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CINQUIÈME CONFÉRENCE DES NATIONS UNIES CHARGÉE DE REVOIR TOUS LES ASPECTS DE L'ENSEMBLE DE PRINCIPES ET DE RÈGLES ÉQUITABLES CONVENUS AU NIVEAU MULTILATÉRAL POUR LE CONTRÔLE DES PRATIQUES COMMERCIALES RESTRICTIVES
Antalya (Turquie), 14-18 novembre 2005

MANUEL SUR LE DROIT DE LA CONCURRENCE

Note du secrétariat de la CNUCED

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INTRODUCTION

L'Ensemble de principes et de règles équitables convenus au niveau multilatéral pour le contrôle des pratiques commerciales restrictives prévoit, à la section F.6 c), l'établissement d'un manuel des législations appliquées en matière de pratiques commerciales restrictives.

La quatrième Conférence des Nations Unies chargée de revoir tous les aspects de l'Ensemble, qui s'est tenue à Genève du 25 au 29 septembre 2000, et le Groupe intergouvernemental d'experts du droit et de la politique de la concurrence, à sa cinquième session, tenue à Genève du 2 au 4 juillet 2003, ont prié le secrétariat de la CNUCED de continuer à publier de nouvelles livraisons du *Manuel des législations appliquées en matière de concurrence*, y compris des instruments régionaux et internationaux, qui devrait être complété par un résumé de leurs principales dispositions, établi à partir de communications des États membres. (Voir la résolution adoptée par la Conférence (TD/RBP/CONF.5/16) et les conclusions concertées du Groupe intergouvernemental d'experts à sa cinquième session (TD/B/COM.2/CLP/L.9).)

Le secrétariat a donc établi la présente note qui contient les textes législatifs du Burkina Faso et de la Pologne (nouvelle loi), ainsi que les commentaires de ces deux pays[1].

À ce jour, le secrétariat de la CNUCED a publié des notes présentant le texte et le commentaire des lois sur la concurrence de 48 pays: Afrique du Sud, Algérie, Allemagne, Belgique, Brésil, Bulgarie, Burkina Faso, Canada, Chili, Colombie, Côte d'Ivoire, Croatie, Danemark, Espagne, États-Unis d'Amérique, Finlande, France, Géorgie, Hongrie, Indonésie, Italie, Jamaïque, Japon, Kenya, Lituanie, Malawi, Maroc, Mexique, Nouvelle-Zélande, Norvège, Pakistan, Pologne, Portugal, République de Corée, République tchèque, Roumanie, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, Sénégal, Slovaquie, Sri Lanka, Suède, Thaïlande, Tunisie, Turquie, Ukraine, Venezuela, Zambie et Zimbabwe.

Le Secrétaire général de la CNUCED, dans une note du 8 mars 1996, a prié les États membres qui ne l'avaient pas encore fait ainsi que ceux qui avaient modifié leur législation sur la concurrence ou adopté des dispositions nouvelles depuis leur dernière communication au secrétariat de la CNUCED de fournir à celui-ci le texte de leurs lois et décisions judiciaires, accompagné de commentaires, selon le mode de présentation prescrit (voir la section ci-après). (Cependant, la présentation des commentaires peut s'écarter de ce modèle.) Pour faciliter la publication des textes législatifs dans plusieurs langues officielles de l'ONU, les États ont été invités à fournir si possible des traductions dans au moins une autre de ces langues.

Le secrétariat remercie les États qui lui ont envoyé les renseignements demandés pour l'établissement de la présente livraison du *Manuel*, et invite de nouveau ceux qui ne l'ont pas encore fait à répondre à la demande du Secrétaire général de la CNUCED.

[1] Les commentaires sont reproduits tels quels, dans la langue dans laquelle ils ont été reçus.

MODE DE PRÉSENTATION DES RENSEIGNEMENTS À FOURNIR POUR LE MANUEL

A. Exposé des raisons qui ont motivé l'adoption de la législation.

B. Description des objectifs de la législation et de leur évolution depuis l'adoption de la législation initiale.

C. Description des pratiques, actes ou comportements soumis au contrôle, en indiquant pour chacun:

1) Le type de contrôle − par exemple interdiction pure et simple, interdiction de principe ou examen cas par cas;

2) La mesure dans laquelle les pratiques, actes ou comportements visés aux paragraphes 3 et 4 de la section D de l'Ensemble de principes et de règles sont soumis à ce contrôle, ainsi que les autres pratiques, actes ou comportements susceptibles d'y être assujettis et ceux qui font l'objet de mesures expressément liées à la protection du consommateur, comme la lutte contre la publicité mensongère.

D. Description du champ d'application de la législation, en indiquant:

1) Si elle est applicable à toutes les transactions portant sur des biens et des services et, dans la négative, quelles transactions sont exclues;

2) Si elle s'applique à la totalité des pratiques, actes ou comportements ayant des effets sur le pays, quelle qu'en soit l'origine géographique;

3) Si elle dépend de l'existence d'un accord, ou de l'entrée en vigueur dudit accord.

E. Description du mécanisme (administratif et/ou judiciaire) d'application, en indiquant les éventuels accords de notification et d'enregistrement et les principaux pouvoirs de l'organe ou des organes compétents.

F. Description de toute législation parallèle ou supplémentaire, y compris des traités ou conventions avec d'autres pays, prévoyant une coopération ou des procédures pour régler les différends dans le domaine des pratiques commerciales restrictives.

G. Description des principales décisions prises par les organes administratifs et/ou judiciaires, et des questions qui en font expressément l'objet.

H. Bibliographie succincte donnant la référence des textes législatifs et des principales décisions, ainsi que les documents explicatifs publiés par les pouvoirs publics, ou les textes législatifs ou certains passages de ces textes.

COMPETITION LEGISLATION

I. BURKINA FASO

Commentary by the Government of Burkina Faso on the modification of the «loi n° 15/94/ADP du 5 mai 1994 portant organisation de la concurrence au Burkina Faso»

Modification de la loi n°°15/94/ADP du 5 mai 1994 portant organisation de la concurrence au Burkina Faso

Le Burkina Faso a adopté une loi sur la concurrence, la loi n°°15/94/ADP du 5 mai 1994 portant organisation de la concurrence au Burkina Faso.

Cette loi comprend deux livres.

Le livre I traite de la liberté des prix et des règles applicables en matière de concurrence et définit les conditions dans lesquelles la concurrence s'exerce. Il contient cinq titres.

Le livre II quant à lui traite des pratiques illicites de la concurrence et de leurs sanctions. Il comprend trois titres consacrés respectivement aux infractions, à leur constatation, aux procédures et peines, et aux dispositions diverses.

Les modifications intervenues dans la loi n°°15 du 5 mai 1994 concernent exclusivement les articles 2 et 3 consacrés à la Commission Nationale de la Concurrence et de la Consommation (CNCC). Ces articles ont été abrogés et remplacés par de nouveaux articles.

Ces changements répondent à un souci maintes fois exprimé par les opérateurs économiques, les consommateurs et l'administration de faire de la CNCC un organe plus opérationnel. Cela a donc entraîné la prise de la loi n°°033-2001/AN du 4 décembre 2001 portant modification de la loi n°°15/94/ADP du 5 mai 1994 portant organisation de la concurrence au Burkina Faso.

1/ Commentaire sur l'abrogation de l'article 2

Les dispositions de l'ancien article 2 stipulaient: «Il est institué une Commission Nationale de la Concurrence et de la Consommation. La Commission Nationale de la Concurrence et de la Consommation est un organe consultatif.»

Autrement dit, la loi en créant la CNCC en tant qu'organe purement consultatif à limité son champ d'action à une double mission à savoir:

- Émettre des avis à la requête de l'administration sur les questions de concurrence, d'où son rôle de conseil juridique au profit de l'administration.

- Jouer un rôle d'observatoire chargé du bon fonctionnement des règles de la concurrence dans l'économie et de la protection des consommateurs. C'est à ce titre qu'elle élabore un rapport annuel sur l'état de la concurrence et de la consommation au Burkina Faso.

À l'analyse, ces dispositions ont réduit l'efficacité de la CNCC dans la mesure où elle ne pouvait garantir une saine concurrence entre les opérateurs économiques ou intervenir directement dans la vie économique.

Les nouvelles dispositions de l'article 2 stipulent. *«Il est institué une Commission Nationale de la Concurrence et de la Consommation chargée de la régulation de la concurrence et de la consommation».*

Ainsi d'un simple organe consultatif, la CNCC devient dès lors un organe de régulation de la concurrence. Autrement dit, elle acquiert, en plus de ses anciennes prérogatives, le pouvoir coercitif, de sanction vis à vis des contrevenants aux règles de la concurrence et de la consommation.

2/ Commentaire sur l'abrogation de l'article 3

L'article 3 disposait: «la Commission Nationale de la Concurrence et de la Consommation est saisie à l'initiative de l'administration

- Sur toutes les questions concernant la concurrence et la consommation notamment les textes pris en application de la présente loi.

- Sur les pratiques anticoncurrentielles et restrictives de la concurrence relevées dans les affaires dont les juridictions compétentes sont saisies.

- Sur les faits qui lui paraissent susceptibles d'infractions au sens de la présente loi.»

Ainsi cet article limitait la possibilité de saisine de la Commission à l'administration seule, l'autorité compétente étant le ministre chargé du commerce. Évidemment, cela n'était pas de nature à inciter les opérateurs économiques et les associations de consommateurs à requérir les avis de la Commission.

Cet article sera donc remplacé par de nouveaux articles à savoir les articles 3, 3 *bis* et 3 *ter*. Les dispositions de l'article 3 nouveau stipulent:

«La Commission Nationale de la Concurrence et de la Consommation est saisie à l'initiative de l'administration, des associations de consommateurs légalement reconnues et des opérateurs économiques ou leurs groupements professionnels pour donner son avis sur les faits susceptibles d'infractions au sens de la présente loi.

La Commission Nationale de la Concurrence et de la Consommation peut se saisir d'office».

Dorénavant, le pouvoir de saisine de la Commission est élargi outre l'administration, aux opérateurs économiques et aux groupements professionnels, aux associations de consommateurs légalement reconnues et à la Commission elle-même.

L'article 3 *bis* dispose: *«La Commission Nationale de la Concurrence et de la Consommation peut après avoir entendu toutes les parties intéressées, au besoin contradictoirement, ordonner qu'il soit mis fin aux pratiques incriminées au chapitre I du livre II de la présente loi, dans un délai déterminé ou imposer des conditions particulières. Elle peut infliger une sanction pécuniaire applicable soit immédiatement,*

soit en cas d'inexécution d'une injonction. Le montant maximum de la sanction est pour une entreprise de 1 % du chiffre d'affaires hors taxes réalisé au Burkina Faso au cours du dernier exercice clos et dans les autres cas de 2 000 000 de F CFA. La Commission peut en outre, ordonner la publication de sa décision dans les journaux qu'elle indique, aux frais du contrevenant».

Ainsi, cet article autorise la Commission à prononcer des injonctions et des sanctions pécuniaires vis à vis des contrevenants aux dispositions de la loi portant organisation de la concurrence au Burkina Faso.

Quant à l'article 3 *ter*, il dispose: *«les décisions de la Commission Nationale de la Concurrence et de la Consommation sont notifiées aux parties en cause et à l'administration compétente qui peuvent dans un délai de 6 jours à compter de la date de notification, interjeter appel devant la Chambre Commerciale de la Cour d'Appel. Cet appel n'est pas suspensif».*

Cette disposition de l'article 3 *ter* instaure le contrôle judiciaire des sanctions prononcées par la Commission. En effet, le contrevenant a la possibilité de faire appel devant la Chambre Commerciale de la Cour d'Appel de Ouagadougou s'il n'est pas satisfait des décisions de la Commission.

Ainsi, les modifications de la loi sur la concurrence du Burkina Faso ont consisté à donner plus d'attributions à la Commission Nationale de la Concurrence et de la Consommation en lui conférant en plus de son pouvoir consultatif un pouvoir de sanction tout en élargissant son mode de saisine aux associations de consommateurs légalement reconnues, aux opérateurs économiques ou leurs groupements professionnels et à la Commission elle-même.

LOI N^{O} 15/94/ADP DU 5 MAI 1994 PORTANT ORGANISATION DE LA CONCURRENCE AU BURKINA FASO

L'ASSEMBLÉE DES DÉPUTÉS DU PEUPLE

Vu la Constitution,

Vu la Résolution n^{o}°01/92/ADP du17 juin 1992, portant validation du mandat des Députés

A délibéré en sa séance du 5 mai 1994 et adopté la loi dont la teneur suit:

LIVRE I

DE LA LIBERTÉ DES PRIX ET DES RÈGLES APPLICABLES EN MATIÈRE DE CONCURRENCE

TITRE I

DE LA LIBERTÉ DES PRIX

Article 1er: Les prix des produits, des biens et des services sont libres sur toute l'étendue du territoire et déterminés par le seul jeu de la concurrence.

Toutefois, dans les secteurs d'activité économique ou dans les localités du territoire où la concurrence par les prix est limitée en raison soit de situation de monopole ou de difficultés durables d'approvisionnement, soit de dispositions législatives ou réglementaires, le Ministre chargé du commerce peut réglementer les prix dans des conditions fixées par décret.

Les dispositions ci-dessus ne font pas obstacle à ce que sur décision du conseil des Ministres, le Ministre chargé du commerce adopte des mesures temporaires contre des hausses excessives de prix, lorsqu'une situation de crise, des circonstances exceptionnelles ou une situation anormale du marché dans un secteur économique donné les rendent nécessaires. Il en précise la durée de validité qui ne saurait excéder six (6) mois.

TITRE II

DE LA COMMISSION NATIONALE DE LA CONCURRENCE

ET DE LA CONSOMMATION

Article 2: Il est institué une Commission Nationale de la Concurrence et de la Consommation

La Commission Nationale de la Concurrence et de la Consommation est un organe consultatif.

Article 3: La Commission Nationale de la Concurrence et de la Consommation est saisie à l'initiative de l'administration pour les questions suivantes:

- Sur toutes les questions concernant la concurrence et la consommation notamment les textes pris en application de la présente loi;

- Sur les pratiques anticoncurrentielles et restrictives de la concurrence relevées dans les affaires donc les juridictions compétentes sont saisies;

- Sur les faits qui lui paraissent susceptibles d'infractions au sens de la présente loi.

Article 4: La composition et les règles de fonctionnement de la Commission Nationale de la Concurrence et de la Consommation sont déterminées par décret.

TITRE III

DES ENTENTES ET DES ABUS DE DOMINATION

Article 5: Toutes formes d'actions concertées, de conventions, d'ententes expresses ou tacites ou de coalitions ayant pour objet ou pouvant avoir pour effet d'empêcher, de restreindre ou de fausser le jeu de la concurrence sur un marché, sont prohibées, notamment lorsqu'elles tendent à:

1. Limiter l'accès au marché ou le libre exercice de la concurrence par d'autres entreprises;

2. Faire obstacle à la fixation des prix par le libre jeu du marché en favorisant artificiellement leur hausse ou leur baisse;

3. Limiter ou contrôler la production, les débouchés, les investissements ou le progrès technique;

4. Répartir le marché ou les sources d'approvisionnement.

Article 6: Est prohibée dans les mêmes conditions que celles visées à l'article 5 ci-dessus, l'exploitation abusive par une entreprise ou groupe d'entreprises:

1. D'une position dominante sur le marché intérieur ou une part substantielle de celui-ci;

2. De l'état de dépendance économique dans lequel se trouve à son égard, une entreprise cliente ou fournisseur qui ne dispose pas de solution équivalente.

Ces abus peuvent notamment consister en des refus de vente, en des ventes liées, en des conditions de vente discriminatoires ou en des pratiques de prix imposé ainsi que dans la rupture injustifiée de relations commerciales.

Article 7: Est nul de plein droit tout engagement, convention ou clause contractuelle se rapportant à une pratique prohibée par les articles 5 et 6 ci-dessus:

Article 8: Ne sont pas soumises aux dispositions des articles 5 et 6 ci-dessus les pratiques:

1. Qui résultent de l'application d'un texte législatif ou d'un texte réglementaire pris après consultation de la Commission Nationale de la Concurrence et de la Consommation.

2. Dont les auteurs peuvent justifier qu'elles ont pour effet d'assurer un progrès économique et qu'elles réservent aux utilisateurs une partie équitable du profit qui en résulte, sans donner aux entreprises intéressées la possibilité d'éliminer la concurrence pour une partie substantielle des produits en cause. Ces pratiques ne doivent imposer des restrictions à la concurrence que dans la mesure où elles sont indispensables pour atteindre cet objectif de progrès.

TITRE IV

DE LA TRANSPARENCE DU MARCHEÉ ET DES PRATIQUES RESTRICTIVES DE LA CONCURRENCE

CHAPITRE I: DES PRIX IMPOSÉS

Article 9: Est interdite toute forme de pratique de prix imposé. La marge ou le prix de revente d'un bien, d'un produit, d'une prestation de service est présumé imposé dès lors qu'il lui est conféré un caractère minimal ou maximal.

CHAPITRE II: DE LA REVENTE À PERTE

Article 10: Est interdite la revente de tout produit en l'état à un prix inférieur à son prix d'achat effectif

Le prix d'achat effectif est présumé être le prix porté sur la facture majoré de toutes les taxes afférentes à cette revente et le cas échéant, du prix du transport.

Ne sont pas concernées par cette disposition:

- La revente de produits périssables dès lors qu'ils sont menacés de détérioration rapide;
- La revente volontaire ou forcée motivée par la cessation ou le changement d'activité commerciale sur autorisation administrative et les ventes effectuées sur décision de justice;
- Les ventes en fin de saison de produits dont la commercialisation présente un caractère saisonnier marqué;
- Les ventes de produits qui ne répondent plus à la demande générale en raison de l'évolution de la mode ou de l'apparition de perfectionnements techniques;
- Les ventes de produits dont le réapprovisionnement s'est effectué ou pourrait s'effectuer en baisse;
- La vente de produits dont le prix de revente est aligné sur le prix légalement pratiqué pour les mêmes produits par un autre commerçant dans la même zone d'activité.

CHAPITRE III: DE LA FACTURATION

Article 11: Tout achat de biens, de produits ou toute prestation de service pour une activité commerciale doit faire l'objet d'une facturation.

Le vendeur est tenu de délivrer la facture dès la réalisation de la vente ou la prestation de service. L'acheteur doit la réclamer. La facture doit être rédigée en deux exemplaires au moins: le vendeur remet l'original de la facture à l'acheteur et conserve le double.

Toute vente au détail donne lieu à remise de facture, de reçu ou de note de frais à la demande du consommateur.

Article 12: Sans préjudice de l'application de toute autre disposition législative ou réglementaire, la facture doit mentionner:

- Le nom des parties contractantes et leurs adresses;
- La date de la vente ou de la prestation de service;
- La dénomination précise, la quantité et les prix unitaires et totaux hors taxes des produits vendus ou des services rendus;
- Le taux et le montant de la taxe sur la valeur ajoutée;
- Les rabais, remises, et ristournes dont le principe est acquis et le montant chiffrable lors de la vente ou de la prestation de service quelle que soit leur date de règlement;
- La date à laquelle le règlement doit intervenir et les conditions d'escompte.

Les originaux et les copies des factures doivent être conservés par l'acheteur et le vendeur pendant un délai de cinq (5) ans à compter de la date de la transaction et en tout état de cause jusqu'à épuisement du stock.

CHAPITRE IV: DE LA COMMUNICATION DES BARÈMES ET DES CONDITIONS DE VENTE

Article 13: Tout industriel, grossiste ou importateur est tenu de communiquer à tout revendeur qui en fait la demande, son barème de prix et ses conditions de vente par tout moyen conforme aux usages de la profession.

Les conditions de vente s'entendent, des conditions de règlement et, le cas échéant, des rabais et ristournes qui sont accordés.

Les conditions de règlement doivent obligatoirement préciser les modalités de calcul et les conditions dans lesquelles des intérêts moratoires sont appliqués dans le cas où les sommes dues sont versées après la date de paiement figurant sur la facture.

Les conditions dans lesquelles un distributeur se fait rémunérer par ses fournisseurs en contrepartie de services spécifiques doivent également faire l'objet de communication.

CHAPITRE V: DES REFUS DE VENTE À l'ÉGARD DU CONSOMMATEUR

Article 14: Sont prohibées à l'égard du consommateur les pratiques suivantes:

- Le refus de vente d'un produit, d'un bien ou de la prestation d'un service sauf pour motif légitime;
- La subordination de la vente d'un produit à l'achat d'une quantité imposée ou à l'achat d'un autre produit ou d'un autre service;
- La subordination de la prestation d'un service à celle d'un autre service ou à l'achat d'un produit.

CHAPITRE VI: DES PRATIQUES DISCRIMINATOIRES ENTRE PROFESSIONNELS

Article 15: Il est interdit à tout producteur, industriel, commerçant ou artisan:

1. de pratiquer à l'égard d'un partenaire économique ou d'obtenir de lui des prix, des délais de paiement, des conditions de vente ou d'achat discriminatoires et non justifiés par des contreparties réelles, en créant de ce fait pour ce partenaire un désavantage ou un avantage dans la concurrence;

2. de refuser de satisfaire aux demandes des acheteurs de produits ou de biens ou aux demandes de prestation de service lorsque ces demandes ne présentent aucun caractère anormal, qu'elles sont faites de bonne foi et que le refus n'est pas justifié par les dispositions de l'article 8 ci-dessus;

   la demande d'un acheteur est présumée présenter un caractère anormal au sens de l'alinéa précédent lorsqu'il est notamment établi que ce dernier procède à une des pratiques déloyales visées par les articles 9,10 et 15 de la présente loi;

3. de subordonner la vente d'un produit ou la prestation d'un service soit à l'achat d'une quantité imposée d'autres produits, soit à la prestation d'un autre service sous réserve que cette vente ne soit soumise à une réglementation spéciale.

CHAPITRE VII: DES VENTES SAUVAGES ET DU PARACOMMERCIALISME

Article 16: Il est interdit à toute personne d'offrir des produits à la vente ou de proposer des services en occupant, dans des conditions irrégulières le domaine public de l'État ou des collectivités locales.

Sans préjudice de l'application de toute autre disposition législative ou réglementaire, nul ne peut de façon habituelle, offrir des produits à la vente, les vendre ou fournir des services s'il ne remplit pas les conditions d'exercice de la profession de commerçant déterminées par les textes en vigueur.

CHAPITRE VIII: DE L'INFORMATION DU CONSOMMATEUR

Article 17: Tout vendeur de produit, tout prestataire de service doit par voie de marquage d'étiquetage, d'affichage ou par tout autre procédé approprié informer le consommateur sur les prix, les limitations éventuelles de la responsabilité contractuelle et les conditions particulières de la vente, selon des modalités et conditions fixées par voie réglementaire.

Article 18: Dans la désignation, l'offre, la présentation, le mode d'emploi ou d'utilisation, l'étendue et les conditions de garantie d'un bien ou d'un service, ainsi que dans les factures et quittances, l'emploi de la langue officielle est obligatoire. Le recours à tout autre terme ou expression nationale équivalente est autorisé.

La dénomination des produits typiques ou spécialités d'appellation étrangère ou nationale connue du plus large public est dispensée de l'application des dispositions de l'alinéa précédent.

CHAPITRE IX: DE LA PUBLICITE MENSONGERE OU TROMPEUSE

Article 19: Est interdite toute publicité faite, reçue ou perçue au Burkina Faso comportant, sous quelque forme que ce soit, des allégations, indications ou présentations fausses ou de nature à induire en erreur, lorsqu'elles portent sur un ou plusieurs des éléments ci-après: existence, nature, composition, qualités substantielles, teneur en principes utiles, espèces, origine, quantité, mode et date de fabrication, propriété, prix et conditions de vente des biens, produits ou services qui font l'objet de la publicité, conditions de leur utilisation, résultats qui peuvent être attendus de leur utilisation, motifs ou procédés de la vente ou de la prestation de service, portée des engagements pris par l'annonceur, identité, qualités ou aptitudes du fabricant, des revendeurs, des promoteurs ou des prestataires.

CHAPITRE X: DE LA VENTE AU CONSOMMATEUR

Article 20: Les ventes directes au consommateur et la commercialisation des produits déclassés pour défaut, pratiquées par les industriels, sont soumises à une réglementation fixée par arrêté du Ministre chargé du commerce.

TITRE V

DES DISPOSITIONS ANNEXES À L'ORGANISATION DE LA CONCURRENCE

CHAPITRE I: DE LA LUTTE CONTRE LA FRAUDE

Article 21: Sont interdites:

- L'importation ou l'exportation sans titre ou sans déclaration en douane des biens et produis soumis à ce régime;
- L'importation ou l'exportation de marchandises en violation de la réglementation du contrôle des marchandises avant expédition;
- La détention et la vente desdits biens, produits et marchandises;

- Toute falsification pratiquée sur des documents d'importation ou d'exportation;
- Toute utilisation de faux documents à des fins d'importation ou d'exportation;
- Toute forme de cession de titre d'importation ou d'exportation.

CHAPITRE II: DE LA GARANTIE ET DU SERVICE APRÈS-VENTE

Article 22: Tout produit industriel, objet, appareil ou bien d'équipement destiné au commerce doit être garanti par le vendeur, le fabricant ou l'importateur pendant une durée minimale clairement précisée.

Des arrêtés du Ministre chargé du commerce fixent en tant que de besoin pour certains produits industriels, objets, appareils ou biens d'équipement:

- La durée minimale et les conditions d'application de la garantie;
- L'obligation de fournir un service après-vente;
- Le niveau et la disponibilité des pièces de rechange.

CHAPITRE III: DES CLAUSES ABUSIVES

Article 23: Dans les contrats de vente ou de prestation de service conclus d'une part entre professionnel et non professionnel et d'autre part entre professionnel et consommateur, les clauses tendant à imposer au non professionnel ou au consommateur un abus de la puissance économique de l'autre partie et à lui conférer un avantage excessif peuvent être interdites ou réglementées par décret pris après avis de la Commission Nationale de la Concurrence et de la Consommation lorsqu'elles portent sur:

- Le caractère déterminé ou déterminable du prix;
- Le versement du prix;
- La consistance de la chose;
- Les conditions de livraison;
- La charge des risques;
- l'étendue des responsabilités et garanties;
- Les conditions d'exécution, de résolution, de résiliation ou de reconduction des conventions.

De telles clauses abusives en contradiction avec les dispositions qui précèdent, sont réputées non écrites.

Ces dispositions sont applicables aux contrats quel que soit leur forme ou leur support.

Les décrets visés au premier alinéa du présent article peuvent, en vue d'assurer l'information du contractant non professionnel ou consommateur, réglementer la présentation des écrits constatant lesdits contrats.

CHAPITRE IV: DES TROMPERIES ET DES FALSIFICATIONS

Article 24: En application des dispositions du présent chapitre, le responsable de la première mise sur le marché d'un produit ou d'un bien est tenu de vérifier que celui-ci est conforme aux prescriptions en vigueur.

À la demande des agents habilités pour appliquer la présente loi, il est tenu de justifier des vérifications et contrôles effectués.

Article 25: Il est interdit à toute personne, qu'elle soit ou non partie au contrat, de tromper ou tenter de tromper le contractant par quelque moyen ou procédé que ce soit, même par l'intermédiaire d'un tiers:

- Soit sur la nature, l'espèce, l'origine, les qualités substantielles notamment les dates de production et les dates de consommation, la composition ou la teneur en principes utiles de toutes marchandises;

- Soit sur la quantité des choses livrées ou sur leur identité par la livraison d'une marchandise autre que la chose déterminée qui a fait l'objet du contrat;

- Soit sur l'aptitude à l'emploi, les risques inhérents à l'utilisation du produit, les contrôles effectués, les modes d'emploi ou les précautions à prendre.

Article 26: Il est interdit à toute personne:

1. De falsifier des denrées servant à l'alimentation humaine ou animale, des substances médicamenteuses, des boissons et des produits agricoles naturels ou transformés destinés à la vente;

2. D'exposer, de détenir en vue de la vente, de mettre en vente ou de vendre des denrées servant à l'alimentation humaine ou animale, des boissons et des produits agricoles naturels ou transformés qu'il saura falsifiés, corrompus ou toxiques;

3. D'exposer, de détenir en vue de la vente, de mettre en vente ou de vendre des substances médicamenteuses falsifiées, corrompues ou toxiques;

4. D'exposer, de détenir en vue de la vente, de mettre en vente ou de vendre, connaissant leur destination, des produits, objets ou appareils propres à effectuer la falsification des denrées servant à l'alimentation humaine ou animale, des boissons ou des produits agricoles naturels ou transformés.

Il en est de même pour toute personne qui aura provoqué leur emploi par le moyen de brochures, circulaires, prospectus, affiches, annonces ou instructions quelconques.

Les dispositions du présent article ne sont pas applicables aux fruits et légumes frais fermentés ou corrompus.

Article 27: Il sera statué par voie réglementaire sur les mesures à prendre pour assurer l'application des dispositions du présent chapitre notamment en ce qui concerne:

1. La fabrication et l'importation des marchandises ainsi que leur mise en vente, leur vente, leur exposition, leur détention et leur distribution à titre gratuit;

2. Les modes de présentation ou les inscriptions de toute nature sur les marchandises elles-mêmes, les emballages, les factures, les documents commerciaux ou documents de promotion commerciale, notamment en ce qui concerne les éléments visés à l'article 25 ci-dessus;

La définition, la composition et la dénomination des marchandises de toute nature, les traitements licites dont elles peuvent faire l'objet, les caractéristiques qui les rendent impropres à la consommation;

La définition et les conditions d'emploi des termes et expressions publicitaires, dans le but d'éviter une confusion;

L'hygiène des établissements où sont préparées, conservées et mises en vente les denrées destinées à l'alimentation humaine ou animale;

Les conditions d'hygiène et de santé des personnes travaillant dans ces locaux;

Les conditions dans lesquelles les Ministres compétents déterminent les caractéristiques micro biologiques et hygiéniques des marchandises destinées à l'alimentation humaine ou animale.

3. Les formalités prescrites pour opérer des prélèvements d'échantillons et des saisies ainsi que pour procéder aux expertises contradictoires sur les marchandises suspectes.

Article 28: Les dispositions du présent chapitre sont applicables aux prestations de service.

CHAPITRE V: DE LA SÉCURITÉ DU CONSOMMATEUR

Article 29: Les produits et les services doivent, dans des conditions normales d'utilisation ou dans d'autres conditions raisonnablement prévisibles par le professionnel, présenter la sécurité à laquelle on peut légitimement s'attendre et ne pas porter atteinte à la santé des personnes.

Article 30: Les produits ne satisfaisant pas à l'obligation générale de sécurité prévue à l'article 29 ci-dessus sont interdits ou réglementés par décret pris après avis de la Commission Nationale de la Concurrence et de la Consommation.

Article 31: En cas de danger grave ou immédiat, le Ministre chargé du commerce et le ou les Ministres intéressés peuvent suspendre par arrêté pour une durée n'excédant pas un (1) an , la fabrication, l'importation, l'exportation, la mise sur le marché à titre gratuit ou onéreux d'un produit et faire procéder à son retrait en tous lieux où il se trouve ou à sa destruction lorsque celle-ci constitue le seul moyen de faire cesser le danger. Ils ont également la possibilité d'ordonner la diffusion de mises en garde ou de précautions

d'emploi ainsi que la reprise en vue d'un échange ou d'une modification ou d'un remboursement total ou partiel.

Ils peuvent dans les mêmes conditions, suspendre par arrêté la prestation d'un service.

Ces produits et ces services peuvent être remis sur le marché lorsqu'ils ont été reconnus conformes à la réglementation en vigueur.

Le Ministre chargé du commerce et ou les Ministres intéressés entendent les professionnels concernés au plus tard dans les quinze (15) jours qui suivent la décision de suspension.

Article 32: En cas de danger grave ou immédiat, l'administration compétente prend les mesures d'urgence qui s'imposent. Elle en réfère aussitôt au ministre intéressé et au ministre chargé du commerce, qui se prononcent, par arrêté, dans un délai de quinze (15) jours. Elle peut dans l'attente de la décision ministérielle, faire procéder à la consignation des produits susceptibles de présenter un danger pour la santé ou la sécurité des personnes. Les produits consignés sont laissés à la garde de leur détenteur après inventaire. Elle peut, dans les mêmes conditions, suspendre la prestation d'un service.

Article 33: Le Ministre chargé du commerce ou le ou les Ministres intéressés peuvent adresser aux fabricants, importateurs, distributeurs ou prestataires de services, des mises en garde et leur demander de mettre les produits et services qu'ils offrent au public en conformité avec les règles de sécurité.

Ils peuvent prescrire aux professionnels concernés de soumettre au contrôle d'un organisme habilité, dans un délai déterminé et à leurs frais, leurs produits ou services offerts au public quand pour un produit ou un service déjà commercialisé, il existe des indices suffisants d'un danger, ou quand les caractéristiques d'un produit ou d'un service nouveau justifient cette précaution.

Lorsqu'un produit ou service n'a pas été soumis au contrôle prescrit en application du présent article, il est réputé ne pas répondre aux exigences de l'article 29 ci-dessus, sauf si la preuve contraire en est rapportée.

Article 34: Les mesures prévues au présent chapitre ne peuvent être prises pour les produits et service soumis à des dispositions législatives particulières ou à des règlements spécifiques ayant pour objet la protection de la santé ou la sécurité des consommateurs, sauf en cas d'urgence, celles prévues aux articles 31 et 32 ci-dessus.

Lorsqu'elles sont prises en vertu du présent chapitre, ces mesures doivent être proportionnées au danger présenté par les produits et les services; elles ne peuvent avoir pour but que de prévenir ou de faire cesser le danger en vue de garantir la sécurité à laquelle on peut légitimement s'attendre.

LIVRE II

A. DES PRATIQUES ILLICITES DE LA CONCURRENCE

B. ET DE LEURS SANCTIONS

TITRE I

DES INFRACTIONS ET DE LEUR CONSTATATION

CHAPITRE I: DES INFRACTIONS

Article 35: Sont soumises aux dispositions de présent livre, les infractions ci-après:

- Les infractions qualifiées de pratiques anticoncurrentielles;
- Les infractions aux règles de la transparence du marché et aux pratiques restrictives de la concurrence;
- Les infractions aux dispositions annexes à l'organisation de la concurrence.

Article 36: Est qualifié de pratique anticoncurrentielle, le fait de contrevenir aux dispositions du livre I titre III de la présente loi.

Article 37: Au regard de la présente loi, sont considérées comme infractions aux règles de la transparence du marché et comme pratiques restrictives de la concurrence:

1. Les pratiques de prix imposé et de revente à perte;
2. La non-observation des règles de facturation;
3. La non-communication des barèmes de prix et des conditions de vente;
4. Le refus de vente et la subordination de vente à l'égard du consommateur;
5. Les pratiques discriminatoires entre professionnels;
6. Les ventes sauvages et le paracommercialisme;
7. La non-observation des règles relatives à l'information du consommateur;
8. La publicité mensongère ou trompeuse;
9. La non-observation de la réglementation relative aux ventes directes aux consommateurs.

Article 38: Est considéré comme infraction aux dispositions annexes à l'organisation de la concurrence, le fait de contrevenir aux dispositions du livre I, titre V de la présente loi.

CHAPITRE II: DES POUVOIRS D'ENQUÊTE

Article 39: Les infractions ci-dessus énumérées sont constatées au moyen de procès verbaux ou par information judiciaire.

Article 40: Sont habilités à dresser les procès verbaux, les fonctionnaires et agents de l'État spécialement commissionnés à cet effet. Ils doivent être assermentés et porteurs d'une carte professionnelle.

Article 41: Les fonctionnaires et agents visés à l'article précédent sont astreints au secret professionnel sous peine de sanctions pénales prévues en la matière.

Article 42: Les enquêtes donnent lieu à l'établissement de procès verbaux et, le cas échéant, de rapports.

Les procès verbaux sont rédigés dans les plus courts délais et transmis à l'autorité compétente. Un double est laissé aux parties intéressées. Ils font foi jusqu'à inscription de faux des constations matérielles qu'ils relatent lorsqu'ils sont rédigés par deux (2) agents au moins. Ils sont dispensés du droit de timbre et d'enregistrement.

Les procès verbaux peuvent porter déclaration de saisie des produits ayant fait l'objet de l'infraction ainsi que des instruments, véhicules ou moyens de transport ayant servi à la commettre.

Article 43: Les enquêteurs peuvent:

- Accéder à tous locaux, terrains ou moyens de transport à usage professionnel. En ce qui concerne les visites des locaux d'habitation, les agents habilités à cet effet doivent obligatoirement se faire accompagner d'un officier de police judiciaire ou d'un représentant des autorités civiles locales. Ces visites ne peuvent être effectuées de nuit;

- Demander la communication des livres, factures et tous autres documents professionnels et en prendre copie;

- Exiger la communication des documents de toute nature, propres à faciliter l'accomplissement de leur mission entre quelques mains qu'ils se trouvent;

- Recueillir sur convocation ou sur place les renseignements et justifications;

- Demander à l'autorité dont ils dépendant de désigner un expert pour procéder à toute expertise contradictoire nécessaire;

- Prélever des échantillons;

- Effectuer des saisies directes et des consignations.

La saisie peut être réelle ou fictive. La saisie est réelle lorsqu'elle porte sur des biens qui peuvent être appréhendés. Elle est fictive lorsque les biens ne peuvent être appréhendés.

Article 44: Pour la constatation et la poursuite des infractions prévues à l'article 36 ci-dessus, les enquêteurs ne peuvent procéder aux visites en tous lieux ni à la saisie des documents que dans le cadre d'enquêtes demandées par le Ministre chargé du commerce et sur autorisation judiciaire donnée par ordonnance du Président du Tribunal dans le ressort duquel sont situés les lieux à visiter ou d'un juge délégué par lui. Lorsque ces

lieux sont situés dans le ressort de plusieurs juridictions et qu'une action simultanée doit être menée dans chacun d'eux, une ordonnance unique peut être délivrée par l'un des présidents compétents.

Article 45: Toutes contestations relatives à une ou plusieurs caractéristiques techniques de tous produits, biens ou services, ou à tous documents, peuvent, à tout moment de la procédure administrative ou de l'enquête, être déférées par l'administration à l'examen d'experts désignés par les parties ou le tribunal dans des conditions déterminées par arrêté du Ministre chargé du commerce et du Ministre chargé de la justice.

Lorsqu'ils sont accompagnés d'un des agents visés à l'article 40 ci-dessus, ces experts peuvent, à l'exclusion des visites domiciliaires, exercer le droit de visite tel que défini à l'article précédent. Lorsque les experts sont désignés par les parties, leurs conclusions excluent tout recours à toute nouvelle expertise.

Les experts visés au présent article sont astreints au secret professionnel.

TITRE II

DES PROCÉDURES ET DES PEINES

CHAPITRE I: DES PROCÉDURES

Article 46: Sous réserve de l'application des dispositions des articles 49,50 et 51 ci-dessous les tribunaux connaissent des infractions en matière d'organisation de la concurrence.

Article 47: Les infractions relevées en application de la présente loi font l'objet de poursuites judiciaires. L'administration compétente transmet les procès verbaux au Procureur du Faso et lui fait connaître ses conclusions. Les dispositions du droit commun seront applicables en cas de flagrant délit.

Dans les cas où l'initiative des poursuites ne provient pas de cette administration, le parquet doit l'informer immédiatement des poursuites en cours. Celle-ci est tenue de donner son avis dans un délai de sept (7) jours.

Article 48: Préalablement à la transmission de tout procès verbal au parquet, l'administration compétente peut, si elle le juge utile, demander au Ministre chargé du commerce que soit requis l'avis de la Commission Nationale de la Concurrence et de la Consommation sur le caractère d'un agissement relevé par ses services.

Article 49: L'administration peut accorder au délinquant le bénéfice de la transaction. La transaction ne lie l'administration qu'à la condition d'avoir un caractère définitif, c'est-à-dire d'avoir été ratifiée par l'autorité compétente désignée par décret.

L'exécution de la transaction par le délinquant met fin à l'action publique et entraîne mainlevée de la saisie.

Si la transaction comporte abandon de tout ou partie des marchandises, il est procédé à leur vente aux enchères publiques.

Article 50: Lorsqu'il s'agit de commerçants ambulants ou forains en état d'infraction et que la transaction ne comporte ni versement d'une somme supérieure à cinq mille (5 000) francs CFA, ni abandon de marchandises, l'administration est dispensée d'établir un acte constatant la transaction. Un reçu tiré d'un carnet à souches est délivré au délinquant.

Article 51: La juridiction compétente peut tant que le jugement définitif n'est pas intervenu, faire droit à la requête des personnes poursuivies ou de l'une d'entre elles demandant le bénéfice de la transaction. Dans ce cas, le dossier est remis à l'administration compétente qui dispose d'un délai fixé par l'autorité judiciaire pour réaliser la transaction. Ce délai qui court du jour de la transmission du dossier ne peut excéder un (1) mois.

Après la réalisation définitive de la transaction, les dossiers sont renvoyés à l'autorité judiciaire qui constate que l'action publique est éteinte. En cas de non réalisation, l'action judiciaire reprend son cours.

CHAPITRE II: DES PEINES

SECTION I: DES ENTENTES ET DES ABUS DE DOMINATION

Article 53: Est passible d'une amende de un million (1 000 000) à vingt cinq millions (25 000 000) de francs CFA et d'un emprisonnement de deux (2) mois à deux (2) ans ou de l'une de ces deux peines seulement, toute personne qui commet une ou plusieurs infractions prévues à l'article 36 de la présente loi.

Article 54: Nonobstant les peines prévues à l'article 53 ci-dessus, la juridiction compétente peut ordonner aux frais du condamné la publication intégrale ou par extraits de sa décision dans un ou plusieurs journaux qu'elle désigne et l'affichage dans les lieux qu'elle indique.

En outre, elle peut prescrire l'insertion du texte intégral de sa décision dans le rapport établi sur les opérations de l'exercice par le gérant ou le conseil d'administration.

SECTION II: DE LA TRANSPARENCE DU MARCHE ET DES PRATIQUES RESTRICTIVES DE LA CONCURRENCE

Article 55: Les infractions prévues à l'article 37 ci-dessus à l'exception des 2^{e} et 8^{e} sont punies d'une amende de cinq mille (5 000) à cinq millions (5 000 000) de francs CFA et d'un emprisonnement de six (6) jours à six (6) mois ou de l'une de ces deux peines seulement.

En outre, le tribunal peut ordonner aux frais du condamné la publication de sa décision dans les journaux qu'il désigne.

De même est passible de la même peine le revendeur qui aura demandé à son fournisseur ou obtenu de lui des avantages quelconques contraires aux règles de la concurrence.

Sans préjudice des peines prévues à l'alinéa premier ci-dessus, le Ministre chargé du commerce peut en rapport avec le Ministre de tutelle concerné procéder à l'arrêt immédiat de l'exercice de la profession à l'occasion de laquelle l'infraction a été

commise ou à l'évacuation du domaine public irrégulièrement occupé à des fins commerciales.

Article 56: Tout professionnel qui aura vendu ou revendu des produits, des biens ou offert des services sans délivrer de facture est passible d'une amende de cinq (5 000) à cinq millions (5 000 000) de francs CFA et d'un emprisonnement de six (6) jours à six (6) mois ou de l'une de ces deux peines seulement.

Est puni de la même peine tout professionnel qui, détenant des biens ou des produits pour les besoins de son activité, ne peut en justifier la détention par la présentation d'une facture ou de tout autre document en tenant lieu à première réquisition.

Il en sera de même lorsque:

- La facture délivrée comporte de faux renseignements sur une ou plusieurs des mentions visées à l'article 11 de la présente loi;
- La facture est fausse ou falsifiée;
- La facture ne comporte pas une ou plusieurs des mentions prévues à l'article 12 de la présente loi.

Sont également punies de la même peine, la non remise de facture, de reçu ou de note de frais à la demande du consommateur et la non conservation des factures conformément au délai visé à l'article 12 de la présente loi.

Article 57: Les infractions prévues à l'article 37 huitièmement (8e) de la présente loi sont passibles d'une amende de cinquante mille (50 000) à dix millions (10 000 000) de francs CFA et d'un emprisonnement de un (1) mois à un (1) an ou de l'une de ces deux peines seulement.

En outre, le tribunal peut ordonner la publication d'une annonce rectificative aux frais du condamné. Dans tous les cas, l'administration compétente peut, à titre de mesures conservatoires ordonner la cessation de la publicité en cause.

L'annonceur pour le compte duquel la publicité est diffusée, est responsable à titre principal de l'infraction commise.

SECTION III: DES DISPOSITIONS ANNEXES À L'ORGANISATION DE LA CONCURRENCE

Article 58: Sont punies d'une amende de cinquante mille (50 000) à dix millions (10 000 000) de francs CFA et de un (1) mois à un (1) an d'emprisonnement ou de l'une de ces peines seulement ce, sans préjudice du paiement des droits et taxes dus:

- Toute forme de cession de titre d'importation ou d'exportation;
- Toute importation ou exportation effectuée en violation de la réglementation du contrôle des marchandises avant expédition;

- Toute importation ou exportation sans titre ou sans déclaration en douane des biens, produits et marchandises soumis à ce régime ou leur détention;

- Toute utilisation de faux documents à des fins d'importation ou d'exportation.

En outre, la saisie de la marchandise ou de sa contre valeur peut être prononcée.

Article 59: Les infractions prévues à l'article 38 de la présente loi, relatives à la garantie et au service après vente sont punies d'une amende de cinq cent mille (500 000) à cinq millions (5 000 000) de francs CFA et d'un emprisonnement de un (1) mois à six (6) mois ou de l'une de ces deux peines seulement.

En outre, l'obligation d'exécuter le service après vente peut être ordonnée par le juge.

Article 60: Est puni d'une amende de cinquante mille (50 000) à cinq millions (5 000 000) de francs CFA et de un (1) mois à six (6) mois d'emprisonnement ou de l'une de ces deux peines seulement, tout professionnel qui aura inséré dans un contrat conclu avec un non professionnel ou un consommateur une ou plusieurs clauses interdites ou contraires aux dispositions de l'article 23 de la présente loi.

Article 61: Les infractions prévues à l'article 38 de la présente loi, relatives aux tromperies et falsifications et à la sécurité du consommateur sont punies d'une amende de cinquante mille (50 000) à cinq millions (5 000 000) de francs CFA et d'un emprisonnement de un (1) mois à six (6) mois ou de l'une de ces deux peines seulement.

Article 62: Les peines prévues à l'article 61 ci-dessus sont portées au double:

1) Si la tromperie ou tentative de tromperie a eu pour conséquence de rendre l'utilisation de la marchandise dangereuse pour la santé de l'homme ou de l'animal;

2) Si lesdites tromperies ou tentatives de tromperie ont été commises:

- Soit à l'aide de poids, mesures ou tous autres instruments faux ou inexacts;

- Soit à l'aide de manœuvres tendant à fausser les opérations de l'analyse ou du dosage, du pesage ou du mesurage, ou tendant à modifier frauduleusement la composition, le poids ou le volume des marchandises, même avant ces opérations;

- Soit à l'aide d'indications frauduleuses tendant à faire croire à une opération antérieure et exacte.

Article 63: Les peines prévues à l'article 61 ci-dessus sont portées au double si la substance falsifiée, corrompue ou toxique est nuisible à la santé de l'homme ou de l'animal.

Ces peines seront applicables même au cas où la falsification nuisible serait connue de l'acheteur ou du consommateur.

Article 64: Les peines prévues à l'article 61 ci-dessus seront applicables à ceux qui, sans motif légitime, seront trouvés détenteurs dans tous les lieus de fabrication, de production, de conditionnement, de stockage, de dépôt ou de vente, dans les véhicules utilisés pour le transport des marchandises, ainsi que dans les lieux où sont abattus ou hébergés les animaux dont la viande ou les produits sont destinés à l'alimentation humaine ou animale:

- Soit de poids ou mesures faux ou autres appareils inexacts servant au pesage ou au mesurage des marchandises;

- Soit de denrées servant à l'alimentation humaine ou animale, de boissons, de produits agricoles naturels ou transformés qu'ils savent falsifiés, corrompus ou toxiques;

- Soit de substances médicamenteuses falsifiées, corrompues ou toxiques;

- Soit de produits, objets ou appareils propres à effectuer la falsification des denrées servant à l'alimentation humaine ou animale, des boissons ou des produits agricoles naturels ou transformés.

Article 65: Les peines prévues à l'article 64 ci-dessus sont portées au double si la substance falsifiée, corrompue ou toxique est nuisible à la santé de l'homme ou de l'animal.

Article 66: Nonobstant les dispositions des articles 61,62,63,64 et 65 ci-dessus les marchandises, objets ou appareils dont les vente, usage ou détention constituent des infractions au sens des dispositions de l'article 38 relatives aux tromperies et falsifications pourront être confisqués.

En cas de non lieu ou d'acquittement, si les marchandises, objets ou appareils ont été reconnus dangereux pour l'homme ou pour l'animal, l'autorité compétente pour la saisie, procède à leur destruction ou leur donne une utilisation à laquelle ils demeureront propres.

Le tribunal pourra ordonner dans tous les cas que le jugement de condamnation soit publié intégralement ou par extraits dans les journaux qu'il désigne et affiché dans les lieux qu'il indique. Ces mesures se font aux frais du condamné.

Article 67: Est puni des peines prévues à l'article 61 de la présente loi, quiconque, au mépris des dispositions d'un arrêté pris en application des dispositions du livre I, titre V, chapitre V de la présente loi:

1) Aura fabriqué, importé, exporté, mis sur le marché à titre gratuit ou onéreux un produit ou un service ayant fait l'objet de mesure de suspension provisoire;

2) Aura omis de diffuser les mises en garde ou précautions d'emploi ordonnées;

3) N'aura pas, dans les conditions de lieu et de délai prescrites, échangé, modifié ou remboursé totalement ou partiellement le produit ou le service;

4) N'aura pas procédé au retrait ou à la destruction d'un produit;

5) N'aura pas respecté les mesures d'urgence prescrites pour faire cesser le danger grave ou immédiat présenté par le produit ou le service;

6) N'aura pas respecté la mesure de consignation décidée pour les produits susceptibles de présenter un danger grave ou immédiat.

7) N'aura pas observé la mesure de suspension de la prestation de service.

Article 68: Le tribunal qui prononce une condamnation pour une infraction aux textes pris en application des dispositions du livre I, titre V, chapitre V de la présente loi peut ordonner aux frais du condamné:

- La publication de la décision de condamnation et la diffusion d'un ou de plusieurs messages informant le public de cette décision;
- Le retrait ou la destruction des produits sur lesquels ont porté l'infraction et l'interdiction de la prestation de service;
- La confiscation du produit de la vente des produits ou de la prestation de service sur lesquelles a porté l'infraction.

Article 69: La juridiction compétente peut, dès qu'elle est saisie des poursuites pour infraction aux textes visés à l'article précédent, ordonner la suspension de la vente du produit ou de la prestation de service incriminées.

Ces mesures sont exécutoires nonobstant appel. Mainlevée peut en être ordonnée par la juridiction qui les a ordonnées ou qui est saisie du dossier. Elles cessent d'avoir effet en cas de décision de non-lieu ou de relaxe.

SECTION IV: DES PEINES DIVERSES

Article 70: Est puni d'une amende de deux cent cinquante mille (250 000) à cinq millions (5 000 000) francs CFA et d'un emprisonnement de deux (2) mois à six (6) mois ou de l'une de ces deux peines seulement, quiconque se serait opposé de quelque façon que ce soit à l'exercice des fonctions dont sont chargés les agents désignés à l'article 40 de la présente loi.

Article 71: Pour les infractions constatées en matière de fraude, de tromperies et falsifications, de publicité mensongère ou trompeuse, d'entente et d'abus de domination et de manquement aux règles de sécurité du consommateur le Ministre chargé du commerce peut ordonner la fermeture de magasins et boutiques de vente pour une durée maximum de trois (3) mois.

Article 72: La récidive constitue une circonstance aggravante.

Sont réputés en état de récidive ceux qui, dans un délai de deux (2) ans, se seront rendus coupables d'une seconde infraction de même nature.

Article 73: En cas de récidive pour les infractions énumérées à l'article 71 ci-dessus, le juge peut ordonner la cessation temporaire ou définitive de toute activité commerciale sur l'ensemble du territoire national.

Article 74: les complices convaincus d'infraction à la réglementation de la concurrence sont punis des mêmes peines que les auteurs principaux.

TITRE III

DES DISPOSITIONS DIVERSES

Article 75: Les dispositions de la présente loi s'appliquent à toutes les activités de production, de distribution et de service y compris celles qui sont le fait de personnes morales de droit public.

Article 76: Le délai de prescription des infractions prévues par la présente loi est de trois (3) ans

Article 77: La part attribuée au budget de l'État est de 50 % du produit des amendes et confiscations recouvrées en vertu des dispositions de la présente loi.

Le reste est réparti dans des conditions fixées par arrêté du Ministre chargé du commerce et du Ministre chargé des Finances.

Article 78: Sont abrogés toutes dispositions antérieures contraires.

À titre transitoire, les textes d'application de l'ordonnance n°°77-007/PRES du 1er mars 1977 portant réglementation du régime des prix, ensemble ses modificatifs sont et demeurent en vigueur jusqu'à leur abrogation expresse.

Demeurant également valables, les actes de constatation et de procédure, établis antérieurement à la date d'entrée en vigueur de la présente loi et conformément aux dispositions de l'ordonnance n°°74-051/PRES du 09 août 1974 relative à la constatation, la poursuite et la répression des infractions en matière de prix, ensemble ses modificatifs.

Article 79: Des textes réglementaires détermineront les modalités d'application de la présente loi qui sera exécutée comme loi de l'État.

Ainsi fait et délibéré en séance publique
à Ouagadougou, le 5 mai 1994

Le Secrétaire de séance — *Le Président*

Robert Francis COMPAORE — **Dr Bongnessan Arsène YE**

LOI N^{O} 033 – 2001/AN PORTANT MODIFICATION DE LA LOI N^{O} 15/94/ADP DU 5 MAI 1994 PORTANT ORGANISATION DE LA CONCURRENCE AU BURKINA FASO

L'ASSEMBLÉE NATIONALE

VU la Constitution;

VU la résolution n^{o}°01/97/AN du 7 juin 1997,

Portant validation du mandat des députés;

VU la loi n^{o}°15/94/ADP du 5 mai 1994, portant organisation de la

Concurrence au Burkina Faso;

A délibéré en sa séance du 4 décembre 2001 et adopté la loi dont la teneur suit:

Article 1: Les dispositions des articles 2 et 3 de la loi n^{o}°15/94/ADP du 5 mai 1994, portant organisation de la concurrence au Burkina Faso sont modifiées et complétées ainsi qu'il suit:

Au lieu de:

Article 2: Il est institué une Commission Nationale de la Concurrence et de la Consommation.

La Commission Nationale de la Concurrence et de la Consommation est un organe consultatif .

Lire:

Article 2: Il est institué une Commission nationale de la concurrence et de la consommation chargée de la régulation de la concurrence et de la consommation.

Au lieu de:

Article 3: La Commission Nationale de la Concurrence et de la

Consommation est saisie à l'initiative de l'Administration pour les questions suivantes:

- Sur toutes les questions concernant la concurrence et la consommation notamment les textes pris en application de la présente loi;
- Sur les pratiques anticoncurrentielles et restrictives de la concurrence relevées dans les affaires dont les juridictions compétentes sont saisies;
- Sur les faits qui lui paraissent susceptibles d'infractions au sens de la présente loi.

Lire:

Article 3: La Commission Nationale de la Concurrence et de la Consommation est saisie à l'initiative de l'administration, des associations de consommateurs légalement reconnues et des opérateurs économiques ou leurs groupements professionnels pour donner son avis sur les faits susceptibles d'infractions au sens de la présente loi.

La Commission Nationale de la Concurrence et de la Consommation peut se saisir d'office des mêmes faits.

Article 3 *bis*: La Commission Nationale de la Concurrence et de la Consommation peut, après avoir entendu toutes les parties intéressées au besoin contradictoirement, ordonner qu'il soit mis fin aux pratiques incriminées au Chapitre I du Titre I du Livre II de la présente loi, dans un délai déterminé, ou imposer des conditions particulières.

Elle peut infliger une sanction pécuniaire applicable soit immédiatement, soit en cas d'inexécution d'une injonction.

Le montant maximum de la sanction est, pour une entreprise, de 1% du chiffre d'affaires hors taxes réalisé au Burkina Faso au cours du dernier exercice clos et, dans les autres cas de 2 000 000 de FCFA.

La Commission peut, en outre, ordonner la publication de sa décision dans les journaux qu'elle indique, aux frais du contrevenant.

Article 3 *ter*: Les décisions de la Commission Nationale de la Concurrence et de la Consommation sont notifiées aux parties en cause et à l'administration compétente qui peuvent, dans un délai de dix jours à compter de la date de notification, interjeter appel devant la Chambre commerciale de la Cour d'Appel de Ouagadougou qui statue dans le mois de l'appel. Cet appel n'est pas suspensif.

Article 2: La présente loi sera exécutée comme loi de l'État.

Ainsi fait et délibéré en séance publique
à Ouagadougou, le 4 décembre 2001.

Le Secrétaire de séance

Sina SERE

Pour le Président de l'Assemblée nationale,
le Cinquième Vice-Président

Boureima ZOROME

II. POLAND

Commentary of the Government of Poland on the Polish Competition Legislation

A. Description of the reasons for the introduction of the legislation.

The end of the 1980s marked the fall of the communism and put an end to centrally planned economies in a number of central European countries; it also heralded the beginning of the transformation process.

In 1990, Poland adopted the so-called "Balcerowicz Plan", which contained a range of measures aimed at the rapid transformation of the Polish economy into a system based on the principle of free and competitive market.

From the very beginning of the transformation period, the implementation of sound and fully enforceable competition policy was perceived as an indispensable step on the road to a free and competitive markets.

Apart from the principles of the "Balcerowicz Plan", the introduction of the competition policy in Poland was also one of the several steps taking place in the broader context of the gradual liberalization of the Polish economy, which was also launched in the early 1980s. Before 1990, the liberalization process was very mild and affected only the chosen sectors (i.e. internal trade, food services, tourist services and crafts).

The successful introduction of a competition policy into the Polish economic life would not be possible without a sound and enforceable competition law.

The **Law on Counteracting Monopolistic Practices in National Economy** was adopted on 28 January 1987. This Act was an interim solution as it did not cover every aspect of competition policy — its main focus was rather on anti-competitive practices. Simultaneously, drafting began of the new fully-fledged competition law has begun.

A new competition law was introduced in 1990.[2] To a large extent, the 1990 Act followed standard European competition concepts, as it covered the three main areas of competition policy: i.e. anti-competitive agreements; abuse of dominant position; and control of concentrations. However, it included some features which were designed to address Poland's specific needs stemming from the transformation process.

The 1990 Act served as the backbone of Polish competition policy in the decade that followed. However, in 1998 work began work on a new competition act as Poland began to prepare to accede to the EU — a development that made it necessary to align Polish law with the *acquis communautaire*, as well to respond to changes occurring in a maturing Polish economy. The new **Act on Competition and Consumer Protection** was adopted by the Polish Parliament on 15 December 2000 ('2000 Act'); this Act now provides the legal framework for the enforcement of the Polish competition policy.

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[2] Act of February 24, 1990, on Counteracting Monopolistic Practices and Protection of Consumers' Interests ('1990 Act').

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

The ultimate goal of Polish competition policy is *"to provide for the conditions necessary for the development of unrestrained, competitive and equal relationships among the economic actors"*.[3] This objective needed to be pursued *"as free and unrestrained competition is one of the indispensable pillars of every economic system based on principle of free market and high economic effectiveness"*.[4]

Poland's competition policy was aimed at:

- reinforcing competition in structurally uncompetitive sectors;
- supervising the concentration level of the Polish economy;
- strengthening the role of competition in Polish economic life;
- limiting economic distortions caused by state aid; and
- promoting the rules for fair competition, as well as the economic freedom of choice among Polish market players.

In Poland, this policy was closely linked to the country's consumer protection policy, as both of them fall within the jurisdiction of the Office for Competition and Consumers' Protection (OCCP), thereby combining the economic nature of the competition act with some of the social goals of the consumers' protection policy, for example:

- improving consumer health and economic security;
- expanding consumer choice;
- dealing with the social costs of consumption, i.e. the externalities of the market process.

In conclusion, the general rationale behind the situation depicted above is the OCCP's recognition of the **long-term consistency between competition policy goals and the protecting the interests of consumers.**

Two distinct levels have evolved with regard to the objectives set in Polish competition law.

Throughout the 1990s the responsibilities of the OCCP were broadened on a regular basis; the most important change occurred in 1996 when it was given the responsibility for consumer protection policy and, in 2000, broader powers in the area of state aid surveillance. One of the side-effects of this process was the need to align competition policy objectives with the newly incorporated objectives.

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[3] Outlines for the Polish Competition Policy for the years 2002-2003, Office for the Competition and Consumers' Protection, Warsaw 2001 (Section IV).

[4] *Ibid.*

The second driving force behind these changes in Poland's competition policies was the economic transition was experiencing. At the beginning of the 1990s, the overwhelming majority of OCCP's actions dealt with the control of concentration and privatization issues. Later on, as Polish markets liberalized and the economy as a whole gradually matured, the competition law objectives evolved in order to keep up with the new developments.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) *The type of control – for example, outright prohibition, prohibition in principle or examination on a case-by-case basis;*

Generally speaking, there are three kinds economic activities which fall within the scope of Polish competition law, these are:

Anti-competitive practices (with the exception of the abuse of dominant position)

In Polish jurisdiction anti-competitive practices are **prohibited in principle**.

By virtue of 2000 Act all *"agreements, which have as their object or effect elimination, restriction or any other infringement of competition on the relevant market shall be prohibited"*.[5] The Act in question specifies what is covered by the term "agreement", namely:

- **agreements** concluded between entrepreneurs, between their associations or certain provisions of such agreements;
- **concerted practices** undertaken in any form by two or more entrepreneurs or their associations;
- **resolutions or other acts** of the associations of entrepreneurs or their statutory organs.[6]

The same law states that all such agreements shall be made *"in their entirety or in the respective part null and void"*.[7]

However, the above prohibition **does not refer to agreements of minor importance**[8] e.g., horizontal agreements in which the combined market share of the parties does not exceed 5% and vertical agreements where combined market share does not exceed 10%).[9]

In addition to the above *de minimis* rule, the 2000 Act provides the Council of Ministers with the right to **block exempt** certain categories of practices whenever they *"contribute*

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[5] Article 5.1 (if not stated otherwise all articles refer to the currently binding 2000 Act).

[6] Article 4.4.

[7] Article 5.2.

[8] Article 6.1.

[9] The market share is calculated, based on the year preceding the calendar year in which such agreement is concluded.

to improvement of the production, distribution of products or to technical or economic progress and ensure to the buyer or user fair share of benefits resulting thereof."[10]

Furthermore, the above practices may not *"impose upon the entrepreneurs concerned, restrictions which are not indispensable to the achievement of these objectives".*[11] Likewise, they may not "*afford these entrepreneurs the possibility to eliminate competition on the relevant market in respect of a substantial part of the products in question."*[12]

«Block-exempted» agreements fall into five categories, namely:[13]

- technology transfer agreements;
- vertical agreements;
- R&D agreements;
- specialization agreements;
- insurance sector agreements; and
- automotive sector agreements.

The President of the OCCP may also issue a decision exempting a specific practice not covered by any existing block-exemption regulations, although the practice must fulfill the same criteria as practices exempted by the regulations.[14]

Concentration Control

The control of concentration also falls into the category of behaviours which are **prohibited in principle.**

Article 19.1 of the 2000 Act states that the President of the OCCP "*shall prohibit, by way of a decision, to perform the concentration which results in creation or strengthening of a dominant position, in consequence of which the competition on the market would be significantly restricted".*

Anti-competitive concentration may however be allowed, whenever it *"contributes to the economic development or technical progress"* or *"it may have a favourable impact on the national economy."*[15]

This prohibition only covers a small fraction of all the concentration agreements which are concluded each year in Poland. This is due to the **notification procedure,** which sets clear the criteria of the obligation to notify the intended concentration to the OCCP. Only

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[10] Article 7.1.

[11] Article 7.1.1.

[12] Article 7.1.2.

[13] For the detailed list of block exemption regulations issued by the Council of Ministers, please refer to the bibliography listed in section H (a).

[14] Article 11.2.

[15] Article 19.2.

those concentrations are notified which might threaten competition on their relevant markets.

The concentration agreement shall be notified whenever "*the combined turnover of the entrepreneurs participating in the concentration exceeds 50 million EURO in the fiscal year preceding the year of the notification."* [16] In that case, however, agreement may still be excluded from notification obligation:

- if in case of acquisition the turnover of the passive party did not exceed 10 million EURO within the territory of the Republic of Poland during any of two fiscal years preceding the notification; or
- if the combined market share of entrepreneurs intending to concentrate does not exceed 20%; or
- if the temporary acquisition has been carried out by the financial institution within the framework of its normal activities (i.e. investing in stocks and shares on its own account or on the account of the others), with a purpose of reselling the acquired assets[17]; or
- if the temporary acquisition has been carried out by the entrepreneur in order to secure the liabilities (though the entrepreneur may not execute any rights on the acquired stock bar the right to sale); or
- if the acquisition has been carried out as a result of the bankruptcy proceeding (the buyer of the firm may not however be its competitor nor belong to the competing capital group); or
- if the merger occurs within a single capital group.[18]

Abuse of dominant position

Polish competition law **explicitly forbids** any form of anti-competitive behaviour by market player holding a dominant position. Article 8.1 states that: *"the abuse of a dominant position on the relevant market by one or more entrepreneurs shall be prohibited."*

Moreover, by virtue of the Article 8.3, any "*legal actions, which constitute abuse of a dominant position shall be in their entirety or in the respective part null and void".*

Case-by-Case approach

Under Polish legislation, a **case-by-case approach does not qualify as an independent type of control**. However it does play a very important role as it is employed for all the proceedings carried out by the OCCP in cases of prohibition in principle and outright prohibition.

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[16] Article 12.1.

[17] In such cases, however, the resale must occur within one year of the purchase date, at which time the asset holder may not execute any rights on possessed stock other than those necessary for facilitating the resale.

[18] Enumeration based on Articles 13.1 – 13.6.

(b) ***The extent to which practices, acts or behaviours in section D, paragraphs 3 and 4, of the «Set of Principles and Rules» are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example controls concerning misleading advertising.***

Technically speaking, none of the practices enumerated in Section D, paragraphs 3 and 4 of the "Set of Rules and Principles" are excluded from the scope of Poland's competition law. This is explained by the fact that the 2000 Act establishes an **open catalogue** of anti-competitive practices, which is constantly expanded through the outcomes of OCCP's investigations.

However, the geographic scope of Polish competition law is limited only to the territory of the Republic of Poland. Therefore, the 2000 Act does not provide any grounds for special consideration in regard of *"adverse effects",* that the scrutinized practice might have on *"international trade particularly that of the developing countries and on economic development of these countries"*, as described in UNCTAD's Set of Principles and Rules on Competition (Section D, § 3 and 4).

In conclusion, the practices in question are fully covered by Polish competition law whenever they affect Polish territory.

The additional practices mentioned in the second part of the question are regulated by the **Act of 16 April 1993, on Combating Unfair Competition** (1993 Act), which states that "*all actions of the entrepreneur contrary to the existing law, violating at same time the interests of other entrepreneurs or consumers are to be considered as unfair competition".* The law in question, *inter alia,* forbids the following types of practices:[19]

- false or incorrect enterprise naming;
- false or incorrect indications on a product's place of origin;
- false or incorrect product branding;
- abuse of enterprise business confidential information;
- production and distribution of copy-cat products;
- limiting the access of third parties to the market;
- bribing public servants;
- misleading advertising; and
- coercing third parties into terminating a contract.

The above list enumerates only those practices applying to whole economy, but the 1993 Act also prohibits a number of sector-specific practices.

[19] Article 3.2.

D. Description of the scope of application of the legislation, indicating:

(a) ***Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;***

Polish Competition Law does not make any distinction between transactions in goods and transactions in services.

As for exclusions, three types provided in Article 3 and 6 of 2000 Act, e.g.:

Exclusions allowed by virtue of separate acts

So far, the only areas of Polish economic activities excluded by virtue of the separate acts is the state lottery and certain areas of agricultural production.

In addition to the ongoing liberalization process temporary exclusions have been established in a certain sectors such as telecommunications, the postal sector, the railways, and air transportation. Most of these exclusions are in the process of being phased out or will be phased out in the near future.

Exclusions based on collective labour agreements

Exclusions based on collective labour agreements have been introduced as a protective measure to cushion the negative impact that liberalization might have on the employment situation in certain sectors.

Exclusions of agreements of minor importance[20]

An example of this type of exemption is to be found above in section C (a).

(b) ***Whether it applies to all practices, acts or behaviour having effects on the country in questions, irrespective of where they occur;***

As it has been already stated in section C (b), Polish competition law applies to all: *"competition-restrictive practices and anti-competitive concentrations of entrepreneurs and associations thereof, where such practices or concentrations cause or may cause effects on the territory of the Republic of Poland."*[21]

(c) ***Whether it is dependent on the existence of an agreement, or on such agreement being put into effect.***

Under Polish competition law the sole existence of an anti-competitive agreement — even if it not put into practice — is a breach of the law and provides the OCCP with necessary legal grounds to take punitive action.

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[20] Article 6.

[21] Article 1.2.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of the body or bodies involved.

Polish law designates two institutions as competition policy enforcers, they are the **Office for Competition and Consumers Protection** and the **Court for Competition and Consumers' Protection**.

Office for Competition and Consumers' Protection (administrative body)

The OCCP forms a part of central public administration. It is headed by a President who is chosen by an independent panel of experts. The President is nominated by the Prime Minister for the period of five years and reports directly to him. The President is the principal decision maker and the OCCP plays a supportive role. The Act in 2000 gives the President to power to:

- enforce Polish competition law;
- monitor concentration level of the Polish economy;
- design or provide advice on any legal acts which even partially fall into the scope of the competition policy;
- prepare governmental programmes on the development of competition policy;
- *ex-ante* advisory capacity regarding any anti-dumping measures undertaken by the Ministry of Economy;
- cooperation with foreign and domestic institutions in the area of competition protection.

The OCCP has nine regional branches in addition to its headquarters in Warsaw. OCCP Directors are empowered to launch investigations and issue decisions on behalf of its President.

Investigations are held in two stages, namely an **explanatory investigation** and **anti-monopoly investigation.**[22] The latter is usually launched once it has been established that an infringement has been determined at the explanatory investigation stage (except in the case of concentration cases)**.**[23]

The explanatory investigation can be launched only on an *ex-officio* basis and *"should last no longer than 30 days from its institution."*[24] The anti-monopoly investigation may be launched *ex-officio* or upon the complaint. Proceedings may last no longer than two months in concentration cases, and cannot exceed four months in antitrust cases. During both types of investigations OCCP's President may:

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[22] Article 42.1.

[23] Article 42.2-42.3.

[24] Article 43.4.

- request information from the legal or natural persons;[25]
- hear witnesses;[26]
- carry out the on-spot inspections (including dawn raids);[27]
- request information from public administration bodies.[28]

Upon completion of the anti-monopoly investigation the President takes a decision and can, if necessary impose a fine, which can be appealed by the parties to the Court for Competition and Consumers' Protection within 14 days from the date of receiving the President's decision.[29]

Court for Competition and Consumers' Protection (judicial body)

The Polish Competition and Consumers' Protection Court has been carved out from the general judiciary in 1990. The Court carries out two tasks.

Firstly, it acts as Court of First Instance and hears the appeals of decisions taken by the President of the OCCP. This court can confirm the President's decision or overrule it entirely or in part. If the court overrules a decision, it can issue a decision of its own, reviewing not only the evidence examined by the OCCP, but also other evidence presented directly to the court.

Secondly, by giving interpretations of law, it plays very important role as a policy maker in the field of competition.

Importantly, in order to ensure a consistent application of policy, the Competition and Consumers Protection Court has the power to hear appeals from sectoral regulators.[30] The Court's rulings might be appealed only to the Supreme Court.

The appeal system was modified at the end of 2003 in fulfillment of the Constitutional Tribunal's judgment. According to the judgment the appeal to the court of second instance will be made possible so that appeals from the judgments of Competition and Consumers' Protection Court will be heard by the Appeal Court, and appeals (i.e. cassation) from the Appeal Court will be heard by the Supreme Court.

This modification will align the appeals system in competition cases with the general appeals system prescribed in other civil cases — Polish civil procedure has a three-tiered instance system, two instances being appeal instances.

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[25] Article 45.
[26] Article 56.
[27] Articles 57-61.
[28] Article 64.
[29] Article 78.
[30] Energy Regulatory Authority, Regulatory Authority for Telecommunications and Post.

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

Until 2004, Poland has not signed any foreign cooperation agreements with binding effect on the core competition policy enforcement.[31]

There are, however, three pieces of parallel legislation (below), which have fostered OCCP's inter-institutional cooperation:

- Act of 10 April 1997 on Energy Law;
- Act of 21 July 2000 on Telecommunications Law;
- Act of 27 June 1997 on Railroad Transportation.

The above Acts established sectoral regulators [32] with whom OCCP cooperates to ensure a constant presence of competition policy principles in regulatory policies, as well as to maintain overall coherence in enforcement of the Polish competition law.

Poland became a member of the European Union in May 2004. This meant that OCCP acquired the status of a fully-fledged member of the European Competition Network (ECN), thereby accepting the obligation to fully cooperate with other members of this body. As an ECN member OCCP is, in certain situations, obliged to apply EU competition law into its proceedings.

G. Description of a major decisions taken by the administrative and/or judicial bodies, and the specific issues covered

Legal Services Sector

The case against the Polish National Notary Council (PNNC) was initiated *ex officio*. The PNNC was charged with anti-competitive practices. The complaint of unfair competition concerned an amendment to the PNNC Code of Ethics to tempt consumers with lower prices. Under Polish law, a notary does not have the right to charge fees above the amounts set by the Ministry of Justice. In practice, however, the amendment to the PNNC Code of Ethics also prohibited charging fees below the level set by the Ministry of Justice.

In response to the charges of the OCCP, PNNC issued a statement saying that the sole reason behind the amendment was to restrain unfair advertisements. On 20 May 2002 the OCCP's President imposed a fine of 36,000 PLN (EUR 8,381) on the PNNC. The PNNC has appealed the OCCP's decision to the Competition and Consumers Protection Court, but it has yet to render a judgment on this case.

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[31] All existing cooperation agreements though very useful do not provide grounds for a legal cooperation.

[32] In case of railroad transportation the regulatory competences rest with the Ministry of infrastructure, though the separate regulator is to be created in the nearby future.

Gas Distribution Sector

One of the most significant cases heard by the President of the OCCP in 2002 related to a case in the gas distribution sector. On 3 April 2001, Bartimpex filed a complaint against the Polish Oil and Gas Mining Company (PGNiG). The President of the OCCP opened a case against PGNiG to investigate a case of suspected abuse of dominant position.

Bartimpex SA is a major Polish gas trader and recently entered into an agreement with German Ruhrgas Energie Beteiligungs (Ruhrgas) and PGNiG to build a pipeline going across Poland and linking the western European and Russian gas distribution systems.

All three firms signed a letter of intention paving the way for the beginning of works on the above-mentioned investment. PGNiG as a Polish gas supplier and trader with a dominant position in the Polish market, played a vital role in this cooperation scheme as it agreed to send the bulk of its gas exports via the new pipeline.

However, not long after signing the letter of intent PGNiG changed its mind and decided to withdraw from the agreement and, in the process, rendered the whole agreement economically unviable; the other participating parties also abandoned the project.

In its complaint Bartimpex stated that PGNiG's decision clearly breached the Polish Energy Law in which the Third Party Access clause was embedded, thereby imposing on an obligation on PGNiG to provide other market players with the means to enter and effectively operate on the markets, in which PGNiG held a dominant position.

The charges brought by Bartimpex were upheld by the OCCP. On 24 December 2002, the President of the OCCP issued a 'cease and desist' order regarding this practice along with a fine of 105.657 PLN (EUR 24.598).[33]

Cable TV services sector

On 6 July 2002 the President of the OCCP issued a decision declaring that Aster City Cable TV had abused its dominant position on the relevant market by imposing onerous contract terms on its customers, thereby making an unjustifiably high profit.

Once the investigation was completed charges were brought against the Aster City Cable TV; these covered the lack of formal avenues which the firm's customers could claim damages for not being provided with services (whenever the gap in services providing was shorter than three days); and providing a TV signal of inferior quality.

Aster City Cable TV adjusted its rules in order to comply with the 'cease and desist' order issued by the President of the OCCP.

[33] EUR rate published by National Bank of Poland on 07.05.2003: 1 EUR = 4.2953 PLN.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation or particular parts thereof.

(a) Legal Acts

1. Act of 15 December 2000, on Competition and Consumers' Protection (Official Journal No. 122, items 1319).

2. Act of 16 April 1993, on Combating Unfair Competition (O.J. no. 93/47, item 211).

(b) Secondary Legislation

1. Regulation of the Council of Ministers of 28 June 2001, on the calculation of the turnover of entrepreneurs participating in the concentration.

2. Regulation of the Prime Minister of 3 April 2002, on the mode of notifying the intention of concentration by entrepreneurs.

3. Regulation of the Council of Ministers of 18 September 2001 concerning the detailed mode and procedure of inspection of undertakings and association of undertakings in the case of proceedings before the President of the OCCP.

4. Regulation of the Prime Minister of 5 May 2001, on the administrative fees to be paid when filing the motion to institute the proceedings.

5. Regulation of the Prime Minister of 26 March 2002, on the territorial and material jurisdiction of the OCCP Delegations.

6. Regulation of the Prime Minister of 29 March 2001, on the mode and procedure for organizing contest to select the President of the Office for Competition and Consumers Protection.

(c) Block exemptions

1. Regulation of the Council of Ministers of 30 July 2002, on the exemption of certain categories of agreements concluded between entrepreneurs in connection with the performance of insurance activity from the prohibition on competition restrictive agreements.

2. Regulation of the Council of Ministers of 30 July 2002, on the exemption of certain categories of technology transfer agreements from the prohibition on competition restrictive agreements.

3. Regulation of the Council of Ministers of 13 August 2002, on the exemption of certain categories of specialization and research and development agreements from the prohibition on competition restrictive agreements.

4. Regulation of the Council of Ministers of 13 August 2002, on the exemption of certain categories of vertical agreements from the prohibition on competition restrictive agreements.

5. Regulation of the Council of Ministers of 28 January 2003, on the exemption of certain categories of agreements concluded between entrepreneurs operating in the motor vehicle sector from the prohibition on competition restrictive agreements (the regulation will enter into force as of 1 May 2004).

(d) Governmental Publications

1. OCCP: "Prohibition of Anticompetitive Practices" (brochure issued under the aegis of PHARE twining project, available in Polish language only).

2. OCCP: "Preventive Control of Concentration" (brochure issued under the aegis of PHARE twining project, available in Polish language only).

3. OCCP: "How to utilize State aid?" (brochure issued under the aegis of PHARE twining project, available in Polish language only).

4. OCCP: "How to grant State aid?" (brochure issued under the aegis of PHARE twining project, available in Polish language only).

5. OCCP: "Outlines for the Polish Competition Policy for the years 2002-2003"

6. OCCP: Yearly Reports

ACT

of 15 December 2000

ON COMPETITION AND CONSUMER PROTECTION

Title I

General Provisions

Article 1

1. The Act determines conditions for the development and protection of competition as well as the rules of undertaken in the public interest protection of entrepreneurs' and consumers' interests.

2. The Act governs the rules and measures of counteracting competition restricting practices and anticompetitive concentrations of entrepreneurs and associations thereof, where such practices or concentrations cause or may cause effects on the territory of the Republic of Poland.

3. The Act also defines the authorities competent in competition and consumer protection issues.

Article 2

1. The Act is without prejudice to the rights vested based on provisions concerning protection of intellectual and industrial property rights, in particular provisions on the protection of inventions, decorative and industrial patterns, topography of integrated circuits, trade marks, geographic designations, copyright and neighbouring rights.

2. The Act shall apply to the concluded between entrepreneurs:

1) agreements, in particular licensing agreements, as well as to other than agreements practices of exercising rights referred to in section 1,

2) agreements concerning information undisclosed to the general public related to:

   a) technical and technological information,

   b) rules of organisation and management -

in relation to which steps were taken in order to prevent their disclosure, where such agreements result in the unjustified limitation of freedom of business activity of the parties or in significant restriction of competition on the market.

Article 3

Provisions of the Act shall not apply to:

1) restrictions of competition exempted by virtue of separate legal acts,

2) collective labour agreements.

Article 4

For the purpose of this Act the following shall mean:

1) entrepreneur – entrepreneur in the meaning of provisions of the act of 19 November 1999 – Law on business activity (O.J.L. of 1999, No 101, item 1178 and of 2000, No.86, item 958) as well as:

   a) natural and legal person as well as organisational unit without legal status, organising or rendering services of public utility nature, which are not business activity in the meaning of provisions on business activity,

   b) natural person exercising profession on its own behalf and account or performing activity in the frame of exercising such profession,

   c) natural person being in a possession of stocks or shares ensuring at least 25% of votes in organs of at least one entrepreneur or having control, in the meaning of item 13, over at least one entrepreneur, even if not conducting business activity in the meaning of provisions on business activity, provided that this person is undertaking further activities subject to control of concentrations referred to in Article 12,

2) associations of entrepreneurs - chambers, associations and other organisations associating entrepreneurs referred to under item 1 as well as associations thereof.

3) dominant entrepreneur – shall mean the entrepreneur which:

   a) disposes, directly or indirectly, of the majority of votes at the assembly of partners or at the general assembly, also in the capacity of a depositary or user, or in the managing organ of the other (dependent) entrepreneur, also on the basis of agreements concluded with other persons, or

   b) is empowered to appoint or recall the majority of members of the management or of the supervisory board of another entrepreneur (dependent) also on the basis of agreements concluded with other persons, or

   c) more than a half of the members of management of a capital company are at the same time members of management of another entrepreneur (dependent entrepreneur), or

   d) disposes directly or indirectly of the majority of votes in dependent personal company or at the general assembly of dependent co-operative, also on the basis of agreements concluded with other persons, or

   e) has a decisive impact on the activities of another (dependent) entrepreneur, in particular pursuant to agreement stipulating managing another (dependent) entrepreneur or remitting by him profit.

4) agreements:

a) agreements concluded between entrepreneurs, between associations thereof and between entrepreneurs and their associations or certain provisions of such agreements,

b) concerted practices undertaken in any form by two or more entrepreneurs or associations thereof,

c) resolutions or other acts of the associations of entrepreneurs or their statutory organs,

5) distribution agreements – agreements concluded between entrepreneurs acting at the different stages of the economic process aimed at purchase of products for further resale,

6) products – things as well as all forms of energy, securities and other property rights, services as well as construction works,

7) prices – prices including also charges in the nature of prices, profit margins, commissions and mark-ups,

8) relevant market - market of products, which by reason of their intended use, price and characteristics, including quality, are regarded by the buyers as substitutes, and are offered on the area in which, by reason of their nature and characteristics, existence of market access barriers, consumer preferences, significant differences in prices and transport costs, the conditions of competition are sufficiently homogeneous,

9) dominant position – position of the entrepreneur which allows him to prevent the efficient competition on the relevant market thus enabling him to act in a significant degree independently from competitors, contracting parties and consumers; it is assumed that entrepreneur holds a dominant position where his market share exceeds 40%,

10) competitors – entrepreneurs which at the same time release or may release for free circulation, purchase or may purchase products on the relevant market,

11) consumer – person who concludes a contract with entrepreneur for the purpose directly unrelated to the business activity,

12) consumer organisations –independent of entrepreneurs and associations thereof social organisations which statutory tasks include protection of consumer interests, provided their tasks do not consist in conducting business activity,

13) taking over the control – any form of direct or indirect acquisition of powers which, individually or jointly, taking into account all legal or factual circumstances, enable to exercise decisive influence upon given entrepreneur or entrepreneurs; in particular, such powers are created by:

a) ownership of entirety or part of the property of the entrepreneur,

b) rights or agreements according decisive influence upon composition, voting or decisions of the entrepreneur’s organs,

14) capital group – all entrepreneurs which are directly or indirectly controlled by one entrepreneur,

15) income – income attained in the taxation year preceding the day of initiating the proceedings by virtue of the present Act, in the meaning of income tax provisions binding the entrepreneur,

16) average salary – average monthly wages within the industry sector in the last month of a quarter preceding the day of issuance of a decision of the President of the Office for Competition and Consumer Protection, published by the President of the Central Bureau for Statistics pursuant to separate provisions.

Title II

Prohibition of competition restricting practices

Chapter I

Prohibition of competition restricting agreements

Article 5

1. The agreements which have as their object or effect elimination, restriction or any other infringement of competition on the relevant market shall be prohibited, in particular those consisting in:

1) fixing, directly or indirectly, prices and other conditions of purchase or sales of products,

2) limiting or controlling production or supply as well as technical development or investments,

3) sharing markets of supply or purchase,

4) application in similar transactions with third parties onerous or not homogenous contract terms, thus creating for these parties diversified conditions of competition,

5) making conclusion of an agreement subject to acceptance or fulfilment by the other party of another performance, having neither substantial nor customary relation with the subject of the agreement,

6) limiting access to the market or eliminating from the market entrepreneurs which are not party to the agreement,

7) fixing conditions of a bid made by entrepreneurs participating in a tender, in particular in relation to the scope of works or price.

2. The agreements referred to in section 1 shall be in their entirety or in the respective part null and void, with the reservation of Articles 6 and 7.

Article 6

1. The prohibition of agreements referred to in Article 5 shall not apply to:

1) agreements concluded between competitors which combined market share in the year preceding calendar year in which such agreement is concluded does not exceed 5%,

2) agreements concluded between entrepreneurs acting at different stages of the economic process which combined market share in the year preceding calendar year in which such agreement is concluded does not exceed 10%.

2. In relation to distribution agreements concluded by the entrepreneur with at least two other entrepreneurs, combined market share of these entrepreneurs referred to in section 1 shall be aggregated.

Article 7

1. The Council of Ministers may, by way of a regulation, exempt from the prohibition stipulated in Article 5 agreements which contribute to improvement of the production, distribution of products or to technical or economic progress and ensure to the buyer or user fair share of benefits resulting thereof, and which:

1) do not impose upon the entrepreneurs concerned restrictions which are not indispensable to the achievement of these objectives,

2) do not afford these entrepreneurs the possibility to eliminate competition on the relevant market in respect of a substantial part of the products in question.

2. In the regulation referred to in section 1, the Council of Ministers shall define:

1) conditions which are to be satisfied for the agreement to be considered exempted from the prohibition,

2) clauses which existence is not considered to infringe Article 5,

3) clauses which existence constitute the infringement of Article 5,

4) period during which the exemption shall apply.

Chapter II

Prohibition of abuse of a dominant position

Article 8

1. The abuse of a dominant position on the relevant market by one or more entrepreneurs shall be prohibited.

2. The abuse of a dominant position may, in particular consist in:

1) direct or indirect imposition of unfair prices, including predatory prices or prices glaringly low, significantly delayed payment terms or other conditions of purchase or sale of products,

2) limiting production, supply or technical development to the detriment of contractors or consumers,

3) application in similar transactions with third parties onerous or not homogenous contract terms, thus creating for these parties diversified conditions of competition,

4) making conclusion of the agreement subject to acceptance or fulfilment by the other party of another performance having neither substantial nor customary relation with the subject of agreement,

5) counteracting formation of conditions necessary for emergence or development of the competition,

6) imposition by the entrepreneur of onerous contract conditions, yielding to this entrepreneur unjustified profits,

7) creating for consumers onerous conditions of redress.

3. Legal actions which constitute abuse of a dominant position shall be in their entirety or in the respective part null and void.

Chapter III

Decisions in cases of competition restricting practices

Article 9

The President of the Office for Competition and Consumer Protection, hereinafter referred to as «the President of the Office», shall issue the decision assessing the practice as restricting the competition and ordering to refrain from it where he finds the infringement of the prohibition defined in Article 5 in the scope not exempted pursuant to Articles 6 and 7, or infringement of Article 8.

Article 10

1. The decision referred to in Article 9 shall not be issued if the market behaviour of the entrepreneur or association thereof does no longer infringe the provisions of Article 5 or Article 8, in particular by reason of the permanent decrease of their market share.

2. In the case referred to in section 1, the President of the Office shall issue a decision assessing the practice as restricting competition and shall declare it discontinued.

3. The burden of proof in relation to the circumstances referred to in section 1 shall rest on the entrepreneur or association thereof.

Article 11

1. Where the President of the Office shall not find the infringement of Article 5 or Article 8, he shall issue a decision stating that the practice restricting competition have not been applied.

2. The decision referred to in section 1 shall be issued by the President of the Office also in the case where the agreement meets the conditions referred to in Article 7 section 1 but is not covered by the Regulation of the Council of Ministers referred to in Article 7.

Title III

Concentration of entrepreneurs

Chapter I

Control of concentration

Article 12

1. The intention of concentration is subject to the notification to the President of the Office in the case where combined turnover of the entrepreneurs participating in the concentration in the marketing year preceding the year of the notification exceeds 50 million EURO.

2. The obligation referred to in section 1 concerns the intention of:

1) merger of two or more independent entrepreneurs,

2) taking over – by way of acquisition or entering into a possession of stocks, other securities, shares, of the entirety or a part of the property or in any other way obtaining direct or indirect control over one or several entrepreneurs,

3) creation by entrepreneurs of one joint entrepreneur.

3. The obligation to notify the intention of concentration referred to in section 1 shall also apply to:

1) taking over or acquisition of stocks or shares of another entrepreneur resulting in achieving at least 25% of votes at a general assembly or assembly of partners,

2) assuming by the same person the function of a member of the managing or controlling body of the competing entrepreneurs,

3) initiating to exercise the rights arising from stocks or shares taken over or acquired without prior notification in accordance with Article 13, items 3 and 4.

Article 13

The obligation to notify the intention of concentration shall not apply where:

1) the turnover of the entrepreneur:

   a) over which the control is to be taken in accordance to Article 12, section 2, item 2,

   b) whose stocks or shares are to be taken over or acquired as defined in Article 12, section 3, item 1,

   c) whose rights to stocks or shares are to be exercised in accordance with Article 12, section 3, item 3

- did not exceed, on the territory of the Republic of Poland, during any of two marketing years preceding the notification the equivalent of 10 million EURO,

2) combined market share of entrepreneurs intending to concentrate does not exceed 20%,

3) the financial institution, the normal activities of which include investing in stocks and shares of other entrepreneurs, for its own account or for the account of others, acquires on a temporary basis stocks and shares with a view to reselling them provided that such resale takes place within one year of the date of acquisition and that:

a) this institution does not exercise the rights arising from these stocks or shares, except from the right to dividend, or

b) exercises these rights solely in order to prepare the resale of the entirety or a part of the entrepreneurs, its property, or these stocks and shares,

4) the entrepreneur acquires on a temporary basis stocks and shares with a view to securing debts, provided that such entrepreneur does not exercise the rights arising from these stocks or shares, except from the right to sell,

5) such concentration arises as an effect of bankruptcy or composition proceedings, except from the operations where the control is to be taken over by the competitor or participant of the capital group to which belong competitors of the to-be-taken over entrepreneur,

6) concentration of the entrepreneurs participating in the same capital group.

Article 14

The concentration performed by a dependent entrepreneur is considered as performed by a dominant entrepreneur.

Article 15

The turnover referred to in Article 12, section 1 and Article 13, item 1 shall include the turnover of entrepreneurs directly participating in the concentration as well as of the remaining entrepreneurs participating in the capital groups in which entrepreneurs directly taking part in the concentration participate.

Article 16

The Council of Ministers shall define, by way of a regulation, the method of calculating turnover referred to in Article 12, section 1 and Article 13, item 1 taking into account specificity of the activity conducted by entrepreneurs, in particular accountancy rules applicable to individual entrepreneurs, including banks, insurers and investment funds.

Chapter II

Decisions in cases of concentration

Article 17

The President of the Office, by way of a decision, shall issue a permission to perform the concentration which will not result in creation or strengthening of a dominant position, thus will not significantly restrict competition on the market.

Article 18

1. The President of the Office, by way of a decision, shall issue a permission to perform the concentration, provided that after fulfilment by the entrepreneurs intending to perform concentration of the requirements stipulated in section 2, a dominant position will not be created or strengthened, as a result of which the competition on the market will not be significantly restricted.

2. The President of the Office may impose upon the entrepreneur or entrepreneurs intending to perform the concentration an obligation, or accept their obligation, in particular:

1) to divest the entirety or a part of the property of one or more entrepreneurs,

2) to suppress the control over entrepreneur or entrepreneurs not participating directly in the concentration, in particular by way of divesting the determined set of stocks or shares or by recalling from his function the member of managing or controlling body of the one or more entrepreneurs,

3) to grant competitor an exclusive licence

- determining in the decision referred to in section 1 the time limit for meeting the requirements.

3. In the decisions referred to in section 1, the President of the Office shall impose upon the entrepreneur or entrepreneurs the obligation to provide information about fulfilment of such requirements, in a time limit appointed in the decision.

Article 19

1. The President of the Office shall prohibit, by way of a decision, to perform the concentration which results in creation or strengthening of a dominant position, in consequence of which the competition on the market would be significantly restricted, with the reservation of section 2.

2. The President of the Office shall issue, by way of a decision, permission to perform concentration resulting in creation or strengthening a of dominant position despite significant restriction of competition, in the case when renouncing prohibition is justified, in particular where concentration:

1) will contribute to the economic development or technical progress,

2) it may have a favourable impact on the national economy.

Article 20

1. The President of the Office may withdraw the decisions referred to in Article 17, Article 18, section 1 and Article 19, section 2 if they were based on unreliable information for which entrepreneurs participating in the concentration were responsible or where entrepreneurs did not comply with conditions referred to in Article 18, section 2 and 3. In the case of withdrawal of the decision the President of the Office shall pronounce on the substance of the case.

2. Where, in the cases referred to in section 1, the concentration is already performed and restitution of the competition on the market is otherwise impossible, the President of the Office may, by way of a decision, defining time limit for its implementation under conditions defined in the decision, order in particular:

1) separation of the merged entrepreneur under conditions defined in the decision,

2) divestiture of the entirety or a part of the entrepreneur's property,

3) divestiture of stocks or shares ensuring the control over the entrepreneur or entrepreneurs or dissolution of the company over which the entrepreneurs have joint control,

4) recalling from the function of the member of a managing or controlling body of the entrepreneurs participating in the concentration.

3. The decision referred to in section 2 cannot be issued after the lapse of 5 years since the day the concentration was performed.

4. In the case when the intention of concentration have not been notified to the President of the Office as stipulated in Article 12 section 1, the provisions of sections 2 and 3 shall apply respectively.

Article 21

The decisions referred to in Article 17, 18, section 1 or in Article 19, section 2 shall expire if within the time limit of 3 years from issuance of the decision a concentration is not performed.

Article 22

The President of the Office, upon a motion of the financial institution, may extend, by way of a decision, the time limit referred to in Article 13, item 3 where it will prove that resale of stocks or shares was not possible or economically unjustified before the lapse of one year since their acquisition.

Article 23

The Registry court, acting pursuant to the separate provisions, shall make entry into the register where:

1) the President of the Office shall, by way of a decision, give permission to perform the concentration,

2) the entrepreneur proves that the intention of concentration is not subject to notification.

Title IV

Organisation of competition and consumer protection

Chapter I

The President of the Office

Article 24

1. The President of the Office shall be the central government administration organ competent in the protection of competition and consumers. The Prime Minister shall supervise activities of the President of the Office.

2. The Prime Minister shall appoint, for the period of 5 years, the President of the Office, selected by way of a contest, from among the persons with university education, in particular in the field of law, economy or business administration, distinguished by their theoretical knowledge and practical experience in the scope of market economy and competition and consumer protection.

3. The Prime Minister shall define, by way of a regulation, mode and procedures for organising the contest referred to in section 2. The Prime Minister shall define composition of the contest board and exigencies towards members thereof, having in mind the necessity to ensure impartiality of the election of the President.

4. The member of the contest board may not be a person who within the last three years was performing function in the organs of the entrepreneur being in possession of a dominant position or was representing his interest, or a person not giving a guarantee of impartiality in performance of the function in public interest.

5. The President of the Office may be recalled by the Prime Minister before the term of office in the case of:

1) assuming relation of work, with the exception of employment as professor at the university or in scientific institution,

2) undertaking business activity in a capacity of entrepreneur or assuming function of a member of managing or controlling body of the entrepreneur,

3) condemnation by a lawful judgement for the offence committed in deliberate guilt,

4) flagrant infringement of his responsibilities,

5) resigning of his office.

6. The President of the Office shall perform his tasks supported by the Office for Competition and Consumer Protection, hereinafter referred to as “the Office”.

Article 25

The Prime Minister shall appoint and recall Vice-Presidents of the Office, upon a motion of the President of the Office.

Article 26

1. The scope of the activities of the President of the Office shall include:

1) exercising control over the observance by entrepreneurs of the provisions of the present Act,

2) issuance, in the cases stipulated in the Act, of decisions in the matters of counteracting competition restricting practices, concentrations or separations of entrepreneurs as well as decisions concerning financial fines,

3) conducting studies on the concentration level in the economy and on the market behaviour of entrepreneurs,

4) elaboration of the draft government programmes for the development of the competition and of the draft government consumer protection policy,

5) monitoring the public aid granted to the entrepreneurs pursuant to separate provisions,

6) assessment of the efficiency and effectiveness of the public aid granted to the entrepreneurs as well as of the effects of granted aid in the field of competition,

7) co-operation with foreign and international organisations and authorities in the scope of competition protection,

8) elaboration and submission to the Council of Ministers of the draft legal acts concerning competition restricting practices, development of the competition or conditions for its emergence as well as protection of consumer interests,

9) giving an opinion on the draft legal acts concerning competition restricting practices, development of the competitions or conditions for its emergence as well as protection of consumer interests,

10) submitting to the Council of Ministers periodical reports on the enforcement of the government programmes for competition development and consumer policy,

11) addressing entrepreneurs and associations thereof in the matters of the protection of the rights and interests of consumers,

12) undertaking activities resulting from the provisions on combating unfair competition,

13) addressing specialised units and relevant bodies of the State supervision for undertaking control of observance of consumer rights,

14) surveillance over the safety of products intended for consumer use in the scope of the Act on general product safety,

15) co-operation with the territorial self-government authorities and with national and international social organisations which statutory tasks include the protection of consumer interests,

16) giving assistance to the self-government authorities on voivodship (provincial) and powiat (district) levels and to organisations which statutory tasks include protection of consumer interests, in the scope of the government consumer policy,

17) initiating checks on products and services to be performed by consumer organisations,

18) elaborating and editing publications and educational programmes promoting awareness of consumer rights,

19) enforcement of the international obligations of the Republic of Poland in the scope of co-operation and exchange of the information in the field of competition protection and public aid granted to the entrepreneurs,

20) collecting and disseminating judgements pronounced in the cases in the field of competition and consumer protection,

21) performance of other tasks defined by the present Act or by separate acts.

Article 27

1. The President of the Office shall issue the Official Journal of the Office for Competition and Consumer Protection.

2. The decisions and resolutions of the President of the Office, as well as judgements of the District Court in Warsaw – the anti-monopoly court, hereinafter referred to as "anti-monopoly court" and of the Supreme Court in cases of cassation of the judgements of the anti-monopoly court, or their sentences with the omission of information constituting business secrecy of the undertaking and of other secrecy protected under separate provisions , may be in their entirety or part published in the Official Journal of the Office for Competition and Consumer Protection.

3. In the Official Journal of the Office for Competition and Consumer Protection shall be also published information, communications, notices, explanations and interpretations having significant importance for the application of the provisions encompassed by the scope of the activities of the President of the Office.

Article 28

1. The Office shall be composed of the Head Office in Warszawa and of the Office delegations in Bydgoszcz, Gdansk, Katowice, Kraków, Lublin, Poznan, Warsawa and Wroclaw.

2. The Office delegations shall be managed by their directors.

3. The Prime Minister shall determine, by way of a regulation, territorial and material jurisdiction of the Office delegations in the scope of the activities of the President of the

Office, taking into consideration character and number of cases arising on the relevant territory.

4. In addition to the matters within their jurisdiction the Office delegations may deal with other cases entrusted by the President of the Office.

5. In particularly justified circumstances the President of the Office may take over the case within the jurisdiction of a given delegation or delegate it to be dealt with by the indicated delegation.

6. Decisions and resolutions within the jurisdiction of delegations and in cases delegated by the President of the Office pursuant to section 5, are issued by the directors of delegations on behalf of the President of the Office.

Article 29

The organisation of the Office shall be defined by the statute granted by the Prime Minister, by way of a regulation.

Article 30

1. The Trade Inspection shall be subordinated to the President of the Office.

2. The President of the Office shall sanction the policy of the Trade Inspection and the draft plans of inspections of national dimensions submitted by the Chief Inspector of the Trade Inspection.

3. The President of the Office may order the Trade Inspection to proceed with the inspection or to exercise other tasks included in the scope of his activities.

4. The President shall perform periodical assessments of the activities of the Trade Inspection based on the reports submitted by this Inspection and shall address the conclusions of such assessments to the Chief Inspector of the Trade Inspection.

Article 31

The President of the Office may make public information concerning results of the control of The Trade Inspection as well as information about activities undertaken by virtue of the provisions of Article 26, items 11 and 12, with the omission of information constituting secrecy of the undertaking as well as of other secrecy protected under separate provisions.

Chapter II

Territorial self-government and consumer organisations

Article 32

The tasks in the field of the protection of consumer interests in the scope determined by the Act and by separate provisions shall be performed also by the territorial self-government as well as by consumer organisations and other institutions, which statutory tasks include the protection of consumer interests.

Article 33

The task of the territorial self-government in the field of consumer protection shall consist in promoting consumer education, in particular by way of introducing elements of consumer awareness into educational programmes in the public schools.

Article 34

1. The tasks of the district (powiat) self-government in the field of the protection of consumer rights shall be performed by the district (municipal) consumer advocate, hereinafter referred to as "consumer advocate".

2. The districts may, by way of an agreement, create one common post of the consumer advocate.

Article 35

1. The consumer advocate shall be appointed by the district council or town council in towns with district status, hereinafter referred to as "the council".

2. The consumer advocate shall be appointed from among persons with university education, in particular in law or economy and with minimum five years of professional experience.

3. The consumer advocate shall be subordinated directly to the council and report to the council.

4. The organisational status of the consumer advocate shall be determined by the district statute or regulations.

Article 36

1. The consumer advocate shall be employed in the district starosty.

2. All functions in the scope of labour law in relation to the consumer advocate shall be performed by the starost.

3. The working and payment conditions of the consumer advocate shall be determined by the council.

4. The rules on the remuneration of the consumer advocate shall be governed by the provisions on self-government employees.

Article 37

1. The tasks of the consumer advocate shall, in particular include the following:

1) providing free of charge consumer advice and legal information in the scope of protection of consumer interests,

2) bringing forward motions for proclaiming and amending local regulations in the scope of consumer protection,

3) addressing entrepreneurs in cases pertaining protection of consumer rights and interests,

4) co-operation with the territorially competent Office delegations, with organs of Trade Inspection and with consumer organisations,

5) performance of other tasks prescribed by the present Act and by separate provisions.

2. The consumer advocate may in particular bring an action on consumers behalf and, with their consent, join lawsuits in cases pertaining protection of consumer interests.

3. In the cases concerning misdemeanours to the detriment of consumers, the consumer advocate is acting as a public prosecutor in the meaning of provisions of the Misdemeanour Code.

4. The entrepreneur addressed by the consumer advocate acting pursuant to provisions of section1, item 3, is under an obligation to provide the advocate with requested explanations and information and to assume an attitude in relation to comments and opinion of the advocate.

5. The provisions of Article 63 of the Code of Civil Proceedings shall apply, respectively, to the consumer advocate.

Article 38

1. The consumer advocate shall submit to the council for approval annual report on his/her activities in the previous year by 31 May of each year.

2. The consumer advocate shall remit the report approved by the council referred to in section 1 to the territorially competent Office delegation.

3. The consumer advocate shall be obligated to constantly present to the Office delegations the relevant conclusions and inform about problems concerning consumer protection which require undertaking activity on the government administration level.

Article 39

1. The consumer organisations shall represent consumer interests in relation to the public and self-government administration bodies and may participate in the implementation of the government consumer policy.

2. The organisations referred to in section 1 are, in particular, entitled to:

1) expressing opinion on the draft legal acts and other documents concerning rights and interests of consumers,

2) elaborating and disseminating consumer educational programmes,

3) performing tests of products and services and publishing their results,

4) editing periodicals, research studies, folders and leaflets,

5) providing free of charge consumer advice and free of charge assistance in consumer redress,

6) participating in works on standarisation,

7) implementing government tasks in the field of consumer protection, commissioned to them by the government and self-government administration bodies,

8) applying for allocation of public funds for the implementation of tasks referred to in item 7.

Article 40

The government and self-government administration bodies shall be obliged to consult consumer organisations on the issues concerning the directions of activities aimed at the protection of consumer interests.

Article 41

The amount of yearly targeted budget allocation, in the meaning of the act of 26 November 1998 on public finance (O.J.L. of 1999 No 155, item 1014, No 38, item 360, No 49, item 485, No 60, item 778 and No 100, item 1255 and O.J.L of 2000. No 6, item 69, No 12, item 136 and No 48, item 550), granted from the State budget for implementation of tasks referred to in Article 39, section 2, item 7 shall be determined in the Budgetary Act in the part of the State budget falling under disposal of the President of the Office.

Title V

Proceedings before the President of the Office

Chapter I

General provisions

Article 42

1. The proceedings before the President of the Office shall be conducted as explanatory investigation or anti-monopoly investigation.

2. The explanatory investigation may precede instituting the anti-monopoly investigation.

3. The provisions of section 2 shall not apply to the cases of concentration.

Article 43

1. The President of the Office may institute *ex officio*, by way of a resolution, the explanatory investigation where circumstances indicate the possibility of an infringement of the provisions of the present Act, in the matters concerning given economy sector and in the cases concerning protection of consumer interests.

2. The explanatory investigation shall be aimed at:

1) preliminary assessment if there was an infringement of provisions of the Act giving grounds to institute anti-monopoly investigation, including assessment if the case has an anti-monopoly character,

2) market research, including defining its structure and concentration level,

3) assessment if the legitimate interests of the consumers have been infringed, thus justifying taking actions foreseen by separate legal acts.

3. The closure of the explanatory investigation shall be done by way of a decision.

4. The explanatory investigation should last no longer than 30 days from its institution.

Article 44

1. The anti-monopoly investigation in the cases of competition restricting practices and of control of concentrations shall be instituted upon a motion or *ex officio*.

2. The provision of section 1 shall apply to the imposition of fines referred to in Chapter VI.

Article 45

1. Upon request of the President of the Office entrepreneurs or association thereof shall be obligated to provide all necessary information.

2. The request referred to in section 1 should include:

1) indication of the scope of such information and the relevant time period,

2) indication of the object of the request,

3) time limit for providing information,

4) instruction about sanctions for non delivering information or for providing false or misleading information.

Article 46

1. Only the original document or its copy certified by public administration body, notary, attorney at law, legal adviser or authorised employee of the entrepreneur may serve as the documentary evidence in the proceedings before the President of the Office.

2. The evidence in the proceedings before the President of the Office shall constitute the document drawn up in the Polish language, with the reservation of section 3.

3. Where such document has been drawn up in a foreign language also the translation into Polish of this document or of its part intended to serve as the evidence in the proceedings should be submitted, certified by a sworn translator.

Article 47

1. The party adducing witness evidence is obligated to precisely indicate facts subject to confirmation by the testimony of individual witnesses and to indicate the data to allow proper summons of the witnesses.

2. The President of the Office, when summoning a witness, shall indicate in his summons name, surname and domicile of the summoned, place and date of giving the explanation, parties and subject of the case as well as provisions on penal sanctions for false testimony.

Article 48

1. The testimony of a witness, after its entry to the protocol, shall be read before a witness and, depending on circumstances, completed or verified based on his/her comments.

2. The protocol of the hearings of a witness shall be signed by the witness and by the employee of the Office carrying on the hearings.

Article 49

1. In cases requiring special information, the President of the Office having heard proposals of the parties concerning number of experts and their choice, may summon one or more experts in order to seek their opinion.

2. The expert in the meaning of section 1 may be also a legal person specialised in the relevant field.

Article 50

Until the termination of the activities of an expert each party may request him/her to be excluded from the proceedings for the same reasons as may be invoke to exclude the employee of the Office. The party lodging a request to exclude an expert after the works have been initiated has an obligation to give an appearance of verisimilitude that the reason justifying the exclusion arose thereafter or was unknown to the party beforehand.

Article 51

The President of the Office may order to present to an expert the case records and the subject of inspection. The provisions of Article 63, sections 1 and 3 shall apply respectively.

Article 52

1. The opinion of an expert should contain its justification.

2. The experts may submit their joint opinion.

Article 53

1. The President of the Office shall accord to an expert the remuneration in accordance with the provisions on costs of expert's evidence in court proceedings, with the reservation of section 3.

2. The President of the Office may impose upon a party the obligation to pay an advance on account of the expert's expenses.

3. Where the investigation is instituted *ex officio* and terminated by a decision referred to in Article 11, section 1, the costs of the expert's remuneration shall be born by the State Treasury.

Article 54

1. The President of the Office may address a scientific or scientific-research institute to issue an opinion.

2. In its opinion this institute shall indicate person or persons who carried the research and issued the opinion.

3. The provisions of Articles 51 and 53, section 2 and 3 shall apply respectively.

Article 55

1. During the proceedings the President of the Office may held hearing.

2. The hearing referred to in section 1 shall be in open court, with the exception of such hearing or its part in course of which information subject to business secrecy or other secrecy protected by virtue of separate provisions are being examined.

3. The President of the Office may summon for the hearing and examine parties, witnesses as well as ask for expert opinion.

4. In the case of hearing in camera the provisions of Articles 153, 154 and 479^{10} of the Code of civil proceedings shall apply respectively.

Article 56

The President of the Office may address territorially competent regional court to examine witnesses and obtain an expert opinion, where it is supported by the character of the evidence or consideration of significant inconvenience or significant costs of obtaining the evidence. When addressing the court for providing evidence, the President of the Office shall issue a decision in which he shall define:

1) the court which is to provide evidence,

2) means of evidence,

3) facts to be established.

Article 57

1. During the proceedings before the President of the Office the authorised employee of the Office or of the Trade Inspection, hereinafter referred to as "inspector", may perform the inspection of each entrepreneur or association thereof, hereinafter referred to as "controlled", in the scope encompassed by these proceedings.

2. The authorisation to perform an inspection should include:

1) name, surname and post of the inspector as well as his/her identity or professional card number,

2) indication of the controlled,

3) indication of the subject and scope of the inspection,

4) indication of date of initiating the inspection and scheduled date of its termination,

5) instruction about sanctions for the lack of co-operation during the inspection.

3. The authorisation to perform the inspection referred to in section 1 is issued, respectively: by the President of the Office and, upon a motion of the Chief Inspector of the Trade Inspection, by the voivodship inspectors of the Trade Inspection.

4. The inspector is obligated to produce to the person representing the controlled the authorisation to perform the inspection and professional identity card. In the case of the absence of the person authorised to represent the controlled, authorisation to perform the inspection and professional identity are shown to the employee or person active on the place where inspection is initiated. The copy of the authorisation to perform an inspection shall remain with the controlled.

5. The inspector is entitled to:

1) enter the premises, buildings, rooms or other quarters and means of transportation belonging to the controlled,

2) request to render accessible files, books and all kinds of documents or data carriers related to the subject of inspection as well as duplicates and extracts thereof and also to make notes,

3) request persons referred to in Article 59, section 1, to provide oral explanations relevant for the subject of inspection.

6. The Council of Ministers shall determine, by way of a regulation and taking into consideration objectives of the inspection, the detailed mode and procedure of the inspection, including mode of drafting inspection protocol.

Article 58

1. In the course of the inspection the inspectors may also search the premises or things, pursuant to the permission of the anti-monopoly court, issued upon a motion of President of the Office. During the search the inspector may be assisted by functionaries of other State control bodies or the Police from the unit territorially competent considering the entrepreneur's premises.

2. The anti-monopoly court shall issue within 48 hours the decision in the case referred to in section 1. To the decision of the anti-monopoly court the right of complaint shall not apply.

3. The Police, upon instruction of the President of the Office, shall perform functions referred to in section 1.

5. In the matters not regulated by the Act, the provisions on search of the Code of penal proceedings shall apply.

Article 59

1. The controlled or the person authorised to represent him as well as the user of living quarters referred to in Article 91, section 1 are obliged to:

1) provide the requested information,

2) enable access to business premises and buildings, rooms and other quarters or means of transportation of the controlled,

3) render accessible files, books and all kinds of documents or other data carriers belonging to the controlled.

2. The person referred to in section 1 may refuse to provide information or to co-operate during the inspection solely were it would expose him/her or his/her spouse, ascendants, descendants, siblings and related in the same line or degree as well as persons being with this party in the privity of adoption, custody or wardship to penal liability. The right to abstain from providing information or co-operation during the inspection shall continue after the termination of marriage or the dissolution of the privity of adoption, custody or wardship.

Article 60

1. During the inspection referred to in Article 57, section 1 the President of the Office may issue a seizure order in view to secure files, books, all kind of documents or data carriers as well as other things which may serve as the evidence in the case.

2. The inspector shall summon the person being in a possession of the objects referred to in section 1 to deliver them voluntarily and, in the case of refusal, may carry their collection in the course of administrative execution proceedings.

3. The resolution on the seizure of objects shall be subject to complaint of the persons which rights have been infringed. The lodging of a complaint does not suspend enforcement of the decision.

Article 61

1. The objects subject to seizure, delivered, collected or found during the inspection, after being examined and entered into the protocol of seizure, should be taken away or deposited with the trustworthy person, with the indication of the obligation to present them upon each request of the organ performing the inspection.

2. The protocol of seizure should contain indication of the case to which the seizure or search are related, exact hour of initiating and terminating the action, detailed list of detained objects and, where appropriate, their description and moreover, reference to the resolution of the President of the Office about a seizure. The protocol shall be signed by the executor and the representative of the controlled.

3. The executor of the seizure of the objects referred to in section 1 shall be obligated to immediately present to the interested persons the receipt specifying which objects and by whom have been detained and to inform without delay the entrepreneur whose objects have been detained.

4. The detained objects should be immediately returned upon assessment of their uselessness for the carried investigation or upon abrogation by the anti-monopoly court of the seizure order.

Article 62

1. The President of the Office, upon request of the party or *ex officio*, by way of a resolution, may to the necessary extend restrict for the remaining parties the right to inquiry into the evidence attached to the case files, where rendering this material accessible would threaten with a disclosure of the business secrecy as well as of other secrets protected by separate provisions.

2. The restriction referred to in section 1 shall also apply to materials included to the investigation pursuant to Article 65, section 3.

3. The decision issued pursuant to section 1 shall be subject to complaint.

4. The party lodging a motion to restrict for the remaining parties the right to inquiry into the evidence shall submit to the President of the Office also a version of a document

which does not contain restricted information referred to in section 1, with appropriate annotation.

5. The version of a document not including restricted information referred to in section 1, with appropriate annotation, shall be made accessible to the parties.

Article 63

1. The information obtained during the investigation by the employees of the Office are subject to the protection pursuant to provisions on the protection of undisclosed information.

2. The provision of section 1 shall not apply to the information generally accessible to the public, information about initiating the proceedings, with the exception of proceedings in cases concerning concentration with participation of public companies, in the meaning of provisions on public circulation of securities, and to information on issuance of the decision terminating the investigation and its findings.

3. The employees of the Office shall be under obligation to protect business secrecy as well as other secrets protected by virtue of separate provisions, knowledge about which they acquired during the proceedings.

Article 64

The public administration bodies are under obligation to render accessible to the President of the Office the files being in their possession as well as information relevant to the proceedings before the President of the Office.

Article 65

1. The information acquired in the course of the proceedings cannot be used for other proceedings conducted on the basis of separate provisions.

2. The provision of section 1 does not apply to the penal proceedings conducted under public complaint procedures as well as other proceedings carried by the President of the Office.

3. The President of the Office shall inform parties about including to the evidence information acquired in the course of other proceedings.

Article 66

When issuing the decision terminating the proceedings, the President of the Office shall take into consideration only the charges to which parties could assume their position.

Article 67

The President of the Office shall decide, by way of a resolution, upon discontinuance of the investigation in the case of the following:

1) withdrawal of a motion to order renunciation of the competition restricting practices,

2) withdrawal of a notification of the intention to perform concentration of entrepreneurs,

3) inaction of the mover preventing carrying on the investigation in the cases of competition restricting practices,

4) desistance from imposing the fine referred to in Article 101, section 2, item 2, Article 102 and Article 103.

Article 68

With the reservation of Article 93,the investigation shall not be instituted, where 5 years have elapsed since the end of the year when:

1) infringement of the provisions of the Act took place,

2) decision about imposition of fine became legally binding.

Article 69

1. In the case of proceedings instituted upon a motion, the loosing party shall be obligated to reimburse to the other party, upon its request, the expenses necessary for expedient legal redress and expedient defence, including costs of opinion of experts and scientific institutes.

2. The necessary expenses of the proceedings carried on by the party personally or by the plenipotentiary, who is not attorney at law or legal adviser, shall include travel costs incurred by the party or its plenipotentiary to visit the seat of the President of the Office.

3. The necessary expenses of the proceedings of the party represented by the attorney at law or legal adviser shall include his/her fees, however not higher than those resulting from payment rates determined by the separate provisions and expenses of one lawyer as well as costs of personal appearance of the party upon summons of the President of the Office.

Article 70

1. Where the requests contained in a motion for instituting proceedings are only partially met, the expenses incurred by the parties shall be mutually compensated or proportionally shared. However, the President of the Office may impose upon one of the parties the obligation to reimburse all the expenses if the motion of the other party was not taken into account only in its insignificant part.

2. In the case of conciliation between the parties, the expenses of the proceedings shall cancel each other out, unless the parties decide otherwise.

Article 71

1. The reimbursement of expenses shall be due to the entrepreneur or association thereof against which the proceedings are instituted upon a motion despite the assessment, by way of a decision, of infringement of the provisions of the Act, where such entrepreneur or association thereof give no grounds for the institution of the proceedings and admit, at

the moment of the first action undertaken before the President of the Office after receiving information about instituting the investigation, the legitimacy of charges.

2. The costs of necessary opinions of experts and scientific institutes in the cases related to concentrations shall be born by the entrepreneurs participating in the concentration.

Article 72

Where proceedings are initiated *ex officio* and result in the assessment by the President of the Office of the infringement of provisions of the Act, entrepreneur or association thereof which perpetrate this infringement shall be obliged to bear the costs of the proceedings.

Article 73

In the cases particularly justified the President of the Office may impose upon the loosing party the obligation to reimburse only a part of the expenses or desist from charging costs.

Article 74

Regardless of the result of proceedings, the President of the Office may impose upon a party the obligation to reimburse expenses due to its unreliable or clearly unfair behaviour, in particular costs resulting from avoiding to give explanation or submitting untruthful explanation, concealment or delayed presentation of the evidence.

Article 75

The President of the Office shall decide upon costs by way of a resolution, which may be included in the decision terminating the proceedings.

Article 76

The claim for reimbursement shall expire if in the time limit appointed by the President of the Office, not shorter than 7 days, the party does not submit a list of expenses or a request for reimbursement in conformity with separate provisions.

Article 77

1. The motions for instituting anti-monopoly proceedings before the President of the Office are subject to dues which are to be covered by entrepreneurs and associations thereof.

2. Where the motion is filed without dues being remitted, the President of the Office shall summon a mover to effect the payment within 7 days, with instruction that non-payment of dues will result in leaving the motion without being examined.

3. The anti-monopoly proceedings may be instituted irrespective of the dues not being paid, where it is justified by important considerations concerning competition protection or consumer interests.

4. In the case referred to in section 3 the dues shall be subject to collection under provisions on administrative execution of payments.

5. In the case of the unquestionable incapacity of the entrepreneur, in particular being natural person, or of the association of entrepreneurs, to remit dues, the President of the Office may, upon their motion, relieve them from the dues, in part or in the entirety.

6. The Prime Minister determines, by way of a regulation, the amount of dues referred to in section 1 and mode of their payment, in particular the amount of rates, taking into consideration their division into motions concerning competition restricting practices and concentration as well as the mode of effecting payment of dues.

Article 78

1. The decision of the President of the Office is subject to appeal to the anti-monopoly court, lodged within two weeks from the date when the decision has been delivered.

2. The provisions of the Code of Civil Proceedings concerning proceedings in economic cases shall apply to the proceedings in cases of appeal against decisions of the President of the Office.

3. In the case where the appeal against decision is lodged, the President of the Office shall without delay remit it to the anti-monopoly court together with case files.

4. Where the President of the Office considers the appeal to be justified, he may – without remitting files to the court – abrogate or change his decision in its entirety or in part, about which without delay he shall inform the party by sending a new decision, which may be appealed against.

5. Prior to the remittance of the appeal to the anti-monopoly court or the abrogation or the change of the decision pursuant to section 4, the President of the Office may also, in justified cases, perform additional activities aimed at clarification of objections contained in the appeal.

6. Provisions of sections 1-5 shall apply, respectively, to the resolutions of the President of the Office which are subject to complaints, however a complaint is to be lodged within one week as of the day of the remittance of the resolution.

Article 79

Legal means for shaking decision foreseen in the Code of administrative proceedings and concerning resumption of proceedings, abrogation, change or assessment of invalidity of decisions shall not apply to the decision of the President of the Office.

Article 80

To the matters not regulated by the present Act the provisions of the Code of administrative proceedings shall apply, with the reservation of Article 81.

Article 81

To the matters concerning the evidence in the proceeding before the President of the Office in the scope not regulated in the present chapter, Articles 227-315 of the Code of civil proceedings shall apply respectively.

Article 82

The entrepreneur shall inform the President of the Office about proceedings instituted against him abroad based on assumption of performance of competition restricting activities and shall remit to the President of the Office a copy of the judgement.

Article 83

The provisions of the present chapter shall apply respectively to the cases of imposition of fines for infringements of the provisions of the Act.

Chapter 2

Anti-monopoly proceedings in cases of competition restricting practices

Article 84

1. The motion for instituting the anti-monopoly investigation related to suspicion of the infringement of the provisions of the Act may be lodged by:

1) entrepreneur or association of entrepreneurs, which prove their legal interest,

2) territorial self-government body,

3) organ of State inspection,

4) consumer advocate,

5) consumer organisation.

2. The motion referred to in section 1 shall be lodged in writing together with justification and indication of the legal basis with copies in a number enabling their presentation to the remaining parties to the proceedings. The mover is obliged to give to the infringement of the provisions of the Act the appearance of verisimilitude.

3. The President of the Office informs the parties about instituting proceedings.

Article 85

1. The President of the Office may, by way of a decision, refuse to institute the anti-monopoly proceedings if according to the information contained in a motion and being in a possession of the President of the Office clearly results that the prohibition provided for in Article 5 has not been infringed in the scope not exempted pursuant to Articles 6 and 7, or prohibition defined in Article 8.

2. Prior to issuing the decision on instituting or refusing to institute the anti-monopoly proceedings, the President of the Office may proceed with the explanatory investigation

referred to in Article 43 aimed at obtaining additional information necessary to decide upon instituting or refusing to institute the anti-monopoly proceedings.

3. President of the Office shall refuse, by way of a decision which is subject to a complaint, to institute anti-monopoly proceedings where the motion is lodged by a person not authorised in conformity with Article 84 section 1.

4. The President of the Office may refuse to institute anti-monopoly proceedings, by way of a resolution which may be complained against, in the following cases:

1) in the case when a mover fails to provide in the fixed time limit information necessary to decide upon instituting or refusal to institute the proceedings,

2) where a motion fails to meet the requirements referred to in Article 84 section 2.

Article 86

The party to the investigation shall be a person who applies for the issuance of a decision in the matters concerning competition restricting practices or against whom the proceedings on application of competition restricting practices or infringement of other provisions of the Act are instituted.

Article 87

1. The President of the Office may allow for the participation in the proceedings in the character of the interested entity the following:

1) entrepreneur aggrieved in the result of the activities constituting the infringement of the provisions of the Act,

2) party to the agreement subject to the investigation,

3) another entity which files a motion and proves its legal interest or which admission to the participation in the proceedings will contribute to the clarification of the case.

2. The admittance or refusal to admit to the participation in the proceedings in a character of the interested entity shall be effected by way of a resolution which is subject to complaint.

3. The interested entity shall be entitled to give explanation as to the circumstances of the case.

4. The interested entity shall be authorised to the inquiry in the files, in the scope which is necessary to protect its rights and without prejudice to business secrecy as well as to other secrets protected pursuant to separate provisions.

5. The President of the Office shall inform the interested entity about the way the case is solved. Such entity shall not have the right of appeal or complaint.

Article 88

In the course of the proceedings before the President of the Office the parties may agree to conciliate, provided that it is without prejudice to the public interest.

Article 89

1. In cases of minor importance for the protection of competition and consumers, where on the basis of circumstances of the case, information contained in the motion or information giving grounds to institute investigation *ex officio* as well as based on hitherto adjudication in the anti-monopoly cases, the President of the Office shall assess that infringement of the prohibition of the competition restricting practices is unquestionable, he may, after instituting the anti-monopoly investigation, summon the entrepreneur or association of entrepreneurs against whom the investigation is instituted to acknowledge such infringement of the relevant provisions of the Act.

2. In the case of the acknowledgement referred to in section 1, the President of the Office without investigation of the evidence shall issue the decision ordering to abandon the infringement. The provisions of Article 101, section 2, item 1 shall not apply.

3. The right of appeal shall not apply to the decision referred to in section 2.

4. The provisions of sections 1, 2 and 3 shall not apply to:

1) agreements referred to in Article 5, section 1, concluded between competitors,

2) in the case of abuse of a dominant position by the entrepreneur whose market share exceeds 80%,

3) where during last 3 years preceding the institution of the anti-monopoly investigation the infringement by the entrepreneur or association of entrepreneurs of the prohibition referred to in Article 5 in the scope not exempted under Articles 6 or 7, or the prohibition provided for in Article 8 has been assessed by the final decision of the President of the Office or by the legally binding court judgement.

Article 90

The President of the Office may issue a decision or a part of it under pain of immediate enforcement, where it is necessary for the protection of competition or important interest of consumers.

Article 91

1. Where there are trustworthy bases for suspicion that the objects, files, books, documents and other data carriers which may have an impact on the assessment of facts substantial for the ongoing investigation are kept in the living quarters, the anti-monopoly court may, upon a motion of the President of the Office, give permission to make a search by functionaries of the Police from the unit competent is view of the localisation of these living quarters.

2. The search referred to in section 1 shall be performed also with the participation of the inspector. Provision of Article 57, sections 2 and 3 shall apply respectively.

3. The anti-monopoly court shall give permission referred to in section 1 by way of a resolution which is not subject of appeal.

4. On the basis of the order of the anti-monopoly court, the Police shall perform the activities referred to in section 1.

Article 92

The anti-monopoly proceedings in the matters of competition restricting practices should be terminated not later than within 4 months as of the day of their institution. The provisions of Articles 35-38 of the Code of administrative proceedings shall apply respectively.

Article 93

The proceedings in the matters of application of competition restricting practices shall not be instituted where since the end of the year in which they have been abandoned one year have elapsed.

Chapter 3

Proceedings in the cases of concentration

Article 94

1. Every person who notifies, in conformity with section 2, the intention of concentration shall be a party to the proceedings.

2. The intention of concentration shall be notified by:

1) merging entrepreneurs jointly - in the case referred to in Article 12, section 2, item 1,

2) entrepreneur taking over the control - in the case referred to in Article 12, section 2, item 2,

3) jointly all entrepreneurs participating in creation of a joint entrepreneur - in the case referred to in Article 12, section 2, item 3,

4) entrepreneur taking over or acquiring stocks or shares - in the case referred to in Article 12, section 3, item 1,

5) entrepreneur in whose managing or controlling body the person already performing function of the member of managing or controlling body of another entrepreneur is assuming the function - in the case referred to in Article 12, section 3, item 2,

6) respectively financial institution or entrepreneur who acquired stocks or shares in order to secure liabilities - in the case in Article 12, section 3, item 3.

3. In the case where a concentration is performed by a dominant entrepreneur by intermediary of at least two dependent entrepreneurs, the notification of intention of concentration shall be filed by a dominant entrepreneur.

4. The notification referred to in section 1 should be effected in the time limit of 7 days since the day the agreement is concluded or since another action is undertaken, on the bases of which the concentration takes place.

5. The Council of Ministers shall determine, by way of a regulation, the detailed conditions to be met by the notification of intention of concentration, including list of information and documents which this notification should contain, taking into consideration the specificity of activities conducted by different entrepreneurs and, in particular by financial institutions.

Article 95

1. The President of the Office may, by way of a resolution which is not subject to complaint, admit to the participation in the proceedings in the character of interested entity a person who proves its legal interest, in particular:

1) entrepreneur over whom another entrepreneur takes over the control,

2) entity disposing of stocks or shares,

3) entity disposing of the property.

2. The interested entities are authorised to provide explanations and documents relevant for the assessment of the case.

3. The provision of Article 87, section 5 shall apply respectively.

Article 96

1. The President of the Office may:

1) return within 14 days the notification of the intention of concentration shall it fail to meet the requirements with which it should comply,

2) summon the party notifying the intention of concentration to eliminate the indicated errors in the notification or to supplement necessary information, in the appointed time limit.

2. The President of the Office may present to the entrepreneur or association of entrepreneurs participating in the concentration the requirements referred to in Article 18, section 2, appointing the time limit for adopting attitude towards the proposal; the failure to reply or negative answer shall result in the issuance of the decision referred to in Article 19, section 1.

Article 97

1. The anti-monopoly proceedings in concentration cases should be terminated not later than within 2 months since their institution, with the reservation of section 2.

2. In the case of the intention to acquire stocks admitted to the public circulation the proceedings referred to in section 1 should be terminated not later than within 14 days since their institution.

3. The time limits appointed in sections 1 and 2 shall not include periods of waiting for the notifications of the remaining participants to the concentration as well as periods for eliminating errors or supplementing information referred to in Article 96, section 1, item 2 as well as for adopting attitude towards conditions proposed by the President of the Office referred to in Article 18, section 2.

Article 98

1. The entrepreneurs which intention of concentration is subject to notification are under obligation to refrain from proceeding with concentration until the issuance of the decision of the President of the Office or the lapse of the time limit in which such a decision should be issued.

2. The legal action pursuant to which the concentration is to be effected may be performed under condition of the issuance by the President of the Office, by way of a decision, of the approval or after the lapse of the time limit referred to in Article 97.

3. The realisation of the public offer to purchase or exchange of stocks, notified to the President of the Office under procedure stipulated in Article 12, section 1, shall not be considered as an infringement of the obligation referred to in section 1, provided the buyer does not exercise the voting rights arising from the acquired stocks or exercises them solely in order to maintain full value of his capital investment or to prevent the substantial damage which might affect the entrepreneurs participating in the concentration.

Article 99

In the case where the President of the Office shall conceive the information about the concentration being effected with the infringement of the obligation referred to in Article 12, he may institute the investigation *ex officio*.

Article 100

In the case of non-compliance with the decision referred to in Article 20, section 1 or 4, the President of the Office may, by way of a decision, accomplish a separation of the entrepreneur. To the separation of a company the provisions of Articles 528-550 of the act of 15 September 2000 – Code of commercial companies (O.J.L. of 2000, No 94, item1037) shall apply respectively. The President of the Office has the competence of the bodies of companies participating in the separation. Moreover, the President of the Office may apply to the court for the annulment of the agreement or for undertaking other legal means aimed at restoring the previous status.

TITLE VI

Fines

Article 101

1. The President of the Office shall impose upon the entrepreneur, by way of a decision, the fine equivalent from 1.000 up to 50.000 EURO, where this entrepreneur, even unintentionally:

1) fails to comply with the obligation to notify the intention of concentration referred to in Article 12,

2) after taking over or acquiring stocks or shares exercises the rights arising from these stocks or shares, thus infringing provisions of Article 13, sections 3 and 4,

3) is in a possessions of stocks or of shares after the lapse of the period referred in Article 13, item 3,

4) undertakes activities from which he should abstain after having effected the notification pursuant to Article 98, section 1.

2. The President of the Office may impose upon the entrepreneur, by way of a decision, the fine:

1) in the amount equivalent to 1.000 up to 5.000.000 EURO, but not exceeding 10% of the annual income attained in the year of account preceding the year of imposing the fine, where he infringes the prohibition defined in Article 5 in the scope not exempted under Articles 6 and 7, or if he infringes the prohibition defined in Article 8,

2) in the amount equivalent to 200 up to 5.000 EURO where he, even unintentionally:

   a) in the motion referred to in Article 22 or in the notification referred to in Article 94, section 2 declared false data,

   b) failed to provide information requested by the President of the Office pursuant to Article 18, section 3 or Article 45, or provided false or misleading information,

   c) does not co-operate in the inspection carried on within the framework of the investigation pursuant to Article 57, with the reservation of Article 59, section 2,

   d) did not fulfil obligation foreseen in Article 82.

3. The provisions of sections 1 and 2 shall also apply to the association of entrepreneurs. Where the association of entrepreneurs does not attain any income, the President of the Office may fix the fine in the amount up to fiftyfold of the average salary.

Article 102

1. The President of the Office may impose upon the entrepreneurs, by way of a decision, the fine in the amount equivalent from 10 up to 1.000 EURO for each day of laches in the execution of the decision issued pursuant to Article 9, 18 section 1, Article 19, section 1 and Article 20, section 2 and 4, the resolutions issued pursuant to Article 60, section 1 or judgements of the anti-monopoly court pronounced by virtue of Article 479^{31} § 3 of the Code of civil proceedings; the fine shall be imposed counting from the date indicated in the decision.

2. The provisions of section 1 shall apply to the associations of entrepreneurs. Where the association of entrepreneurs does not attain any income, the fine for each commenced month of non execution of the decision, resolution or of the court judgement within the

time limit shall be fixed by the President of the Office in the amount up to fiftyfold of the average salary.

Article 103

1. The President of the Office may, by way of a decision, impose upon a person performing managerial function or belonging to the managing body of the entrepreneur or association of entrepreneurs the fine in the amount up to tenfold of the average salary, where this person deliberately or unintentionally:

1) did not execute the decisions, resolutions or judgements referred to in Article 102,

2) did not notify the intention of concentration referred to in Article 12.

2. The President of the Office may impose upon the persons referred to in Article 59, section 1, the fine referred to in section 1, for non providing the information or providing false or misleading information, requested by the President of the Office pursuant to Article 45, with the reservation of Article 59, section 2, and also for the lack of co-operation in the inspection carried within the frameworks of the investigation pursuant to Article 57, with the reservation of Article 59, section 2, as well as upon the witnesses for unjustified refusal to testify.

Article 104

When fixing the amount of the fines referred to in Articles 101-103 the duration, gravity and circumstances of the previous infringement of the provisions of the Act should be particularly taken into account.

Article 105

1. The fines referred to in Articles 101-103 are to be paid out of the income after taxation or out of another form of the surplus of revenues over expenses decreased by the taxes.

2. The execution of the fine imposed by the President of the Office shall be suspended until validation of the decision about its imposition.

3. Financial means originating from the fines referred to in Articles 101-103 shall constitute income of the State Treasury.

4. The fine is to be paid within 14 days from the validation of the decision of the President of the Office.

5. In the case of the ineffective lapse of the time limit referred to in section 4, the fine shall be subject to collection on the bases of the provisions on administrative execution proceedings.

6. In the case of delay in the payment of a fine the interest shall not be collected.

Article 106

1. Upon a motion of the entrepreneur, association of entrepreneurs or persons referred to in Article 103, the President of the Office may, by way of a resolution which is not

subject to appeal, accord to the respite for payment of the fine or to the payment on the instalment plan, taking into account important interests of the mover.

2. The President of the Office may abrogate, by way of a resolution which is not subject to appeal, the respite for payment of the fine, where new or previously unknown circumstances, substantial for the settlement, are disclosed.

TITLE VII

Amendments to the existing provisions

Article 107

The following amendments shall be introduced into the act of 17 November 1964 – the Code of civil proceedings (O.L.J. of 1964, No 43, item 296, of 1965, No 15, item 113, of 1974 No 27, item 157 and No 39, item 231, of 1675 No 35, item 234, of 1982 No 11, item 82 and No 30, item 210, of 1983 No 5, item 33, of 1984 No 45, item 241 and 242, of 1985 No 20, item 86, of 1987 No 21, item 123, of 1988 No 41, item 324, of 1989 No 4, item 21 and No 33, item 175, of 1990 No 14, item 88, No 34, item 198, No 53, item 306, No 55, item 318 and No 79, item 464, of 1991 No 7, item 24, No 22, item 92, No 115, item 496, of 1993 No 12, item 53, of 1994 No 105, item 509, of 1995 No 83, item 417, of 1996 No 24, item 110, No 43, item 189, No 73, item 350 and No 149, item 703, of 1997 No 43, item 270, No 54, item 348, No 75, item 471, No 102, item 643, No 117, item 752, No 121, item 769 and 770, No 133, item 882, No 139, item 934, No 140, item 940 and No 141, item 944, of 1998 No 106, item 668 and No 117, item 757, of 1999 No 52, item 532 and of 2000 No 22, item 269 and 271, No 48, item 552 and 554, No 55, item 665, No 73, item 852 and No..., item ....):

1) Article 479^{1} §2, item 3 shall read as follows:

> «3) being in the courts' competence on the bases of the provisions on competition protection, Energy Law, Telecommunications Law and the provisions on rail transport,»,

2) Chapter 2, Division IVa, Title VII, Book One of the first part shall read as follows:

Chapter 2

Proceedings in cases in the field of competition protection

Article 479^{28} § 1. The District Court in Warsaw – the anti-monopoly court shall be the competent forum in the matters of:

1) appeals against the decision of the President of the Office for Competition and Consumer Protection, in the present chapter referred to as “the President of the Office”,

2) complaints against resolutions issued by the President of the Office in the course of proceedings conducted by virtue of the provisions of the Act of 15 December 2000 on competition and consumer protection (O.J.L No 122, item 1319) or pursuant to separate provisions,

3) complaints against resolutions issued by the President of the Office in the course of proceedings in prevention conducted by virtue of the Act on competition and consumer protection,

4) complaints against resolutions issued in the course of execution proceedings conducted in order to enforce obligations resulting from decisions and resolutions issued by the President of the Office.

§ 2. The appeal against decisions of the President of the Office shall be lodged by his intermediary before the anti-monopoly court in a time limit of two weeks since the day the decision is delivered.

§ 3. The appeal against the decision of the President of the Office should meet the requirements foreseen for a lawsuit citation and contain description of the sued decision, citation of raised objections, compact grounds thereof , indication of the evidence as well as contain a motion for the change of the decision in its entirety or in part.

Article 479^{29}. § 1. Parties to the proceedings before the anti-monopoly court shall be the President of the Office, the entity being a party to the proceedings before the President of the Office as well as the person lodging a complaint.

§ 2. In the proceedings before the anti-monopoly court may take part as participants the entities admitted to the participation in the proceedings before the President of the Office in a capacity of interested entities.

§ 3. The employee of the Office for Competition and Consumer Protection may act as a plenipotentiary of the President of the Office.

Article 479^{30}. In the case where an appeal against the decision of the President of the Office is being lodged, the anti-monopoly court may, upon a motion of the appealing party, suspend the enforcement of the decision until settlement of the case. The resolution may be issued in the course of the proceedings in camera.

Article 479^{31}. § 1. The anti-monopoly court shall dismiss an appeal against a decision of the President of the Office where there are no grounds to admit it.

§ 2. The anti-monopoly court shall dismiss an appeal lodged after the lapse of the time limit for its submission, inadmissible for other reasons as well as where errors in the appeal are not eliminated in the appointed time limit.

§ 3. The anti-monopoly court, when admitting an appeal against a decision, shall change the decision in its entirety or in part and rule on the substance of the case.

Article $479^{32.}$ § 1. Complaints against resolutions of the President of the Office are to be lodged to the anti-monopoly court in the time limit of one week since such resolution is delivered.

§ 2. The provisions of Article 479^{28} § 2 and 3 as well as Articles 479^{30} and 479^{31} shall apply to complaints against resolutions of the President of the Office respectively.

Article 479[33]. § 1. In the course of the proceedings before the anti-monopoly court a business secrecy and other secrets protected by virtue of separate provisions shall be protected.

§ 2. The anti-monopoly court may, by way of a resolution, disclose to the party to the proceedings the information protected in the proceeding before the President of the Office as a business secrecy of the another party solely where:

1) circumstances giving grounds to issuance by the President of the Office of the resolution restricting the right to inquiry into evidence attached by the parties into the case files have changed significantly,

2) the party which business secrecy is protected have expressed its consent.

§ 3. The court, upon request of the party or *ex officio,* may to the necessary extend restrict for the remaining parties the right to inquiry into the evidence attached to the case files in the course of the proceedings, where rendering this material accessible would threaten with a disclosure of the business secrecy or other secrets protected by virtue of separate provisions.

§ 4. The restriction of the right to inquiry into the evidence referred to in § 3 shall not apply to the President of the Office.

§ 5. The resolution referred to in § 2 and 3 shall not be subject to appeal.

Article 479[34]. In the proceedings before the anti-monopoly court the President of the Office shall not be under obligation to pay court dues and to reimburse costs of the proceedings.

Article 479[35].§ 1. To the judgement of the anti-monopoly court the provisions of Articles 387 and 388 shall apply respectively.

§ 2. The judgement of the anti-monopoly court shall be subject to cassation by the Supreme Court, irrespective of the value of the subject of complain."

3) After Chapter 3, Division Iva, Title VII, Book One of the first part the following Chapters 4-6 shall be inserted:

Chapter 4

Proceedings in cases in the field of regulation in the energy sector

Article 479[46]. The District Court in Warsaw – the anti-monopoly court shall be the competent forum in the matters of:

1) appeals against decisions of the President of the Office for Energy Regulation, hereinafter in this chapter referred to as "the President of the Office",

2) complaints against resolutions issued by the President of the Office in the course of proceedings conducted by virtue of the act of 10 April 1997 – Energy Law (O.J.L. of 1997 No 54, item 348 and No 158, item 1042, of 1998 No 94, item 594, No 106, item 668 and 162, item 1126, of 1999 No 88, item 980, No 91, item 1042 and No 110, item

1255 and of 2000 No 43, item 489 and No 48, item 555) or based on separate provisions.

Article 479^{47}. § 1. The appeal against decisions of the President of the Office shall be lodged by his intermediary before the anti-monopoly court in a time limit of two weeks since the day the decision is delivered.

§ 2. The anti-monopoly court shall dismiss the appeal lodged after the lapse of a time limit for its submission or where it is inadmissible for other reasons.

Article 479^{48}. § 1. The President of the Office without delay shall remit the appeal together with the case files to the anti-monopoly court.

§ 2. Where the President of the Office considers the appeal to be justified, he may – without remitting files to the court – abrogate or change his decision in the entirety or in part, about which without delay he shall inform the party by sending his new decision, against which the party may appeal.

Article 479^{49}. The appeal against decisions of the President of the Office should meet the requirements foreseen for a lawsuit citation and contain description of the sued decision and value of the subject of dispute, citation of raised objections, compact grounds thereof, indication of the evidence as well as contain a motion for the change of decision in its entirety or in part.

Article 479^{50}. § 1. Parties to the proceedings in the field of energy regulation shall also be the President of the Office and the interested entity.

§ 2. The interested entity shall be the person, whose rights or obligations depend on the settlement of the proceedings. Where the interested entity is not summoned to take part in the proceedings, the anti-monopoly court shall summon her upon a motion of the party or *ex officio*.

Article 479^{51}.The employee of the Office for Energy Regulation may act as a plenipotentiary of the President of the Office.

Article 479^{52}. In the case where an appeal against the decision of the President of the Office is being lodged, the anti-monopoly court may, upon a motion of the appealing party, suspend the enforcement of the decision until settlement of the case. The resolution may be issued in the course of the proceedings in camera.

Article 479^{53}. § 1. The anti-monopoly court shall dismiss an appeal against a decision of the President of the Office where there are no grounds to admit it.

§ 2. The anti-monopoly court, when admitting an appeal against a decision, shall change the decision in its entirety or in part and rule on the substance of the case.

Article 479^{54}. In the proceedings before the anti-monopoly court the President of the Office shall not be under obligation to pay court dues and to reimburse costs of the proceedings.

Article 479^{55}. The provisions of Article 479^{32} § 1 and Articles 479^{47}-479^{54} shall apply, respectively, to the complaints against resolutions of President of the Office.

Article 479[56]. § 1. To the judgement of the anti-monopoly court the provisions of Articles 387 and 388 shall apply respectively.

§ 2. The judgement of the anti-monopoly court shall be subject to cassation by the Supreme Court, irrespective of the value of the subject of complain.

Chapter 5

Proceedings in cases in the field of regulation in telecommunications sector

Article 479[57]. The District Court in Warsaw – the anti-monopoly court shall be the competent forum in the matters of:

1) appeals against decisions of the President of the Office for Telecommunications Regulation, hereinafter in this chapter referred to as "the President of the Office",

2) complaints against resolutions issued by the President of the Office in the course of proceedings conducted by virtue of the act of 21 July 2000 – Telecommunications Law (O.J.L. No 73 item 852) or based on separate provisions.

Article 479[58]. § 1. The appeal against decisions of the President of the Office shall be lodged by his intermediary before the anti-monopoly court in a time limit of two weeks since the day the decision is delivered.

§ 2. The anti-monopoly court shall dismiss the appeal lodged after the lapse of a time limit for its submission or where it is inadmissible for other reasons.

Article 479[59]. § 1. The President of the Office without delay shall remit the appeal together with the case files to the anti-monopoly court.

§ 2. Where the President of the Office considers the appeal to be justified, he may – without remitting files to the Court – abrogate or change his decision in the entirety or in part, about which without delay he shall inform the party by sending his new decision, against which the party may appeal.

Article 479[60]. The appeal against decisions of the President of the Office should meet the requirements foreseen for a lawsuit citation and contain description of the sued decision and value of the subject of dispute, citation of raised objections, compact grounds thereof, indication of the evidence as well as contain a motion for the change of decision in its entirety or in part.

Article 479[61]. § 1. Parties to the proceedings in the field of telecommunications regulation shall also be the President of the Office and the interested entity.

§ 2. The interested entity shall be the person, whose rights or obligations depend on the settlement of the proceedings. Where the interested entity is not summoned to take part in the proceedings, the anti-monopoly court shall summon her upon a motion of the party or *ex officio*.

Article 479[62]. The employee of the Office for Telecommunications Regulation may act as a plenipotentiary of the President of the Office.

Article 479^{63}. In the case where an appeal against the decision of the President of the Office is being lodged, the anti-monopoly court may, upon a motion of the appealing party, suspend the enforcement of the decision until settlement of the case. The resolution may be issued in the course of the proceedings in camera.

Article 479^{64}. § 1. The anti-monopoly court shall dismiss an appeal against a decision of the President of the Office where there are no grounds to admit it.

§ 2. The anti-monopoly court, when admitting an appeal against a decision, shall change the decision in its entirety or in part and rule on the substance of the case.

Article 479^{65}. In the proceedings before the anti-monopoly court the President of the Office shall not be under obligation to pay court dues and to reimburse costs of the proceedings.

Article 479^{66}. The provisions of Article 479^{32} § 1 and Articles 479^{58}- 479^{65} shall apply, respectively, to the complaints against resolutions of the President of the Office.

Article 479^{67}. § 1. To the judgement of the anti-monopoly court the provisions of Articles 387 and 388 shall apply respectively.

§ 2. The judgement of the anti-monopoly court shall be subject to cassation by the Supreme Court, irrespective of the value of the subject of the complain.

Chapter 6

Proceedings in cases in the field of regulation in rail transport sector

Article 479^{68}. The District Court in Warsaw – the anti-monopoly court shall be the competent forum in the matters of:

1) appeals against decisions of the President of the Office for Rail Transport, hereinafter in this chapter referred to as “the President of the Office”,

2) complaints against resolutions issued by the President of the Office in the course of proceedings conducted by virtue of the act of 27 June 1997 on rail transport (O.J.L. of 1997 No 96, item 591, of 1998 No 106, item 668, of 1999 No 84, item 934 and of 2000, No 84, item 948 and No ...., item....) or based on separate provisions.

Article 479^{69}. § 1. The appeal against decisions of the President of the Office shall be lodged by his intermediary before the anti-monopoly court in a time limit of two weeks since the day the decision is delivered.

§ 2. The anti-monopoly court shall dismiss the appeal lodged after the lapse of a time limit for its submission or where it is inadmissible for other reasons.

Article 479^{70}. § 1. The President of the Office without delay shall remit the appeal together with the case files to the anti-monopoly court.

§ 2. Where the President of the Office considers the appeal to be justified, he may – without remitting files to the Court – abrogate or change his decision in the entirety or in

part, about which without delay he shall inform the party by sending his new decision, against which the party may appeal.

Article 479^{71}. The appeal against decisions of the President of the Office should meet the requirements foreseen for a lawsuit citation and contain description of the sued decision, the value of the subject of dispute, citation of raised objections, compact grounds thereof, indication of the evidence as well as contain a motion for the change of decision in its entirety or in part.

Article 479^{72}. § 1. Parties to the proceedings in the field of regulation in rail transport sector shall also be the President of the Office and the interested entity.

§ 2. The interested entity shall be the person, whose rights or obligations depend on the settlement of the proceedings. Where the interested entity is not summoned to take part in the proceedings, the anti-monopoly court shall summon her upon a motion of the party or *ex officio*.

Article 479^{73}. The employee of the Office for Rail Transport Regulation may act as a plenipotentiary of the President of the Office.

Article 479^{74}. In the case where an appeal against the decision of the President of the Office is being lodged, the anti-monopoly court may, upon a motion of the appealing party, suspend the enforcement of the decision until settlement of the case. The resolution may be issued in the course of the proceedings in camera.

Article 479^{75}. § 1. The anti-monopoly court shall dismiss an appeal against a decision of the President of the Office where there are no grounds to admit it.

§ 2. The anti-monopoly court, when admitting an appeal against a decision, shall change the decision in its entirety or in part and rule on the substance of the case.

Article 479^{76}. In the proceedings before the anti-monopoly court the President of the Office shall not be under obligation to pay court dues and to reimburse costs of the proceedings.

Article 479^{77}. The provisions of Article 479^{32} § 1 and Articles 479^{69}- 479^{75} shall apply, respectively, to the complaints against resolutions of the President o the Office.

Article 479^{78}. § 1. To the judgement of the anti-monopoly court the provisions of Articles 387 and 388 shall apply respectively.

§ 2. The judgement of the anti-monopoly court shall be subject to cassation by the Supreme Court, irrespective of the value of the subject of complain.

Article 108

Article 20 of the act of 20 June 1985 – Law on organisation of common courts (O.J.L. of 1994, No 7, item 25, No 77, item 355, No 91, item 421, No 105, item 509, of 1995 No 34, item 163, No 81, item 406, of 1996 No 77, item 367, of 1997 No 75, item 471, No 98, item 604, No 106, item 679, No 117, item 751, 752 and 753, No 121, item 769, No 124, item 782, No 133, item 882, of 1998 No 98, item 607, No 160, item 1064, No 162, item 1118 and 1125, of 1999 No 20, item 180, No 60, item 636, No 75, item 853, No 83, item

931, No 110, item 1255 and of 2000 No 48, item 551, No 50, item 580, No 56, item 678) - shall read as follows:

"Article 20. The Minister of Justice, by way of regulation, shall establish in the District Court in Warsaw a separate organisational unit competent in the cases in the fields of protection of competition, regulation in energy, telecommunications and rail transport sectors."

Article 109

In the act of 30 April 1993 on national investment funds and their privatisation (O.J.L. of 1993 No 44 item 202, of 1994 No 84 item 385, of 1997 No 70 item 164, No 47 item 298 and No 107 item 691) the following amendments shall be introduced:

1) Article 25 shall read as follows:

"Article 25. 1. The managing company shall neither at the same time render managerial services on behalf of two or more funds nor be the shareholder of the fund on which behalf it renders managerial services without obtaining prior consent of the President of the Office for Competition and Consumer Protection.

2. The member of the supervisory board or of the management of the fund shall not be allowed to assume at the same time the function of the member of the supervisory board or of the management of another fund. The above prohibition shall apply to the proxies respectively.

3. In the case of the infringement of the obligations and prohibitions referred to in sections 1 and 2, the President of the Office for Competition and Consumer Protection may issue the decision imposing on the respective member of the management of a given fund or managing company the fine in the amount not exceeding the half of the income of this person for the last taxation year. The appeal against the decision of the President of the Office for Competition and Consumer Protection shall be examined according to the procedure set up in Article 78 of the act of 15 December 2000 on competition and consumer protection (O.J.L No 122, item 1319)."

2) Article 27 shall read as follows:

"Article 27. The prohibitions referred to in Article 25 sections 1 and 2 shall also include the entities dominant or dependent in relation to the managing company, in the meaning of Article 4, item 3 of the act referred to in Article 25, section 3."

3) After Article 28 the following Article 28a shall be added:

"Article 28a. In the scope not regulated by this Chapter, the provisions of the act of 15 December 2000 on competition and consumer protection shall apply."

TITLE VIII

Transitional and final provisions

Article 110

1. As of the day the present Act is coming into force the first term of office of the President of the Office holding this post on that day shall begin, without prejudice to sections 2 and 3.

2. The term of office referred to in section 1 shall be abbreviated by the period for which the President of the Office has been holding this post before the Act becomes effective.

3. The Prime Minister may recall the President of the Office within 3 months as of the day the Act comes into force. During this period the restrictions referred to in Article 24, section 5 shall not apply.

Article 111

As of the day the present Act comes into force, Directors and Deputy Directors of the Office delegations shall become members of the civil service corps and their hitherto work relations established by way of the appointment based on rules defined in the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests (O.J.L. of 1999 No 52, item 547 and of 2000 No 31, item 381, No 60, item 704) shall be transformed into work relations by virtue of the work contract for unlimited duration, only that the post of Vice-Director of the delegation shall change to the post of Deputy Director.

Article 112

When fixing the amount of the fine referred to in Article 104 also the fact of the infringement of the provisions of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interest shall be taken into account within the period of 5 years as of the day the present Act enters into force.

Article 113

The investigations instituted by virtue of the provisions of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interest shall be carried pursuant to the provisions of the present Act.

Article 114

The implementing regulations issued on the bases of the act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests shall remain in force until the time they will be superseded by the regulations issued pursuant to the present Act, in the scope in which they are not contradictory to its provisions, but not longer than for the period of 12 months from its entering into force.

Article 115

The value of EURO referred to in the provisions of the Act shall be converted into zloties according to average rate of foreign currencies published by the National Bank of Poland on the last day of the year preceding the year in which the intention of concentration is notified or fine imposed.

Article 116

Wherever in the separate provisions the anti-monopoly authority or the Anti-monopoly Office are being mentioned, it should be understood as the President of the Office for Competition and Consumer Protection.

Article 117

The act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests expires (O.J.L. of 1999 No 52 item 547 and of 2000 No 31 item 381, No 60 item 704).

Article 118

The Act comes into force as of 1 April 2001, except for Article 41 which shall come into force as of 1 January 2001.
