

# Law on Protection of Competition

## Part I

### General Provisions

#### Subject Matter

##### Article 1

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

#### Impairment of Competition

##### Article 2

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

## Personal Application

### Article 4

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

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

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

## Application to Related Undertakings

### Article 5

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

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

## Relevant Market

### Article 6

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

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

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

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

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

## Part II

### Impairments of Competition on the Market

#### Chapter 1

#### Prohibited Agreements

#### Agreements Preventing, Restricting or Distorting Competition

#### Article 7

(1) Acts which for their object or effect have or may have prevention, restriction or distortion competition on the relevant market, within the meaning of this Law, are agreements, contracts, particular provisions of contracts, explicit or tacit agreements, concerted practices, decisions on the associations of undertakings (hereinafter: 1(Agreemenpursulevatots, ageogrTT4ng of of)]TJ 86.58 0 TD -.0005 [( thw (Articdy shabe of)]7.72.

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

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

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

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

## Content and Validity of Individual Exemption

### Article 12

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

(2) Time limit referred to in paragraph 1 of this Article is determined for the period not longer then necessary to return investment and acmTw [(agreement.0025 )atereturn(e)1.1st

## Exemptions by Categories of Agreements (Block Exemptions)

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

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

## Obligatory Notification of Agreements

### Article 17

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

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

## Chapter 2

### Abuse of dominant position

#### Notion of Dominant Position

### Article 18

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

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

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

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

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

## Collective Dominance

### Article 19

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

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

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

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

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

## Prohibition of Abuse of Dominant Position

### Article 19

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

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

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



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

## Decisions and Measures of the Competent Body

### Article 21

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

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

### Admissibility of Certain Acts

### Article 22

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

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

## Chapter 3

### Control of concentrations

#### Concept of Concentration and Forms of Acquiring Control over Undertaking

### Article 23

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

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

(2) The control referred to in paragraph 1, items 2 and 3 of this Article shall be

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

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

### Request for Approval of Concentration

#### Article 25

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

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

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

2) combined total annual income of undertakings involved

- 1) for legal entities providing financial services, after deduction of value added tax (indirect taxes) and other taxes directly related to those items, the sum of following income items shall be used:
  - a) interest income and similar income;
  - b) income from securities:
    - income from shares and other variable yield securities
    - income from participating interest
    - income from shares in affiliated undertakings
  - c) due commissions
  - d) net profit from financial operations and
  - e) other operating income.
  
- 2) for insurance and other reinsurance companies, the value of gross premiums which shall comprise all amounts received and receivables in respect of insurance and reinsurance contracts issued by or on behalf of the insurance companies, after deduction of taxes charged by reference to the amounts of individual premiums or the total volume of premiums.

#### Method for Submitting the Request for Concentration Approval

##### Article 27

- (1) The request referred to in Article 25, paragraph 1 of this Law shall be submitted to the competent body within 7 days upon signing of the agreement, that is publishing of the public offer or acquiring control over the undertaking.
  
- (2) The request for control over concentration may be submitted also in case when the undertakings involved in concentration show a serious intention to conclude the contract, by signing the statement of intent, or when the undertaking announces the intention to make an offer to purchase shares.
  
- (3) In case the control over the entire or parts of one or more undertakings is acquired by another undertaking, the request referred to in paragraph 1 of this Article shall be submitted by a party acquiring the control, whereas in all other cases parties involved in concentration shall submit a joint request.

#### Publishing the Request for Concentration

##### Article 28

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

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

## Criteria for Control of Concentration

### Article 29

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

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

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



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

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

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

## Initiation of Proceedings

### Article 37

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

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

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

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

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

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

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



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

### Submitting of Data

#### Article 38

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

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

### Cessation of Proceedings

#### Article 39

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

### Termination of Proceedings

#### Article 40

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

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

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

Part IV

Supervision

Article 43

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

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

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

## Protective Measures

### Article 46

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