;
- d) opinions, recommendations and advisory opinions drafted in regard to the enforcement of this law;
- e) block exemptions, decisions made by associations of undertakings and concerted practices proposed for exemption;
- f) draft regulation proposed to be adopted;
- g) the annual competition report;
- h) the analysis of violations of Art. 9 violations.

(5) During deliberations, each member has one vote; in cases of a tie vote, the president's vote shall prevail.

(6) The decisions adopted by the Competition Council in plenary sessions in compliance with paragraph 4 shall be signed by the president, on behalf of the Competition Council; they may be challenged within 30 days from publication or, depending on the case, from the date they were communicated by administrative proceedings before the Bucharest Court of Appeals; the verdict shall be without right of appeal, but may be challenged by recourse before the Supreme Court of Justice.

## Article 22

(1) The President of the Competition Council, by his signature, binds the patrimony of the Competition Council as a legal person, and represents it as public institution before natural and legal persons, before legislative, judiciary and administrative authorities, and other Romanian, foreign and international institutions. He exercises disciplinary authority with respect to all Competition Council personnel.

(2) The Competition Council's orders and decisions which determine measures and apply sanctions, shall be signed by the president, and the regulations adopted by the Competition Council shall be put into effect, suspended or abrogated by order of the president.

(3) In case of the President's absence or unavailability, the legal representation of the Competition Council shall pass onto one of the vice-presidents, designated by the President for the period of his absence or unavailability.

(4) The President of the Competition Council may delegate powers of representation to any of the vice-presidents, competition counselors, competition inspectors or other persons; the mandate shall explicitly mention the delegated powers and the period of their delegation.

## Article 23

(1) In order to carry out its duties, the Competition Council shall draw up and adopt its own organizational, functioning and procedural regulation, and sets up its own apparatus, at the central

and local level.

(2) The staff list of its own apparatus, which includes competition inspectors and other staff categories, appointing, promoting and incentivizing terms, and the duties of each job shall be set by regulations adopted by the Competition Council, while observing the regulations on public office and public servants and the regulations regarding the waging of staff with state contracts.

(3) The public specialized office relative to the Competition Council is of competition inspector.

#### **Article 24**

The position of President of the Competition Council is equivalent to that of a minister, the vice-president - to a secretary of state, and the competition counselor - to an under-secretary of state.

#### **Article 25**

The Competition Council structure includes a general secretariat led by a general secretary, appointed by the Competition Council. The general secretary's duties are set up through the Competition Council's organizational, functioning and procedural regulations.

#### **Article 26**

(1) The Competition Council shall draw up its own budget that shall be a distinct chapter of the state budget.

(2) In order to assure the functioning of the Competition Council and its territorial staff, the Government and, as the case may be, the local public administration shall assign buildings, grounds and other facilities from the public property of national or local interest, within 60 days of the registration of a request from the Competition Council.

(3) The returns from fees, taxes or fines, or from other sanctions enforced by the Competition Council, shall become revenue to the state budget, according to the law.

#### **Article 27**

The Competition Council has the following duties:

- a) to conduct investigations, upon its own initiative or upon a complaint, intimation or notification, regarding the enforcement of arts. 5, 6, 13 and 16;
- b) to take decisions, according to this law, regarding the violations of arts. 5, 6, 9, 13 and 16, found after investigation by the competition inspectors;
- c) to certify, upon request by undertakings or by associations of undertakings and, whenever it deems necessary, after beginning an investigation, based on the evidence gathered, that there is no ground to intervene on the basis of Art. 5 par.(1) or Art. 6;
- d) to take decisions to grant individual exemptions in cases of agreements, decisions made by associations of undertakings or concerted practices, subject to provisions of Art. 5 par. (2), and decisions in cases of economic concentrations;
- e) to carry out the effective enforcement of its own decisions;

- f) to carry out, upon its own initiative, investigations aimed at a better understanding of the market;
- g) to notify the Government about situations of monopoly or of other cases subject to Art. 4 par. (2) and (3), and to propose the Government the measures deemed necessary for the remedy of the ascertained dysfunctions;
- h) to inform the courts on cases subject to their jurisdiction;
- i) to supervise the enforcement of legal provisions and other norms related to the object of this law;
- j) to notify the Government about the interference of central and local public administration bodies in enforcing this law;
- k) to give advisory opinion on the governmental legislation bills that may have anticompetitive impact, and to propose amendments to the governmental legislation bills having such effects;
- l) to recommend to the Government and the local public administration to adopt measures facilitating the market and competition development;
- m) to propose to the Government and local public administration bodies, disciplinary measures against their staff for not observing the mandatory decisions of the Competition Council;
- n) to draw up studies and reports on its field of activity, and to inform the Government, the public and the specialized international organizations about this activity;
- o) to represent Romania and promote exchange of information and of experience in the relations with specialized international organizations and institutions, and to co-operate with foreign and community competition authorities;
- p) to establish and approve the mission, the general strategy and the agenda of the competition agency;
- q) to take any other decisions in order to meet the duties arising under this law.

### **Article 28**

- (1) The Competition Council adopts regulations and guidelines, issues orders and drafts advisory opinions, makes recommendations and draws up reports in order to apply the provisions of this law.
- (2) The Competition Council adopts regulations regarding:
  - a) its organization, functioning and procedures;
  - b) the authorization of economic concentrations;
  - c) the exemption of certain categories of agreements, decisions to associate or concerted practices;
  - d) the individual exemption regime;
  - e) the finding and enforcement of sanctions stipulated by this law;
  - f) the charges for notification, requests for individual exemption, access to documentation and issuing copies and excerpts;
  - g) the competition inspectors;
  - h) the disciplinary regime for the staff.
- (3) The Competition Council issues guidelines, especially those regarding:
  - a) the notifications of economic concentrations;
  - b) the requests for and extension of individual exemptions;
  - c) the calculation of turnovers and threshold values provided in this law;

- d) the definition of the relevant market with the aim of establishing the substantial share of the market;
- e) payment of fees and charges provided by this law and by regulations.

(4) The Competition Council issues orders to establish the threshold values that are periodically reviewed, according to this law; enforces, suspends or abrogates the adopted regulations, orders investigations, inquiries and measures to be taken concerning undertakings.

(5) Decisions are individual acts of management, administration and internal discipline, of enforcing sanctions, of authorization, of granting and of extension of exemptions.

(6) Advisory opinion is formulated, recommendations and proposals are made, viewpoints are formulated, reports are drawn up and communicated, and, as the case may be, published, according to the provisions of this law.

#### **Article 29**

(1) Draft regulations and instructions, as well as their amendments, require the approval of the Legislative Council, being subsequently adopted by the plenum of the Competition Council and enforced by order of the Competition Council's President.

(2) The regulations of the Competition Council may be appealed by judicial review before the Bucharest Court of Appeal within 30 days from notice, or from publication of the appealed action.

#### **Article 30**

The Competition Council shall state its viewpoint on every aspect of competition policy, at the request of:

- a) the Presidency of Romania;
- b) the Parliament commissions, senators and deputies;
- c) the central or local public administration bodies;
- d) the professional, employers' and trade union organizations, including the Chamber of Commerce and Industry of Romania;
- e) the consumers' protection organizations;
- f) the courts and prosecutors' offices.

#### **Article 31**

- (1) In matters concerning the privatization policy, respectively the branch or sectorial policies, the Competition Council shall consult with the ministries in charge and other central or local public administration bodies, and the employers' organizations.
- (2) The organizations mentioned in par. (1) shall submit their opinion to the Competition Council within 30 days from being requested. Such opinion shall be attached to the report on the case under investigation.
- (3) In fulfilling its duties, the Competition Council shall consult with central or local public



administration bodies, and shall request them information and assistance.

- (4) The Competition Council, as national authority in the field of competition, shall be liable for the relation with the institutions of the European Community, in accordance with the applicable provisions of the Community legislation.

### Article 32

- (1) The Competition Council shall draw up an annual report on its activity, and the manner in which the undertakings and public authorities observe the rules of competition, according to this law.
- (2) The report shall be adopted by the plenum of the Competition Council, and shall be published.

### Article 33

- (1). This law sets up the following fees: the authorization fee to authorize economic concentrations, which shall be paid when issuing a decision to authorize according to art. 51. par. 1 section b) and par. 2 sections b) and c).
- (2) The authorization fee for economic concentration is set up to 0.1 % of the cumulated turnover of the undertakings involved in the authorized economic concentration, and it is calculated based on the turnover of the fiscal year preceding the authorization of the economic concentration, observing the regulations of the Competition Council.
- (3) The returns from payment of the fees mentioned in par.(1) become revenue to the state budget, within due term and according to the regulations of the fiscal law.

Section II of the Chapter IV shall be abrogated.

## CHAPTER V

The procedure of preliminary investigation, of investigation and decision-making

### Article 39

- (1). The identification and investigation of the violations to this law are incumbent on the Competition Council, through specialized control staff.
- (2). In case of violation of Art. 63, par. (1) of this law, the staff appointed according to par. 1 may only take the measures provided in Art. 214 of the Criminal Procedure Code.

### Article 40

The Competition Council shall order an investigation, within its competence and according to the provisions of Art. 46 of this law:

- a) ex officio;
- b) following a complaint by an individual or a legal person who was in effect and directly affected

by a violation of Art. 5 par. (1), Arts. 6, 13 and 16;

c) at the request of the undertakings of the associations of undertakings concerned, according to Art. 5 par. (2) or Art. 14 par. (2);

d) at the request of any of the authorities, institutions, organizations or bodies mentioned under Art. 30 sections a) -f).

#### **Article 41**

In carrying out the duties prescribed by this law, competition inspectors may request the necessary information and documents from undertakings or associations of undertakings, stating the legal basis and the purpose of the request, and may set up deadlines for such information and documents to be submitted, under sanctions stipulated by this law.

#### **Article 42**

(1) In order to investigate violations of this law, competition inspectors are empowered to make inspections, with the exception of beginners, and shall have the following powers to inspect:

- a) to enter premises, grounds or vehicles of business use which belong to undertakings or associations of undertakings;
- b) to review documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertakings or associations of undertakings, regardless of the location they are stored in;
- c) to request statements from representatives and employees of the undertaking or the association of undertakings pertaining to facts or documents which are deemed relevant;
- d) to issue or obtain, in any form, copies or excerpts from documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertaking or the association of undertakings;
- e) to apply seals on business locations of the undertaking or the association of undertakings and on documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertakings or the association of undertakings.

(2) Competition inspectors having powers to inspect, mentioned under par. (1), shall proceed as described under par. (1) if there are indices that documents may be found or information may be obtained which are deemed necessary to fulfill their task, and the results thereof shall be registered in a fact-finding and inventorying minutes.

(3) Competition inspectors having powers to inspect may make unannounced inspections, and may request any information or justifications related to the fulfillment of their task, either on the spot, or upon summoning at the Competition Council principal office.

(4) The exercise of the powers of inspections shall be done in accordance to the regulation on the setting, operation and procedure of the Competition Council.

#### **Article 43**

According to the judicial competence granted through ruling, according to the provisions of Art. 44, competition inspectors may perform inspections on any premises, including domiciles, lands or transportation means belonging to managers, administrators, executives and other employees of undertakings or associations of undertakings submitted to investigations.

- a) the premises, grounds or professional means of transportation belonging to the undertakings, if any signs indicate that information or documents can be found to help the investigation;
- b) the residences of head executives, managers, directors of the investigated companies, as well as to the residence of natural persons responsible for the financial, accounting or marketing departments, under conditions stipulated in Art. 27, par. (3) of the Romanian Constitution.

#### **Article 44**

- (1). The competition inspectors may start investigations, in accordance to the provisions of Art. 43, provided they are part of an inspection requested by the President of the Competition Council, and provided they have judicial ruling granted by the president of district court having jurisprudence over the premises to be controlled, or by a judge mandated by the court president. When such places fall under different court jurisdictions and simultaneous investigations should be conducted in all of them, a unique ruling may be issued by any of the court presidents having jurisdiction.
- (2). In the request for judicial ruling, the Competition Council shall provide all information justifying the inspection, and the judge is held to check if the request is grounded.
- (3). The inspection and related acts shall be carried out under the authority and control of the judge who issued the ruling.
- (4). The judge may inspect the searched places, and may decide to suspend or to terminate the search, at any moment.
- (5). Whatever the circumstances, the search shall not begin before 8:00 or after 18:00 hours, and must be conducted in the presence of the occupant of the searched premises, or his representatives; only the competition inspectors, the occupant of the premise or his representative may take notice of the evidence and documents before capture and retrieval.
- (6). Inventories and application of seals shall be done according to the Criminal Procedure Code; the original minute and inventory of the search shall be transmitted to the judge who had ordered the search, while the evidence and documents no longer necessary to establish the truth shall be returned to the occupant of the searched premises.
- (7). The authorization mentioned in par. (1) may be appealed at the Bucharest Court of Appeal; the appeal is not suspensive of execution.
- (8). The Competition Council or, as the case may be, the Head of the Competition Office shall be informed without delay about the beginning of the inspection and of the performed operations.
- (9). According to the above mentioned provisions, the procedure is plenary contradictory during the whole duration of the inspection.

#### **Article 45**

(1). Central and local public administration bodies, as well as any other institutions and public authorities shall allow access of the competition inspectors to the documents, data and information, when these are deemed useful to the fulfillment of the legal assignment of the Competition Council, and without being able to invoke the state secret or business secret character of such documents, data and information.

(2). The competition inspectors having access to the documents, data and information mentioned in par. (1) shall strictly observe the state secret or business secret character legally attributed to such documents, data and information.

#### **Article 46**

(1). Upon receipt of a request or complaint denouncing, respectively claiming an anticompetitive practice, the Competition Council examine whether there is enough *de jure and de facto* evidence to support starting an investigation.

(2). If the request or complaint does not justify an investigation, the Competition Council shall reject it and notify their decision to the initiator, in writing, stating the rejection reasons, within 30 days from the date the request or complaint was filed.

#### **Article 47**

(1). Whenever an investigation is ordered, the President of the Competition Council shall appoint a rapporteur to draw up the investigation report, to communicate it to the parties involved, to register the observations and to present the report to the Competition Council plenary session, if necessary.

(2). The appointed rapporteur will be in charge of preparing all documents for the investigation procedure and shall submit proposals to the Competition Council, for the measures it is entitled to order.

#### **Article 47<sup>1</sup>**

Whenever, after an investigation has been commenced, it is found out that it did not lead to reasonable evidence that the law was violated, able to justify remedies or sanctions to be imposed by the Competition Council, the latter, by Order of the President, may close the investigation and shall inform the parties involved immediately. Except for the case when an investigation was triggered by a complaint, closing an investigation does not require hearings before the Competition Council plenary session.

#### **Article 48**

(1). Except for the situation mentioned under Art. 47<sup>1</sup>, any investigation procedure requires hearings for the undertakings participating in the agreement, the decision of the association of undertakings, the abuse of dominant position, or the economic concentration under investigation. The hearing shall be ordered by the President of the Competition Council.

(2). The President of the Competition Council may appoint experts and may authorize the initiator of

the complaint or request to be heard, upon the request of the latter, and any other individual or legal entity claiming to possess relevant data and information necessary to establish the truth in the case under investigation.

(3). Absence from or renouncing the hearing, as well as refusal to testify or submit statements, shall not prevent the investigation procedure from going on.

#### **Article 49**

(1). A copy of the report shall be sent for the information of persons whose hearing had been ordered under Art.48 par.(1) at least 30 days prior to the date of the hearing. The persons admitted for hearing according to Art.48, par.(2) shall be sent a copy of the report only upon request, and if the President of the Competition Council considers it helpful for the investigation.

(2). The President of the Competition Council may allow the parties involved to study the case file at the Competition Council secretariat, and to get copies and excerpts of the investigation papers on their own cost.

(3). No documents, data and information from the case file, classified as state secret or confidential character, are available for study, duplication or taking excerpts, without the President's decision.

(4). In investigations concerning an economic concentration, the provisions of this article referring to file study shall apply to the partners and directors of the companies participating in the economic concentration, to the extent to which they can prove a legitimate interest in the cause.

#### **Article 50**

After the hearings were ordered and, as the case may be, admitted, and after examining the parties' observations on the investigation report, the Competition Council may decide as follows:

a) in investigations on violations of Art.5, par.(1) or, as the case may be, of Art.6, ordered *ex officio* or upon notification, to order that the anticompetitive practices found should be stopped, to formulate recommendations, to impose special conditions and other obligations to the parties involved, to fine the undertakings according to Chap. VI;

b) in requests in keeping with Art.5, par.(3), to issue a motivated decision for approval or denial of an individual exemption for the agreement, the decision by the association of undertakings or the concerted practice at issue;

c) in notifications in keeping with Art.5, par.(7) - to issue a motivated decision for qualifying or not the respective agreement, decision for partnership or concerted practice in an exempted category.

#### **Article 51**

(1). Within 30 days from receiving a notification of an economic concentration, the Competition Council shall:

- a) issue a decision for nonintervention, when concluding that the notified economic concentration is not subject to this law;
- b) issue a non-objection decision, when concluding that, although the notified economic concentration is subject to the provisions of this law, there are no serious doubts regarding the compatibility with a normal competitive environment.

(2). Within 5 months at the most from receiving a notification of an economic concentration, for which the Competition Council decided to start an investigation because of doubts concerning compatibility with a normal competitive environment, the Competition Council shall:

- a) issue a denial decision if, through the economic concentration, a dominant position is created or consolidated, in the sense of Art.13;
- b) issue a decision for authorization if, through the economic concentration, no dominant position is created or consolidated, in the sense of Art.13;
- c) issue a decision establishing the obligations and/or conditions which must be met in order for the economic concentration to be authorized, if it concludes that, if these changes were done, the economic concentration could be compatible with a normal competitive environment.

(3). If the Competition Council takes no decision within the time limits stipulated under par. (1) and (2), the notified economic concentration operation may take place.

(4). In case the notification of an economic concentration requires supplementation, the time limits provided for under pars. (1) and (2) begin as of the date the parties supplied the Competition Council the information requested in order to complete the notification.

(5) The Competition Council may establish, by regulation, a simplified procedure to analyze some economic concentration operations.

## Article 52

‘1) Before issuing a decision under arts. 50 and 51, the Competition Council may impose – through a decision of interlocutory measures – the undertakings involved to take any measure that it deems necessary for re-establishing the normal competitive environment and for bringing the parties back to the previous circumstances.’

(2). The suspension or banning of the identified anticompetitive practices, as well as the injunctions sent to the undertakings and requesting them to return to the previous circumstances, shall be ordered by the Competition Council in enforcing Arts. 50 and 51, but only when finding obvious illicit actions that constitute anticompetitive practices expressly banned by this law and that must be terminated without delay in order to forestall or stop a serious and certain damage from being done.

(3). The measures stipulated in par. (1) and (2) shall be strictly limited, in duration and scope, to what is necessary for correcting an obvious and intolerable alteration of free competition.

**(4). The Competition Council's decisions, taken in enforcing the provisions of Arts. 50 and 51 shall be conveyed immediately to the parties; the same may be appealed by administrative proceedings at the Bucharest Court of Appeals, within 30 days from notice. Upon request, the Court may decide to suspend execution of the appealed decision.**

#### **Article 53**

**(1). The Competition Council's decision, taken in enforcing provisions of Art.51, on economic concentration operations in which a regie autonome is involved, shall be notified also to the line minister.**

**(2). Within 30 days after the notification of the decision under par.(1), the Government may, following a proposal from the line minister, make a different decision from that of the Competition Council on its own responsibility and for reasons of public interest. The decision shall be executed and shall be published in the Official Gazette of Romania, together with the Competition Council's decision.**

## **CHAPTER VI Sanctions**

#### **Article 54**

**Any agreements, conventions or contractual clauses, either expressed or tacit, public or secret, referring to an anticompetitive practice banned by Arts.5 and 6 of this law, are null and void.**

#### **Article 55**

**The following deeds constitute offences and may be sanctioned with a fine of up to 1% of the aggregate turnover of the financial year prior to the sanctioning of the following deeds:**

- a) failure to notify an economic concentration, in keeping with the provisions of Art. 16;**
- b) submission of incorrect or incomplete information following a request made under Art. 5 par. (3), or a notification made under Art.16;**
- c) submission of incorrect information or of incomplete documents, or failure to submit information and documents as requested in keeping with the provisions of Art.41;**
- d) submission of incomplete information, documents, business records and books during inquiries conducted under Art.42;**
- e) the refusal to accept an inquiry conducted in keeping with the provisions of Arts. 42 and 43.**

#### **Article 56**

**(1) The following deeds are deemed offences and shall be sanctioned by fines of up to 10 % of the aggregate turnover of the financial year prior to the sanctioning:**

- a) violations of the provisions of Art.5, par. (1), Art. 6 or Art. 13;**
- b) putting in effect an economic concentration operation in violation of Art.16, par. (4) and par. 5);**

- c) start of a economic concentration operation, declared incompatible with the provisions of this law by a decision issued by the Council under Art.51, par.(2) (a);
- d) failure to comply with an obligation or condition imposed through decision issued according to this law.

(2) Through exception from par. (1), the Competition Council shall establish, by guidelines, the terms and conditions, and the criteria to apply a leniency policy which may lead to exoneration of pecuniary liability.

#### **Article 57**

The individual sanction for any of the specific offences stipulated under Arts.55 and 56, shall be decided taking into account the seriousness and the duration of the deed and its consequences on competition. Sanctions shall be on a scale adopted through Competition Council's guidelines.

#### **Article 58**

If, within 45 days after decision notification, the undertaking concerned does not comply with the measures decided by the Competition Council under the provisions of this law, the Competition Council may impose the maximum fine stipulated in Art.56, or may request the authorized court to impose one of the measures stipulated in Art.7, par.(1).

#### **Article 59**

The Competition Council may issue a decision to force the undertakings or the associations of undertakings to pay comminatory fines of up to 5% of the daily average turnover of the financial year prior to the sanctioning , for each day of delay, calculated from the date set up in the decision, in order to determine them to:

- a) observe the provisions of Art. 5 par. (1), of Art. 6 and of Art. 13;
- b) to enforce the remedies stated in a decision issued in accordance with the provisions of Art. 50 pars. (a) and (b), of Art. 51 par. (2) (c), and of Art. 52 pars. (1) and (2);
- c) submit complete and correct information, as requested in Art. 41;
- d) accept the inspection, as requested in Arts. 42- 44 of this law.

#### **Article 60**

(1). The offences stipulated by this law shall be assessed and sanctioned by the Competition Council's plenary session or its commissions, or by the competition inspectors.

(2). The sanctions concerning the offences stipulated in Art.55, let.b) -e), and Art.56. par. (1) let. d), shall be enforced by the competition inspectors.

(3). The sanctions concerning offences stipulated in Art.55, section a) and Art.56, par. (1) section c), and the comminatory fines stipulated in Art.59 shall be applied by decision issued by the Competition Council's commissions.



3<sup>1</sup>) The sanctions for the offences provided for under Art. 56 par.(1) sections a) and b) shall be applied by the Competition Council's plenary session, by the same decision whereby the commitment of that offence was ascertained. The court having jurisdiction is the court provided for under Art. 52 par. (4).

(4). The decisions taken under pars. (3) and (3<sup>1</sup>) may be appealed before the Bucharest Court of Appeal, the Litigation Division, within 30 days from notice.

(5). On the basis of the Competition Council's decision, the returns or, as the case may be, the supplementary incomes achieved by the undertakings as a consequence of perpetrating the offences stipulated and sanctioned by this law shall be disgorged and deposited to the state budget.

#### **Article 61**

The offences stipulated in Art.55, sections b) -e) and Art.56, par. (1) section d) of this law fall under the provisions of Government Decree no.2/2001 regarding the legal system of offences, approved and modified through Law no.180/2002, except for Arts.28 and 29 therein.

#### **Article 62<sup>1</sup>**

(1) The right of the Competition Council to apply civil sanctions for violations of this law shall be extinguished under statute of limitations as follows:

- (a) within 3 years, for violations of the provisions of Art. 55 sections (c), (d) and (e);
- (b) within 5 years, for all other violations of provisions of this law.

(2) The statute of limitations of the Competition Council begins the day when the anticompetitive practice stopped. For violations of the law which are continuous or reiterative, the statute of limitations begins the day the last anticompetitive action or fact stopped.

#### **Article 62**

(1). The decisions issued under Arts. 50, 51, 59 and 60 shall be transmitted to the parties involved, by the Competition Council's Secretariat-General, and shall be published in the Official Gazette of Romania, Part I, at the expense of the perpetrator or of the applicant, as the case may be, or on the Competition Council's website.

(2). The legitimate interests of the concerned undertakings shall be taken into consideration when publishing the decisions, so that no business secret be revealed.

### **Article 62<sup>2</sup>**

- (1) Any action undertaken by the Competition Council in view of a preliminary inquiry or in view of commencing an investigation relative to a particular violation of the law shall interrupt the course of the statute of limitations provided for under art. 62<sup>1</sup>. The interruption of the statute of limitations shall enter into effect as of the date the action taken by the Competition Council was transmitted to at least one undertaking or association of undertakings who was involved in the commitment of the law violation.**
- (2) The actions which can be undertaken by the Competition Council and which interrupt the course of the statute of limitations may be, among others, the following:**
  - (a) requests of information, in writing;**
  - (b) order of the President of the Competition Council to commence an investigation;**
  - (c) commencement of legal procedures.**
- (3) The interruption of the statute of limitations produces effects over all undertakings or associations of undertakings involved in the commitment of the law violation.**
- (4) In case of interrupting of the statute of limitation, a new term, of a similar duration, begins as of the date the Competition Council has undertaken one of the actions mentioned under par.(2). The statute of limitation shall expire no later than the day on which a period equal to the double of statute of limitations elapses, applicable to the commitment of the violation at issue, in case the Competition Council did not impose any of the sanctions provided for by this law.**

### **Article 63**

- (1).When an individual participates with fraudulent intent and in a decisive way to the conceiving, the organization or the realization of any of the practices prohibited under Art.5(1) and Art.6 which are not exemptions according to Art.5 (2) or Art.8 shall be considered a criminal offence and shall be convicted to jail from 6 months to 4 years or shall be fined.**
- (2). The criminal action shall start following the Competition Council's notification.**
- (3). The court may decide that its irrevocable decision be published in the press, at the guilty party's expense.**

### **Article 64**

**Apart from the sanctions enforced in keeping with the provisions of this law, individuals and/or legal entities reserve the right to sue for the complete remedy of the damage caused by the anticompetitive practices banned according to this law.**

### **Article 65**

**Any person who, uses or discloses documents or information having business secret character, received or acknowledged during work or work-related duties, for other purposes than those stipulated in this law will be held liable according to the criminal law, and may be forced to remedy the damages caused.**

## CHAPTER VII

### Common and Final Provisions

#### Article 66

In case the legal qualification made in a notification by the undertakings involved is not correct, the Competition Council may change this qualification.

#### Article 67

(1). The turnover referred to in Art.8, and Art.15 is the total of the revenues achieved by the concerned undertaking through sales of products and/or services during the previous fiscal year, from which shall be deducted the amounts representing fiscal obligations and the accounted value of the exports (performed directly or through agents).

(2). In case an economic concentration takes place as provided for by Art.11, par.(2) section b), by purchasing of assets, from the turnover established under par.(1), only the amount relating to the assets constituting the object of the transaction shall be taken into consideration.

(3). If two or several transactions of the kind mentioned in par.(2) take place between the same individuals and/or legal entities during a 2-year period, they shall be considered a single economic concentration operation, concluded on the date of the last transaction.

#### Article 68

The turnover shall be replaced:

- a) for banking companies, credit or financial institutions, and financial companies - by one tenth of their balance sheet;
- b) for insurance companies, by the value of the issued gross premiums, which shall include all amounts received or to be received according to the insurance contracts concluded by them or on their behalf, including outgoing reinsurance premiums, after deducing taxes and fees identified by the Competition Council through the guidelines.

#### Article 69

For the purposes of Arts. 8 and 15, but without violating the provisions of Art.67, pars.(2) and (3), if any of the undertakings referred to in applying Art.8, or Art.15 is part of a group of undertakings, its turnover shall be the cumulated turnover of the particular group, according to the group's consolidated balance sheet.

#### Article 70

The threshold values set up by this law, related to the turnover, shall be periodically updated through decision of the plenary session and enforced through order of the President of the Competition Council, by considering the market trend.

**Article II - (1) Within 30 days from the date this Government Emergency Decree enters into force, the Government shall submit to the Parliament a draft law on the remuneration of the members of the Plenum and of the competition inspectors from the Competition Council.**

**(2) Until the law provided for in par. (1) enters into force, the civil servants from the Competition Council, including the civil servants from the Competition Office's own corpus, transferred in service interest, shall be remunerated on the basis of Appendix I of the Government Emergency Decree no. 192/2002 regarding the salary rights of civil servants, approved with amendments and completions through Law no. 228/2003.**

**(3) Until the law provided for in par. (1) enters into force, the contract staff taken over by the Competition Council from the Competition Office preserves the salary rights they held prior to the taking-over.**

**(4) Depending on the duties set by law for this institution, the staff from the Competition Office which is taken over by the Competition Council shall be established on the basis of a memorandum of understanding which will be concluded among the Ministry of Public Finances, the Competition Office and the Competition Council within a period not exceeding 30 days as of the date this Emergency Decree enters into force. On the basis of this memorandum of understanding, the Competition Council shall accordingly amend the Regulation of organization, operation and procedure of the Competition Council.**

**(5) The complaints and intimations set forth on the grounds of Law no. 21/1996, which are in the course of being determined by the Competition Office, and the ongoing investigations shall be taken over by the Competition Council, on the basis of a memorandum of understanding, within a period not exceeding 30 days as of the date this Emergency Decree enters into force.**

**(6) The Competition Council shall take over the personal and real estate which are administered or owned by the Competition Office, according to the activities and staff it took over through the memorandum of understanding which shall be concluded among the Ministry of Public Finances, the Competition Office and the Competition Council within a period not exceeding 30 days as of the date this Emergency Decree enters into force.**

**Article III - (1) Within the Ministry of Public Finances, a specialized directorate general, and divisions within the regional units shall be set up, and they will mainly have the following principal activity:**

- a) to apply, by the Ministry of Public Finance, as main state aid grantor, the legislation in the field of state aid;**
  - b) to apply the legal provisions in matters of price, for which the Ministry of Public Finances is empowered by law;**
  - c) to pursuit evolution of prices in the economy;**
  - d) to apply the legal provisions in the field of unfair competition and publicity, for which the Ministry of Public Finances is empowered by law;**
  - e) to participate in the exchange of information and experience with the international organizations and institutions, in its field of activity.**
- (2) The staff from the Competition Office shall be taken over by the Ministry of Public Finances, while preserving the salary rights held prior to the taking-over, depending on the duties**

established by this Government Emergency Decree for this institution, by memorandum of understanding, which will be concluded among the Ministry of Public Finances, the Competition Office and the Competition Council, within a period not exceeding 30 days as of the date this Emergency Decree enters into force.

- (3) The title “Competition Office” shall be replaced by “Ministry of Public Finances” in all governmental statutes which regulate the fields of activity provided in par. (1).
- (4) The complaints, intimations and petitions set forth on the grounds of governmental statutes other than Law No. 21/1996, which are in the course of being determined by the Competition Office, shall be taken over by the Ministry of Public Finances, on the basis of a memorandum of understanding, within a period not exceeding 30 days as of the date this Emergency Decree enters into force.
- (5) The Ministry of Public Finance shall take over the personal and real estate which are administered or owned by the Competition Office, according to the activities and staff it took over through the memorandum of understanding which shall be concluded among the Ministry of Public Finances, the Competition Office and the Competition Council within a period not exceeding 30 days as of the date this Emergency Decree enters into force.
- (6) In order to enforce pars. (1), (2) and (5), within 30 days from the date this Emergency Decree enters into force, the Ministry of Public Finances shall submit to the Government a draft to modify the Government Decision on the organization and operation of the Ministry of Public Finances.
- (7) Article IV -The Competition Council’s Regulations and Guidelines, into force, shall be revised accordingly within 3 months as of the date this Emergency Decree enters into force.

**Article V – On the date this Emergency Decree enters into force, any contrary dispositions shall be abrogated.**

**Article VI - The provisions of Arts. II –IV shall enter into force within 3 days as of the date this Emergency Decree enters into force.**

**Article VII - Competition Law no. 21/1996 published in the Romanian Official Gazette, Part I, no. 88 of 30<sup>th</sup> of April 1996, with subsequent amendments and completions, and those brought by this Emergency Decree, shall be republished in the Romanian Official Gazette, Part I, and the texts shall be renumbered, after the decree is approved by law.**