

APPROVED  
by Decision of the Supreme  
Eurasian Economic Council

## **Model Law "On Competition"**

This Law ensures consistency in the treatment of the fundamental provisions of the Law on Protection of Competition of the Customs Union member states and the Common Economic Space (hereinafter the states) for the purposes of this Law hereinafter referred to as the national law.

The aim of this Law is the approximation of the regulatory environment for economic relations in the field of competition policy on the territory of the Common Economic Space.

This Law shall apply to the relations involving natural monopolies subject to the provisions of the treaties (agreements) between the states in the spheres of natural monopoly operations and the laws of the states.

This Law is non-regulatory in nature.

### **Chapter I**

#### **GENERAL PROVISIONS**

##### **Article 1. Scope and Aims of National Law**

1. The national law establishes an organizational and legal framework for protection of competition including the prevention and suppression of:

- 1) monopolistic activity and unfair competition;
- 2) prevention, restriction, elimination of competition by state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, and organizations involved in the provision of public or municipal services, public non-budgetary funds, the national (central) bank, business entities (market agents), individual officials, natural persons, including self-employed entrepreneurs.

2. The aims of the national law are to maintain the common economic space, free movement of goods, freedom of economic activity, protection of competition and to create the conditions for effective functioning of goods markets on the territory of a state.

##### **Article 2. Regulation of Relations in the Sphere of Competition Protection**

1. Any relations connected with the protection of competition on the territory of a state shall be regulated by the national law.

Relations connected with the protection of competition may be regulated by other laws and regulations of a state, including the regulations of an anti-monopoly body where provided by the national law.

2. If any international treaty where a state is a party lays down other rules than those set out in the national law, the rules of the international treaty shall apply.

3. The provisions of the national law shall not apply to the relations of control over the compliance with uniform rules of competition in cross-border markets and uniform rules for the granting of industrial

subsidies, which lies within the competence of the Eurasian Economic Commission in accordance with international treaties.

### **Article 3. Sphere of Application of National Law**

1. The national law shall be valid on the entire territory of a state and shall apply to the relations which parties are business entities (market agents), state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, and organizations involved in the provision of public or municipal services, public non-budgetary funds, the national (central) bank, business entities (market agents), individual officials, natural persons, including self-employed entrepreneurs.

2. The provisions of the national law shall apply to the agreements reached between the persons of a state specified in part 1 of this article and/or foreign persons outside the territory of the state, as well as to actions performed by them, if such agreements or actions influence the state of competition on the territory of the state.

3. The laws of a state may establish the procedure for the application of the national law to the relations connected with the use of exclusive rights to the results of intellectual activity and equivalent means of individualization of a legal entity, means of individualization of products, work or services unless otherwise is provided in this Law.

### **Article 4. Basic Definitions Used in This Law**

For the purposes of this Law and the national law the following basic definitions shall be used:

1) "anti-monopoly body" – is the state authority of a state competent in the implementation of the anti-monopoly (competition) policy, approval of regulations and control over the compliance with the state law;

2) "vertical agreement" - is an agreement between business entities (market agents), one of which purchases products or is their potential purchaser and the other supplies the products or is their potential seller;

3) substitute products – are products that are comparable by their functional purpose, application, qualitative and technical characteristics, price and other parameters so that a purchaser actually substitutes or is ready to substitute one product with another in the process of consumption (including consumption for production purposes);

4) "state enterprise" - is state (republic or communal) unitary enterprises, state enterprises with the right of economic management and public enterprises, other state and municipal unitary enterprises organized under the laws of the states;

5) "state or municipal preferences" mean granting advantages to individual business entities (market agents) by state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, which put them in more advantageous operating conditions by transferring state or municipal property, other assets, or by providing property exemptions, or state or municipal guarantees;

6) "state register of business entities (market agents) having a dominant position" - is the list of the business entities (market agents) having a dominant position in the respective goods market, except for the natural monopoly markets;

7) "discriminatory conditions" – are conditions of access to a goods market, conditions of production, exchange, consumption, purchase, sale, other transfer of products, where a business entity (market agent) or several business entities (market agents) are placed at a competitive disadvantage in comparison with another business entity (market agent) or other business entities (market agents);

8) "competitive price of a financial service" – is the price for which a financial service may be provided in a competitive environment;

9) "competition" – is a rivalry between business entities (market agents) during which independent actions taken by each of them exclude or restrict the possibility for each of them to influence unilaterally the general conditions of product circulation in the relevant product market;

10) "coordination of business activity" – is the coordination of actions of business entities (market agents) by a third person which is not a member of the same group of persons as any of such business entities (market agents) and does not operate in the product market(s) where the actions of the business entities (market agents) are coordinated. Actions of business entities (market agents) which are exercised under vertical agreements shall not be deemed coordination of business activity;

11) "person subject to economic concentration" – is a persons which shares (participating interests), property, plant and/or intangible assets are purchased and/or contributed to the authorized capital (authorized stock), and/or a person the rights in which are acquired in the manner provided in the national law;

12) "price manipulation in the wholesale electric energy (power) market" - means the actions taken without any economical or technological reasons, including taking the advantage of one's dominant position in the wholesale market, which lead to substantial changes in the price(s) for electric energy and/or power in the wholesale market. Such actions may consist in:

placing unreasonably overstated or understated price bids for purchase or sale of electric energy and/or power. A bid may be found overstated if its price is higher than the price prevailing in a comparable product market or the price determined in such product market before (for the same time of the previous day, for the similar time of the day of the previous week, for the same time of the day for the previous month or previous quarter);

placing a price bid for purchase or sale of electric energy where the amount stated in such bid does not meet the amount of electric energy generated with the supplier's generating equipment running at its maximum generating capacity determined in accordance with the rules (specific conditions) of the wholesale market as provided in the laws of the state;

placing a price bid that does not meet the set requirements in respect of economic feasibility as provided in the laws of the state.

The laws of the states may provide for other price manipulation events in the wholesale electric energy (power) market;

13) "price manipulation in the retail electric energy (power) market" - means the actions taken without any economical or technological reasons by a business entity (market agent) occupying a dominant position in the retail market, which lead to substantial changes in the non-regulated price(s) for electric energy and/or power.

The laws of the states may provide for other price manipulation events in the retail electric energy (power) market;

14) "monopolistic activity" – is abuse by a business entity (market agent) or a group of persons of their dominant position, agreements or concerted practices prohibited by the national law, as well as other actions (omissions) recognized as monopolistic activity in accordance with the laws of the state;

15) "unfair competition" – is any actions of business entities (market agents) or a group of persons aimed at obtaining benefits in business activity contrary to the laws of the state, good business practices, requirements of good faith, reasonableness and fairness, which have inflicted or may inflict damage on other, competitor business entities (market agents) or impair their business reputation;

16) "unreasonably high price of a financial service", "unreasonably low price of a financial service" – is the price of a financial service or financial services, which is set by a financial organization occupying a dominant position, and which differs considerably from the competitive price of a financial service and/or impedes the access to the product market for other financial organizations and/or has negative impact on competition;

17) "indicators of restriction of competition" – are the reduction in the number of business entities (market agents), which are members of the same group of persons, in the product market, the increase or decrease in the product price which is not connected with the relevant changes of other general conditions of circulation of products in the product market, a refusal of business entities (market agents), which are not members of the same group of persons, from independent actions in the product market, the defining of general conditions for circulation of products in the product market by agreement between business entities (market agents) or in accordance with any instructions of another person which are binding on them, or in the result of coordination of actions in the product market between business entities (market agents), which are not members of the same group of persons, as well as other circumstances making it possible for a business entity (market agent) or several business entities (market agents) to exert unilateral influence on the general conditions of circulation of products in the product market, and when state authorities, municipal authorities or organizations involved in the provision of public or municipal services, in the provision of such services, impose on the products or business entities (market agents) any requirements which are not provided in the laws of the state;

18) "acquisition of shares of (participating interests in) commercial organizations" – is purchasing or becoming otherwise able to exercise the voting right given by the shares of (participating interests in) commercial organizations on the basis of trust management agreements, partnership agreements, agency agreements, other transactions, or on other grounds;

19) "systematic pursuance of monopolistic activity" – is pursuance of monopolistic activity by a business entity (market agent) detected more than two times in three years in accordance with the procedure established by the national law;

20) "agreement" - a written arrangement contained in a document or several documents, or a verbal understanding;

21) "product" – is the object of civil rights (including work, service, in particular, financial service) intended for sale, exchange or commercialization in another form;

22) "product market" – is an area of circulation of a product (including a product of foreign manufacture), which cannot be substituted by another product, or substitute goods, within the boundaries of which (including geographical ones) a purchaser, based on economic, technical or other possibility, or expediency, can buy the product and outside of the boundaries of which such possibility or expediency is absent;

23) "financial organization" – is a business entity (market agent) providing financial services in accordance with the laws of the state, which set out the criteria for business entities (market agents) to be qualified as financial organizations;

24) "financial service" – is a banking service, an insurance service, a service in the securities market, a service under a lease contract or a service provided by a financial organization and connected with attracting and/or allocating money of legal entities and natural persons;

25) "business entity (market agent)" – is a commercial or noncommercial organization that conducts income-generating activity, a self-employed entrepreneur or a natural person which professional income-generating activity requires state registration and/or a license in accordance with the laws of the state, or by virtue of membership in a self-regulating organization;

26) "economic concentration" – is transactions, other actions, which performance influences or may influence the state of competition.

#### Article 5. **Dominant Position**

1. A dominant, including a monopsonic, position shall be deemed the position of a business entity (market agent) (a group of persons) or several business entities (market agents) (groups of persons) in the market of a certain product giving to such business entity (market agent) (a group of persons) or several business entities (market agents) (groups of persons) an opportunity to exert a decisive influence on the general conditions of circulation of products in the relevant product market and/or to remove other business entities (market agents) from such product market and/or to impede the access to such product market for the other business entities (market agents).

The position of a business entity (market agent) (except a financial organization) shall be recognized as dominant:

1) if its share in the market of a certain product exceeds the value established by the national law unless in the examination of a case of violation of the national law or in the process of state control over economic concentration the anti-monopoly body establishes that, although the aforementioned quantity has been exceeded, the position of the business entity (market agent) in the product market is not dominant;

2) if its share in the market of a certain product is less than the value established by the national law in case the dominance of this business entity (market agent) was established by the anti-monopoly body based on the stable or insignificantly changing share of the business entity (market agent) in the product market as compared with the shares of its competitors in such product market, accessibility of such product market for new competitors, or proceeding from other criteria specific for the product market.

2. The position of a business entity (market agent) (except a financial organization) which share in the market of a certain product does not exceed the value established by the national law cannot be recognized dominant, except as provided in parts 3, 6 and 7 of this article.

3. The position of each business entity of several business entities (market agents) (except a financial organization) shall be recognized dominant if it meets all of the conditions below:

1) the existence of the aggregate share of several business entities (market agents) where the share of each exceeds the shares of other business entities (market agents) in the respective product market, if such share exceeds the value established by the national law, and where the national law defines the minimum share for at least one of the aforementioned business entities (market agents) for which such criteria will not be applied;

2) stability of, or insignificant changes in, the relative size of the shares of such business entities (market agents) over a long period (for no less than one year or, if such term is less than 1 year, during the existence of the respective product market or any other term established by the national law) and impeded access to the respective product market for new competitors;

3) product sold or purchased by such business entities (market agents) cannot be substituted with another product in the process of consumption (including the consumption for production purposes), the

growth of a product price is not conditioned by the declining demand for such product corresponding to such growth, information about the product price, sale or purchase conditions in the respective product market is available to general public.

4. A business entity (market agent) has the right to provide evidence before court or an anti-monopoly body that the position of such business entity (market agent) in the product market cannot be recognized dominant.

5. The position of a business entity (market agent) being a natural monopoly in a product market in the state of natural monopoly shall be recognized dominant.

6. The state laws may provide for the instances when the position of a business entity (market agent), which share in the market of a certain product is less than the value established by the national law as a criteria for recognizing the position of a business entity dominating, is recognized dominating.

7. Following the analysis of competitive situation performed by an anti-monopoly body, the position of a business entity (market agent) shall be found dominating if its share in the market of a certain product is less than 35 percent and exceeds the shares of other business entities (market agents) in the respective product market, but if it can exert a decisive influence on the general conditions of circulation of products in the product market, provided the following conditions are met in total:

1) the economic entity (market agent) can unilaterally determine the level of the product prices and exert a decisive influence on the general conditions of circulation of products in the relevant product market;

2) the entry of new competitors to the respective product market is impeded, in particular, due to economic, technological, administrative or other restrictions;

3) the product sold or bought by the business entity (market agent) cannot be substituted by another product in the process of consumption (including the consumption for production purposes);

4) changing prices for the product do not cause an appropriate decrease of demand for the product.

8. The position of a business entity (market agent) may be found dominant on the grounds provided in part 7 of this article, if the anti-monopoly body has not recognized the position of such business entity (market agent) dominant on the grounds provided in parts 1, 3 and 6 of this article.

9. The state laws shall establish the conditions for recognizing the position of a financial organization dominant.

10. In the determination of a dominant the position of the anti-monopoly body shall, in accordance with the procedure established in the national law, analyze the competitive environment which includes the assessment of the conditions that influence the competition status including market entry conditions; shares of business entities (market agents) in certain product markets, the percentage of buyers and sellers of the product, the duration of the possibility to exert a decisive influence on the general conditions of circulation of a product in the product market.

The time interval for the analysis of the competitive situation depends on the survey objectives, the specifics of the product market and availability of information. The minimum time interval for the analysis of the competitive situation with a view to determine a dominant position of a business entity (market agent) shall be one year or the time of existence of the respective product market, if less than 1 year. The national law may establish another time interval for the analysis of the competitive situation with a view to determine a dominant position of a business entity (market agent).

## Article 6. **Monopolistically High Product Price**

1. Monopolistically high price of a product is the price set by a business entity (market agent) having a dominant position, if such price exceeds the sum of the costs and profit necessary for the production and distribution of such product and the price prevailing in a competitive environment in the product market, with comparable composition of product buyers or sellers, conditions of circulation of the product, market entry conditions, government regulation, including taxation and customs tariff tariff and non-tariff regulation (hereinafter - a comparable product market), if such a market exists on the territory of the state or abroad, including the price set:

1) by increasing an earlier fixed price of the product, provided the following conditions are met:  
the expenses necessary for the production and distribution of the product have remained the same or their change does not match the price change;

the composition of product buyers or sellers remains unchanged or changes are insignificant;  
conditions of circulation of the product in the product market, including those set by government regulation, including taxation and the customs tariff, tariff and non-tariff regulation, have remained the same or their changes are disproportionate to the price change;

2) by maintaining or not decreasing an earlier fixed price, provided the following conditions are met:

the expenses necessary for the production and distribution of the product have decreased considerably;

the composition of product buyers or sellers brings about a possibility to reduce the price of the product;

conditions of circulation of the product in the product market, including those set by government regulation, including taxation and the customs tariff, tariff and non-tariff regulation, bring about a possibility to reduce the price of the product.

2. The price of a product shall not be recognized monopolistically high if it is set by a natural monopoly operator within the range of the tariff imposed on such product as provided in the laws of the state.

3. The price of a product shall not be recognized monopolistically high if it does not exceed the price prevailing in a competitive environment in a comparable product market.

4. Subject to the requirements provided in part 1, article 14 of this Law, the price of a product shall not be recognized monopolistically high if the product is a result of innovative activity, that is, the activity of creating a new product that does not have substitutes, or a new product that have substitutes with its productions costs decreased and/or quality improved.

5. The laws of the state may provide for other grounds for establishing that a product price is not monopolistically high, including when the price it regulated by an exchange.

6. In the determination of the monopolistically high price as provided in part 1 of this article the anti-monopoly body may take into consideration price indices in the global exchange and over-the-counter markets of the like product.

## Article 7. **Monopolistically Low Product Price**

1. Monopolistically low price of a product is the price set by a business entity (market agent) having a dominant position, if this price is below the sum of the costs and profit necessary for the production and distribution of such product, and is below the price prevailing in a competitive

environment in the product market if such a market exists on the territory of the state or abroad, including the price set:

1) by reducing an earlier fixed price of the product, provided the following conditions are met:  
the expenses necessary for the production and distribution of the product have remained the same or their change does not match the price change;

the composition of product buyers or sellers remains unchanged or changes are insignificant;  
conditions of circulation of the product in the product market, including those set by government regulation, including taxation and the customs tariff, tariff and non-tariff regulation, have remained the same or their changes are disproportionate to the price change;

2) by maintaining or not increasing an earlier fixed price, provided the following conditions are met:

the expenses necessary for the production and distribution of the product have increased considerably;

the composition of product buyers or sellers brings about a possibility to raise the price of the product;

conditions of circulation of the product in the product market, including those set by government regulation, including taxation and the customs tariff, tariff and non-tariff regulation, bring about a possibility to raise the price of the product.

2. The price of a product shall not be recognized monopolistically low if:

1) it is set by a natural monopoly operator within the range of the tariff imposed on such product as provided in the laws of the state;

2) it is not lower than the price prevailing in a competitive environment in a comparable product market;

3) its setting by the product seller has not resulted or could not have resulted in restricting competition due to reduction in the number of business entities (market agents) which are not members of the same group of persons with the product buyers or sellers in the respective product market.

3. The laws of the state may provide other grounds for establishing that a product price is not monopolistically low, including for the purposes of determining monopsonically low prices.

#### **Article 8. Monopsonic Position and Monopsonically Low Price**

1. Monopsonic position is a dominant position of a business entity (market agent) or a group of persons or several business entities (market agents) or groups of persons in the market of a certain product in which such business entity (market agent) or a group of persons or several business entities (market agents) or groups of persons buy the product.

2. Monopsonic position shall be determined in accordance with article 5 of this Law.

3. Monopsonically low price is the price of a product set by the business entity (market agent) occupying a monopsonic position if:

1) such price makes it possible for the business entity (market agent) occupying a monopsonic position to receive extra income by reducing the production and/or distribution costs of products;

2) such price is lower than the sum of the costs and profit necessary for the production and distribution of such product by the business entity (market agent) that produces and distributes such product.

4. The competition laws of the state may provide other procedures for determining a monopsonically low price.

## Article 9. **Concerted Practices of Business Entities (Market Agents)**

1. Concerted practices of business entities (market agents) are the actions of business entities (market agents) in the product market, where no agreement is in place, that meet all of the following conditions:

- 1) the result of such actions meets the interest of each of the business entities (market agents);
- 2) the actions are known to each of the business entities (market agents) in advance by virtue of a public declaration of such actions by one of them;
- 3) the actions of each of the above business entities (market agents) are caused by the actions of other business entities (market agents) using concerted practices and are not consequences of any circumstances equally influencing all economic entities (market agents) in the respective product market. Such circumstances, in particular, may include changes in regulated tariffs, changes in the prices for raw materials used for the production, changes in the prices for the product in the global product markets, significant changes in demand for the product within a period of at least 1 year or within the period of existence of the relevant product market if it exists for less than 1 year.

2. Actions taken by the parties referred to in part 1 of this article under an agreement shall not be regarded as concerted practices, rather than an agreement.

3. The national law may provide other conditions for the determination of concerted practices of business entities (market agents) in a product market.

## Article 10. **Group of Persons and Affiliated Persons**

1. A group of persons is an aggregate of natural persons and/or legal entities that meet one or several of the following criteria:

1) a business entity (partnership, economic partnership) and a natural person or a legal entity if such natural person or such legal entity, due to its participation in this business entity (partnership, economic partnership) or under any authorities received, including by virtue of a written arrangement, from other persons, has more than 50 percent of the total number of votes related to voting shares (participating interests) in the authorized (contributed) capital (authorized stock) of such business entity (partnership, economic partnership);

2) a legal entity and a natural person or a legal entity if such natural person or such legal entity exercises the functions of the sole executive body of this legal entity;

3) a business entity (partnership, economic partnership) and a natural person or a legal entity if such natural person or such legal entity, based on the founding documents of such business entity (partnership, economic partnership) or an agreement concluded with such business entity (partnership, economic partnership), has the right to give to such business entity (partnership, economic partnership) binding instructions;

4) legal entities where more than 50 percent of the members of their collective executive body and/or the Board of Directors (supervisory board, foundation council) are the same natural persons;

5) a business entity (economic partnership) and a natural person or a legal person if the sole executive body of such business entity (economic partnership) has been appointed or elected at the suggestion of such natural person or such legal entity;

6) a business entity and a natural person or a legal entity if more than 50 percent of the members of the collective executive body and/or the Board of Directors (supervisory board) of the business entity have been elected at the suggestion of such natural person or such legal entity;

7) a natural person, his/her spouse, parents (including adoptive parents), children (including adopted children), blood and half-blood brothers and sisters;

8) persons each of which, according to any of the criteria given in paragraphs 1 - 7 of this part, is in a group with one and the same person, and other persons that are in a group with any of such persons according to any of the criteria given in paragraphs 1 - 7 of this part;

9) a business entity (partnership, economic partnership), natural persons and/or legal entities which, according to any of the criteria given in paragraphs 1 - 8 of this part, are members of a group of persons, if such persons, due to their joint participation in this business entity (partnership, economic partnership) or under any authorities received from other persons, have more than 50 percent of the total number of votes related to voting shares (participating interests) in the authorized (contributed) capital (authorized stock) of such business entity (partnership, economic partnership).

2. Prohibitions on actions (omissions) of a business entity (market agent) in the product market imposed by the national law shall apply to the actions (omissions) of a group of persons, unless the national law provides otherwise.

3. The national law may provide other criteria for qualifying an aggregate of natural persons and/or legal entities as a group of persons.

4. The national law may provide the criteria for qualifying natural persons and legal entities capable of exerting a decisive influence on the activity of legal entities and/or natural persons being business entities (market agents) as affiliated persons.

## **Chapter II**

### **MONOPOLISTIC ACTIVITY AND UNFAIR COMPETITION**

#### **Article 11. Abuse of Dominant Position**

1. Actions (omissions) of a business entity (market agent) occupying a dominant position, which result or can result in prevention, restriction or elimination of competition and/or infringement of the interests of other business entities (market agents) in the sphere of income generating activities or consumers at large, are prohibited, including the following actions (omissions):

1) setting and maintaining of monopolistically high or monopolistically low or monopsonically low price of a product;

2) withdrawal of a product from circulation, if such withdrawal brings about the increase in the price of the product;

3) imposing on a counteragent economically or technologically unjustified contractual terms which are disadvantageous for it or irrelevant to the subject matter of the agreement (economically or technologically unjustified and/or not provided for directly in the laws of the state or its judicial acts demanding transfer of financial assets, other property, including property rights, a consent to conclude a contract on condition that the contract will include provisions concerning the product in which the counteragent is not interested, and other requirements);

4) economically or technologically unjustified reduction or cessation of the product output if the product is in demand or agreements (contracts) have been concluded for its delivery where its production

may be profitable and where such reduction or cessation has not been provided in the laws of the state or its judicial acts;

5) economically or technologically unjustified refusal or evasion from concluding an agreement (contract) with individual buyers (customers) where there production or delivery of the respective product is possible if such a refusal or evasion is not expressly provided in the laws of the state or its judicial acts;

6) economically, technologically or otherwise unjustified setting of different prices (tariffs) for one and the same product unless otherwise provided in the laws of the state;

7) setting of unjustifiably high or unjustifiably low price of a financial service by a financial organization;

8) creation of discriminatory conditions;

9) creation of barriers to the entry into the product market or the exit from the product market for other business entities (market agents);

10) violation of the pricing procedure established by the laws of the state;

11) price manipulation in the wholesale and/or retail electric energy (power) markets.

2. The laws of the state may provide other instances of abuse by business entities (market agents) of their dominant position.

3. For the prevention of discriminatory conditions that may be created the laws of the state may establish the rules for non-discriminatory access to product markets and/or products produced or distributed by the business entities (market agents) that are natural monopoly operators and which operation is regulated in accordance with the laws of the state, and to the infrastructure facilities directly used by such natural monopoly operators for providing services in natural monopoly operating areas. Such rules shall contain:

1) the list of the products and infrastructure facilities to which non-discriminatory access is being provided;

2) the list of the information making it possible for the agents of the respective product market participants to compare the conditions of circulation of products in the product market and/or the conditions for entry into the product market, as well as other essential information necessary for the entry into and/or circulation of products in the product market;

3) the procedures for disclosing the information specified in paragraph 2 of this part, including information about the products produced or sold by the business entities (market agents) listed in the first paragraph of this part, the cost of such products and the fee for the access to the market, possible scope of production output or sales of such products, and technical and technological possibilities for supplying such products;

4) the procedures for compensating economically reasonable expenses of business entities (market agents) listed in the first paragraph of this part, for production and/or distribution of the respective products and/or organization of market access;

5) the conditions for organizing tender procedures for the access to the product market where the business entities (market agents) listed in the first paragraph of this part operate, subject to economic, technological or other possibilities, if other market access procedures are not provided for by the laws of the state;

6) essential terms of agreements and/or model agreements for granting access to the product market and/or products of business entities (market agents) specified in the first paragraph of this part;

7) the procedures for determining consumers entitled to mandatory servicing, establishing the minimum level of services to be provided and the sequence of their access to the product market and/or the products when it is impossible to fully satisfy the demand for the product produced and/or distributed

by the business entities (market agents) listed in the first paragraph of this part, due consideration being given to the protection of citizens' rights and legitimate interests, state security, protection of the environment and cultural heritage;

8) the conditions of access to the product market and/or the products, and/or infrastructure facilities for the business entities (market agents) listed in the first paragraph of this part, and, to the extent applicable, requirements for the technological and technical measures to be taken, including the measures related to connection (integration);

9) required characteristics of the product unless the laws of the state provides otherwise.

4. The laws of the state may, following the analysis of competitive situation, establish the rules of non-discriminatory access containing the requirements provided in part 3 of this article with respect to the products produced and/or distributed by a business entity (market agent) that occupies a dominant position and is not a natural monopoly operator, in which respect all of the following conditions are met:

1) the share of the business entity (market agent) in the respective product market exceeds 70 percent or other value established by the national law;

2) over a long period (at least 1 year or, if such term is less than 1 year, during the existence of the respective product market) the relative shares of business entities (market agents) do not change or change insignificantly;

3) the entry of new competitors to the respective product market is impeded, in particular, due to economic, technological, administrative or other restrictions;

4) the demand for the product has been significantly higher than the supply over a long period as determined by the anti-monopoly body following the analysis of competitive situation.

5. The laws of the state may provide the right of the anti-monopoly body, following the hearing of a case over abuse of a dominant position or in the process of government control over economic concentration, to issue to the business entity (market agent) which is a defendant in a case over violation of the state laws or which has filed to the anti-monopoly body a petition or a notice of transaction (other action), an instruction to approve and publish the rules of trade aimed to ensure non-discriminatory access to the product in which market such business entity (market agent) has a dominant position. The requirements to the content of the trade rules shall be defined by the national law.

## **Article 12. Anticompetitive Agreements between Business Entities (Market Agents)**

1. Agreements between the business entities (market agents) that are competitors (or the business entities (market agents) that sell or buy products in one product market) are recognized cartels and forbidden if such agreements lead or may lead to the following:

1) setting or maintaining of prices (tariffs), discounts, markups (extra charges), and margins;

2) raising, lowering, or maintaining of prices at tenders;

3) division of the product market according to the territory, the volume of product sales or purchases, the range of the products offered for sale or composition of sellers or buyers (customers);

4) reduction or cessation of output of products;

5) refusal from concluding contracts with certain sellers or buyers (customers).

The provisions of paragraph 2 of this part may also apply to the arrangements between the business entities (market agents) that are members of one and the same group of persons.

2. "Vertical" agreements between business entities (market agents) are forbidden (except for the "vertical" agreements that are recognized acceptable under article 14 of this Law), if:

1) such agreements lead or may lead to fixing resale prices for the product except when the seller sets for the buyer (customer) the maximum resale price for the product;

2) such agreement provides for the buyer's (customer's) obligation not to sell the product of the business entity (market agent) that is the seller's competitor;

3) such agreement provides for the seller's obligation not to sell the product to the business entity (market agent) that is the buyer's (customer's) competitor.

3. Agreements between business entities (market agents) that operate in the wholesale and/or retail markets of electric energy (power), are organizations of commercial infrastructure, organizations of technological infrastructure or grid operators are forbidden if such agreements lead to price manipulations in the wholesale and/or retail markets of electric energy (power).

4. Other types of agreements between business entities (market agents) (except the "vertical" agreements that are recognized acceptable under Article 14 of this Law) are forbidden if such agreements lead or may lead to restriction of competition. Such agreements may include, in particular, the following agreements:

1) on imposing on a counteragent contractual terms which are disadvantageous for it or irrelevant to the subject matter of the agreement (unjustified demands to transfer financial assets, other property, including property rights, a consent to conclude a contract on condition that the contract will include provisions concerning the products in which the counteragent is not interested, and other requirements);

2) on economically, technologically or otherwise unjustified setting of different prices (tariffs) for one and the same product by business entities (market agents);

3) on creation of barriers to the entry into the product market or the exit from the product market for other business entities (market agents);

4) on laying down the conditions of membership (participation) in professional or other associations.

5. Natural persons, commercial organizations and non-commercial organizations are forbidden to coordinate economic activity of business entities (market agents) if such coordination leads or may lead to any of the consequences indicated in parts 1 - 3 of this article which cannot be found acceptable under article 14 of this Law and that are not provided in the laws of the state.

6. A business entity (market agent) may present evidence that the agreements it concluded, as specified in parts 2 - 4 of this article, can be found acceptable under article 14 of this Law.

7. Prohibitions of anticompetition agreements do not apply to any agreements between business entities (market agents) that are members of one group of persons if one of such business entities (market agents) controls the other business entity (market agent) or if such business entities (market agents) are controlled by the same person, except for agreements between business entities (market agents) engaged in such type of activity which concurrent performance by one business entity (market agent) is not allowed by the laws of the state.

8. In this article 13 of this Law and for the purposes of government control over economic concentration, control shall mean the ability of a legal entity or a natural person to influence, directly or indirectly (through a legal entity or through several legal entities) the decisions taken by another legal entity by means of one or several of the following actions:

1) control of over 5 percent of the total number of votes in the shares (participation interest) forming the authorized (contributed) capital (authorized stock) of the legal entity;

2) performance of functions of the sole executive body of the legal entity.

**Article 13. Prohibition of Concerted Practices of Business Entities (Market Agents)  
Restricting Competition**

1. Concerted practices of the business entities (market agents) that are competitors are forbidden if such concerted practices lead to the following:

- 1) setting or maintaining of prices (tariffs), discounts, markups (extra charges), and margins;
- 2) raising, lowering, or maintaining of prices at tenders;
- 3) division of the product market according to the territory, the volume of product sales or purchases, the range of the products offered for sale or composition of sellers or buyers (customers);
- 4) reduction or cessation of output of products;
- 5) refusal from concluding contracts with certain sellers or buyers (customers) if such a refusal is not expressly provided in the laws of the state.

2. Concerted practices of the business entities (market agents) that operate in the wholesale and/or retail markets of electric energy (power), are organizations of commercial infrastructure, organizations of technological infrastructure or grid operators are forbidden if such concerted practices lead to price manipulations in the wholesale and/or retail markets of electric energy (power).

3. Apart from those provided in parts 1 and 2 of this article, other types of concerted practices of the business entities (market agents) that are competitors are forbidden if it is found that such concerted practices lead to restriction of competition. Such concerted practices may include the following practices:

- 1) of imposing on a counteragent contractual terms which are disadvantageous for it or irrelevant to the subject matter of the agreement (unjustified demands to transfer financial assets, other property, including property rights, a consent to conclude a contract on condition that the contract will include provisions concerning the products in which the counteragent is not interested, and other requirements);
- 2) of economically, technologically or otherwise unjustified setting of different prices (tariffs) for one and the same product by business entities (market agents);
- 3) of creation of barriers to the entry into the product market or the exit from the product market for other business entities (market agents).

4. A business entity (market agent) may present evidence that the concerted practices that it followed, as specified in parts 1 - 3 of this article, can be found acceptable under part 1 of article 14 of this Law.

5. The national law may provide for non-application of the prohibitions set out in this article to concerted practices of business entities (market agents) if their aggregate share and the share of each of them in the product market does not exceed the value established by the national law.

**Article 14. Actions (Omissions), Agreements, Including "Vertical" Agreements, Concerted Practices that May Be Found Acceptable**

1. The actions (omissions) provided for in part 1, article 11 of this Law (except for the actions (omissions) specified in paragraph 1 (except where it concerns the setting or maintaining of the price for the product that is a result of innovative activity), 2, 3, 5 - 7 and 10 of part 1 of article 10 of this Law), agreements and concerted practices provided for in parts 2 - 4 of article 12 and article 13 of this Law, transactions and other actions provided for in chapter VI of this Law may be recognized acceptable if such actions (omissions), agreements and concerted practices, transactions and other actions do not present an opportunity for individual persons to eliminate competition in the respective product market, do not impose on their parties or third parties restrictions otherwise than for the purposes of such actions

(omissions), agreements and concerted practices, transactions or other actions, and also if they lead or may lead to:

1) process improvement, sale of goods or promotion of technical or economic progress, or increasing competitive advantage of national products in the global product market;

2) obtaining by buyers (customers) of benefits (advantages) which are proportionate to the benefits (advantages) obtained by the business entities (market agents) as a result of actions (omissions), agreements and concerted practices, transactions.

2. The agreements between business entities (market agents) about joint efforts, which may lead to the consequences specified in part 1 of article 12 of this Law may be recognized acceptable if such agreements do not present an opportunity for individual persons to eliminate competition in the respective product market, do not impose on third parties any restrictions and if they lead or may lead to both:

1) process improvement, sale of goods or promotion of technical or economic progress, or direct investments made by their parties on the territory of the state (including commissioning of new production facilities or modernization of operating production facilities);

2) obtaining by buyers (customers) of benefits (advantages) which are proportionate to the benefits (advantages) obtained by the business entities (market agents) as a result of actions (omissions), agreements and concerted practices, transactions.

3. The laws of the state may establish the instances when the agreements and concerted practices meeting the conditions specified in paragraphs 1 and 2 of part 1 of this article are acceptable (general exemptions). General exemptions in respect of the agreements specified in parts 2 - 5, article 12 of this Law shall be established by the state upon the recommendation by the anti-monopoly body and shall state the following:

1) type of agreement;

2) conditions which cannot be considered as acceptable in regard to such agreements;

3) mandatory conditions for ensuring competition which should be contained in such agreements.

General exemptions may also state other conditions, apart from those given in this part, which the agreements shall meet.

Written "Vertical" agreements (except for "vertical agreements between financial organizations) are acceptable if they are franchising agreements.

Permissibility of "vertical" agreements between business entities (market agents) (except for "vertical agreements between financial organizations) may also be determined based on the share of each party to the agreement in any product market if it does not exceed the value established in the national law.

#### **Article 15. State Control Over Agreements Restricting Competition between Business Entities (Market Agents)**

1. Business entities (market agents) intending to conclude an agreement which may be recognized acceptable in accordance with this Law have the right to file to the anti-monopoly body an application for validation of the compliance of the draft agreement (in writing) with the requirements of the laws of the state.

Business entities (market agents) intending to conclude such agreement shall submit to the anti-monopoly body documents and information according to the list to be approved by the anti-monopoly body, together with the application.

2. The anti-monopoly body takes a decision whether the draft agreement (in writing) complies with the requirements laid down in the laws of the state within a prescribed time limit that runs from the receipt of all documents and information required for examination of the application.

3. If the applicant fails to provide a complete package of the documents and information required for the examination of the application the application shall be deemed unfiled, of which the anti-monopoly body informs the applicant within a time limit prescribed by the laws of the state that runs from the receipt of the application. The term during which the anti-monopoly body shall keep the submitted documents and the applicant may demand and obtain them shall be set out in the laws of the state and shall run from the receipt of the respective notice by the applicant.

4. The grounds for making a decision that the draft agreement (in writing) does not comply with the requirements laid down in the national law are:

1) existence of the conditions provided in parts 1 - 4 of article 12 of this Law if there are no grounds for recognizing the draft agreement acceptable under article 14 of this Law;

2) unreliability of the information contained in the documents and other information submitted by the business entity (market agent) and being significant for decision-making;

5. If necessary, the period for consideration of the application stated in part 1 of this article may be extended by the anti-monopoly body. The anti-monopoly body shall notify the applicant of the extension in writing, specifying its reasons.

6. A decision of the anti-monopoly body concerning the compliance or non-compliance of a draft agreement (in writing) with the requirements laid down in the laws of the state shall expire if such agreement has not been concluded within the prescribed period.

7. Together with the decision of compliance of a draft agreement (in writing) with the requirements laid down in the laws of the state, the anti-monopoly body has the right to issue to the parties to the agreements an instruction aimed at ensuring competition.

8. The anti-monopoly body has the right to cancel its decision of compliance of a draft agreement (in writing) with the laws of the state if:

1) after the decision had been taken, it was established that the information submitted by the business entity (market agent) intending to conclude an agreement was not reliable;

2) the business entities (market agents) intending to conclude an agreement do not follow the instructions of the anti-monopoly body provided in part 7 of this Article;

3) the conditions that had served as grounds for recognizing an agreement acceptable under article 14 of this Law have changed.

9. The business entities (market agents) that concluded agreements following the decision of the anti-monopoly body concerning the compliance of a draft agreement (in writing) with the requirements laid down in the laws of the state shall terminate such agreement within the term set by such laws and running from the moment when any of them receives a substantiated decision to cancel the decision of compliance of a draft agreement (in writing) with the requirements laid down in the laws of the state made by the anti-monopoly body under paragraph 3, part 8 of this article. The anti-monopoly body may decide to cancel the decision of compliance of a draft agreement (in writing) with the requirements laid down in the laws of the state if the share of the parties to the agreement in the product market has changed or if the parties to the agreement fail to perform under the agreement.

## **Article 16. Prohibition of Unfair Competition**

1. Unfair competition is not permitted, including:

- 1) dissemination of false, inaccurate, or corrupted information, which can inflict damage on a competing business entity (market agent) or cause injury to its business reputation;
  - 2) misrepresentation concerning the nature, method, and place of manufacture, end-user performance, quality and quantity of a product or concerning its producers;
  - 3) inappropriate comparison of a products manufactured or sold by a business entity (market agent) with products manufactured or sold by other business entities (market agents);
  - 4) sale, exchange or other commercialization of a product if based on illegal use of any results of intellectual activity and equivalent means of individualization of a legal person, means of individualization of products, work or services;
  - 5) illegal receipt, use, and disclosure of information constituting commercial, official or other secret protected by the laws of the state.
2. The national law may provide for other forms of unfair competition to be prohibited, apart from those specified in part 1 of this article.

### **Chapter III.**

#### **ACTS, ACTIONS (OMISSIONS), AGREEMENTS AND CONCERTED PRACTICES RESTRICTING COMPETITION OF STATE AUTHORITIES, MUNICIPAL AUTHORITIES, OTHER BODIES OR ORGANIZATIONS EXERCISING THE FUNCTIONS OF THE AFOREMENTIONED BODIES, ORGANIZATIONS INVOLVED IN THE PROVISION OF PUBLIC OR MUNICIPAL SERVICES, PUBLIC NON-BUDGETARY FUNDS, NATIONAL (CENTRAL) BANK**

#### **Article 17. Prohibition of Acts, Actions (Omissions), Agreements and Concerted Practices Restricting Competition of State Authorities, Municipal Authorities, Other Bodies or Organizations Exercising the Functions of the Aforementioned Bodies, Organizations Involved in the Provision of Public or Municipal Services, Public Non-Budgetary Funds, National (Central) Bank**

1. It is forbidden for the state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal services, public non-budgetary funds and the national (central) bank to pass acts and take actions (make omissions) that lead or may lead to prevention, restriction, elimination of competition, unless the laws of the state provide otherwise. In particular, it is prohibited:

- 1) to introduce restrictions concerning establishment of business entities (market agents) in any sphere of activity, and to impose bans or introduce restrictions concerning individual activities or production of certain types of products;
- 2) to unreasonably prevent any business entities (market agents) from operation, in particular, by establishing requirements to products or business entities (market agents) that are not provided for by the laws of the state;
- 3) to impose bans or introduce restrictions concerning free movement of products on the territory of the state, other restrictions of the rights of business entities (market agents) to sale, purchase, other acquisition or exchange of products;
- 4) to give to business entities (market agents) instructions concerning priority supplies for a certain category of buyers (customers) or conclusion of contracts on a priority basis;

5) to impose for buyers (customers) of products restrictions concerning the choice of business entities (market agents) that supply such products;

6) to provide to a business entity (market agent) priority access to any information;

7) to grant state or municipal preferences in conflict with the requirements established in chapter 5 of this Law;

8) to create discriminatory conditions;

9) to impose and/or levy charges that are not provided in the laws of the state when providing state or municipal services and the services that are necessary and compulsory for the provision of state or municipal services;

10) to give to business entities (market agents) instructions concerning acquisition of a product except where the laws of the state provide otherwise.

2. 2. It is forbidden to vest the state authorities or municipal authorities with powers which execution leads or may lead to prevention, restriction or elimination of competition, except as provided in the laws of the state.

3. It is forbidden to combine the functions of state authorities, municipal authorities and business entities (market agents) except as provided in the laws of the state.

4. The laws of the state may establish additional requirements and restriction in respect of the prohibitions specified in this article.

**Article 18. Prohibition of Agreements or Concerted Practices Restricting Competition of State Authorities, Municipal Authorities, Other Bodies or Organizations Exercising the Functions of the Aforementioned Bodies, Organizations Involved in the Provision of Public or Municipal Services, Public Non-Budgetary Funds, National (Central) Bank**

1. Agreements between state authorities, local authorities and other bodies or organizations exercising the functions of the aforementioned bodies,

organizations involved in the provision of public or municipal services, public non-budgetary funds, the national (central) bank or between them and business entities (market agents) or the pursuance by such bodies and organizations of concerted practices are forbidden if such agreements or pursuance of concerted practices lead or may lead to prevention, restriction or elimination of competition, in particular, to:

1) increase, decrease or maintaining of prices (tariffs) except where such agreements are provided for by the laws of the state;

2) economically, technologically or otherwise unjustified setting of different prices (tariffs) for one and the same product;

3) division of the product market according to the territory, the volume of product sales or purchases, the range of the products offered for sale or composition of sellers or buyers (customers);

4) limitation of access to, or exit from, a product market or removal of business entities (market agents) from such market.

**Chapter IV****ANTI-MONOPOLY REQUIREMENTS TO TENDERS, REQUESTS FOR QUOTATIONS  
SPECIFICS OF CONCLUSION OF CONTRACTS WITH FINANCIAL ORGANIZATIONS AND  
PROCEDURE FOR CONCLUSION OF CONTRACTS IN RESPECT OF STATE AND  
MUNICIPAL PROPERTY****Article 19. Anti-Monopoly Requirements to Tenders and Requests for Quotations**

1. In the process of tenders or requests for quotation for products (hereinafter in this article - a request for quotation), any actions that lead or may lead to prevention, restriction or elimination of competition are prohibited, including:

1) coordination of bidders' actions by the organizers of the tender or request for quotation or the customers, and agreements between the organizers of the tender or request for quotation and/or the customers and the bidders under such tender or request for quotation if such agreements are intended to, or lead, or may lead to the advance, decrease in, or support of, prices at tenders unless the laws of the state provided otherwise;

2) restriction of access to a tender or request for quotation, including by limiting the access to information about such tender or request for quotation or providing to a bidder or a tenderer or several bidders or tenderers preferential conditions for participation in the tender or the request for quotation, where such restrictions are not provided in the laws of the state;

3) violation of the procedure for determining the winner or winners of the tender or request for quotation;

4) participation of the organizers of the tender or request for quotation or the customers and/or the employees of the organizers of the tender or request for quotation or the customers in the tender or request for quotation;

5) unsubstantiated loading of the lot with products (work, services) having no technological and functional connection with the products (work, services) which supplies (delivery, provision) is the subject-matter of the tender or request for quotation except for the life cycle agreements (contracts) that imply the purchase of products (work, services) with subsequent servicing, maintenance throughout the service life, repair and disposal of the supplied products or results of work or where otherwise is provided in the laws of the state.

2. A failure to comply with the rules established in this article is a predicate for the court order to find the respective tender, request for quotation and the transactions closed following such tenders invalid, including in the action brought by the anti-monopoly body.

**Article 20. Specifics of Procedure for Conclusion of Contracts in Respect of State and  
Municipal Property**

The laws of the state may establish that any contracts in respect of state and municipal property be concluded only following tenders or auctions for the right to conclude such contracts, providing the exceptions from this requirement.

## **Article 21. Specifics of Conclusion of Contracts with Financial Organizations**

1. The laws of the state may establish for the state authorities, municipal authorities and public non-budgetary funds an obligation to conclude, regardless of the transaction amount, contracts with financial organizations only following an open tender or open auction held in accordance with the laws of the state concerning purchasing of products (work, services) for state and municipal needs, including for providing the following financial services:

- 1) opening and keeping of accounts, settlement on such accounts;
- 2) trust management of securities;
- 3) private pension schemes.

2. When holding an open tender or open auction under this Article, the state authority, municipal authority or a public non-budgetary funds has the right to impose requirements with a view to assess the financial stability and solvency of a financial organization, except for the requirements for the following:

- 1) certain value of authorized capital (authorized fund), equity, assets or conformity with other characteristics of a financial organization and/or its activity in absolute terms unless conformity with such characteristics is required under the laws of the state;
- 2) rating by national or international rating agencies;
- 3) branches, offices or other structural subdivisions outside the place where the financial service is being rendered.

3. In the process of an open tender or open auction held under this article, a state authority, municipal authority or public non-budgetary fund may require a certain rating by national or international rating agencies if the financial organization does not meet the necessary level of financial stability and solvency to be determined on the basis of the indicators identified in the laws of the state and derived from the financial and economic and other statements of the financial organization submitted to the national (central) bank and state authorities that regulate the market of financial services.

4. Amendment and termination of financial services contracts concluded by state authorities, local authorities or public non-budgetary funds under this article is allowed to the extent and in the manner provided in the laws of the state in respect of purchases of products (work, services) for state and municipal needs.

5. The laws of the state may specify the term of the financial services contracts concluded in accordance with part 1 of this article.

6. Violation of the procedure for concluding financial services contracts by state authorities, local authorities or public non-budgetary funds constitutes grounds for a court ruling to find the tender or the transactions closed following such tenders invalid, including in the action brought by the anti-monopoly body.

## **Article 22. Processing of Complaints about Breach of Tendering and Contracting Procedures by Anti-Monopoly Body**

The national law may provide the grounds and procedures for the anti-monopoly body to process complaints about actions (omissions) of a bidding process organizer, the operator of an electronic trading platform, a tender or auction commission in the organization and process of a tender, the conclusion of contracts following a tender or if any tender required under the laws of the state has been found void, except for the complaints which processing is provided in the laws of the state in respect of purchases of products (work, services) for state and municipal needs.

**Chapter V**  
**GRANTING OF STATE OR MUNICIPAL PREFERENCES**  
**AND STATE PARTICIPATION IN BUSINESS INCLUDING ANTI-MONOPOLY**  
**REQUIREMENTS TO ESTABLISHMENT OF STATE ENTERPRISES OR COMPANIES WITH**  
**MORE THAN 50 PERCENT OF SHARES (PARTICIPATING INTERESTS) OWNED BY THE**  
**STATE**

**Article 23. State or Municipal Preferences**

1. Granting of state or municipal preferences otherwise than provided in the laws of the state and by the contractual legal framework of the Customs Union and the Common Economic Space is not allowed.

2. The grounds and procedure for granting state or municipal preferences shall be provided in the laws of the state.

**Article 24. Anti-Monopoly Control in Establishment of State Enterprises or Companies with More Than 50 Percent of Shares (Participating Interests) Owned by State**

1. The laws of the state may require that state enterprises or companies with more than 50 percent of shares (participating interests) owned by the state (hereinafter in this article - a company) are organized subject to a prior written consent of the anti-monopoly body except where the establishment of such enterprises or companies is provided for by the laws of the state.

2. The laws of the state may provide that state enterprises or companies may not be organized without a prior consent of the anti-monopoly body as required by this article.

**Article 25. Procedure for Obtaining Prior Consent of Anti-Monopoly Body for Organization of State Enterprises or Companies**

1. The state or municipal authority with competence in organizing state enterprising or companies shall file to the anti-monopoly body an application for consent to such actions.

2. Alongside with the application for organizing a state enterprise or company the anti-monopoly body shall be provided with the documents which list is to be given in the national law.

**Article 26. Decision by Anti-Monopoly Body Following Processing of Application for Organizing a State Enterprise or Company**

1. The anti-monopoly body shall process the application for organizing a state enterprise or company within the term set out in the laws of the state and shall inform the applicant (in writing) of the decision taken stating the reasons for such decision.

2. After processing the application the anti-monopoly body may decide:

1) to approve the application and give consent to the organization of a state enterprise or company if such state enterprise or company is being organized for operating in a product market with undeveloped or underdeveloped competition. Undeveloped or underdeveloped competition in the product market where the state enterprise or company is to be established shall be determined following the analysis of

competitive situation to be performed in accordance with the procedure established in the laws of the state;

2) to extend the period for processing the application if during the processing the anti-monopoly body decides that it needs additional information to make the respective decision;

3) to dismiss the application and withhold consent to the organization of a state enterprise or company if such state enterprise or company is being organized in a product market that does not meet the criteria set out in paragraph 1 of this part;

4) to approve the application and give consent to the organization of a state enterprise or company if such state enterprise or company is being organized for operating in a product market with undeveloped or underdeveloped competition and, at the same time, to issue to the state enterprise or company being organized instructions to take actions aimed at ensuring competition.

3. The extension of the period for processing an application in accordance with paragraph 2, part 2 of this article shall not be more than 2 months. If the respective decision is taken, the anti-monopoly body shall place information about the establishment of a state enterprise or company on its official web site. Interested parties may provide to the anti-monopoly body information about the influence that the establishment of the state enterprise or company has on the competitive situation.

#### **Article 27. Consequences of Violation of Procedure for Obtaining Prior Consent of Anti-Monopoly Body for Organization of State Enterprises or Companies**

1. Formation of a state enterprise or company without a prior consent of the anti-monopoly body entails liability provided for in the laws of the state.

2. A failure to comply with the instruction of the anti-monopoly body entails liability provided for in the laws of the state.

### **Chapter VI STATE CONTROL OVER ECONOMIC CONCENTRATION**

#### **Article 28. Scope of State Control over Economic Concentration**

1. In order to exclude prevention, restriction or elimination of competition the anti-monopoly body shall exercise state control over the following transactions or other actions:

1) formation of commercial organizations;

2) reorganization (consolidation, merger) of commercial organizations;

3) acquisition of voting shares of a stock corporation;

4) acquisition of participating interests in the authorized capital (authorized fund) of a limited liability company or a company limited by guarantee;

5) obtaining by a business entity (market agent) or a group of persons of ownership, use or possession of property, plant and/or intangible assets of another business entity (market agent);

6) acquisition by a person (group of persons) of rights making it possible to exercise a dominant influence on the operations of a business entity (market agent) registered on, or organized outside, the territory of the state in the territory of the state, or perform the functions of its executive body;

7) acquisition of shares (participating interests), assets and rights in respect of financial organizations.

2. State control over economic concentration is preliminary and shall be exercised in the form of an application to be filed by the persons specified in part 1, article 30 of this Law to the anti-monopoly body seeking its consent to transactions and/or other actions. The anti-monopoly body may exercise notification control over transactions and/or other actions taken by the persons that are members of one group of persons.

The national law may provide exemption from the requirements of prior consent to transactions and actions under part 1 of this article if such transactions and actions are carried out by the persons that are members of one group of persons, on the grounds given in paragraph 1, part 1, article 10 of this Law, or if such transactions and actions are carried out in compliance with the requirements in article 29 of this Law, or they are prescribed by the acts of the President of the Government of the state.

3. The criteria after exceeding which transactions or other actions shall be subject to state control by the anti-monopoly body are:

1) the total value of assets in the accounting balance sheets corresponding to the latest reporting date prior to the date when a person buying shares (participation interests) and/or property and its group of persons and a subject person of economic concentration and its group of persons go to the anti-monopoly body, which value shall be specified in the laws of the state;

2) the total revenue of a person buying shares (participation interests) and/or property and its group of persons and a subject person of economic concentration and its group of persons from sales of products over the last calendar year, which value shall be specified in the laws of the state;

3) a dominant position of a person buying shares (participation interests) and/or property and its group of persons and a subject person of economic concentration and its group of persons in the product market, on the basis of which such persons are included in the state register of business entities (market agents) having statutory share in the market of a certain product which makes it possible to conclude that such persons may unilaterally determine the price for the product and exert a decisive influence on the general conditions of sale of the product in the respective product market;

4) the percentage of the shares being acquired, the share in the authorized capital (authorized fund) of a commercial organization which threshold values shall be specified in the laws of the state;

5) the balance-sheet value of the property, plant and/or intangible assets being acquired by a person as part of the total value of property, plant and/or intangible assets of such person, which exceeds the threshold value and shall be specified in the laws of the state.

#### **Article 29. Specifics of State Control over Economic Concentration Exercised by a Group of Persons**

1. Transactions or other actions stated in part 1 of article 28 of this Law may be exercised without a prior consent of the anti-monopoly body, but with its subsequent notification thereof in accordance with the procedure established in article 30 of this Law if all of the following conditions are observed:

1) the transactions or other actions stated in part 1 of article 28 of this Law are carried out by the persons that are members of one group of persons;

2) the list of the persons that are members of one group of persons giving the grounds, on which such persons are the members of such group, was submitted by any member or such group (applicant) to the anti-monopoly body in the approved form and within the term set out in the laws of the state before entering into transactions or taking other actions;

3) the list of the persons that are members of one group has not changed for the moment of the transactions or other actions in comparison with the list of such persons submitted to the anti-monopoly body.

2. Within the term specified in the laws of the state from the receipt of the list of persons that are members of one group of persons with statement of the membership grounds the anti-monopoly body sends to the applicant one of the following notices about:

1) the receipt of the list of persons that are members of one group and its placement on the official web site of the anti-monopoly body if such list was submitted in the form approved by the anti-monopoly body;

2) violation of the format for submitting a list of the persons that are members of one group and non-compliance with the conditions stated in part 1 of this Article.

3. A notice of any transactions or other actions, carried out in accordance with the conditions set out in this article shall be filed to the anti-monopoly body within the term specified in the laws of the state.

4. The anti-monopoly body shall approve the format for submitting a list of the persons that are members of one group stating the grounds for their membership.

5. If it is found that any submitted information concerning the persons that are members of one group of persons is not reliable, such information published on the official web site of the anti-monopoly body shall be removed from the web site.

### **Article 30. Procedure of State Control over Economic Concentration**

1. Applications for prior consent to transactions or other actions as provided in part 1, article 28 of this Law may be filed to the anti-monopoly body by the following persons:

1) persons performing operations for consolidation of commercial organizations or merger of one commercial organization with another commercial organization;

2) persons or one of the persons that make a decision to form a commercial organization;

3) persons buying shares or participating interests, property, assets of business entities (market agents) or rights in respect of business entities (market agents).

2. Notices of transactions or other actions carried out in conformity with the conditions set out in article 29 of this Law shall be filed to the anti-monopoly body by the person interested in such transactions or other actions, or the person organized as a result of the transactions or other actions specified in part 1, article 30 of this Law.

3. Alongside with an application or a notice of transactions or other actions subject to state control, the anti-monopoly body shall be provided with the documents and information necessary for complete and comprehensive examination of the application (notice) for establishing its conformity with the requirements of the state laws.

The exhaustive list of such documents and information shall be set out in the laws of the state.

4. If any transaction or other action requires a prior consent or notification of the anti-monopoly body on several grounds provided in article 30 of this Law, the laws of the state may also provide that such transaction or other action may be approved on the basis of one application or notice.

**Article 31. Results of State Control over Economic Concentration**

1. The anti-monopoly body shall process an application within the term specified in the laws of the state and shall inform the applicant (in writing) of the decision taken stating the reasons for such decision.

2. Following the examination of the application for a consent to a transaction or other action subject to state control, the anti-monopoly body makes one of the following decisions:

1) to approve the application if the transaction or other action stated in the application do not lead to restriction of competition;

2) to extend the period for processing the application in connection with the need of its more detailed examination and additional information for making the decision referred to in paragraphs 1, 3 – 5 of this article following the processing of the application if it is established that the transaction or other action stated in the application may lead to restriction of competition including through an arising or strengthening dominant position of a person (group of persons);

3) to extend the period for processing the application for a consent to consolidation of commercial organizations and/or non-commercial organizations, merger of a commercial organization and/or non-commercial organization with one or several commercial organization(s) and/or non-commercial organization(s), formation of a commercial organization or making a transaction in accordance with part 1, article 28 of this Law in connection with imposing the conditions after fulfillment of which by the applicant and/or other parties to such consolidation, merger, formation or transaction the anti-monopoly body decides to satisfy such application, and with setting of the period for the fulfillment of such conditions. Such conditions form an integral part of the decision to extend the period of processing of such application;

4) to satisfy the application for a consent to a transaction or other action referred to in part 1, article 28 of this Law and, at the same time, to issue to the applicant and/or persons from its group of persons and/or the business entity (market agent) which shares (participating interests), property, assets or rights in which are being acquired and/or to the person being organized instructions to take actions aimed at ensuring competition if such persons carry out the transaction or other action stated in the application;

5) to dismiss the application if the transaction or other action stated in the application will or may lead to restriction of competition (in particular, through an arising or strengthening dominant position of the applicant or a dominant position of the persons that will be organized following the completion of the transaction or other action stated in the application) or if in the processing of the documents the anti-monopoly body finds that the information contained in them and being significant for decision-making is not reliable, or in the applicant has not provided any information available to it and requested by the anti-monopoly body, without which it cannot make the determination of restriction of competition or no restriction of competition in respect of the application under consideration.

3. The laws of the state may provide other grounds for extending the period for processing of an application and its dismissal.

4. The term specified in part 1 of this article may be extended by decision of the anti-monopoly body as provided in paragraph 2, part 2 of this Article. If such decision is taken, the anti-monopoly body shall place information about the transaction or other action stated in the application for consent to the transaction or other action on its official web site. Interested parties may provide to the anti-monopoly body information about the influence that such transaction or other action has on the competitive situation.

5. A decision to extend the period for processing the application as provided in paragraph 3, part 2

of this article shall be made by the anti-monopoly body if consolidation of commercial organizations, merger of a commercial organization with one or several commercial organization(s) or formation of a commercial organization will or may lead to restriction of competition, including through an arising or strengthening dominant position of a person (group of persons) that will be organized following the completion of such actions.

6. For the purposes of ensuring competition, the conditions in paragraph 3, part 2 of this article may include, in particular:

1) the procedure of access to production facilities, infrastructure and information available to the applicant and other persons involved in consolidation of commercial organizations, merger of a commercial organization with one or several commercial organizations, formation of a commercial organization;

2) the procedure for granting to other persons rights to industrial property available to the applicant and other persons involved in consolidation of commercial organizations, merger of a commercial organization with one or several commercial organizations, formation of a commercial organization;

3) requirements imposed on the applicant and other persons involved in consolidation of commercial organizations, merger of a commercial organization with one or several commercial organizations, formation of a commercial organization, for transfer of property to another person that is not a member of one group of persons with such applicant and/or other persons, or for assignment of the rights of claim and/or obligations of such applicant and/or other persons to another person that is not a member of one group of persons with such applicant and/or other persons;

4) requirements for the composition of the group of persons that includes the applicant and other persons involved in consolidation of commercial organizations, merger of a commercial organization with one or several commercial organizations, formation of a commercial organization.

7. After fulfilling the conditions stated in paragraph 3, part 2 of this article the applicant shall submit to the anti-monopoly body documents confirming their fulfillment. Within the statutory term from the receipt of the aforementioned documents, if they serve as a confirmation that such conditions have been fulfilled within the required period, the anti-monopoly body decides to approve the application for a consent to consolidation of commercial organizations, merger of a commercial organization with one or several commercial organizations, formation of a commercial organization or making of a transaction provided in part 1, article 28 of this Law, otherwise it decides to dismiss the application.

8. The decision to approve the application for consent to a transaction or other action referred to in paragraph 4, part 2 of this article and to issue an instruction shall be taken by the anti-monopoly body if the transaction or other action stated in the application leads or may lead to restriction of competition.

9. The decision of the anti-monopoly body to give consent to a transaction or other action referred shall terminate if such transaction or other action are not carried out within the term specified in the laws of the state.

10. If the transactions or other actions provided in article 28 of this Law have led or may lead to restriction of competition including through an arising or strengthening dominant position of a business entity (market agent), the applicant that has filed a respective notice to the anti-monopoly body, or a group of persons of which the applicant is a member, shall take the actions for ensuring competition, according to the instruction of the anti-monopoly body.

11. The anti-monopoly body, by request of the person that has received the instruction as provided for in this article, or on its own initiative may review its content or implementation procedure in connection with material circumstances that have arisen after its issuance and make it impossible and/or

unreasonable to follow the instruction in whole or in part. Material circumstances shall include changes in the product or geographical boundaries of the product market, the composition of sellers or buyers and loss of a dominant position by the business entity (market agent). The request to review an instruction shall be processed by the anti-monopoly body within the period specified in the laws of the state. The review procedure shall be established by the anti-monopoly body. Changes in the instruction may not prejudice the position of the person to which such instruction is issued.

**Article 32. Consequences of Violation of Procedure for Obtaining Prior Consent of Anti-Monopoly Body to Transactions or Other Actions and Procedure for Submitting to Anti-Monopoly Body Notices of Transactions or Other Actions Subject to State Control**

1. A commercial organization founded without a prior consent of the anti-monopoly body, including through consolidation or merger of commercial organizations as provided in part 1, article 28 of this Law, shall be legally liquidated or reorganized in the form of a spin-off or demerger in an action of the anti-monopoly body's claim if its formation led or may lead to restriction of competition, including through an arising or strengthening dominant position.

2. Transactions or other actions stated in part 1, article 28 of this Law, which were carried out without a prior consent of the anti-monopoly body, shall be legally recognized invalid in an action of the anti-monopoly body if such transactions or other actions led or may lead to restriction of competition, including through an arising or strengthening dominant position.

3. Transactions or other actions stated in part 1, article 28 of this Law, which were carried out in violation of the procedure for notification of the anti-monopoly body, shall be legally recognized invalid in an action of the anti-monopoly body if such transactions or other actions led or may lead to restriction of competition, including through an arising or strengthening dominant position.

4. Noncompliance with the instruction of the anti-monopoly body issued in accordance with paragraph 4, part 2 of article 31 of this Law shall constitute the grounds for legally recognizing such transactions invalid in an action of the anti-monopoly body.

5. Noncompliance with the instruction of the anti-monopoly body issued in accordance with paragraph 4, part 2 of article 31 of this Law, other violations of the requirements for prior approval of transactions or other actions or a failure to notify of such transactions or other actions alongside with the consequences indicated in this article entails liability to the extent specified in the laws of the state.

**Chapter VII  
ANTI-MONOPOLY BODY**

**Article 33. Functions of Anti-Monopoly Body**

1. In order to implement the anti-monopoly (competition) policy the state shall form an independent anti-monopoly body powers of which shall be established by the laws of the state.

2. The anti-monopoly body shall fulfill the following functions:

1) ensure state control over observance of the laws of the state by state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal services, public non-budgetary funds, their officials, business entities (market agents) and natural persons;

2) detect violations of the laws of the state, take measures to terminate violations of the laws of the state and take to court for such violations;

3) prevent monopolistic activity, unfair competition, other violations of the laws of the state by state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal services, public non-budgetary funds, their officials, business entities (market agents) and natural persons;

4) exercise state control over economic concentration.

#### **Article 34. Powers of Anti-Monopoly Body**

The anti-monopoly body may have the following powers:

1) to open and review cases over violations of the laws of the state;

2) to issue to business entities (market agents) binding instructions:

on termination of agreements between business entities (market agents) restricting competition and fulfillment of actions aimed at ensuring competition;

on termination of abuse of a dominant position by a business entity (market agent) and fulfillment of actions aimed at ensuring competition;

on termination of violation of rules of non-discriminatory access to products;

on termination of unfair competition;

on prevention of actions which can prevent competition and/or lead to restriction or elimination of competition and violation of the laws of the state;

on removal of the consequences of violation of the state laws;

on termination of other violations of the state laws;

on restoration of the situation that existed prior to the violation of the state laws;

on conclusion of contracts, change of contractual terms or termination of contracts on a respective application filed by persons which rights have been or can be violated, in the hearing of a case over violation of the state laws held by the anti-monopoly body, or in the process of state control over economic concentration by the anti-monopoly body;

on transfer of the income received through violation of the state laws to the national budget;

on change or limited use of a brand name in the case if, in the hearing of a case over violation of the state laws held by the anti-monopoly body, the persons which rights have been or can be violated filed a respective application, or in the process of state control over economic concentration by the anti-monopoly body;

on fulfillment of economic, technical, informational, and other requirements for elimination of discriminatory conditions and their prevention;

on taking actions aimed at ensuring competition, including the provision of access to production facilities or information in accordance with the procedures established by the laws of the state; on granting rights to industrial property in accordance with the procedures established by the laws of the state; on assignment of property rights or prohibition of such assignment; on prior notification of the anti-monopoly body of an intention to take the actions required by the instruction; on selling a certain quantity of products through an exchange; on prior approval by the anti-monopoly of the procedure for determining the starting price for the products to be sold through an exchange in accordance with the procedures established by the laws of the state;

3) to issue to state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal

services, public non-budgetary funds and their officials except as provided in paragraph 6 of this part, binding instructions:

on cancellation or amendment of acts violating the laws of the state;

on cancellation or amendment of agreements violating the laws of the state;

on termination of other violations of the state laws, in particular, on taking measures to return property or other assets that have been transferred as a state or a municipal preference;

on taking actions aimed at ensuring competition;

4) to issue to a bidding process organizer, a tender or auction commission, a seller of state or municipal property, a sale organizer binding instructions on taking appropriate actions to remedy the breach of the procedure for organizing and holding a tender, selling state or municipal property (hereinafter in this article - the tender), concluding contracts following the tender or, if the tender is invalidated, instructions to cancel the memorandums drafted in the course of the tender, to introduce amendments to the tender documentation, the tender notice or the invalidation letter;

5) to issue a warning letter demanding cessation of the action (omission) showing signs of violation of the national law;

6) to send to the state authority for the securities market, the national (central) bank an offer bringing their acts in conformity with the laws of the state and/or cessation of actions if such acts or actions violate the laws of the state;

7) to send a written notice of prohibition concerning violation of the state laws by officers of business entities (market agents), state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, and organizations involved in the provision of public or municipal services, public non-budgetary funds, the national (central) bank, which make public declarations of their intended behavior in the product market if such behavior may lead to violation of the state laws;

8) to consider complaints regarding breaches of the procedures for statutory tenders, sale of state or municipal property;

9) to hold commercial and non-commercial organizations, their officers, officials of state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal services, officials of public non-budgetary funds and natural persons (including self-employed entrepreneurs) liable for violation of the state laws to the extent and in the manner established in the laws of the state;

6) to go to court with claims or petitions concerning violation of the state laws, including claims and petitions for:

finding invalid or having no effect, fully or partially, any laws and regulations or non-regulatory instruments of state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, public non-budgetary funds and the national (central) bank if they contravene the laws of the state;

finding invalid, fully or partially, any contracts if they contravene the laws of the state;

obligatory conclusion of a contract;

amendment or termination of a contract;

liquidation of legal persons as provided in this Law and the laws of the state;

recovery of the income received through violation of the state laws to the national budget;

holding persons that committed a violation of the state laws liable for such violation;

finding tenders invalid;

enforcement of decisions and instructions of the anti-monopoly body;

11) to take part in the hearing of cases connected with the application and/or violation of the state laws by court or arbitration (commercial) court;

12) to keep:

the state register of business entities (market agents) (except financial organizations) that control over 35 percent of, or have a dominant position in, the market of a certain product if in respect of such market the laws of the state establish the criteria for recognizing the position of business entities (market agents) dominant;

the register of the persons brought to administrative liability for violation of the state laws unless the national law refers it to the competence of another state body. Information contained in such register shall not be published in mass media or put on the Internet;

13) to place on the official web site of the anti-monopoly body decisions and instructions affecting the interests of general public;

14) to determine a dominant position of a business entity (market agent) during the examination of applications, materials, cases over violation of the state laws and in the process of state control over economic concentration;

15) to carry out audits of compliance with the laws of the state or anti-monopoly investigations in respect of commercial organizations or non-commercial organizations, state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, public non-budgetary funds and natural persons and, if any signs of violation are detected, to receive from them necessary documents and information, explanations in written or verbal form, and to duly apply to investigating agencies for taking investigating measures or other actions in accordance with the laws of the state;

16) to exercise control over operations of legal entities supporting organization of trade in the markets of certain products (for example, in the market of electric energy (power)) in the situation where the state abandons regulation of prices (tariffs) for such products, and to exercise control over price manipulation in the wholesale and/or retail markets of electric energy (power);

17) to approve the methodology for determination of an unjustifiably high and unjustifiably low price of a financial service of a credit organization in consultation with the national (central) bank;

18) to approve the procedure for analysis of competitive situation in order to establish a dominant position of a business entity (market agent) and detect other events of prevention, restriction or elimination of competition, and its subsequent implementation;

19) to issue regulations in the sphere of protection of competition;

20) to give explanations in the application of the state laws;

21) to sum up and analyzes the practice of application of the state laws and develop corresponding recommendation;

22) to collaborate with international organizations and state bodies of foreign countries, participate in the development and implementation of international treaties of the state, the work of intergovernmental or interdepartmental commissions coordinating international cooperation of the state, the realization of international programs and projects on protection of competition;

23) to interact with the anti-monopoly bodies of the states and the Eurasian Economic Commission in accordance with the procedure provided in international treaties concluded by the member states of the Customs Union and the Common Economic Space;

24) to exercise other powers provided for by the laws of the state.

### **Article 35. Rights of Anti-Monopoly Body Officials during Audits of Compliance with State Laws**

In the process of control over the compliance with the state laws, officials of an anti-monopoly body, in accordance with their powers (on presentation of the documents evidencing their powers and the relevant executive order of the anti-monopoly body to take measures of control over compliance with the state laws) have the right of unimpeded access to the territory and offices of state and municipal authorities, other institutions and organizations, business entities (market agents) except dwellings of natural persons in order to obtain necessary documents and information.

### **Article 36. Obligation to Provide Information to Anti-Monopoly Body**

1. Business entities (market agents) (their officers), state authorities (their officials), municipal authorities (their officials), other bodies or organizations exercising the functions of the aforementioned bodies (their officials), organizations involved in the provision of public or municipal services (their officials) and natural persons (including self-employed entrepreneurs) are obliged to provide to the anti-monopoly body within the required period, upon its reasonable request, any documents, written and verbal explanations, and information, respectively, in verbal form or in writing, including statements, contracts, abstracts, business correspondence, other documents and materials in the form of a digital record or recorded on electronic media, including any information constituting commercial, official, tax or other legally protected secrets, necessary for the anti-monopoly body in accordance with its authorities.

2. The laws of the state may oblige the national (central) bank to produce, on a written request by the anti-monopoly body, the regulations adopted by the national (central) bank and other information necessary to analyze the competitive situation in the market of financial services provided by credit organizations, and control such situation.

3. Information constituting commercial, official, tax or other legally protected secret shall be submitted to the anti-monopoly body in accordance with the requirements established by the laws of the state.

4. A failure to provide or untimely provision to the anti-monopoly body of information specified in the laws of the state, including a failure to provide information on request by the anti-monopoly body, the same as the provision of incorrect information to the anti-monopoly body, shall entail liability provided for in the laws of the state.

### **Article 37. Measures Taken by Anti-Monopoly Body for Control of Compliance with State Laws**

1. For the purposes of control over compliance with the state laws, the anti-monopoly body may carry out inspections or anti-monopoly investigations in respect of state authorities, municipal authorities, other bodies and organizations exercising the functions of the aforementioned bodies, organizations involved in the provision of public or municipal services, public non-budgetary funds, commercial and non-commercial organizations, natural persons (including self-employed entrepreneurs ) (hereinafter - the person being inspected). Non-commercial organizations may only be inspected for compliance with articles 11, 12, 16 –20 and 23 of this Law when they are involved in business operations or coordinate economic activities of other business entities (market agents). The national law does not provide grounds

for inspections of non-commercial organizations which purpose is to verify that the operations of such non-commercial organization meets the objectives stated in its the foundation documents.

2. Grounds for, and forms of, inspections and anti-monopoly investigations, reports issued in their process and the procedure for documenting the results of inspections or anti-monopoly investigations shall be established in the national law.

3. The national law may provide that inspections and anti-monopoly investigations which purpose is to verify compliance with the prohibitions imposed in articles 12 and 18 of this Law, may be carried out without notification of the person being inspected.

#### **Article 38. Access of Anti-Monopoly Body Officials to Territory or Offices for Inspection or Anti-Monopoly Investigation**

1. Officials of the anti-monopoly body carrying out an inspection or anti-monopoly investigation shall have access to the territory or offices of the person being inspected upon presentation of their official identity cards and the executive order of the anti-monopoly body to hold inspection or anti-monopoly investigation in respect of the person being inspected. Officials carrying out the inspection or anti-monopoly investigation are not allowed enter the dwelling of the person being inspected.

2. If the inspecting officials of the anti-monopoly body are prevented from access to the territory or offices of the person being inspected, such officials shall draw up a report in accordance with the procedures established by the anti-monopoly body. If the person being inspected refuses to sign the report, it shall be recorded in the report.

#### **Article 39. Examination**

1. To clarify the circumstances significant for the completeness of an anti-monopoly investigation or inspection, the inspecting officials of the anti-monopoly body may examine the territories, offices (except the dwelling of the person being inspected), documents and property of the person being inspected.

2. The person being inspected, its representative and other persons brought into the inspection or anti-monopoly investigation by the anti-monopoly body may take part in the examination. The examination shall take place in the presence of at least two attesting witnesses. Any natural persons having no interest in the outcome of the case, may be invited as attesting witnesses. Officials of the anti-monopoly bodies cannot be attesting witnesses. If necessary, the anti-monopoly body may invite professionals and/or experts for the examination.

#### **Article 40. Requesting for Documents and Information during Inspection or Anti-Monopoly Investigation**

1. The officials of the anti-monopoly body, which carry out an inspection or an anti-monopoly investigation, may request the person being inspected to provide documents and information necessary for the inspection or anti-monopoly investigation. The form of request for documents and information, alongside with the procedure for its sending and/or delivery to the person being inspected shall be provided in the laws of the state.

2. The requested documents shall be presented as copies certified in accordance with the procedures established by the laws of the state. If necessary, the officials of the anti-monopoly body, which carry out the inspection or the anti-monopoly investigation, may see the the original documents.

3. The national law shall specify the term within which the person being investigated shall provide documents and information requested by the anti-monopoly body, and the grounds for extension of such term if the person being investigated cannot provide the requested documents and information within the term specified in the request of the anti-monopoly body. If the person being inspected informs of its inability to provide the requested documents and information when due, an official of the anti-monopoly body shall, in accordance with the procedure established in the laws of the state, make a motivated decision either to set a new term for the delivery of the documents, or to refuse the extension specifying the reasons.

4. A failure to provide the information and documents requested by the anti-monopoly body in the course of an inspection or an anti-monopoly investigation within the required term, or provision of misleading documents and information by the person being inspected shall entail the liability provided in the laws of the state.

#### **Article 41. Notice of Prohibition of Violation of National Law**

1. To prevent violation of the national law the anti-monopoly body shall send to an officer of a business entity (market agent), state authority, municipal authority, other bodies or organizations exercising the functions of the aforementioned bodies, an organization involved in the provision of public or municipal services, a public non-budgetary fund or the national (central) bank a written notice of prohibition of actions that may lead to violation of the national law (hereinafter - the notice).

2. Such notice may be send based on a public declaration of the officer within the meaning of part 1 of this article of their intended behavior in the product market if such behavior may lead to violation of the national law and, at the same time, there are no grounds to open and review cases over violation of the national law.

3. The term and procedure for making the decision with regard to sending the notice shall be specified in the national law. The term for the notice shall run from the date when the anti-monopoly body becomes aware of the public declaration of an officer concerning their intended behavior in the product market as provided in part 2 of this article.

4. The notice shall contain:

- 1) conclusions about the existence of grounds for the notice;
- 2) the standards of the national law that may be violated by the business entity (market agent), state authority, municipal authority, the organization involved in the provision of public or municipal services, the public non-budgetary fund or the national (central) bank.

#### **Article 42. Obligation of Anti-Monopoly Body to Keep Commercial, Official, Tax or Other Legally Protected Secret**

1. Any information constituting commercial, official, tax or other legally protected secret received by the anti-monopoly body in the exercise of its authorities shall not be disclosed.

2. In case of a disclosure of any information constituting commercial, official, tax or other legally protected secret, officials of the anti-monopoly body shall be held liable in accordance with the provisions of the state laws.

**Chapter VIII**  
**LIABILITY FOR VIOLATION OF NATIONAL LAW**

**Article 43. Obligation to Implement Decisions and Instructions of Anti-Monopoly Body**

Commercial and non-commercial organizations (their officers), state authorities (their officials), municipal authorities (their officials), other bodies or organizations exercising the functions of the aforementioned bodies (their officials), organizations involved in the provision of public or municipal services (their officials) and natural persons (including self-employed entrepreneurs) are obliged to implement the decisions and instructions of the anti-monopoly body within the period specified in such decisions and instructions.

**Article 44. Liability for Violation of National Law**

1. Officials of state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, officials of organizations involved in the provision of public or municipal services and officials of public non-budgetary funds, commercial and noncommercial organizations and their officers, and natural persons (including self-employed entrepreneurs) shall be liable in accordance with the laws of the state.

2. As an administrative sanction for violation of the national laws, the business entities (market agents) shall be charged penalty fines (including those calculated on the basis of the violator's revenue from sales of the product (work, services) in which market the violation occurred), as provided in the laws of the state.

As an administrative sanction for violation of the national laws by officers of business entities (market agents), officials of state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies, public non-budgetary funds, the laws of the state may provide for their disqualification.

3. The laws of the state may provide for special circumstances mitigating or aggravating liability for violations of the state laws that shall be considered when determining the amount of the penalty fines referred to in part 2 of this article.

4. The laws of the state may impose criminal responsibility for the conclusion of an agreement restricting competition (a cartel) by competitor business entities (market agents), the same as for being a party to such agreement, for repeated abuse of a dominant position resulting in the setting and/or maintaining of monopolistically high or monopolistically low of a product, unmotivated refusal or evasion from concluding a contract, limitation of access to the market.

5. A person (group of persons) that has voluntarily notified the anti-monopoly body of conclusion of any agreement, or pursuance of any concerted practices, prohibited under the laws of the state shall be relieved from liability for

such violations if all of the following conditions are observed:

at the time of receipt of the notice from such person the anti-monopoly body had no information and documents concerning the violation;

the person is no longer a party to the agreement, or does not follow the concerted practices,  
the information and documents provided are sufficient to establish a violation of the state laws.

Exemption from liability shall be granted to the person that was the first to fulfill all conditions imposed in this part.

6. Liability imposed on the persons stated in Part 1 of this Article does not relieve them from the obligation to comply with the decision and instructions of the anti-monopoly body, to submit to the anti-monopoly body application or notices or take other actions provided by the laws of the state.

7. The person (group of persons) which rights and interests have been violated through violation of the laws of the state, may duly file an action (a class action) in a court, including an action for restoration of violated rights, damages (including lost profit) and compensation of injury inflicted to property.

#### **Article 45. Forced Demerger of Spin-Off of Commercial Organizations and Non-Commercial Organizations Involved in Income Generating Activity**

1. In case of systematic pursuance of monopolistic activity by a commercial organization occupying a dominant position, or a noncommercial organization involved in income-generating activity, the court, in the action of the anti-monopoly body, may require a forced demerger of such organizations or a spin-off of one or several organizations from them. Organizations established in the result of a forced demerger cannot be members of one group of persons.

2. A court decision of forced demerger of a commercial organization or a spin-off of one or several organizations from a commercial organization shall be made to promote the development of competition, if all of the following conditions are fulfilled:

- 1) possibility of separation of structural units of the commercial organization;
- 2) absence of technological interconnection between the structural units of the commercial organization (in particular, 30 percent or less of the total products manufactured, work delivered or services provided by the structural unit are consumed by the other structural units of such commercial organization);
- 3) possibility of independent operations in the respective product market for legal entities formed as a result of reorganization.

3. A court decision of forced demerger of a commercial organization or a spin-off of one or several organizations from a commercial organization, or a decision of such demerger or spin-off in respect of a noncommercial organization involved in income-generating activity shall be implemented by the owner or the latter's authorized body, subject to the requirements imposed in, and within the term specified by, such decision.

### **Chapter IX**

#### **PROCEDURE FOR MAKING, CHALLENGING AND IMPLEMENTING DECISIONS AND INSTRUCTIONS OF ANTI-MONOPOLY BODY**

#### **Article 46. Grounds for Initiation of Proceedings by Anti-Monopoly Body for Violation of the State Law**

1. The anti-monopoly body shall, within its scope of authorities, initiate and reviews cases in accordance with the national law, make corresponding decisions and issue instructions.

2. Grounds for initiation and review of a case over violation of the national law by the anti-monopoly body are:

- 1) receipt of materials suggesting possible violation of the national law from state authorities;

- 2) an application of a legal entity or a natural person suggesting possible violation of the national law;
- 3) detection of signs of possible violation of the national law by the anti-monopoly body;
- 4) mass media reports suggesting possible violation of the national law;
- 5) findings of an inspection, that detected the signs of possible violation of the national law by commercial organizations, noncommercial organizations, state authorities, municipal authorities, other bodies or organizations exercising the functions of the aforementioned bodies and public non-budgetary funds.

#### **Article 47. Warning Letter Demanding Cessation of Actions (Omissions) Showing Signs of Violation of National Law**

1. For the suppression of actions (omissions) that lead or may lead to prevention, restriction or elimination of competition, the anti-monopoly body shall issue to the business entity (market agent) occupying a dominant position a warning letter (in writing) demanding cessation of the actions (omissions) that show signs of violation of the national law, removal of causes and conditions promotive to such violation and taking measures for elimination of the consequences of such violation (hereinafter - a warning letter).

2. A warning letter shall be issued to the business entity (market agent) occupying a dominant position if it shows signs of violation of the prohibitions stated in paragraphs 3 and 5, part 1, article 11 of this Law. The anti-monopoly body may not take a decision to initiate a case over violation of the prohibitions stated in paragraphs 3 and 5, part 1, article 11 of this Law without a warning letter and before the end of its implementation period.

The laws of the state may provide for other actions (omissions) recognized prohibited under this Law in connection with which a business entity (market agent), state authority, municipal authority, other body or organization exercising the functions of the aforementioned bodies, an organization involved in the provision of public or municipal services, a public non-budgetary fund or the national (central) bank may be issued a warning letter.

3. A warning letter shall contain:

- 1) conclusions about the existence of grounds for its issuance;
- 2) the standard of the national law violated through actions (omissions) of the person to which the warning letter is addressed;
- 3) the list of the actions to be taken to terminate violation of the national law, remove the causes and conditions promotive to such violation and eliminate the consequences of such violation alongside with a reasonable term for their implementation.

4. The warning letter must be examined by the person to which it has been issued within the term set in the warning letter. The implementation period of the warning letter, its form and issuance procedure and the grounds for the extension of its implementation period shall be provided in the national law. A decision to extend the implementation period of the warning letter shall be taken by the anti-monopoly body in the presence of the grounds evidencing that the implementation of the warning letter is impossible within the period prescribed.

5. Subject to the implementation of the warning letter, a case over violation of the national law shall not be initiated and the person that has fulfilled the warning shall not be held liable for violation of the national law as provided in the national law.

6. If the warning letter is not implemented when due and in the presence of signs of violation of the state laws the anti-monopoly body takes a decision to initiate a case over violation of the national law.

**Article 48. Procedure for Initiation and Review of Case by Anti-Monopoly Body over Violation of the National Law, Taking Respective Decisions and Acts Adopted Following Review**

1. The procedure for initiation and review of cases over violation of the national law shall be provided in the national law.

2. Following a review of cases over violation of the national law the anti-monopoly body shall make decisions, determinations and directions and other acts that may be adopted under the national law.

3. Based on the decision in the case the anti-monopoly body shall issue to the defendant in the case instruction to take certain actions stated in the decision with a view to remedy the violation of the national law and its consequences.

4. The instruction in a case over violation of the national law shall be prepared together with the decision.

5. Decisions and Instructions in cases over violation of the national law shall, within the term stated in the laws of the state, be sent to interested parties in writing and published in the Internet.

The text of the decision to be published may be amended if such amendments are required to protect any information constituting commercial, official, tax or other legally protected secret.

**Article 49. Procedure for Implementation of Decision (Instruction) of Anti-Monopoly Body**

1. A decision (instruction) in a case over violation of the national law shall be implemented within the prescribed period. The anti-monopoly body shall supervise the implementation of the decisions (instructions) issued.

2. A failure to implement decisions (instructions) in a case over violation of the national law shall entail liability provided in the laws of the state.

3. The laws of the state may provide for the obligation of the person which actions (omissions) are found to constitute monopolistic activity or unfair competition and are prohibited under the national law, to transfer to the state budget the income received through such actions (omissions) following on instruction by the anti-monopoly body. If such instruction is not implemented the income received from monopolistic activity or unfair competition shall be recovered into the state budget in the action of the anti-monopoly body.

4. A failure to implement a decision (instruction) in a case over violation of the national law in time shall mean a partial implementation of the decision (instruction) within the term specified in such decision (instruction) or an avoidance of its implementation. A failure to implement such decision (instruction) in time constitutes a violation of the national law.

5. The period for the implementation of a decision (instruction) in a case over violation of the national law may be extended for the term allowed by the national law on request by the defendant(s) giving the reasons if the reasons stated in the request are found acceptable. The period for filing a request for extension of the period for the implementation of such decision (instruction)

with the anti-monopoly body shall be provided for in the national law and shall not exceed the term for the implementation of the decision (instruction).

**Article 50. Explanation of Decision (Instruction) in Case over Violation of National Law  
Correction of Errors, Misprints and Computational Errors**

The anti-monopoly body may, on its own initiative or on application by parties to a case, give explanations of decisions (instructions) without changing their content and correct errors, misprints and computational errors made in a decision (instruction).

**Article 51. Review of Decisions (Instruction) in Case over Violation of National Law upon  
New and/or Newly Discovered Facts**

1. A decision (instruction) in a case over violation of the national law may be reviewed upon new and/or newly discovered facts on request of a party to a case or if the anti-monopoly body determines the grounds for reviewing such decision (instruction) as provided in this article.

2. The grounds for the review of a decision (instruction) in a case over violation of the national law are:

1) discovery of the facts that were not and could not be known at the moment when the operative part of the decision in a case was announced, but are significant for correct adjudication of the case;

2) falsification of evidence, willful misrepresentation by a person having information about the facts in the case under consideration, deliberately false opinion of an expert or deliberately wrong translation that brought about the making of an illegal or unreasoned decision and/or the issuance of the corresponding instruction.

3. The procedure for filing and processing, the form and content of the application for review of a decision (instruction) of the anti-monopoly body in a case over violation of the national law shall be established by the anti-monopoly body.

**Article 52. Procedure and Grounds for Contesting Decision (Instruction) of Anti-Monopoly  
Body**

1. The laws of the state shall specify the period within which a decision (instruction) of the anti-monopoly body may be contested in court.

2. In case of an appeal filed in a court, the laws of the state may provide that the implementation of the decision (instruction) shall be suspended until the date when the decision of the court takes legal effect.

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