

Unofficial consolidated text of a

LAW ON THE PROTECTION OF COMPETITION

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PART ONE

GENERAL PROVISIONS

Scope of the Law

Article 1

This Law regulates prohibited forms of prevention, restriction or distortion of competition, measures and procedures regarding the restrictions of competition.

Purpose of the Law

Article 2

The purpose of this Law shall be to ensure free competition on the domestic market in order to stimulate economic efficiency and consumers' welfare.

Scope of Application

Article 3

(1) This Law shall apply to all forms of prevention, restriction or distortion of competition (hereinafter referred to as distortion of competition) that produce effect on the territory of the Republic of Macedonia, even when they result from acts and actions carried out or undertaken outside of the territory of the Republic of Macedonia.

(2) This Law shall apply to:

-undertakings, associations of undertakings, related undertakings, the state authority and

-public undertakings, undertakings that have been entrusted with performing services of general economic interest, undertakings which are by their nature revenue producing monopolies or have special and exclusive rights or concessions, except in cases when the application of the provisions of this Law would hinder the performance of the tasks stipulated by law or the purpose for which those entities are established.

(3) In the assessment of the forms of distortion of competition that may affect the trading between the Republic of Macedonia and the European Communities, in accordance with Article 69 of the Stabilization and Association Agreement concluded between the Republic of Macedonia and the European Communities and their member-states, the criteria arising from the proper application of the rules regulating competition in the European Union shall be accordingly applied.

Legal Relations Exempt from Application of the Law

Article 4

This Law shall not apply to the relations regulated by collective agreements between employers and trade unions as far as they are not discriminatory with respect to other entities.

Definitions

Article 5

Certain terms used in this Law shall have the following meaning:

- "*Undertaking*" shall mean any type of business venture, regardless of the manner of organisation or the form of management thereof (trade company, sole proprietor, public undertaking, cooperative undertaking, association of undertakings, etc.), freelance professions (lawyers, doctors, architects, accountants, notaries public, etc.), public undertakings established for performing activities from public interest as well as any other natural or legal person or state authority performing economic activities, regardless whether they are considered as traders or not;

- "*Association of undertakings*" shall mean association of two or more undertakings that does not perform economic activity directly, but which has or may have an influence on the market practices of the undertakings, regardless of the form of association;

- "*Related undertakings*" shall mean controlling or controlled undertakings, according to the law;

- "*State authority*" shall mean the Government of the Republic of Macedonia, ministries, bodies of the ministries, independent bodies of the state administration, administrative organizations, the bodies of local self government and the City of Skopje.

- "*Economic activity*" shall mean trade of goods and/or services on the market regardless whether the purpose of such trade is making profit or not;

- "*Market*" shall mean a meeting point of supply and demand of goods and services attained by the sellers and buyers;

- "*Relevant market*" shall mean a relevant market of goods and a relevant geographical market;

- "*Relevant market of goods*" shall mean a market of all those goods and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, their prices and their intended use;

- "*Relevant geographic market*" shall mean a market on the area in which the undertakings concerned are involved in the supply and demand of goods and/or services, in which the conditions for competition are sufficiently homogenous,

and which can be distinguished from neighbouring areas, according to the conditions for competition which are considerably different in those areas;

- "*Agreements and decisions*" shall mean legal acts that regulate issues related to the terms under which business activities are performed and whose object or effect is distortion of competition. This relates also to individual provisions of agreements or decisions which can be explicit or tacit;

- "*Cartels*" are agreements and decisions and/or concerted practices between two or more undertakings aimed at coordinating their competitive behaviour on the market and/or influencing the relevant parameters of competition, especially through fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets, bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other undertakings-competitors to the cartel participants;

- "*Concerted practices*" shall mean coordination of the conduct between two or more undertakings which, without having reached an agreement, have knowingly substituted practical cooperation for the risks of competition. A concerted practices may result from direct or indirect contacts among the undertakings whose intention or effect is, either to influence the conduct on the relevant market or to disclose intended future behaviour to competitors;

- "*Horizontal agreement*" shall mean an agreement between undertakings, decisions of associations of undertakings or concerted practices among entities operating at the same level of production or distribution on the market;

- "*Vertical agreement*" shall mean an agreement between undertakings, decisions of associations of undertakings or concerted practices among entities operating at different levels of production or distribution on the market.

- "authorized persons" are employees in the Commission's supporting staff who have been granted an official identity card.

- "the persons accompanying the authorized persons" are representatives of the state authority competent for the performance of activities pertaining to the public order and peace, IT experts as well as other persons whose presence is necessary during the inspection.

Competent Authority

Article 6

The supervision of the implementation of the Law on Protection of Competition is under the competence of the Commission for Protection of Competition.

PART TWO

DISTORTION OF COMPETITION

Chapter One

AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

Prohibited agreements, decisions and concerted practices

Article 7

(1) All agreements concluded between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the distortion of competition shall be prohibited, and in particular, those which:

- 1) directly or indirectly fix purchase or selling prices or any other trading conditions;
- 2) limit or control production, markets, technical development or investments;
- 3) share markets or sources of supply;
- 4) apply dissimilar conditions to equivalent or similar transactions with other trading parties, thereby placing them at a competitive disadvantage;
- 5) make the conclusion of agreements subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such agreements.

(2) Any agreement and decision or individual provisions thereof prohibited pursuant to paragraph (1) of this Article shall be considered null and void.

(3) The provisions of paragraph (1) of this Article shall not apply to agreements, decisions of associations of undertakings and concerted practices that contribute to promoting the production or distribution of goods and services or to promoting technical or economic development, provided that the consumers have a proportionate share of the resulting benefit, and which:

- 1) do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and
- 2) do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(4) As an exception and when necessary for protecting the public interest relating to the application of Article 7 of the Law, the Commission for Protection of Competition may, acting on its own initiative, establish by means of a decision that this Article is not applicable to an agreement, a decision of an association of undertakings or a concerted practice because the conditions of Article 7 paragraph (1) of this Law are not fulfilled or because the conditions of Article 7 paragraph (3) of this Law are satisfied.

Agreements of Minor Importance

Article 8

(1) The provisions referred to in Article 7 paragraph (1) of this Law shall not apply to the agreements of minor importance.

(2) Agreement of minor importance shall be considered to be any agreement in which the joint market share of the parties to the agreement and undertakings under their control on the market does not exceed the threshold of 10% where the agreement is horizontal or the threshold of 15% where the agreement is vertical. In case where it is not possible to classify the agreement as either horizontal or vertical, the 10% threshold shall apply.

(3) The provisions of paragraph (1) of this Article shall also apply if the market share of the undertakings has not increased by more than 2% in the last two consecutive business years.

(4) The Government of the Republic of Macedonia, upon the proposal of the Commission for Protection of Competition, shall prescribe the detailed conditions for the agreements of minor importance.

(5) With the by-law referred to in paragraph (4) of this article the Government shall determine in particular:

- 1) The market shares of the contracting parties that are relevant for the qualification of the agreements as agreements of minor importance.
- 2) The restrictions and/or the provisions that cannot be contained in the agreements of minor importance.

Block Exemptions

Article 9

(1) The provisions referred to in Article 7 paragraph (3) of this Law shall, in particular, apply to the following categories of agreements:

- 1) vertical agreements for exclusive right of distribution, selective right of distribution, exclusive right of purchasing and franchising;
- 2) horizontal agreements for research and development or specialization;
- 3) agreements for transfer of technology, license or know-how;
- 4) agreements for distribution and repairing motor vehicles;
- 5) insurance agreements, and
- 6) agreements in the transport sector.

(2) The Government of the Republic of Macedonia, upon a proposal of the Commission for Protection of Competition, shall prescribe the more specific conditions for granting block exemptions to agreements referred to in paragraph (1) of this Article.

(3) The by-laws referred to in paragraph (2) of this Article shall determine in particular:

- 1) The scope of the block exemption;
- 2) the specific conditions regarding the market shares and the components of the agreements that need to be met in order for the block exemption to apply.
- 3) The restrictions and the commitments that such agreements must not contain and
- 4) the specific conditions for the withdrawal of the block exemption.

Chapter Two

DOMINANT MARKET POSITION AND DISTORTION OF COMPETITION

Dominant Position

Article 10

(1) An undertaking shall have dominant position on the relevant market, if as a potential seller or purchaser of certain type of goods and/or services:

1) has no competitors on the relevant market, or
2) compared to its competitors, it has a leading position on the relevant market, especially in relation to the following:

- the market share and position and/or
- the financial power and/or
- the access to sources of supply or the market and/or
- the connection with other undertakings and/or
- the legal or factual barriers to entry for other undertakings on the market

and/or

- the capability to dictate the market conditions, taking into consideration its supply or demand, and/or

- the capability to exclude other competitors from the market by turning towards other undertakings.

(2) The undertaking shall be presumed as having dominant position, if its share of the relevant market amounts to more than 40%, unless the undertaking proves otherwise.

(3) It shall be presumed that two or more legally independent undertakings have a joint dominant position on a relevant market if they act or participate jointly on the relevant market.

Abuse of Dominant Position

Article 11

(1) Any abuse by one or more undertakings of a dominant position on the relevant market or a substantial part of it shall be prohibited.

(2) The abuse, within the meaning of paragraph (1) of this Article, shall, in particular, consist in:

1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2) limiting production, markets or technical development to the prejudice of consumers;

3) applying different conditions to equivalent or similar legal transactions with other trading partners, thereby placing them in a position of competitive disadvantage;

4) making conclusion of agreements subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such agreements;

5) unjustified refusal to deal or encouraging and requesting from other undertakings or association of undertakings not to purchase or sell goods and/or services to a certain undertaking, with an intention to harm that undertaking in a dishonest manner;

6) unjustified refusal to allow another undertaking access to its own network or other infrastructure facilities for adequate remuneration, if without such access, as a result of legal or factual reasons, the other undertaking becomes unable to operate as a competitor on the relevant market.

(3) The provision of paragraph (2) item 6) of this Article shall not apply if the dominant undertaking proves that such concurrent usage of its network or its infrastructure facilities is not possible due to certain operational or other reasons, or that it should not be allowed due to certain justified reasons.

Chapter Three

CONCENTRATIONS

Origination ?Definition of a Concentration

Article 12

(1) A concentration shall be deemed to arise where a change of control on a lasting basis results from:

1) the merger of two or more previously independent undertakings or parts of undertakings, or

2) the acquisition of direct or indirect control of the whole or parts of one or more other undertakings by

- one or more persons already controlling at least one undertaking,

or

- one or more undertakings,

whether by purchase of securities or assets, by means of an agreement or in other manner stipulated by law.

(2) The control referred to in paragraph (1) of this Article shall be constituted by rights, agreements or any other means which, either separately or in combination, and having regard to the actual or legal condition, confer the possibility of exercising decisive influence on an undertaking, in particular by:

1) ownership or the right to use all or part of the assets of an undertaking, or

2) rights or contracts which confer the possibility for exerting decisive influence over the composition, voting or decision-making of the bodies of the undertaking.

(3) Control is acquired by persons or undertakings which:

1) are holders of the rights or have acquired the rights under the agreements referred to in paragraph (2) of this Article, or

2) while not being holders of such rights or having acquired the rights under the contracts referred to in paragraph (2) of this Article, have the power to exercise such rights.

(4) The creation of a joint venture performing on a longlasting basis the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph (1) item 2) of this Article.

(5) A concentration of undertakings shall not be deemed to arise where:

1) banks, saving houses and other financial institutions or insurance companies the normal activities of which include legal transactions and dealing in securities, hold on a temporary basis securities with a view to reselling them within a period of one year from the date of acquisition, and provided that they do not exercise voting rights in respect to those securities with a view to influence the competitive behaviour of that undertaking on the market. Upon a special request, the Commission may, by means of a procedural order, extend the period of one year if the acquirer can prove that the sale of the securities was not completed within the period set due to justified reasons. No appeal or legal action on instituting an administrative dispute shall be allowed against this procedural order;

2) control is exercised by an authorized person in a procedure related to bankruptcy or liquidation of an undertaking and concerning undertakings that are established outside the Republic of Macedonia, by persons who perform the corresponding function according to the legislation under which the undertaking is founded;

3) investment funds acquire capital interest in undertakings, provided that they exercise the acquired rights only with a view to maintain the full value of their investments and provided that they do not influence the competitive behaviour of the undertakings on the market.

Participants in a Concentration

Article 13

(1) Participants in a concentration are:

1) merging undertakings, within the meaning of Article 12 paragraph (1) item 1) of this Law and

2) persons or undertakings acquiring control of the whole or parts of one or more other undertakings, within the meaning of Article 12 paragraph (1) item 2) of this Law, as well as the undertakings or parts thereof over which control is acquired.

Conditions for Notifying a Concentration

Article 14

(1) A concentration shall be notified to the Commission for Protection of Competition if the following conditions are satisfied:

1) the aggregate turnover of all undertakings participants, generated by sale of goods and/or services on the world market, amounts to at least 10 million euro in denar equivalence according to the exchange rate valid on the day of compiling the annual account, realized in the business year preceding the

concentration and provided that at least one participant must be registered in the Republic of Macedonia, and/or

2) the aggregate turnover of all undertakings participants, generated by sale of goods and/or services in the Republic of Macedonia, amounts to at least 2.5 million euro in denar equivalence according to the exchange rate valid on the day of compiling the annual account, realized in the business year preceding the concentration, and/or

3) the market share of one of the participants amounts to more than 40% or the total market share of the participants in the concentration amounts to more than 60% in the year preceding the concentration.

(2) If, by the time of filing the notification of the concentration, the participants in the concentration have not compiled their annual account, the relevant year in the procedure for appraising the concentration shall be deemed to be the last year whereof the participants have compiled their annual account.

(3) In the first year of operation, the turnover referred to in paragraph (1) items 1) and 2) and the market share referred to in paragraph (1) item 3) of this Article shall be calculated based on the turnover realized in the current year of calculation at a level of 12 months.

Obligation for Notification of Concentration

Article 15

(1) The participants in the concentration are obliged to notify the concentration to the Commission for Protection of Competition prior to its implementation and following the procedural order of the merger agreement, the announcement of the public bid for the purchase or the acquisition of the controlling interest in the nominal capital undertaking.

(2) The participants may notify the Commission for Protection of Competition of their serious intention for concluding an agreement or, in the event of a public bid, when they have publicly stated their intention of participating therein if such an agreement or public bid would have as an effect creation of a concentration, within the meaning of the provisions of this Law.

(3) The participants in the merger, i.e. the acquirers of the joint control shall submit a joint notification of the concentration arising as a result of a merger within the meaning of Article 12 paragraph (1) item 1) of this Law or of a concentration resulting from the acquisition of a joint control within the meaning of Article 12 paragraph (1) item 2) of this Law. In all other cases, the notification shall be filed by the person or undertaking acquiring control of a whole undertaking or part of one or more undertakings.

(4) The notification of the concentration must include the following:

1) original of the legal act which is the basis for the creation of the concentration or a verified transcript thereof;

2) financial report of the participants regarding the business year preceding the concentration in the original or a verified transcript thereof;

3) certificate from the trade register or other register of legal persons containing the basic information on the undertaking, the registered office and the

scope of operation of the participants in the original or a verified transcript thereof and

4) data regarding the market shares of the participants, as well as the shares of their competitors.

(5) The authorized official who conducts the procedure for assessing the concentration ex officio obtains the financial statements and an extract from the trade register or other register of legal entities from paragraph (4) points 2) and 3) of this article for the participants in the concentration who are registered in the Republic of Macedonia by the competent public authority within three days from the day of submission of the request

(6) An authorized official from the competent public authority is obliged to submit the required evidence from paragraph (5) of this article within three days from the day of receipt of the request.

(7) The day of receipt of the notification shall be deemed to be the day when the Commission for Protection of Competition receives all data and documents referred to in paragraph (4) of this Article. The Commission for Protection of Competition shall issue a special confirmation letter for the receipt of the notification to the notifying party.

(8) The Government of the Republic of Macedonia, on the proposal of the Commission for Protection of Competition, shall prescribe the contents and the form of the notification referred to in paragraph (1) of this Article as well as the necessary documentation that needs to be submitted alongside the notification.

Calculation of Aggregate Turnover

Article 16

(1) The aggregate turnover referred to in Article 14 paragraph (1) of this Law shall comprise the revenues generated from the sale of goods produced within the regular operation of an undertaking, as well as the revenues generated from the services that the undertaking provides within its regular operations, which were realized during the business year preceding the concentration, after deduction of the sales rebates (discounts) and of the Value Added Tax and other public taxes directly related to the revenues.

(2) If one of the participants is a related undertaking within the meaning of the provisions of this Law, all undertakings related in such a manner shall be regarded as one undertaking when calculating its aggregate turnover.

(3) When calculating the aggregate turnover of the related undertakings, the revenues generated from the sales of goods and/or provision of service among them shall not be taken into consideration.

(4) In cases when a concentration within the meaning of Article 12 paragraph (1) of this Law relates to the acquisition of a part or parts of the assets of one or more undertakings, regardless whether those parts are established as separate legal entities, when calculating the turnover generated by the undertaking selling those assets, only the revenues of the asset subject to acquisition shall be taken into consideration.

(5) Two or more transactions, within the meaning of paragraph (4) of this Article performed during a period of two years among the same persons or undertakings shall be considered as one and same concentration performed on the day of the last transaction.

(6) The aggregate turnover referred to in Article 14 paragraph (1) of this Law of banks, saving houses and other financial institutions shall be determined according to the aggregate revenues realized from the regular operations during the business year preceding the concentration.

(7) The aggregate turnover referred to in Article 14 paragraph (1) of this Law of the insurance companies shall be determined according to the value of the gross calculated premiums of the participants for the financial year preceding the concentration.

(8) The revenues generated in foreign currency shall be expressed in denar equivalence according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of compiling the annual account.

Appraisal of the Concentration

Article 17

(1) Concentrations subject to the provisions of this Law shall be appraised with a view to establishing whether or not they are compliant with this Law.

(2) The concentration which does not significantly impede effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be compliant with the provisions of this Law.

(3) The concentration which significantly impedes the effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position of its participants, shall be noncompliant with the provisions of this Law.

(4) In making the appraisal of the concentration, the Commission for Protection of Competition especially takes into account:

1) the need to maintain and develop effective competition on the market or in a substantial part of it, especially in terms of the structure of all markets concerned and the actual or potential competition from undertakings located in the Republic of Macedonia and outside of the Republic of Macedonia;

2) the market position of the undertakings concerned and their economic and financial power, the supply and alternatives available to suppliers and users, as well as their access to the supplies or markets, any legal or other barriers to entry on and exit from the market, the supply and demand trends for the relevant goods and/or services, the interest of the consumers and the technological and economic development, provided this is benefits the consumers and the concentration does not form an obstacle to competition.

(5) To the extent that the creation of a joint venture constituting a concentration within the meaning of 12 paragraph (1) of this Law, has as its object or effect the coordination of the competitive behaviour of undertakings-part of the joint venture

which remain legally independent, such coordination shall be appraised according to the criteria of Article 7 paragraphs (1) and (3) of this Law.

(6) In making the appraisal referred to in paragraph (5) of this Article, the Commission for Protection of Competition in particular shall take into account whether:

1) the parties to the joint venture continue to retain, to a significant extent, the activities on the same market as the joint venture or on the market which is downstream or upstream from that of the joint venture or on a neighbouring market closely related to the market of the joint venture;

2) the coordination which arises as direct effect from the creation of the joint venture affords the parties in the joint venture the possibility of eliminating competition in respect of a substantial part of the goods and/or services in question.

Suspension of Concentrations

Article 18

(1) The concentration shall not be implemented either before its notification to the Commission for Protection of Competition, in accordance with Article 15 of this Law, or after the submission of the notification until it has been declared compliant with the provisions of this Law within the meaning of Article 19 paragraph (1) items 1) and 2), Article 20 paragraph (1) items 1), 2) and 3), or until the presumption of Article 24 paragraph (6) of this Law is satisfied.

(2) The provision of paragraph (1) of this Article shall not prevent the implementation of a public bid for purchase of securities or series of transactions in securities, including those convertible into other securities admitted to trading on a market in accordance with the law, if:

1) the concentration has been notified to the Commission for Protection of Competition pursuant to Article 15 of this Law without delay and

2) the acquirer of securities does not exercise the voting rights attached to the securities in question, or does so only to the extent which is necessary to maintain the full value of its investment and based on a **decision** for exemption from the obligations of paragraphs (1) and (2) of this Article, adopted in accordance with paragraph (3) of this Article.

(3) The Commission for Protection of Competition may, upon a request by the notifying party adopt a decision to allow an exemption from the obligations referred to in paragraphs (1) and (2) of this Article. The request must be reasoned. In deciding upon the request for exemption, the Commission for Protection of Competition shall, *inter alia*, take into account the effects of the suspension of the concentration on one or more undertakings concerned by the concentration or on a third party, as well the threat to the competition posed by the concentration. This exemption may be subject to conditions and obligations in order to ensure conditions for effective competition. The exemption may be applied for and granted at any time, i.e. prior to the notification or following the transaction referred to in paragraph (2) of this Article.

(4) The form and content of the request form from paragraph (3) of this article are prescribed by the Commission for the Protection of Competition

(5) The validity of each transaction carried out contrary to paragraph (1) of this Article shall depend on the decisions adopted in accordance with Article 19 paragraph (1) items 1) and 2), Article 20 or on fulfilling the presumption referred to in Article 24 paragraph (6) of this Law.

(6) This Article shall not have effect on the validity of transactions in securities, including those convertible into other securities, admitted for trading on the market, unless if the buyer and the seller knew or could have known that the transaction was carried out in contravention of paragraph (1) of this Article.

Article 18-c

Against the decision rejecting the request for the issuance of a decision from Article 18-a paragraph (4) of this law, the applicant has the right to appeal within 15 days to the State Commission for decision-making in administrative proceedings and employment proceedings in second instance.

Examination of the Notification

Article 19

(1) The Commission for Protection of Competition shall examine the notification as of the day when it is received, pursuant to Article 15 of this Law and if:

1) it determines that the notified concentration does not fall under the provisions of this Law, the Commission for Protection of Competition shall adopt a decision thereof;

2) it finds that the concentration notified, although falling under the provisions of this Law, shall not have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, it shall adopt a decision declaring that the concentration is compliant with the provisions of this Law,

3) it finds that the concentration notified falls under the provisions of this Law and may have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, the Commission for Protection of Competition shall issue a procedural order for the initiation of a procedure. No appeal or legal action on instituting an administrative dispute is allowed against this procedural order. During the procedure referred to in this paragraph, the Commission for Protection of Competition may adopt a decision pursuant to Article 20 of this Law, unless the participants have demonstrated that they have abandoned the concentration.

(2) If the participants, after the notification is filed, modify the concentration and the Commission for Protection of Competition finds that due to those changes, the concentration shall no longer have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a

result of the creation or strengthening of a dominant position, it shall adopt a decision in accordance with paragraph (1) item 2) of this Article.

(3) After the notification is filed, the participants may enter into commitments vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law. The Commission for Protection of Competition in its decision referred to in paragraph (1) item 2) of this Article shall attach conditions and impose obligations intended to insure that the participants shall act in line with the commitments entered into vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law.

Decision-making when a Procedure has been Initiated

Article 20

(1) During the procedure initiated pursuant to Article 19 paragraph (1) item 3) of this Law:

1) if the Commission for Protection of Competition finds that the concentration shall not have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, it shall adopt a decision declaring that the concentration is compliant with the provisions of this Law,

2) if the participants in the concentration modify the concentration and the Commission for Protection of Competition finds that after the modifications the concentration shall not have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, it shall adopt a decision declaring that the concentration is compliant with the provisions of this Law;

3) if the participants in the concentration entered into commitments vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law, the Commission for Protection of Competition, in its decision referred to in paragraph (1) item 1) of this Article, shall determine conditions and impose obligations intended to insure that the participants act in line with the commitments entered into vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law,

4) if the Commission for Protection of Competition finds that the concentration shall have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, it shall adopt a decision declaring that the concentration is not compliant with the provisions of this Law.

Revocation of a Decision

Article 21

(1) The Commission for Protection of Competition may issue a decision to revoke the decision declaring that the concentration is compliant with the provisions of this Law in cases when:

1) the decision was adopted on the basis of false and/or incomplete data for which one of the participants in the concentration is responsible or they were obtained by way of deceit and had a decisive influence when adopting the decision or

2) the participants commit a breach of an obligation attached to the decision.

(2) With the decision referred to in paragraph (1) of this Article, the Commission for Protection of Competition shall:

1) revoke the decision declaring that the concentration is compliant with the provisions of this Law;

2) declare that the concentration is not compliant with the provisions of this Law and

3) if necessary, impose measures and obligations to restore effective competition on the relevant market.

(3) The Commission for Protection of Competition may adopt a decision within the meaning of paragraph (1) of this Article without being bound by the time limits stipulated in Article 24 paragraph (1), (2) and (3) of this Law.

(4) The Commission for Protection of Competition shall inform the participants of the decision referred to in paragraph (1) of this Article without delay.

Measures to be taken after a concentration declared noncompliant with the Provisions of this Law has been implemented

Article 22

(1) The Commission for Protection of Competition may, by way of a decision, impose behavioural and structural measures necessary for restoring effective competition on the relevant market and determine deadlines for their implementation in cases when:

(1) the concentration has been implemented without the submission of notification referred to in Article 15 of this Law, or

(2) the concentration has been implemented contrary to the decision of the Commission declaring it not compliant with the provisions of this Law.

(2) With the decision referred to in paragraph (1) of this Article, the Commission for Protection of Competition may, in particular:

(1) order sale or transfer of stocks or shares acquired,

(2) prohibit or restrict the exercise of voting right related with the stocks or shares of the participants in the concentration, order the termination of the joint venture or other forms of acquiring control within the meaning of Article 12 of this Law.

Interim Measures

Article 23

(1) The Commission for Protection of Competition may, by way of a decision, order interim measures for restoring or maintaining effective competition when the concentration:

1) has been implemented contrary to Article 18 of this Law and decision declaring the concentration is compliant with the provisions of this Law has not been adopted yet;

2) it has been implemented contrary to the conditions and obligations attached to the decision referred to in Article 19 paragraph (3) or Article 20 paragraph (1) item 3) of this Law,

3) it has already been implemented and it declared not compliant with the provisions of this Law.

Time-limits for Initiation of a Procedure and Decision-making

Article 24

(1) The Commission for Protection of Competition is obliged within 25 working days as of the day of receipt of the complete notification either to adopt a decision in accordance with Article 19 paragraph (1) items 1) or 2) of this Law or initiate a procedure by means of a procedural order in accordance with Article 19 paragraph (1) item 3) of this Law.

(2) The period referred to in paragraph (1) of this Article shall be extended up to 35 working days if the participants in the concentration offer commitments vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law.

(3) The decisions referred to in Article 20 paragraph (1) of this Law have to be adopted within 90 working days as of the day of the initiation of the procedure.

(4) At any time following the initiation of the procedure, the time limits of paragraph (1), (2) and (3) of this Article may be extended by the Commission for Protection of Competition in agreement with the participants in the concentration.

(5) The total duration of each extension(s) may not exceed 20 working days.

(6) If the Commission for Protection of Competition has not adopted a decision within the deadlines referred to in this Article, the concentration shall be considered to be compliant with the provisions of this Law.

(7) By exception, the time limits stipulated in paragraphs (1), (2) and (3) of this Article shall not be binding on the Commission for Protection of Competition when the Commission for Protection of Competition had to request *ex officio* data referred to in Article 49 of this Law or had to perform the actions referred to in Article 50 of this Law as a result of circumstances for which one of the participants is responsible.

Ancillary restrictions

Article 25

The decision whereby the Commission for Protection of Competition determines that the concentration is compliant with the provisions of this Law shall be

considered also to cover the restrictions which are directly related and indispensable for the implementation of the concentration.

PART THREE

AUTHORITY FOR THE PROTECTION OF COMPETITION

Commission for the Protection of Competition

Article 26

- (1) The Commission for Protection of Competition shall be an independent state authority with a status of a legal person.
- (2) The Commission for Protection of Competition shall consist of a President, four members and a team of supporting staff.
- (3) The Commission for Protection of Competition shall be independent in its operations and in making the decisions within the scope of its competencies determined by this Law.
- (4) The budget necessary for the operation of the Commission for Protection of Competition shall be provided from the Budget of the Republic of Macedonia.
- (5) The seat of the Commission for Protection of Competition is in Skopje.
- (6) The Commission for Protection of Competition shall be accountable for its work to the Assembly of the Republic of Macedonia and shall submit an annual report for its activities no later than by March 31st.

Appointment and Dismissal of the President and Members of the Commission for Protection of the Competition

Article 27

- (1) The President and members of the Commission for Protection of Competition shall be appointed and dismissed by the Assembly of the Republic of Macedonia, acting upon a proposal by the Commission for appointment and dismissal matters of the Assembly of the Republic of Macedonia, for a period of five years with the right to reappointment.
- (2) When appointing and dismissing the members of the Commission for Protection of Competition, The Assembly of the Republic of Macedonia should take into account the adequate and proportional representation of members of all communities.
- (3) After the end of the term of office referred to in paragraph (1) of this Article, and until a new President and members of the Commission for Protection of Competition are appointed, the President and members of the Commission for Protection of Competition referred to in paragraph (1) of this Article shall continue their work and decision-making.
- (4) The President and two members of the Commission for Protection of Competition shall be professionally engaged in the Commission's work.

(5) The President of the Commission for Protection of Competition shall represent, present and manage the work of the Commission for Protection of Competition.

(6) or the appointment of a president and a member of the Commission for Protection of Competition, a public notice is published in three daily newspapers, which are published throughout the territory of the Republic of Macedonia, of which one of the newspapers published is in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian language.

(7) A person who meets the following conditions can be appointed as president and member of the Commission for the Protection of Competition, namely:

1) to be a citizen of the Republic of Macedonia;

2) at the time of appointment by an effective court judgment, no penalty or misdemeanor sanction was imposed on him, banning him from performing a profession, activity or duty;

3) has acquired at least 240 credits according to ECTS or completed VII/1 degree in the field of law and economics;

4) to have a minimum of five years of work experience in the profession and special knowledge in the field of competition, commercial law, management and finance;

5) possesses one of the following internationally recognized certificates for active knowledge of the English language not older than five years:

- TOEFL iBT minimum 74 points,

- IELTS minimum 6 points,

- ILEC, (Cambridge English: Legal) – minimum B2 level,

- FCE, (Cambridge English: First) - passed

- BULATS – minimum 60 points or

- APTIS – minimum level B2.

(8) The President or one of the Commission members who are professionally engaged in the Commission's work must be a Bachelor in Law who has passed the bar exam with at least five years working experience in legal matter following the passing of the bar exam.

(9) For the duration of their term of office, the President and the members of the Commission for Protection of Competition may not be members of the Assembly of the Republic of Macedonia, members of the Government of the Republic of Macedonia, persons performing duties in bodies of the political parties, members of management bodies of an undertaking or members of any other form of association of legal and natural persons that might lead to a conflict of interest.

(10) The President and members may not decide on undertakings where they, their spouses, or family members of direct lineage up to the 1st degree are shareholders or members of the managing bodies within the undertakings that are parties in a procedure conducted in line with the provisions of this Law.

(11) The Assembly of the Republic of Macedonia may, upon a proposal of the Commission for appointment and dismissal matters, dismiss the President or member of the Commission from their duty before the end of their term of office, if he/she:

1) requests such dismissal him/herself;

2) is absent from the sessions of the Commission for three consecutive times, without justifying his/her absences.

(12) The Commission for Protection of Competition shall, by a majority vote from the total number of members, determine the fulfilment of the conditions for dismissal stipulated in paragraph (8) of this Article and shall submit a request for dismissal to the Assembly of the Republic of Macedonia.

Competencies of the Commission for Protection of Competition

Article 28

(1) The Commission for Protection of Competition shall control the application of the provisions of this Law, the Law on State Aid and the by-laws adopted based on these Laws, it shall monitor and analyze the conditions on the market to the extent necessary for the development of free and efficient competition, conduct administrative (and misdemeanour procedures) and adopts decisions in administrative (and misdemeanour) procedures in accordance with the provisions of this Law and the Law on State Aid.

(2) The Commission for Protection of Competition is the competent misdemeanour body about misdemeanours determined with the provisions of this Law.

(3) The Commission for Protection of Competition shall determine rules and measures for the protection of competition and measures for the establishment of effective competition.

(4) The Commission for Protection of Competition shall provide opinion upon draft laws and other acts that regulate issues pertaining to the economic activity and which may influence the competition on the market, and it shall submit it in writing to the competent body. The body shall inform the Commission for Protection of Competition of the reasons for non-acceptance of the Commission's opinion.

(5) Upon a request by the Assembly, the Government of the Republic of Macedonia, other state authorities, undertakings, or *ex officio*, the Commission for Protection of Competition shall provide expert opinions on issues in the area of competition policy, protection of competition on the market and granting state aid.

(6) The Commission for Protection of Competition, while performing its competences, shall co-operate with other state authorities and bodies regarding issues related to the protection of competition. The Commission for Protection of Competition and the state authorities and bodies are obliged to exchange data and information necessary for performing their competences, whose extent of exchange of information is limited to data and information appropriate and proportionate to the purposes of the exchange.

(7) The Commission for Protection of Competition shall perform tasks of international co-operation related to the implementation of international obligations of the Republic of Macedonia transferred within the competences of the Commission for Protection of Competition, participate in the implementation of projects of international authorities and the authorities of the European Union

and shall co-operate with the authorities of other countries and institutions in the area of competition.

(8) The Commission for Protection of Competition shall regulate the issues pertaining to the manner of operation and organization by means of a statute and other general acts.

(9) The Commission for Protection of Competition shall also perform other activities stipulated in this Law and other laws.

(10) Administrative procedures are conducted by the president and four members of the Commission for the Protection of Competition. The decisions in an administrative procedure and the decisions regarding the daily activities of the Commission for Protection of Competition shall be adopted by the President and four members of the Commission for Protection of Competition at a session with a majority vote of the total number of members. A member of the Commission for Protection of Competition may not abstain from voting.

Supporting staff

Article 29

(1) The expert, normative legal, administrative, administrative-supervisory, financial, accounting, IT and other activities of the Commission for Protection of Competition and the Commission for misdemeanour matters shall be performed by the supporting staff of the Commission for Protection of Competition, managed by a Secretary General who is appointed by the President of the Commission for Protection of Competition.

(2) The supporting staff shall have the status of civil servants.

(3) In the performance of the expert, normative legal, administrative, administrative-supervisory, financial, and accounting, the supporting staff shall:

1) collect data, check and analyse the collected data of individual cases and inform the Commission for Protection of Competition, i.e. the Commission for misdemeanour matters thereof;

2) prepare draft by-laws stipulated in the provisions of this Law and the Law on State Aid;

3) prepare draft opinions upon draft laws and other acts that regulate issues pertaining to the economic activity and which may influence the competition on the market;

4) prepare draft expert opinions regarding matters from the field of competition policy, protection of competition on the market and granting state aid;

5) collect data and information from the undertakings which are relevant for research and determining the market conditions, irrespective of the specific procedures conducted before the Commission for Protection of Competition, i.e. the Commission for misdemeanour matters;

6) prepare a draft annual report on the activities of the Commission for Protection of Competition, and

7) perform other activities on request of the Commission for Protection of Competition and the Commission for misdemeanour matters related to the enforcement of the provisions of this Law and the Law on State Aid.

(4) In the cases referred to in paragraph (3) item 5) of this Article, the procedural orders for the performance of the activities stipulated in Articles 48, 49 and 50 of this Law shall be adopted by the Secretary General of the Commission for Protection of Competition.

PART FOUR

PROCEDURES BEFORE THE COMMISSION FOR THE PROTECTION OF COMPETITION

Chapter One

MISDEMEANOUR PROCEDURE

Competence for Misdemeanours

Article 30

(1) Regarding the misdemeanours stipulated in this Law, the misdemeanour procedure in front of the Commission for Protection of Competition is conducted and the misdemeanour sanction is imposed by the Commission for misdemeanour matters.

(2) The Commission for misdemeanour matters shall comprise of the President and the two members of the Commission for Protection of Competition who are professionally engaged in the Commission for Protection of Competition.

(3) President of the Commission for misdemeanour matters shall be the President or one of the two members of the Commission for Protection of Competition who are professionally engaged in the Commission for Protection of Competition. The president of the Commission for misdemeanour matters must be a Bachelor in Law who has passed the bar exam with at least five years working experience in legal matter following the passing of the bar exam.

(4) The Commission for misdemeanour matters shall work and decides at a session with a majority vote of the total number of members. No member of the Commission for misdemeanour matters may abstain from voting.

Application of the Law

Article 31

The Commission for misdemeanour matters, while conducting the misdemeanour procedure, shall appropriately apply the provisions of the Law on General Administrative Procedure, except if it is not otherwise stipulated by the Law on Misdemeanours and this Law.

Initiation of a Misdemeanour Procedure

Article 32

(1) The misdemeanour procedure before the Commission for misdemeanour matters shall be initiated *ex officio*, at the request of the Secretary General of the Commission or at the request of a natural or legal person having a legitimate interest in determining the existence of a misdemeanour.

(2) The Commission for misdemeanour matters shall initiate the misdemeanour procedure with a procedural order against which no appeal or legal action on instituting an administrative dispute shall be allowed.

(3) The procedural order for the initiation of a procedure must contain:

- 1) case number;
- 2) the provisions of the Law – legal basis for initiation of procedure;
- 3) description of the facts and circumstances due to which the Commission for misdemeanour matters initiates a procedure,
- 4) request for the submission of necessary data pursuant to Article 40 of this Law.

(4) The Commission for misdemeanour matters shall in any case initiate a procedure if it finds that significant distortion of competition may occur.

(5) The procedural order for the initiation of a procedure shall be submitted to the person against whom the procedure has been initiated and to the party submitting the request if the procedure was initiated at a request of a natural or legal person having a legitimate interest in determining the existence of a misdemeanour.

(6) The person against whom a procedure has been initiated has the right to submit an answer within 8 days as of the day of receiving the procedural order for the initiation of a procedure. As an exception, at the request of the person against whom the procedure has been initiated, the deadline may be extended for up to 15 days if there are justified reasons thereof.

(7) The misdemeanour procedure initiated before the Commission for misdemeanour matters shall not be urgent.

Initiation of a Misdemeanor Procedure at e request of the Secretary General of the Commission for Protection of the Competition

Article 33

(1) The request for the initiation of a misdemeanor procedure submitted by the Secretary General of the Commission for Protection of the Competition shall contain:

- 1) the legal basis for submitting the request;
 - 2) data regarding the person against whom the request has been submitted;
 - 3) factual description of the misdeamenour showing the legal features of the misdemeanor, time, place and manner and other circumstances necessary to specify the misdemeanor;
 - 4) evidence that needs to be presented;
 - 5) signature of the Secretary General of the Commission for Protection of the Competition.
- (2) Evidence shall be enclosed with the request.

Contents of the Request for the Initiation of a Misdemeanour Procedure at a Request of a Natural or Legal Person

Article 34

(1) The request for the initiation of a misdemeanor procedure at a request of a natural or legal person having a legitimate interest in determining the existence of a misdemeanor shall contain the following:

- 1) name and seat of the legal person, i.e. name, surname and address of the natural person – submitter of the request and description of the circumstances showing the legitimate interest for submitting the request;
- 2) data regarding the person against whom the request has been submitted;
- 3) factual description of the misdemeanor showing the legal features of the misdemeanor, time, place and manner and other circumstances necessary to specify the misdemeanor;
- 4) evidence that needs to be presented;
- 5) signature of the party submitting the request.

(2) Evidence shall be enclosed with the request.

(3) If the request referred to in paragraph (1) of this Article should contain data which are business secret, the submitted is obliged to clearly mark such data and to indicate the legal basis for their denomination as a business secret.

(4) While submitting the request for the initiation of a misdemeanor procedure containing data which are business secret, the provisions of Article 40 paragraph (4), (5) and (6) of this Article shall apply accordingly.

(5) If the submitter of the request referred to in paragraph (1) of this Article wishes to remain anonymous or a request has been submitted which does not contain data on its submitter, the Commission for misdemeanor matters shall conduct a procedure *ex officio* if the condition referred to in Article 32 paragraph (4) of this Law has been satisfied.

**Supplementing the Request for the Initiation of a Misdemeanour Procedure
at a Request of a Natural or Legal Person**

Article 35

(1) If the request for the initiation of a misdemeanour procedure does not contain the data referred to in Article 34 of this Law, the Commission for misdemeanour matters shall ask the submitter to supplement the request.

(2) If the submitter of the request fails to act within 15 days as of the day of receiving the request for supplement, s/he shall be considered to have renounced the request.

**Cancellation of the Request for the Initiation of a Misdemeanour
Procedure at a Request of a Natural or Legal Person**

Article 36

(1) If the procedure has been initiated at the request of a natural or legal person, the submitter may cancel the request during the whole procedure.

(2) If the procedure has been initiated at the request of a natural or legal person and submitter cancels the request, the Commission for misdemeanour matters shall issue a procedural order terminating the procedure.

(3) If any further conduct of the procedure is necessary in the public interest, i.e. if the Commission for misdemeanour matters assesses that the conditions referred to in Article 32 paragraph (4) of this Law have been satisfied, the Commission for misdemeanour matters shall continue to conduct the procedure.

(4) When the procedure has been initiated *ex officio*, the Commission for misdemeanour matters may terminate the procedure by means of a procedural order.

(5) No appeal may be filed against the procedural order from paragraph (2) and (4) of this article for the termination of the procedure. Such a procedural order may be subject to a legal action on instituting an administrative dispute before the court competent for decision-making in administrative disputes within 8 days as of the day of receiving the procedural order.

**Dismissal of Requests for the Initiation of a Misdemeanour Procedure at a
Request of a Natural or Legal Person**

Article 37

(1) If the Commission for misdemeanour matters finds there are no legal conditions for the initiation of a procedure, the request referred to in Article 34 of this Law shall be dismissed by means of a procedural order.

(2) There are no legal conditions for the initiation of a procedure if:

- 1) the action described in the request is not a misdemeanour;
- 2) the request was submitted by a person who does not have a legitimate interest in the determination of a misdemeanour;
- 3) the request is not supported by evidence;
- 4) the prosecution of the misdemeanour is subject to statute of limitation;

5) the practice-subject to the request does not lead to significant distortion of the competition or

6) there is no public interest in conducting a misdemeanour procedure.

(3) No appeal may be filed against the procedural order for the dismissal of the request referred to in paragraph (1) of this Article. Such a procedural order may be subject to a legal action on instituting an administrative dispute before the court competent for decision-making in administrative disputes within 8 days as of the day of receiving the procedural order.

(4) The procedural order referred to in paragraph (1) of this Article does not have to contain an assessment of every allegation contained in the request for the initiation of a procedure, but it must enclose clearly stated reasons for the dismissal of the request.

Parties to the Misdemeanour Procedure

Article 38

Parties to the misdemeanour procedure are:

- the person against whom the misdemeanour procedure has been initiated, and
- the submitter of the request for the initiation of a misdemeanour procedure referred to in Article 34 of this Law.

Fusion and Separation of the Procedure

Article 39

(1) If a legal or natural person, with one or more actions, commits several misdemeanours prescribed in this Law, which have not been subject to a decision, the Commission for misdemeanour matters shall, as a rule, conduct a single procedure and shall adopt a single decision.

(2) Until the decision referred to in paragraph (1) of this Article is adopted, from justified reasons or for purposes of expedience, the Commission for misdemeanour matters may decide to separate the procedures regarding separate misdemeanours or against separate legal or natural persons and to complete them separately.

(3) The Commission for misdemeanour matters shall issue a procedural order for the fusion or separation of the procedure against which no appeal or legal action on instituting an administrative dispute shall be allowed.

EVIDENTIARY PROCEDURE

Requesting Data

Article 40

(1) For the purposes of exercising the authorizations determined in this Law, the Commission for misdemeanour matters may, by means of a procedural order,

request from the undertakings to submit data regarding their economic-financial condition, their business relations, data regarding their statutes and decisions, and the number and identity of the persons affected by such decisions, as well as other data necessary for conducting the procedure.

(2) The procedural order for requesting data shall contain the legal basis, the purpose of the request, precise indication of the requested data, the deadline for submitting the requested data, and notice that failure to submit data within the requested deadline, as well as submission of false, incomplete or misleading data to the Commission for Protection of Competition is a misdemeanour pursuant to Article 61 of this Law.

(3) No appeal or legal action on instituting an administrative dispute shall be allowed against the procedural order referred to in paragraph (1) of this Article.

(4) If certain data referred to in paragraph (1) of this Article are a business secret, the undertakings are obliged to clearly mark such data and to indicate the legal basis for their classification as a business secret.

(5) While submitting data which are a business secret, the undertakings referred to in paragraph (1) of this Article are obliged to submit to the Commission for misdemeanour matters one copy including the business secrets (confidential version) and one copy where the business secrets shall be deleted (non-confidential version).

(6) If the undertakings referred to in paragraph (1) of this Article fail to act in accordance with paragraph (5) of this Article and only submit a confidential version of the requested data by indicating the data that are a business secret, the Commission for misdemeanour matters shall ask them to also submit a non-confidential version of the requested data within 3 days as of the day when the request was received. If the undertakings fail to deliver a non-confidential version of the requested data even by that deadline, the Commission for misdemeanour matters shall consider that the submitted data do not contain data which represent a business secret.

Inspections

Article 41

(1) If there is a justified suspicion that a certain undertaking owns documents or other objects or information that could be relevant to prove the existence of a misdemeanour, the Commission for misdemeanour matters may, by means of a procedural order, order the said undertaking to provide the authorized persons of the Commission and the persons accompanying them with:

1) unhindered access to any business premises, land or means of transport of the undertaking referred to in paragraph (1) of this Article which are of relevance for determining the existence of a misdemeanour;

2) the possibility for unhindered examination of the books and other documentation relevant for determining the existence of a misdemeanour, irrelevant of the medium where these are stored;

3) the possibility to take or keep in any form copies or extracts from those books or documentation;

4) the possibility to temporarily take and keep the books or other documentation relevant for determining the existence of a misdemeanour for the period necessary for copying them if they cannot be copied on the spot. The authorized persons of the Commission for Protection of Competition shall issue a written confirmation which shall describe the seized books and other documentation and shall indicate where they have been found;

5) the possibility to temporarily take and keep objects, books or other documentation which are relevant for determining the existence of a misdemeanour for the period necessary for determining the relevant facts and evidence arising from such objects, books and documentation, but not longer than the effective termination of the procedure. The authorized persons of the Commission for Protection of Competition shall issue a written confirmation which shall describe the seized objects, books and other documentation and shall indicate where they have been found;

6) the possibility to seal the business premises and books or other documentation for the period and to the extent necessary for the examination, but not longer than seven days;

7) an authorized person or other employee in the undertaking providing an official statement with an explanation to the facts or documents relevant for determining the existence of a misdemeanour;

8) an authorized person or other employee in the undertaking submitting a written explanation regarding the facts or documents relevant for determining the existence of a misdemeanour within a determined deadline;

9) the possibility for unhindered performance of other actions relevant for determining the existence of a misdemeanour.

(2) The procedural order referred to in paragraph (1) of this Article shall contain the legal basis, the subject and purpose of the action, name and surname of the authorized persons from the Commission for Protection of Competition performing the actions referred to in paragraph (1) of this Article, time and place of performance of the actions referred to in paragraph (1) of this Article and that the failure to enable the authorized persons from the Commission for Protection of Competition to perform the actions referred to in paragraph (1) of this Article is a misdemeanour pursuant to Article 61 of this Law.

(3) No appeal or legal action on instituting an administrative dispute shall be allowed against the procedural order referred to in paragraph (1) of this Article.

(4) If some of the data or documentation referred to in paragraph (1) of this Article which are taken or kept by the authorized persons of the Commission for Protection of Competition are a business or professional secret, the undertaking referred to in paragraph (1) of this Article may, within 8 days as of the day of performing the actions referred to in paragraph (1) of this Article, inspect the taken or kept data and documentation, clearly mark the data and documentation which are a business secret and indicate the legal basis for their classification as such.

(5) If the undertaking referred to in paragraph (1) of this Article fails to act pursuant to paragraph (4) of this Article, it shall be considered that the collected data and documentation do not contain data which are a business secret.

(6) While performing the actions referred to in paragraph (1) of this Article, the authorized persons of the Commission for Protection of Competition shall keep minutes of the undertaken actions.

(7) If during the performance of the actions referred to in paragraph (1) of this Article there is a danger from concealment, modification or destruction of documents or objects which may be relevant for determining the existence of a misdemeanour, while performing the actions referred to in paragraph (1) of this Article, the Commission for Protection of Competition shall seek assistance from the state authority competent for the performance of activities pertaining to the public order and peace.

(8) If the undertaking referred to in paragraph (1) of this Article does not allow the authorized persons from the Commission for Protection of Competition to perform the actions referred to in paragraph (1) of this Article, the authorized persons from the Commission for Protection of Competition shall perform the necessary actions even against the will of the undertaking referred to in paragraph (1) of this Article with the assistance of the state authority competent for the performance of activities pertaining to the public order and peace.

Statement of objections

Article 42

(1) For the purpose of providing the participants to the procedure the possibility to state their opinion regarding the facts and circumstances relevant for establishing the actual state of affairs, the Commission for misdemeanour matters, prior to scheduling a oral hearing, shall submit to the participants a preliminary statement of objections.

(2) The parties to the procedure shall have the right to state their views in writing regarding the allegations from statement of objections referred to in paragraph (1) of this Article, provide their remarks and propose evidence available to them, which are, in their opinion, relevant for the correct determination of the actual state of affairs within 15 days as of the day of receiving the statement of objections.

(3) Prior to adopting a final decision in the procedure, the Commission for misdemeanour matters shall submit to the parties in the procedure the final statement of objections.

(4) If it is derived from the facts and circumstances established throughout the procedure that a misdemeanour stipulated by the provisions of this Law has been committed, the final statement of objections referred to in paragraph (3) of this Article shall also contain a statement regarding the type and amount of the misdemeanour sanction to be imposed and an explanation of the circumstances taken into account while determining the sanction.

(5) The parties in the procedure shall have the right to state their views in writing regarding the allegations from the statement of objections referred to in paragraph (3) of this Article within 8 days as of the day of receiving the statement. The parties in the procedure shall have the right to propose new

evidence only if these were not at their disposal at the time of stating the opinion referred to in paragraph (2) of this Article.

Commitments

Article 43

(1) After the initiation of the procedure referred to in Article 32 of this Law, and by the delivery of the final statement of objections by the latest, the person against whom a procedure has been initiated may offer commitments before the Commission for misdemeanour matters by which the distortion of the competition caused by actions or failure to take action by the person against whom the procedure has been initiated shall be overcome.

(2) The Commission for misdemeanour matters shall not accept the offered commitments referred to in paragraph (1) of this Article by means of a procedural order in the case of a significant distortion of the competition. No appeal or legal action on instituting an administrative dispute is allowed against this procedural order.

(3) The Commission for misdemeanour matters shall accept the offered commitments referred to in paragraph (1) of this Article by means of a procedural order if they are sufficient for overcoming the distortion of the competition caused by actions or failure to take action by the person against whom the procedure has been initiated. The procedural order which accepts the offered commitments shall contain a description of the commitments, deadline wherein they should be fulfilled and an obligation for the person against whom the procedure has been initiated to provide evidence that the commitments have been fulfilled. No appeal or legal action on instituting an administrative dispute is allowed against this procedural order.

(4) Before it decides to accept or not to accept the offered commitments, the Commission for misdemeanour matters shall post a short description of the subject and the offered commitments on the web site of the Commission. All interested parties are entitled to submit to the Commission for misdemeanour matters written comments and remarks within 15 days as of the day of the posting.

(5) If commitments referred to in paragraph (1) of this Article have been offered, the procedure before the Commission for misdemeanour matters shall be adjourned until the expiry of the deadline determined in the procedural order referred to in paragraph (3) of this Article. If after the expiry of said term no evidence is presented that the commitments have been fulfilled, the procedure before the Commission for misdemeanour matters shall proceed.

(6) If the Commission for misdemeanour matters finds there are no legal conditions for conducting a procedure due to the fulfilment of the undertaken commitments referred to in paragraph (1) of this Article, it shall terminate the procedure with a procedural order against which no appeal shall be allowed. A legal action on instituting an administrative dispute before the competent court may be brought against this procedural order within 8 days as of the day of receiving the procedural order.

Oral Hearing

Article 44

(1) The Commission for misdemeanour matters shall decide to hold an oral hearing if it is necessary for the establishment of the actual state of affairs.

(2) The person against whom the procedure has been initiated and the party having filed the request for the initiation of a procedure, if the procedure has been initiated at the request of a legal or natural person, shall be summoned at the oral hearing.

(3) In addition to the persons referred to in paragraph (2) of this Article, other persons may be also summoned at the oral hearing.

Decision of the Commission for Misdemeanour Matters

Article 45

After the Commission for misdemeanour matters fully establishes the actual state of affairs relevant for correct decision-making, it shall adopt:

(1) A decision whereby it shall establish that the person against whom the procedure has been initiated has committed a misdemeanour stipulated by the provisions of this Law and shall impose an appropriate misdemeanour sanction, or

(2) A decision whereby it shall establish that the person against whom the procedure has been initiated has not committed a misdemeanour stipulated by the provisions of this Law.

Judicial Protection in Misdemeanour Procedures

Article 46

(1) The decisions of the Commission for misdemeanour matters are final. A legal action on instituting an administrative dispute before the competent court may be brought against such decisions.

(2) The legal action on instituting an administrative dispute as referred to in paragraph (1) of this Article shall be brought within 8 days as of the day of receiving the decision and it shall defer the enforcement of the decision.

Chapter Two

ADMINISTRATIVE PROCEDURE

Application of the Law on the General Administrative Procedure

Article 47

In the procedures before the Commission for Protection of Competition the Law on the General Administrative Procedure shall be applied, unless otherwise stipulated by this Law.

Investigation into Sectors of the Economy and into Types of Agreements

Article 48

(1) If there are circumstances pointing to the possibility for distortion of competition, the Commission for Protection of Competition may conduct an investigation in a certain sector of the economy or a certain type of agreement in different sectors of the economy.

(2) During the investigation, the Commission for Protection of Competition may request the undertakings by means of a procedural order to submit data in relation with their economic-financial condition, their business relations, data on their statutes and decisions, the number and identity of the persons affected by such decisions and other data relevant to the investigation.

(3) The procedural order referred to in paragraph (2) of this Article shall contain a legal basis, purpose of the request, precise indication of the requested data and the deadline for their submission and advice that failure to submit the information within the requested deadline or submission of false, incomplete or misleading data to the Commission for Protection of Competition shall constitute a misdemeanour in accordance with Article 61 of this Law.

(4) No appeal or legal action on instituting an administrative dispute shall be allowed against the procedural order referred to in paragraph (2) of this Article.

(5) The Secretary General of the Commission for Protection of Competition may, based on the data collected through the investigations referred to in paragraph (1) of this Article, submit a request for the initiation of a misdemeanour procedure to the Commission for misdemeanour matters.

(6) If certain data referred to in paragraph (2) of this Article are a business secret, the undertakings referred to in paragraph (2) of this Article are obliged to clearly mark such data and to indicate the legal basis for their classification as a business secret.

(7) While submitting data which are a business secret, the undertakings referred to in paragraph (2) of this Article are obliged to submit to the Commission for Protection of Competition one copy including the data classified as business secret (confidential version) and one copy where the data constituting a business secret shall be deleted (non-confidential version).

(8) If the undertakings referred to in paragraph (2) of this Article fail to act in line with paragraph (7) of this Article and only submit a confidential version of the requested data by indicating the data that are a business secret, the Commission for Protection of Competition shall ask them to also submit a non-confidential version of the requested data within 3 days as of the day of receiving the data. If the undertakings fail to deliver a non-confidential version of the requested data within said deadline, the Commission for Protection of Competition shall consider that the submitted data do not contain data which represent a business secret.

Requesting Data

Article 49

(1) While exercising the authorizations determined in the Law herein, the Commission for Protection of Competition may, by means of a procedural order, request from the undertakings to submit data regarding their economic-financial standing, their business relations, the data regarding their statutes and decisions, and the number and identity of the persons affected by such decisions, as well as other necessary data.

(2) While conducting the actions referred to in paragraph (1) of this Article, the Commission for Protection of Competition shall act pursuant to Article 48 paragraphs (3), (4), (5), (6), (7) and (8) of this Law.

Inspections

Article 50

(1) While exercising the authorizations determined in the Law herein, the Commission for Protection of Competition may, by means of a procedural order, order a certain undertaking to:

1) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with unhindered access to any business premises, land or means of transport of the undertaking referred to in paragraph (1) of this Article;

2) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with the possibility for unhindered examination of the books and other documentation irrelevant of the medium where these are stored;

3) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with the possibility to take or keep in any form copies or extracts from those books or documentation;

4) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with the possibility to temporarily take and keep the books or other documentation for the period necessary for copying them if they cannot be copied on the spot. The authorized persons of the Commission for Protection of Competition shall issue a written confirmation which shall describe the taken books and other documentation and shall indicate where they have been found;

5) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with the possibility of temporarily taking and keeping objects, books or other documentation for the period necessary for determining the relevant facts and evidence arising from such objects, books and documentation, however not for longer than the effective termination of the procedure in question. The authorized persons of the Commission shall issue a written confirmation which shall describe the taken

objects, books and other documentation and shall indicate where they have been found;

6) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with the possibility to seal the business premises and books or other documentation for the period and to the extent necessary for the examination, but not longer than seven days;

7) provide an authorized person or other employee in the undertaking to provide explanation for the facts or documents;

8) provide an authorized person or other employee in the undertaking to submit a written explanation regarding the facts or documents within a determined deadline;

9) provide the authorized persons of the Commission for Protection of Competition and the persons accompanying them with unhindered performance of other actions.

(2) While conducting the actions referred to in paragraph (1) of this Article, the Commission shall act pursuant to Article 41 paragraphs (2), (3), (4), (5), (6), (7) and (8) of this Law.

Interim Measures

Article 51

(1) In case of urgency, when there is risk of serious and irreparable damage to the competition, the Commission for Protection of Competition may, *ex officio* by means of a decision, and based on its initial information (*prima facie*) as to the existence of a misdemeanour, order interim measures to an undertaking that, by its conduct, may cause serious and irreparable damage to the competition.

(2) In the decision referred to in paragraph (1) of this Article, the Commission for Protection of Competition shall order the cessation of certain actions, fulfilment of certain conditions or other measures necessary for preventing the distortion of the competition and shall determine the duration of the measures. The duration of the measures shall be proportionate and suitable to the goal that has to be attained by the ordered interim measures.

(3) If it is necessary and appropriate for preventing the distortion of competition, the Commission for Protection of Competition may by decision alter the already defined measures referred to in paragraph (2) of this Article and/or modify their duration.

Measures for Reinstatement of Effective Competition

Article 52

(1) Within 30 days as of the day of receiving the effective decision referred to in Article 45 paragraph (1) item 1) of this Law, the Commission for Protection of Competition may order the perpetrator by a decision the necessary behavioural and structural measures for eliminating the harmful effects from the distortion of

competition arisen by means of the misdemeanour and determine deadlines for their implementation.

(2) Prior to adopting the decision referred to in paragraph (1) of this Article, the Commission for Protection of Competition shall provide the perpetrator of the misdemeanour with the opportunity to state his/her opinion in writing as to the measures and deadlines referred to in paragraph (1) of this Article within 8 days as of the day of receiving the request for an opinion.

(3) The decision referred to in paragraph (1) of this Article shall be passed in a summary procedure.

Judicial Protection in Administrative Procedures

Article 53

(1) The decisions of the Commission for Protection of Competition issued in an administrative procedure are final. A legal action on instituting an administrative dispute before the competent court may be brought against such decisions of the Commission for Protection of Competition.

(2) The legal action on instituting an administrative dispute shall be brought within 30 days as of the day of receiving the decision and it shall not defer the enforcement of the decision.

Chapter Three

GENERAL PROVISIONS REGARDING THE PROCEDURES BEFORE THE COMMISSION

Official Identity Card

Article 54

(1) By their appointment the President and the members of the Commission have an official identity card.

(2) In order to carry out the actions referred to in Articles 41 and 50 of this Law, the employees of the supporting staff of the Commission for Protection of Competition have an official identity card.

(3) The official identity card refer to in paragraphs (1) and (2) of this article determines its holder's official capacity as authorized person of the Commission for Protection of Competition who are obliged to present the official identity card on request of the party.

(4) The validity of the official identity card ends:

- when the mandate of the President or the Member of the Commission for Protection of Competition ends.
- after the employment as an authorized person is terminated.
- after the end of the authorization to carry out the actions referred to in Articles 41 and 50 of this Law.

(5) In case of an abuse the official identity card shall be dispossessed.

(6) The Commission for Protection of Competition shall prescribe the form and contents of the official identity card and the manner of its issuance and dispossession.

(7) The by-law referred to in paragraph (6) from this Article, the Commission for protection of competition publishes in the “Official Gazette of the Republic of Macedonia”

Use of Data Article 55

The data collected in procedure before the Commission for Protection of Competition or the Commission for misdemeanour matters may be used solely for procedures which are conducted in line with the provisions of this Law.

Access to files Article 56

(1) The parties in the procedure before the Commission for Protection of Competition or the Commission for misdemeanour matters shall be entitled to inspect the files of the case and to make, at their own expense, a transcription or a copy of the whole file or certain documents.

(2) The access to files in a procedure before the Commission for misdemeanour matters shall be performed after receiving the preliminary statement of objections referred to in Article 42 paragraph (1) of this Law.

(3) The request for access to files shall be submitted in written form, and shall be approved by means of a procedural order by the President of the Commission for Protection of Competition or the President of the Commission for misdemeanour matters respectfully depending on the fact whether an administrative or a misdemeanour procedure has been initiated.

(4) The President of the Commission for Protection of Competition or the President of the Commission for misdemeanour matters shall, by means of the procedural order referred to in paragraph (3) of this Article, determine the date and hour of the access to be performed within 15 days as of the day of receiving the request for access to files.

(5) The parties in the procedure shall not be entitled to inspect, transcribe or copy the draft decisions of the Commission for Protection of Competition and the Commission for misdemeanour matters, the minutes of the sessions of the Commission for Protection of Competition and the Commission for misdemeanour matters, the audio and audio-visual recordings of the sessions of the Commission for Protection of Competition and the Commission for misdemeanour matters, the internal instructions and notes of the case or the correspondence and letters between the Commission for Protection of Competition and the European Commission or the other institutions of the European Union or any other documents which are a business or professional secret, within the meaning of Article 57 of this Law.

(6) When the Commission for misdemeanour matters adopts a procedural order for dismissal of a request due to lack of legal conditions for conducting a procedure in accordance with Article 37 of this Law, the submitter of the request for the initiation of a procedure shall be entitled to access the files of the case and transcribe or copy the whole file or certain documents thereof at his/her own expense.

(7) The submitter of the request for the initiation of a procedure referred to in paragraph (6) of this Article shall not be entitled to inspect, transcribe or copy the draft decisions of the Commission for misdemeanour matters, the minutes of the sessions of the Commission for misdemeanour matters, the audio and audio-visual recordings of the sessions of the Commission for misdemeanour matters, the internal instructions and notes of the case or the correspondence and letters between the Commission for Protection of Competition and the European Commission or the other institutions of the European Union or any other documents which are a business or professional secret, within the meaning of Article 57 of this Law.

(8) No appeal or legal action on instituting an administrative dispute shall be allowed against the procedural order for refusing the request for access to files.

Business or Professional secret

Article 57

(1) The President and the members of the Commission for Protection of Competition, the President and the members of the Commission for misdemeanour matters and the employees are obliged to keep business or professional secrets regardless of how they have learnt it. The obligation to keep business or professional secrets shall last for five years as of the termination of the employment with the Commission for Protection of Competition or after the expiry of the term of office of the President or the Commission member.

(2) The persons referred to in paragraph (1) of this Article may not give statements in the public which could harm the reputation of the undertaking or statements on the measures they have undertaken or the procedures they have initiated while performing the activities under their competence until they are final, unless it regards the announcement of general information.

(3) The business secret referred to in paragraph (1) of this Article shall imply in particular the following:

1) What has been determined by law and other regulations as business secret and

2) What shall be determined by the undertaking as business secret if the Commission for Protection of Competition or the Commission for misdemeanour matters accepts such determination.

(4) The Commission for Protection of Competition or the Commission for misdemeanour matters shall accept the classification of data as business secret if it concerns data that have economic or market value and whose discovery or use may lead to economic advantage of other undertakings.

(5) When evaluating the data within the meaning of paragraph (4) of this Article, the following criteria shall apply in particular:

- 1) the extent to which the data is known outside the undertaking;
- 2) the extent to which measures have been taken for the protection of data secrecy in the undertaking and
- 3) the value of the data to the undertaking and its competitors.

(6) Business secret within the meaning of the provisions of this Law shall not, as a rule, be:

- 1) publicly available data or publicly announced data based on another regulation or decision of the managing bodies of the undertaking;
- 2) data older than 5 years, regardless whether they were considered as business secret;
- 3) the revenues contained in the annual financial and statistical reports which do not constitute business secret because they have been publicly announced;
- 4) data and documentation of decisive relevance for the decisions of the Commission for Protection of Competition or the Commission for misdemeanour matters.

(7) When submitting data classified as business secret, the undertaking is obliged to justify such determination by indicating objective reasons.

Actions for damages

Article 58

If any action constituting a misdemeanour in accordance with the provisions of this Law causes damage, the damaged party may seek indemnification in accordance with a Law.

PART FIVE

SANCTIONS

Serious misdemeanours

Article 59

(1) The Commission for misdemeanour matters shall impose a fine to the undertaking, i.e. association of undertakings by means of a decision in the amount of up to 10% of the value of the total annual turnovers earned in the last business year, calculated in absolute and nominal amount for which the undertaking or association of undertakings has compiled an annual account if it:

- 1) concludes a prohibited agreement or otherwise participates in a agreement, decision or concerted practices leading to distortion of competition within the meaning of Article 7 of this Law;
- 2) abuses the dominant position within the meaning of Article 11 of this Law;
- 3) fails to act pursuant to the decision of the Commission for Protection of Competition referred to in Article 51 of this Law,
- 4) fails to act pursuant to the decision of the Commission for Protection of Competition referred to in Article 52 of this Law.

Serious Misdemeanours under a Procedure for Assessing Concentrations

Article 60

(1) The Commission for misdemeanour matters shall impose, by means of a decision, to the participants in the concentration that have an obligation for notification referred to in Article 15 of this Law a fine in the amount of up to 10% of the value of their total annual turnover calculated in absolute and nominal amount in line with Article 16 of this Law if they:

- 1) fail to file a notification of the concentration in accordance with Article 15 of this Law;
- 2) implement the concentration contrary to Article 18 paragraph (1) of this Law;
- 3) fail to act pursuant to the decision adopted in line with Article 18 paragraph (3), Article 19 paragraph (3), Article 20 paragraph (1) item 3), Article 21 paragraph (2) item 3), Article 22 paragraph (2) and Article 23 paragraph (1) of this Law,
- 4) implement a concentration which has been determined by means of a decision adopted in line with Article 20 paragraph (1), item 4) and Article 21 paragraph (2) item 2) of this Law that is not compliant with the provisions of this Law.

Procedural Misdemeanours

Article 61

(1) The Commission for misdemeanour matters shall, by means of a decision, impose a fine to the undertaking, i.e. association of undertakings in the amount of up to 1% of the value of the total annual turnover calculated in absolute and nominal amount earned in the last business year for which the undertaking or association of undertakings has compiled an annual account if:

- 1) it fails to act pursuant to the procedural order of the Commission for Protection of Competition or the Commission for misdemeanour matters as to the submission of data in the determined deadline, within the meaning of Articles 40, 48 and 49 of this Law;

2) it submits false, incomplete or misleading data to the Commission for Protection of Competition or the Commission for misdemeanour matters, within the meaning of Articles 40, 48 and 49 of this Law;

3) it fails to act pursuant to the procedural order referred to in Articles 41 and 50 of this Law;

4) it fails to provide unhindered access to any business premises, land or means of transport of a certain undertaking, within the meaning of Article 41 paragraph (1) item 1) and Article 50 paragraph (1) item 1) of this Law;

5) it fails to provide unhindered examination of books or other documentation, within the meaning of Article 41 paragraph (1) item 2) and Article 50 paragraph (1) item 2) of this Law;

6) it fails to provide unhindered taking or keeping of objects, books, other documentation in any form, copies or extracts from books or other documentation, within the meaning of Article 41 paragraph (1) items 3), 4) and 5) and Article 50 paragraph (1) items 3), 4) and 5) of this Law;

7) it fails to provide unhindered sealing within the meaning of Article 41 paragraph (1) item 6) of this Law and Article 50 paragraph (1) item 6) of this Law;

8) it unseals the sealings performed in accordance with Article 41 paragraph (1) item 6) of this Law and Article 50 paragraph (1) item 6) of this Law;

9) an authorized person or another employee refuses to provide explanation regarding certain facts or circumstances within the meaning of Article 41 paragraph (1) items 7) and 8) of this Law and Article 50 paragraph (1) items 7) and 8) of this Law;

10) an authorized person or another employee provides false, incomplete or misleading data to the Commission for Protection of Competition or the Commission for misdemeanour matters within the meaning of Article 41 paragraph (1) items 7) and 8) of this Law and Article 50 paragraph (1) items 7) and 8) of this Law and

11) it fails to provide unhindered performance of other actions within the meaning of Article 41 paragraph (1) item 9) of this Law and Article 50 paragraph (1) item 9) of this Law.

(2) The Commission for misdemeanour matters shall impose, by means of a decision, to the participants in the concentration that have an obligation for notification referred to in Article 15 of this Law, a fine in the amount of up to 1% of the value of their total annual turnover calculated in line with Article 16 of this Law if in the notification and the appendices to the notification and the supplement to the notification referred to in Article 15 of this Law they submit false or misleading data to the Commission for Protection of Competition.

Imposing a Fine to Associations of Undertakings

Article 62

(1) When the misdemeanour was committed by an association of undertakings and refers to the activities of its members, the fine shall not exceed the amount of 1% for procedural misdemeanours calculated in absolute and nominal amount, i.e. 10% for more serious misdemeanours from the sum of the aggregate annual

turnover calculated in absolute and nominal amount of each member of the association acting on the relevant market.

(2) When the association of undertakings is ordered a fine for a misdemeanour referring to the activities of its members, and the association is insolvent, it is obliged to collect funds for the payment of the fine from its members.

(3) If the association fails to pay the fine within the deadline stipulated by the Commission for misdemeanour matters, the authority competent for enforcement of fines shall seek payment of the fine directly from any of the members of the association whose representatives participate in the decision-making bodies of the association.

(4) After the authority competent for enforcement of the fine seeks payment of the fine referred to in paragraph (3) of this Article, and considering the restriction regarding the amount of the fine referred to in Article 59 paragraph (1) and Article 61 paragraph (1) of this Law, and in order to ensure its full collection, it shall seek payment of the rest of the fine from any member of the association acting on the relevant market.

(5) The authority competent for the enforcement of the fine shall not seek payment of a fine in line with paragraphs (3) and (4) of this Article from the undertakings that prove they had not implemented the decision of the association or they had not been aware of its existence.

Others Misdemeanours Article 62-a

(1) A fine in the amount of 25 to 50 Euros in denar equivalent value will be imposed on an authorized official for an offense if he does not request the evidence in his official capacity within the period set in Article 15 paragraph (5) of this law.

(2) A fine in the amount of 25 to 50 euros in denars equivalent value will be imposed on the authorized official by the competent public authority from which the evidence was requested, for an offense, if he does not submit the requested evidence within the period set in Article 15 paragraph (6) of this law.

(3) For the misdemeanours from paragraphs (1) and (2) of this article, a misdemeanor procedure is conducted and a misdemeanor sanction is imposed by a competent court

Other Misdemeanour Sanctions Article 63

(1) Regarding the misdemeanours referred to in Article 59 paragraph (1) and Article 60 paragraph (1) of this Law, the Commission for misdemeanour matters may impose to the legal person, in addition to the fine, a temporary ban on the performance of specific activity in duration of 3 to 30 days.

(2) Regarding the misdemeanours referred to in Article 59 paragraph (1) and Article 60 paragraph (1) of this Law, the Commission for misdemeanour matters may impose to the natural person, in addition to the fine, a ban on the performance of an occupation, activity or duty in duration of 3 to 15 days.

Determination of the Fine

Article 64

(1) When determining the fine, account shall be taken of:

- 1) the seriousness of the misdemeanour;
- 2) the duration of the misdemeanour, and
- 3) the extent of distortion of competition and the effects caused by the misdemeanour.

(2) The Commission for misdemeanour matters, when determining the fine, shall first determine a basic amount of the fine and shall then adjust it taking into consideration the mitigating or aggravating circumstances.

(3) The basic amount of the fine shall as a rule amount in up to 30% of the revenue of the perpetrator of the misdemeanour earned from the activity performed on the relevant market on which the misdemeanour has been committed in the last complete business year when the perpetrator of the misdemeanour participated therein. The amount determined in such a manner shall be multiplied by the number of years during which the misdemeanour lasted.

(4) The amount determined in accordance with paragraph (3) of this Article shall be adjusted by taking into consideration mitigating or aggravating circumstances, as a result of which it may be reduced or increased.

(5) The mitigating circumstances to be taken into account when determining the fine shall, in particular, are:

- 1) if the perpetrator of the misdemeanour has presented proof that they have terminated the actions which constitute a misdemeanour at the time when the Commission for misdemeanour matters has initiated a misdemeanour procedure, except when it concerns a misdemeanour referred to in Article 7 paragraph (1) item 1) of this Law;

- 2) if the perpetrator of the misdemeanour presented proof that their involvement in the misdemeanour is minimal and proves that while he was a participant in a prohibited agreement, he actually avoided its application acting in a competitive manner on the relevant market;

- 3) if the perpetrator of the misdemeanour effectively cooperated with the Commission for Protection of Competition or the Commission for misdemeanour matters irrespective of the application of Article 65 of this Law (leniency).

(6) The aggravating circumstances to be taken into account when determining the fine shall, in particular, are:

- 1) If the Commission for misdemeanour matters finds that a misdemeanour has been committed which is stipulated by the provisions of this

Law and the perpetrator of the misdemeanour continues to commit the misdemeanour or repeats the same or similar misdemeanour. In such a case, the basic amount stipulated in paragraph (2) of this Article may be increased by up to 100% for every such misdemeanour established;

2) If the perpetrator of the misdemeanour has refused to cooperate or has impeded the Commission for Protection of Competition or the Commission for misdemeanour matters from conducting the procedure;

3) if the perpetrator has had the role of a leader of instigator of the misdemeanour. The Commission for misdemeanour matters shall, in particular, take into consideration whether the perpetrator of the misdemeanour has undertaken actions directed at instigating other undertakings to take part in the misdemeanour and/or has taken any vindictive measures against other undertakings with a view to coercing them into taking actions which constitute a misdemeanour.

(7) The Commission for misdemeanour matters may increase the basic amount of the fine to a perpetrator of a misdemeanour having particularly high revenues which also derive from other activities, not only from the activity performed on the relevant market where the misdemeanour has been committed in order to reach a deterring effect of the fine.

(8) The Commission for misdemeanour matters may increase the basic amount of the fine to a perpetrator of a misdemeanour in order for the fine to exceed the amount related with unfounded enrichment arising as an effect of the misdemeanour provided such an amount is calculable.

(9) The Commission for misdemeanour matters may, at request of the perpetrator of the misdemeanour and when determining the fine, take into account its payment incapability against a specific social and economic background. The fine may not be reduced due to this reason should it concern financial losses of the perpetrator of the misdemeanour committed for the purpose of avoiding the payment of a fine. The fine may be reduced solely if the perpetrator presents evidence that the fine determined in line with the provisions of this Article would jeopardize the economic capability of the perpetrator and would cause their assets lose their value.

The full immunity or the reduction of the fine

Leniency

Article 65

(1) With a view of discovering cartels which constitute misdemeanours referred to in Article 59 paragraph (1) item 1) of this Law, the Commission for misdemeanour matters, acting upon request from an undertaking that has admitted its participation in a cartel, will grant full immunity from the fine which should be, as a rule, imposed on the said undertaking, if it is:

1) the first one to present evidence enabling the Commission for misdemeanour matters to initiate a misdemeanour procedure, or

2) the first one to present evidence enabling the Commission for misdemeanour matters to complete the already initiated misdemeanour

procedure with a decision establishing the existence of a misdemeanour if the existence of the misdemeanour could not have been established without such evidence.

(2) If the undertaking that has admitted to its participation in a cartel which constitutes a misdemeanour referred to in Article 59 paragraph (1) item 1) of this Law fails to meet the conditions for full immunity from fine referred to in paragraph (1) of this Law, the fine, which should be imposed as a rule, may be reduced if said undertaking presents to the Commission for misdemeanour matters additional relevant evidence of decisive importance for the adoption of a decision which shall confirm the existence of a misdemeanour.

(3) The full immunity or the reduction of the fine referred to in paragraphs (1) and (2) of this article will only be granted if the undertaking applying for leniency meets the following cumulative conditions:

- 1) the undertaking ended its involvement in the alleged cartel immediately following its leniency application;
- 2) the undertaking cooperates with the Commission for misdemeanour matters fully, on a continuous basis and expeditiously from the time it submits its application throughout the procedure;
- 3) does not notify the other members of the cartel for the existence of the leniency application;
- 4) the undertaking has not disclosed the fact or any of the content of its contemplated application, except to other competition authorities outside the Republic of Macedonia which is responsible for sanctioning the cartel
- 5) the undertaking must not have destroyed falsified or concealed evidence that can be used to determine facts relevant for the decisions of the Commission for misdemeanour matters.

(4) The Commission for misdemeanour matters will not grant full immunity to an undertaking referred to in paragraph (1) of this article that during the existence of the alleged cartel has taken steps to coerce other undertakings to join the cartel or to remain in it, but it can grant reduction of fines the undertaking fulfils the relevant requirements and meets all the conditions stipulated in paragraph (3) of this article.

(5) On proposal of the Commission for Protection of Competition, the Government of the Republic of Macedonia shall prescribe the terms of paragraph (3) of this Article and procedure under which the Commission for misdemeanour matters shall decide regarding the immunity and reduction of fines

Statute of Limitation

Article 66

(1) Misdemeanour procedure may not be initiated or conducted after the expiry of:

- three years regarding the misdemeanours referred to in Article 61 of this Law, and

- five years regarding misdemeanours referred to in Articles 59 and 60 of this Law.

(2) The deadlines for limitation shall begin to run as of the day of committing the misdemeanour. Should it concern an extended or repeated misdemeanour, the deadlines for limitation shall begin to run as of the day when the misdemeanour was terminated.

(3) The imposed misdemeanour sanction may not be enforced if two years elapse as of the day of the effectiveness of the decision establishing the existence of a misdemeanour.

(4) The limitation of the misdemeanour prosecution and the limitation of the enforcement of the misdemeanour sanction shall occur in any case when elapses twice the time legally required for the limitation of the misdemeanour prosecution or for the execution of the misdemeanour sanction.

PART SIX

PUBLICATIONS

Decisions and Data Subject to Publication in the "Official Gazette of the Republic of Macedonia"

Article 67

(1) The decisions of the Commission for Protection of Competition and of the Commission for misdemeanour matters referred to in Article 19 paragraph (1) item 2), Article 19 paragraph (3), Article 20 paragraph (1) item 1), 2), 3) and 4), Article 21 paragraph (1), Article 22 paragraph (1), Article 23 paragraph (1), Article 45, Article 51 paragraph (1) and Article 52 paragraph (1) of this Law shall be published in the "Official Gazette of the Republic of Macedonia".

(2) The decisions of the Commission for Protection of Competition and the Commission for misdemeanour matters and the judgments, i.e. decisions of the court shall be published on the website of the Commission for Protection of Competition.

(3) The published text of the decision must contain the names of the parties in the procedure and the basic contents of the decision.

(4) The notifications of the concentrations shall be also posted on the website of the Commission for Protection of Competition by stating the names of the participants, seat, basic business activities of the participants and the form of the concentration, whereas all interested parties are invited to deliver their comments, opinions and remarks regarding the concerned concentration within the deadline stipulated in the notification.

(5) All data regarded as business or professional secrets, within the meaning of Article 57 of this Law, shall not be published.

PART SEVEN

TRANSITIONAL AND FINAL PROVISIONS

Completion of Initiated Procedures

Article 68

(1) The initiated procedures for establishing the existence of prohibited agreements, decisions and concerted practices referred to in Article 7 of the Law on the Protection of the Competition (Official Gazette of the RM no. 4/05, 70/06 and 22/07) and the abuse of the dominant position referred to in Article 14 of the Law on the Protection of Competition (Official Gazette of the RM no. 4/05, 70/06 and 22/07) until the entry into force of this law shall continue before the Commission for Protection of Competition in accordance with the Law on the Protection of Competition (Official Gazette of the RM no. 4/05, 70/06 and 22/07).

(2) The initiated misdemeanour procedures, until the entry into force of this law shall continue before the Commission for misdemeanour matters in accordance with the Law on the Protection of Competition (Official Gazette of the RM no. 4/05, 70/06 and 22/07).

Bylaws

Article 69

(1) The bylaws stipulated with this Law will be adopted within six months of the day this Law enters into force.

(2) The existing bylaws shall continue being applied, until the entry into force of the new bylaws of paragraph (1) of this Article

Continuity of Work of the Commission for the Protection of Competition

Article 70

(1) The President and the members of the Commission for the Protection of Competition who have been appointed before the entry into force of this Law shall continue their work until the expiry of their appointed term of office.

Cessation of Validity of Laws

Article 71

On the day when this Law enters into force, the Law on the Protection of Competition (Official Gazette of the Republic of Macedonia no. 4/05, 70/06 and 22/07) shall cease to be valid

Entry into Force

Article 72

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Macedonia.

