

# COUNCIL OF MINISTERS

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**Decree Law n° 53/2003**

**Of 24 November 2003**

**Law on Competition**

The growing dismantling of the administrative barriers and the installation of an economy, whose operation is ever more regulated by market instruments, allied to the growing liberalization of the national and international economies, on the one hand and the need to safeguard the interest of the consumers, on the other hand, require the conception and the adoption of legislative measures that promote competition in the market, thus enabling its operation on a sound bases.

The safeguard of sound competition among the operators in the market, the repression of restrictive practices from competition and the promotion of fair competition, are the principal objectives foreseen in this law.

On the other hand, to be efficient, the competition policy requires follow-up and control instruments, to define and ensure effective compliance of the rules of competition in the repression of restrictive practices of the same.

Although it is recent, Decree-Law 2/99, of 1 February, which establishes the rules of competition, requires a readjustment and improvement in some aspects, in order to face up to the growing level of competition in the national market, particularly in the latter years.

Under these terms,

Having the Chambers of Commerce and the commercial associations been heard, and

In the use of faculties conferred by subparagraph a) of n° 2, article 203 of the Constitution, the Government decrees the following:

## **CHAPTER I** **Competition rules**

### **SECTION I** **General provisions**

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

1. This diploma applies to all the economic activities, whether with a permanent or an occasional character, in the private, public or cooperative sectors.

2. Except in the cases where the Government of Cape Verde might determine otherwise, this law applies to the practices that restrict competition that occur in the national territory or whose effects are or may be felt therein.
3. The restrictions resulting from special legislation are exempted from the provisions of this diploma.

## **SECTION II**

### **Prohibited practices**

#### **Article 2**

#### **Accords, concerted practices and decisions from associations**

1. Accords and concerted practices between enterprises and the decisions of the associations of enterprises, regardless of the form in which they are presented, are prohibited, if their object or effect is to impede, distort or restrict competition, in the whole or in part of the national market, namely those that translate into:
  - a) Directly or indirectly fixing the purchase and sale prices or interfere in its determination by the free market play, artificially inducing either it to go higher or lower;
  - b) Directly or indirectly fixing other conditions for the transactions carried out in the same or in different stages of the economic process;
  - c) Limiting or controlling, production, distribution or technical development and investments;
  - d) Dividing the market or supply sources;
  - e) Systematically or occasionally applying discriminatory conditions of price or others relatively to equivalent situations;
  - f) Directly or indirectly reusing the purchase or sale of goods or the rendering of services;
  - g) Subordinate contracts celebration to accepting supplementary obligations that, by their nature or according to their commercial uses, have no connection with the object of these contracts.
2. Except in the cases where it is justified, under the terms of article 5, the agreements or decisions prohibited by this article are null.

#### **Article 3**

#### **Abuse of dominant position**

1. It is prohibited for one or more enterprises to abusively explore a dominant position in the national market or in a substantial part of the same, for the purpose of distorting or restricting competition.

2. The following are considered dominant positions relatively to the market of a specific good or service:
  - b) An enterprise that operates in a market in which it does not have significant competition or is preponderant relative to its competitors;
  - c) Two or more enterprises act concertedly in a market, in which they have no significant competition or are preponderant relative to third parties.
3. In each concrete case, without prejudice to the weight of other factors relative to the enterprises and the market, it is presumed that:
  - a) An enterprise that has a market share equal to or greater than 30%, for a particular good or service, is in the condition described in subparagraph a).
  - b) The enterprises that hold in the whole of the national market of a specific good or service namely,
    - (i) A share greater than 50% if three enterprises or less, or
    - (ii) A share greater than 65%, if five enterprises or less,are in the condition described in subparagraph b) of the preceding number.
4. The adoption of any of the behaviors referred to in n° 1 of article 2 may be considered abusive.

#### **Article 4** **Abuse of economic dependence**

The abusive exploitation by one or more enterprises, of the state of economic dependence in which a supplier or client may find themselves in, relatively to the one or more enterprises, because there is no alternative available, is prohibited when such action translates into the adoption of any of the behaviors described in n° 1 of article 2.

#### **Article 5** **Economic balance**

Actions that restrict competition may be considered justifiable when they contribute to improve the production or the distribution of goods and services or to promote technical or economic development as long as, cumulatively:

- a) They reserve to the users of these goods and services an equitable part of the benefits resulting therefrom;
- b) They do not impose on the enterprises in question any restrictions that are not indispensable to attain these objectives;

- c) They do not give to these enterprises the opportunity to eliminate the competition in the goods and services market in question.
2. The practices foreseen in article 2 may be the object of prior evaluation by the Competition Council, in accordance with a process to be established by decree from the Government member responsible for trade.

**Article 6**  
**Notion of enterprise**

1. For the purpose of application of the provisions of this section, any physical or moral person who, in durable fashion pursues an economic objective is considered an enterprise.
2. The group of enterprises that, although juridically distinct, maintain between them interdependence or subordination ties ensuing from the rights or powers enumerated in n° 2 of article 9, is considered a single enterprise.

**SECTION III**  
**Grouping of enterprises**

**Article 7**  
**Prior notification**

1. The enterprise grouping operations that fulfill one of the following requisites are subject to prior notification:
  - a) Creation or increase in its share of the national market to over 30% for a specific good or service, or in a substantial part of same, as a consequence of the grouping operation;
  - b) Realization by the group of enterprises involved in the grouping operation of a business volume greater than one billion CVE, in Cape Verde, in the last exercise, after taxes directly related with the business volume.
2. The provisions of this article do not apply to credit and parabanking institutions or to the insurance companies.
3. Prior notification must be made before concluding the juridical businesses necessary to grouping process and before the announcement of any public offer of acquisition.
4. Until the express or tacit approval of the grouping, the juridical businesses celebrated with the intent to create it have no effect.

**Article 8**  
**Market share and business volume**

1. To calculate the market share and business volume described in the preceding article, the business volume must be taken into account of:

- a) The enterprises participating in the grouping;
  - b) The enterprises that directly or indirectly dispose of:
    - (i) A monetary participation in the capital;
    - (ii) More than half the votes;
    - (iii) The possibility to designate more than half the members of the administration and oversight entity;
    - (iv) The power to manage the businesses of the enterprise;
  - c) Of the enterprises in which one enterprise referred to in subparagraph c) disposes of the rights or powers enumerated in subparagraph b);
  - d) Of the enterprises in which the enterprise referred to in subparagraph c) dispose of the rights or powers enumerated in subparagraph b);
  - e) Of the enterprises in which the various enterprises referred to in subparagraphs a) to d) dispose jointly of the rights or powers enumerated in subparagraph b).
2. In derogation of the provisions of the preceding number, if the grouping operation consists in the acquisition of part or parts of an enterprise or parts of the group of enterprises, the volume of business to be considered relatively to the grantor or grantors shall be that of the enterprise or enterprises, or parcels thereof, that is object of the transaction.
  3. The volume of business referred to in subparagraph b) of number 1 of the preceding article consists in the values of the products sold and the services rendered to enterprises and consumers in the Capeverdean territory, but it does not include transactions made between the enterprises referred to in nº 1.

## **Article 9**

### **Grouping of enterprises**

1. A grouping of enterprises is said to have occurred:
  - a) When there is a merger of two previously independent enterprises;
  - b) When one or more persons who already have control over at least one enterprise, or in the case of one or more enterprises, directly or indirectly acquire control of the whole or parts of one or of various other enterprises;
  - c) When two or more enterprises constitute one common enterprise, as long as the latter corresponds to one autonomous economic entity of a lasting character and does not have for object or as effect the coordination of the competition behavior between the founding enterprises or between the latter and the common enterprise.
2. For the purposes of the provisions of the preceding number, the control ensues from any act, independently of the form the latter assumes, that implies the

possibility of exercising isolatedly or jointly, and taking in consideration the

3. For the purpose of the provisions of this article, the following are not considered:
  - a) The compensatory indemnities, regardless of the form they assume, paid by the State as remuneration for public services rendered;
  - b) The benefits granted under specific programs approved by the State.

**CHAPTER II**  
**Agencies for the defense of competition**

**Article 12**  
**General Directorate of Trade**

1. It behooves the General Directorate of Trade:
  - a) To identify the practices susceptible of infringing this law, proceed to the documentation of the respective legal processes and strive for the compliance of the decisions proffered on them;
  - b) Proceed, relatively to the grouping operations subject to notification, to document the respective proceedings, under the terms of this law;
  - c) Carry out, upon solicitation by the Competition Council, the studies necessary to fundament the opinion referred to in No. 2 of article 13;
  - d) Proceed to sectoral studies, in matters of competition, that prove to be necessary;
  - e) Propose the measures that are deemed appropriate with a view the good operation of the pra65791the 8rTJ-1657 the9(9n009(e proceed)5.9(ings)TJil2om)(6aserTJ9(nt th

3. The General Directorate of Commerce may further solicit to any central or local administrative service, the information deemed necessary to carry out its attributions.

**Article 13**  
**Competition Council**

1. It behooves the Competition Council:

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special competence in the matters to be dealt with or representatives of the public Administration services or other individuals with relevant interest in those matters.

5. Without prejudice to the provisions of the preceding number, whenever the matter to be dealt with have special relevance in matters of consumers defense, the President may convoke a representative of the consumer's defense Association to participate in the meetings.

### **Article 15** **Reimbursement of per diem**

3. The members of the Competition Council shall receive a monthly allowance whose amount shall be fixed by joint dispatch of the Government members responsible for finances and trade, respectively, cumulative with any remuneration, under the terms of the legislation in effect.
4. The individualities that participate in the meetings of the Council under the provisions of the numbers 4 and 5 of the preceding article shall be entitled to presence voucher and per diem under the terms of the legislation in effect.

### **Article 16** **Expenses**

The operation expenses of the Competition Council shall be supported by funds attributed to that purpose, in the budget of the Government department responsible for trade.

### **Article 17** **Support**

1. The General Directorate of Trade shall provide to the Council the administrative support the Council may need to fully carry out its functions.

2. The Government member responsible for trade shall designate, under proposal of the Competition Council President, the functionaries of the Ministry that will be especially assigned to that Council, one of which, belonging to the superior technical career and preferentially with a License 308 TJ17.529 0 TD.0001 Tc.085 Tw{ngeerin eLaw,shall deisch

**Article 19**  
**Duty to secrecy**

1. In the exercise of its competences, the General Directorate of Trade shall keep the most rigorous secrecy and shall observe the rules of confidentiality to which it is committed.
2. The members of the Competition Council and the individualities alluded to in No. 4 and 5 of article 14 are subject to the rules of confidentiality applicable to the Government's civil service employees regarding the facts that may come to their knowledge in the exercise of their functions.

**Article 20**  
**Impediments**

The members of the Competition Council are subject to the impediments and suspicions applicable to judges.

**CHAPTER III**  
**Cases**

**SECTION I**  
**Cases pertaining to prohibited practices**

**Article 21**  
**Applicable norms**

Cases due to infraction of the provisions of articles 2, 3, and 4 are governed by the provisions of this law and, subsidiarily, by the contra ordination juridical regimée007 Te07 Te30Gar Tw(

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Bank of Cape Verde, about the institution upon which the case incides. The opinion is to be emitted within seven working days.

**Article 25**

2. The Competition Council shall order the in

d) List of the enterprises that maintain interdependence or subordination ties



**Article 34**  
**Decision**



**CHAPTER IV**  
**Infractions and penalties**

**Article 37**  
**Contra ordinations**

1. The infractions to the norms described in this law constitute contra-ordination punishable with fine under the terms of the numbers that follow.
2. Any of the restrictive behaviors described in articles 2, 3, and 4 constitute contra-ordinations punishable by fines of ECV 50,000\$00 to ECV 75,000,000\$00.
3. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 40.000.000\$00:
  - a) Non-compliance with an order issued by the Competition Council under n° 1 of article 24;
  - b) Non-compliance with the decisions referred to in sub-paragraphs b) and c) of n°1 of article 34;
  - c) Non-notification of a grouping operation subject to prior notification under the terms of n° 1, article 7;
  - d) Providing false information on the notification presented under n° 1 of article 7.
  - e) Providing false information in response to a request elaborated under n° 2 of article 31 or not supplying the information.
4. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 5.000.000\$00:
  - a) Opposition to the diligences foreseen in No. 1 of article 23;
  - b) Providing false declarations or information in response to a request elaborated under subparagraph b) of No. 1, article 23 or of No. 5, article 31.
5. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 2.500.000\$00:
  - a) Providing false declarations or information in response to a request elaborated under No.3, article 12 or refusing to provide the information
  - b) Non-observance of a publication order emanated from the Competition Council under No.2 of article 27.
6. Non-observance by the infractor of an order foreseen in sub-paragraph b) of No.1, article 27 implies the initiation of a new case with a view to the application of the fines foreseen in No. 2 of this article.

7. The fine foreseen in subparagraph b) of No.5 shall always be greater than the cost of publication, which shall be effected by the Office of the Government member responsible for trade.
8. Negligence is punishable.
9. When the infractor is a singular person, the amounts foreseen in No.2 and 5 shall be reduced by half.

**Article 38**  
**Competence to apply the fines**

Except in the application of the fines referred to in No.2, in subparagraph a) of n° 3 and subparagraph b) of No. 5 of the preceding article, which is of the competence of the Competition Council, the competence to apply the fines goes to the General Directorate of Trade.

**CHAPTER V**  
**Final dispositions**

**Article 39**  
**Revocation**

Decree-Law 2/99, of 1 February, is hereby revoked.

**Article 40**  
**Effective Date**

This law goes into effect 60 days after its publication

Reviewed and approved by the Council of Ministers

*José Maria Neves, Avelino Bonifácio Fernandes Lopes*

Promulgated on 12 November 2003

Publish it.

The President of the Republic, PEDRO VARONA RODRIGUES PIRES

Referended on 12 November 2003

The Prime Minister

*José Maria Pereira Neves*