

**GREECE**  
**(2000)**

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### I. Executive summary

1. This Annual Report summarises the enforcement of the Greek Competition Law for the year 2000. During the period under review, the Greek Competition Act 703/77 “On the Control of Monopolies and Oligopolies and on the Protection of Free Competition” has been amended by the Act 2837/2000, as published in the Government Gazette on August 3<sup>rd</sup>, 2000. The OECD Committee has already thoroughly been informed on these latest amendments during its meeting held in October 2000.<sup>1</sup>

### II. Enforcement of competition law and policies

2. During the reporting period the number of cases to be examined by the Competition Committee have increased by 269, which can be classified as follows:

**Table 1**

Agreements	52
Complaints	44
Mergers	145
Provisional Measures-Fines-Opinions	14
Miscellaneous	14
Total	269

3. Out of the 269 cases 70 have been heard before the Greek Competition Committee. A formal decision has been taken in 59 cases. Decisions are pending in 11 cases. The cases entered in the aforementioned period are classified as follows.

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<sup>1</sup> DAFEE /CLP (2000) 20/09. The new Act as amended is attached to this report.

Table 2

	Cases entered	Cases heard	Decisions taken (files concluded)	Pending before the CC
1. Agreements-Negative Clearance	1	1	-	1
2. Complaints	44	2	2	
3. Mergers:				
i. 4b- Prior notification	70	48	42	6
ii. 4a- Post Notification <sup>2</sup>	75	1	1	
4. Provisional measures	12	10	9	1
5. Requests for derogation	3	3	3	
6. Opinions Requested	1	1	-	1
7. Fines	1	1	1	
8. Miscellaneous	3	3	1	2
Total	210	70	59	11

4. The large number (145) of notified concentrations has almost “monopolised” the activities of the Competition Committee. On the contrary, the number of agreements to be examined was minimal.

5. Since its introduction in the Greek legal system through the Act 2296/95, the mechanism of the control of concentrations turned out to be an obstacle to the work of the Committee, as the thresholds were proved to be very low<sup>3</sup> and the number of notified cases too large to be handled by the limited personnel of the Secretariat of the Committee within the time limits provided by the Act. Most of the concentrations notified were of lesser importance as far as their impact on competition in the Greek market is concerned.

6. The regulatory reform of 1999 (Act 2741/1999), aiming at the reduction of the concentration cases falling under the control of Act 2296/95 by increasing the concentration thresholds was positive, but obviously not adequate to render the problem as the number of notifications remained almost the same. Therefore, a new legislative intervention became a necessity.

7. From the time that the preventive control of concentrations was introduced by the Act 2296/95, until its amendment by the Act 2741/99, approximately 180 concentrations of article 4b of the Act 703/77 had been notified, whereas the concentrations that were notified between October 1999 and August 2000 were more than 80. Between the 8<sup>th</sup> of June 1998 and the 31<sup>st</sup> of July 2000, of a total of 165 decisions, the ones that concerned concentrations of Article 4b of the Act 703/77 were 135 (including 29 decisions requesting derogation according to Art. 4e par.3 of the Act 703/77). The notifications of article 4a of the Act 703/77, from the introduction of the Act 2296/95 until August 2000, had reached the number of 413.

<sup>2</sup> Article 4a on post-notification has been abolished by the recent amendments of the revised Act 703/77.

<sup>3</sup> The Act foresaw that the combined aggregate turnover of all undertakings involved, within the national market, is at least equal to the equivalent to drachmae amount of 50.000.000 EURO and the aggregate national turnover of each of at least two of the undertakings concerned is more than the equivalent to drachmae amount of 15 million EURO. Alternatively, the market share had to be at least 25%.

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8. Taking into account all of the above, the delay of the review process of decisions of preventive control is not surprising. This situation led to the "transformation" of article 4e par.3 of the Act 703/77, which permits the granting of a derogation from the obligation of suspension of the concentration before the issuance of the Competition Committee's decision. Even though this provision is, obviously, exceptional and the derogation should be granted only to a few -special- cases, the Committee, admitting its inability, due to the lack of its resources, and seeking for a way to facilitate the enactment of the business plans of the applicants, turned, actually, the exception into a rule. Therefore from the 50 requests that were heard until July of 2000, only 9 were rejected. This practice led to a further delay of the Committee's review process, since it encouraged the enterprises, in parallel to the notification of the concentration, to request for the granting of a derogation, and thus actually doubled the work-load of both the Secretariat and the Committee.

9. In May 2000, the cases that were pending before the Competition Committee were almost 600 : of which 227 were notifications according to art. 4a of the Act 703/77, 139 were notifications of concentrations, 39 were notifications of concentrations according to art. 4b of the Act 703/77, 2 requests for derogation, 2 requests for the granting of interim measures, 19 own-initiative investigations and 169 complaints according to articles 1, 2 and 2a of the Act 703/77.

10. As a consequence, the recent Act 2837/2000 increased further the preventive control thresholds of Article 4b.<sup>4</sup> This resulted to a 50-55% decrease in the number of concentrations notified in the time period September-December 2000 compared to the respective 199 time period.

11. Furthermore Act 2837/2000 abolished Article 4a on post notification of mergers of minor importance as well as Article 2a on the abuse of economic dependence. The abolishment of both provisions aimed at enabling the Competition Committee to invest more time in investigating cartel and abuse cases. Especially the abolishment of Article 2a was based on the estimation of the Greek legislator that the cases falling under this provision could be adequately dealt with by civil courts applying Art. 281 of the Greek Civil Code (abuse of rights). In general, Act 2837/2000 upgraded the status of the Committee by establishing an independent source of funding for its budget. The funding will proceed from a levy of 0.001 calculated either upon the capital of newly established companies or their respective increment.

### III. Discussion of main cases

#### a. *Provisional measures :*

12. Ten (10) cases were heard before the Greek Competition Committee concerning requests for the granting of interim measures out of which nine (9) were rejected and one is pending. According to Art. 9 par.4 of the Act 703/1977, a complainant may request the order of provisional measures by the Competition Committee, on the basis of an "urgent need" to prevent "an imminent and incurable damage to the complainant or the public interest". Details of such cases dealt with by the Competition Committee are outlined below.

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<sup>4</sup> According to the recent amendments, the combined aggregate turnover of all undertakings concerned, within the national market is at least equal to the equivalent to drachmae amount of 150 million EURO and the aggregate national turnover of each of at least two of the undertakings concerned is more than the equivalent to drachmae amount of 15 million EURO. Alternatively, the market share has to be at least a 35% of the combined aggregate turnover of the products or services which are regarded as identical because of their properties, prices and their intended use.

*Case 155/II/2000, Phillipos Tagopoulos v. Papastratos L.I.C. of Cigarettes and others*

13. The case was concerned with the complaint of a wholesaler of cigarettes, cigars and other related products, on the grounds of Art. 9 par. 4, 1 and 2 of 703/1977, against five of the biggest Greek tobacco companies<sup>5</sup>, which produce, import, represent and sell well known brands of cigarettes (e.g. Assos, Gauloises, Gitanes, Marlboro, Old Navy, Philip Morris, Camel, Lucky Strike, Kent, KIM, More e.t.a.). The complainant claimed that these companies refused to supply him with their products although he fulfilled all the conditions set both by Law (Art. 7 of Act 2805/1954) and by the tobacco industries themselves. The Competition Committee ruled that solely the complainant's alleged economic damage, who, on his own initiative and without establishing a previous contact with the supplier companies, decided to invest money on the prospect of becoming a tobacco wholesaler, cannot justify the application of an emergency procedure, as such is set by Art. 9 par.4 of the Act 703/77.

*Case 135/II/2000, G.K Eleftheroudakis L.C. and others v. Protoporia L.C.*

14. The case concerned the complaint of three of the most important retail and wholesale book traders, **G.K. Eleftheroudakis, Library Service L.C. and Limited Company of Publishing and Trade of Educational Book**<sup>6</sup>, who requested interim measures against **Protoporia**, a book publisher and supplier. All the complainants are bidders in public tenders held by the Ministry of Education for the supply of newly established libraries all over the country with books from a catalog with a great number of titles. However, Protoporia made exclusive distribution arrangements with other publishers in order to acquire 15% of the titles, which were included in the aforementioned catalog, as well as the exclusive supply of those books to the first winners of the public tenders. Therefore, Protoporia either won the tender or became the exclusive supplier of the tender's winner for a number of titles at a price considerably higher than the price which the latter would have to pay to the publisher, the exclusive arrangement between Protoporia and the publishers being absent. Given that: (i) the complainants were the first winners of at least 40% of the tenders in which they participated and ii) the complainants, even during the period that the case was being discussed, were supplied with books at prices highly reduced by the suppliers who had already signed the agreement of exclusive distribution with Protoporia, the Committee rejected the application for the granting of provisional measures, as no direct and imminent danger of irreparable damage to the complainants or the public interest was proved to exist.

**b. Mergers**

15. Merger decisions comprise about half of all the Competition Committee's decisions, and nearly all of the decisions in the last few years. Out of the 70 mergers that were notified to the Competition Committee on the basis of Art. 4b of the Act 703/77 for "pre-merger control", 42 were approved, since they did not constitute a significant impediment of competition in the national market or in a substantial, with respect to the characteristics of products or services, part of it, while 6 cases are still pending.

<sup>5</sup> "Papastratos Limited Industrial Company of cigarettes", "Karelia Tobacco Industry S.A." Limited Company, "SEKAP S.A." Company, "G.A. Keranis S.A." Limited Company and "Th. Th. Georgiades L.C. Tobacco Company".

<sup>6</sup> Eleftheroudakis is the biggest enterprise in the retail trade of Greek and foreign language books in Greece. It is also active in wholesales, as it supplies books to many universities in Greece. The second applicant company (Library Service S.A.) is a joint venture of publishing companies involved in the retail and wholesale book trade, with the scope of service provision to libraries in Greece and in particular the ones of the public sector. The third applicant "Limited Company of Publishing and Trade Educational Book" through its subsidiary "Apollon S.A." trades Greek and foreign language books in Greece.

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### *i. Case 129/II/2000, EFG EUROBANK S.A./ UNIFON L.C./COM QUEST S.A.*

16. **INFO QUEST S.A.**, a company active in the informatics sector, which represents, assembles PC units and provides computer services, **EFG EUROBANK S.A.**, a credit bank institution involved in all banking activities with 300 stores, and **UNIFON S.A.**, involved in the informatics sector and in mobile telephony, agreed to commonly acquire the control of the company “**COMQUEST**”. The relevant market comprised the telecommunications services (resale of national and international leased lines, IT hardware, provision of vocal data solutions), the provision of internet services and its two submarkets, as examined in this case, that is, first, the dial up and dedicated access market and second, advertising through internet.

17. The case was judged in the light of Article 4b of the Act 703/77 and the Competition Committee took into account both the structure of the relevant markets in which each company is involved and the effect on competition in each of the markets' conditions. The Competition Committee issued a positive decision, as it found neither a significant impediment for competition in the national market, nor a threat for the creation or strengthening of a dominant position.

### *ii. Case 146/II/2000, SHELL HELLAS L.C./ TEXACO LIMITED GREEK OIL COMPANY*

18. This case was concerned with the acquisition of **Texaco Limited Greek Company of Oil by Shell Hellas S.A.** The Competition Committee, taking into account the absence of competitive effect in the national market, which is comprised by the relevant markets of fuel trade, and the remote possibility of creating or strengthening a dominant position, permitted the concentration on the grounds of art. 4 par.2, b of Act 703/77 for the following reasons:

- 25 oil companies are already involved in the sector.
- Shell will reinforce its position by acquiring higher shares at rates of 21,7%, 19,3% and 15,1% respectively.
- There are no legal and factual obstacles for the entrance of new competitors in the market, besides the cost of the investment needed.

### *iii. Case 128/II/2000, BLUE CIRCLE INDUSTRIES PLC / CALCEMENTO INTERNATIONAL S.A*

19. The case focused on the preventive control of a concentration of a London-based company, **BLUE CIRCLE INDUSTRIES PLC**, and a Luxembourg-based company, **CALCEMENTO INTERNATIONAL**, through which Blue Circle would acquire the control of CALCEMENTO'S two subsidiaries, two well established Greek cement industries, “**AGET Iraklis Cement S.A.**” and “**Cements of Chalkida S.A.**”. Blue Circle Industries PLC (BCI) has been the head of an international group of enterprises, active mainly in the sector of production and distribution of heavy construction materials (67%), heating (23%), commodities of sanitation (8%), management of real estate property (2%). Calcemeto's world-wide turnover for 1998 was 478 million EURO, from which 300 million turnover was in Greece through its two above mentioned subsidiaries. The purchasing company has been active in the Greek market only in regards to the sales of commodities of sanitation, which brought a turnover of 74.000 EURO.

20. AGET IRAKLIS has been mainly active in the production and trade of cement, whereas in the other markets (production and trade of ready concrete, extraction and trade of raw materials and inactive materials, construction materials, metal constructions and packing) the market shares of AGET through its

affiliated companies have been below 25%. As a consequence, the Competition Committee examined two distinct relevant product markets: one for cement and its submarkets (common-grey, white and clinker) and the other for the production and trade of packaging materials.

21. The Competition Committee ruled that the concentration would not constitute an impediment of competition in the national market of cement and packaging due to the following reasons:

- i) Besides AGET and Cements of Chalkida, there are also other companies involved in the cement industry with big market shares: TITAN S.A., CHALIPS CONSTRUCTION MATERIAL S.A., HOLDERBANK FINANCIERE CLARIS S.A., whereas LAFARGE COPPEE and Kartonpack S.A. are involved in the market for packaging.
- ii) The Greek Competition Committee ruled that the concentration would neither lead to a reduction of the number of competitors nor to an increase of the company's market share because of the likely increase of market shares in one business sector. The Committee ruled that, in regards to cement, the market was already oligopolistic, characterised by a high degree of concentration, however the existing competition and the potential competition is not going to be threatened. Furthermore, there are no legal obstacles for the entry of a new cement company, besides the high investment needed.

22. The company also notified this concentration to the Competition Authority of Ireland.

*c. Opinion 3/III/2000*

23. This opinion was delivered by the Committee in order to clarify whether or not a public enterprise –in this case the **Public Enterprise of Energy (PEE)**- could participate in an auction, although previously excluded, for the granting of a fixed wireless license held by the National Committee of Telecommunications and Posts (NCTP). The main points of this opinion could be summarized as follows.

- As far as the question of separation of regulatory competencies and policy-making within the market segments between different regulatory authorities (CC, RAE<sup>7</sup> and NCTP) is concerned, the Committee ruled that according to Articles 8e and 8f of the Act 703/77 and also on the basis of the procedure that the Directive 90/388/EEC and the Decision 97/607/EC have imposed, the previous question constituted an issue of competition policy (full liberalization of the telecommunications market) and consequently fell into the competencies of the Committee.
- The relevant Ministerial Decision (MD 51860/3589/00) foresaw nine specific licenses, from which the seven would be awarded through auction, whereas the two would be granted to the Greek Telecommunications Organization (OTE). The NCTP considered the granting of the nine licenses as one unified procedure and characterized OTE and PEE as “Connected Participants”, since both are enterprises controlled by the Greek State. Therefore, it expressed the opinion that PEE should be excluded from the auction.
- The Committee ruled that the characterization of PEE and OTE as “Connected Participants” was based on a misinterpretation of the Ministerial Decision. In any event, the Committee expressed the opinion that the meaning of fixed wireless market liberalization is not that all business activities could be exercised only by private entities. Considering public enterprises as a “Connected Team” that coordinates their activities instead of competing each other did not always constitute a reliable theory. Furthermore, no intention of joint action of PEE and OTE was found during the process of auction, which would be very difficult due to the

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<sup>7</sup> Regulatory Authority of Energy.

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characteristics of the fixed wireless market. In addition, PEE's participation could have beneficial effects on the consumers as it may use its network to shorten the time needed for the application of the new technology and to offer services at lower prices. If PEE were excluded, it could influence the market and in particular the pricing policy by renting its infrastructure to third parties. However, if PEE were successful and acquired a license, both the Competition Committee and the NCTP would supervise it.

- As a consequence, the Committee ruled that the granting of a license to the PEE would neither create problems to the liberalization of the market nor limit competition by the sole fact that on the grounds that OTE, another Greek State controlled enterprise, had already been granted two licenses.

#### **IV. Resources of Competition Committee**

- a) Annual Budget, year 2000 : 185.000.000 Drs
  - b) Number of employees, year 2000 : 27
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**ACT No 703 OF SEPTEMBER 26th, 1977**

**ON THE CONTROL OF MONOPOLIES AND OLIGOPOLIES  
AND THE PROTECTION OF FREE COMPETITION**

**AS AMENDED BY**

**ACTS No 1934 OF MARCH 8th, 1991, No 2000 OF DECEMBER 24th, 1991,  
No 2296 OF FEBRUARY 2nd, 1995, No 2741 OF SEPTEMBER 28,1999 and  
ACT 2837/2000 OF AUGUST 28,2000**

**CHAPTER I  
SUBJECT MATTER OF THE ACT**

**Article 1  
Prohibited Cartels**

1. The following shall be prohibited: all agreements between undertakings, all decisions by associations of undertakings and concerted practices of whatsoever kind, which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- b) limit or control production, markets, technical development or investment;
- c) share markets or sources of supply;
- d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby impeding competition in particular by refusing without valid justification to sell, purchase or conclude any other transaction;
- e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited, pursuant to the preceding paragraph, shall be absolutely null and void, except where otherwise provided by the present Act.

3. Agreements, decisions and concerted practices or categories thereof, falling within the provisions of paragraph 1 of the present Article may be declared valid, wholly or in part, by a decision of the Competition Committee, if they cumulatively fulfil the following conditions:

- a) they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;

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b) they do not impose on the undertakings concerned, restrictions which are not indispensable to the attainment of the aforementioned objectives;

c) they do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the relevant market in question.

## **Article 2**

### **Prohibited Abuse of a Dominant Position**

1. Any abuse by one or more undertakings of a dominant position within the national market as a whole or in a substantial part of it, shall be prohibited. Such abuse may, in particular, consist in:

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

b) limiting production, consumption or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with other trading parties, in particular by refusing without valid justification to sell, purchase or conclude any other transactions, thereby placing certain undertakings at a competitive disadvantage;

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

### *Article 2a (deleted)*

### *Prohibited Abuse of Economic Dependence*

## **Article 3**

### **General Provision**

Without prejudice to Article 1(3), the agreements, decisions and concerted practices referred to in Article 1(1), the abuse of dominant position referred to in Article 2, shall be prohibited without any prior decision to that effect by any authority being required.

## **Article 4**

### **Concentration between Undertakings**

1. A concentration between undertakings, as such, shall not fall into the scope of the prohibitions of Article 1(1) and Article 2 of the present Act.

2. A concentration shall be deemed to arise where:

a) two or more previously independent undertakings merge,

b) one or more persons already controlling at least one undertaking or one or more undertakings, acquire direct or indirect control of the whole or parts of one or more undertakings.

3. For the purpose of the present Act, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on a undertaking, in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking;
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

4. Control is acquired by person(s) or undertakings which:

- (a) are holders of the rights or entitled to the rights under the contracts concerned; or
- (b) while not being holders of such rights or entitled to rights under such contracts concerned, have the power to exercise the rights deriving therefrom.

5. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, which does not give rise to co-ordination of the competitive behaviour of the parties among themselves or between them and the joint venture, shall constitute a concentration within the meaning of paragraph 2(b).

3. A concentration shall not be deemed to arise when:

a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year from the date of acquisition. The Competition Committee may extend that period for a reasonable period of time, where such institutions or companies can show that the disposal was not reasonably possible within the period set;

b) the operations referred to in paragraph 2(b) are carried out by the financial holding companies, provided however that these rights are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

#### **Article 4a (deleted)**

#### **Notification of Concentrations between Undertakings**

#### **Article 4b**

#### **Prior Notification of Concentrations**

1. Every concentration between undertakings shall be notified to the Competition Committee within ten (10) working days as from the conclusion of the agreement, or the announcement of the public bid to buy or exchange, or the acquisition of a controlling interest where:

a) the market share of the products or services to which the concentration is concerned, as being defined in Article 4f, represents within the national market or in a substantial, with respect to the particular characteristics of the products or services, part of it at least a 35% of the combined aggregate turnover of the products or services which are regarded as identical because of their properties, their prices and their intended use, or

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b) the combined aggregate turnover, as being defined in Article 4f, of all the undertakings concerned, within the national market, is at least equal to the equivalent to drachmae amount of 150 million Euro, and the aggregate national turnover of each of at least two of the undertakings concerned is more than the equivalent to drachmae amount of 15 million Euro.

2. The 10 days time limit shall begin when the first of those events, referred to in the previous paragraph, occurs.

3. Obligated to notify are :

a) each of the undertakings in the case where the concentration is the subject of an agreement between undertakings being parties to the merger;

b) the persons, the undertakings or the groups of persons or undertakings acquiring control of the whole or parts of one or more undertakings, in all other cases.

4. In case of a culpable omission of the obligation to notify the Competition Committee shall impose to each of the undertakings as defined in paragraph 3 of the present Article, a fine of at least 5 million DRS and not exceeding the 7% of the aggregate turnover, as it is defined in Article 4f,

5. The specific content of the notification form; as well as, any other relevant matter shall be determined by decision of the Competition Committee

6. Parties obliged to notify are also obliged after submitting the notification, to publish on their own expenses, the notified operation in a daily financial newspaper of national coverage. The content and any other detail of this publication shall be determined by decision of the Competition Committee.

### **Article 4c**

#### **Preventive Control of Concentrations**

1. Every concentration between undertakings that is subject to prior notification and may significantly impede competition in the national market or in a substantial, with respect to the characteristics of the products or services, part of it and particularly by creating or strengthening a dominant position, shall be prohibited by decision of the Competition Committee.

2. Within the scope of appraising the possibility of a concentration to constitute a significant impediment of competition within the meaning of paragraph 1 of the present Article, the following shall be taken into account, especially the structure of all the relevant markets concerned, the actual or potential competition from undertakings located either within or outside Greece, the existence of any legal or other barriers to entry, the market position of the undertakings concerned and their financial and economic power, the alternatives available to suppliers and users by the undertakings concerned as well as by actually or potentially competitive undertakings, their access to suppliers or markets, the supply and demand trends for the relevant goods or services, the interests of the intermediate and ultimate consumers and their contribution in the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

3. A concentration that has been prohibited by the Competition Committee, pursuant to paragraph 1, may be approved by a specifically justified decision of the Ministers of National Economy and Development as particularly provided in Article 4d (7), where the concentration in question presents advantages of general economic nature that counterbalance the resulting restriction of competition, or it is regarded as being indispensable for the public interest, especially where it contributes to the modernisation and rationalisation of production and economy, the attraction of investments, the strengthening of competitiveness in the European and International market and the creation of new employment positions.

**Article 4d**  
**Procedure for the Preventive Control of Concentrations**

1. The Competition Committee shall examine the concentration as soon as the relevant notification is submitted.

2. Where it is found that the concentration notified does not fall within the scope of Article 4b (1), the President of the Competition Committee shall record that finding by means of a relevant decision issued within one (1) month as from its notification and which will be served to the persons or undertakings that submitted the notification.

3. Where it is found that the concentration notified falls within the scope of Article 4b (1), the case in question shall be introduced to the Competition Committee within one (1) month as from its notification and the persons or undertakings that submitted the notification will be accordingly informed.

4. Where the Competition Committee finds that the notified concentration, following modifications made by the undertakings concerned if necessary, can not lead to a significant restriction of competition, it shall issue a relevant decision within two (2) months as from the introduction of the case to it.

5. The Competition Committee may attach to its decision issued according to paragraph 4, conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Competition Committee, with a view to modifying the original concentration plan. This decision shall also cover restrictions directly related and necessary to the implementation of the concentration.

6. Where the Competition Committee finds that the concentration, can lead to a significant restriction of competition, it shall issue within two (2) months as from the introduction of the case a decision prohibiting its realisation. The decision shall be served to the undertakings concerned within ten (10) days as from its issuance.

7. On request made by the interested persons or the undertakings concerned within one (1) month as from the notification of a prohibition decision issued by the Competition Committee, the Ministers of National Economy and Development may approve the concentration as provided for in Article 4c (3).

This decision shall be issued within a time limit of two (2) months as from its relevant request is made, and may be subject to conditions and obligations intended to ensure conditions of effective competition or to secure the attainment of economic or other advantages that shall counterbalance the unfavourable consequences to competition. The lapse of the two (2) months period is considered as equivalent to the request being rejected.

8. The time limits provided for in paragraphs 2, 3, 4, 6 and 7 of the present Article can be extended under the following circumstances:

- a) where the participating undertakings to the concentration, reach an agreement;
- b) where the information contained in the notification is incomplete;
- c) where the notification is incorrect or misleading.

Under (b) and (c) cases the time periods shall start on the date of the duly made notification or the date on which the complete and correct information is being received by the competent Competition Service.

9. Under extremely urgent circumstances the time periods of Articles 4d(3) 8(14) first indent of the present Act ; as well as, of Article 6 (2) of the Ministerial Decision for the Competition Committee's Rules of Procedures ,can be shortened up to fifteen (15 days) by decision of the President of the Competition Committee.

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10. In the case where a decision issued according to the provision of the present Article is being declared null and void wholly or in part by a court decision, the time periods provided for in paragraphs 2, 3, 4, 6 and 7(b) of the present Article shall start again from the date the decision is being notified to the Competent Service.

11. The decisions issued according to paragraphs 2, 4 and 7 of the present Article can be revoked by the issuing authority under the following circumstances:

- a) where its issuance has been based on incomplete, incorrect or misleading data;
- b) where the undertakings concerned commit a breach of the conditions and obligations attached to the decision.

In the cases where a decision is being revoked under the previous indent, the issuance of a new one shall not be subject to the time limits provided for in the present Article.

### **Article 4e**

#### **Suspension of Concentrations**

1. Without prejudice to the provisions of paragraphs 2 and 3 of the present Article a concentration is prohibited to be put into effect until one of the decisions provided for in Article 4d (2), (3), (4), (5), (6) and (7) is issued.

The aforementioned prohibition also applies to concentrations that have not been notified, in accordance with Article 4b (1), although there was an obligation to.

In case of breaching this prohibition a fine of at least 10 million DRS and not exceeding the 15% of the aggregate turnover of the undertakings concerned, as being defined in Article 4f, shall be imposed by the Competition Committee.

2. The provisions of the preceding paragraph shall not prevent the implementation of a public bid to buy or exchange, or the acquisition of an undertaking's controlling interest through the stock exchange market provided that these actions have been notified to the competent competition service within the time limit set by Article 4b (1) and that the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of his investment and on the basis of a derogation granted by the Competition Committee pursuant to paragraph 3 of the present Article.

3. The Competition Committee may, on request, grant a derogation from the obligations imposed in paragraphs 1 and 2 of the present Article in order to prevent serious damage to one or more undertakings concerned by the concentration or to a third party. The decision granting the derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition and to prevent situations that could hinder the execution of a possible prohibiting final decision. A derogation may be applied for and granted at any time, even before notification or after the transaction. The decision granting the derogation can be revoked by the Competition Committee if any of the reasons provided for in Article 4d(10) is found to exist.

4. Where a concentration has already been realised, in breach of the provisions or decisions prohibiting its realisation, the Competition Committee may order by a decision pursuant to Article 4d(6) or by a separate decision, without a deadline, require the undertakings or assets brought together to be separated or the cessation of joint control or any other actions that may be appropriate in order the restriction of competition resulting from the concentration to be removed.

In case of non-compliance with this decision, a fine not exceeding 15% of the aggregate turnover of the undertakings concerned, as defined in Article 4f, and a penalty payment of up to Drs 3 million for each day of delay to comply with, shall be imposed by the Competition Committee

5. The issuance of a decision pursuant to the preceding paragraph does not preclude the possibility of the concentration to be approved by the Ministers of National Economy and Development, according to the procedure provided for in Article 4d(7), and provided that the presuppositions within the meaning of Article 4c(3) are being met.

6. The validity of any transaction carried out in contravention of paragraph 1 of the present Article shall be dependent on the decision pursuant to Article 4d(2) or pursuant to paragraphs 4 and 5 of the present Article. The decision of the Ministers of National Economy and Development approving the concentration shall prevail in any of these cases.

7. The present Article has no effect on the validity of transactions in securities including those convertibles into other securities, unless the buyers and the sellers knew or ought to have known that the relevant transaction was carried out in contravention of paragraph 1 of the present Article.

## **Article 4f**

### **Calculation of Market Share and Turnover**

1. The market share within the meaning of Article 4b(1)(a) corresponds to the aggregate of all the market shares that the undertakings concerned hold in the national market or in a substantial part of it to which the concentration is concerned.

2. The aggregate turnover within the meaning of Articles 4b(1)(b) and (4), 4e(1) indent 3 and (4) indent 2, shall comprise the amounts derived by the undertakings concerned in the preceding financial year within the national market, from the sale of products and the provision of services falling within the undertakings' ordinary activities after the deduction of sales rebates and of the value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 5 of the present Article.

The turnover achieved in the national market shall comprise products sold and services provided to undertakings or consumers in the national market.

3. By way of derogation from paragraph 2, where the concentration consists in the acquisition of parts of one more undertakings, regardless of whether or not these parts constitute legal entities, only the turnover and the market share relating to the part which is the subject of the transaction shall be taken into account with regard to the seller.

Two or more transactions within the meaning of the previous indent which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.

4. In place of turnover the following shall be used :

a) for credit institutions and other financial institutions as well as for undertakings of portfolio investments, one-tenth (1/10) of their total assets, as this is derived from the Balance sheet of the preceding financial year.

As regards Article 4b(1)(b), the total national turnover shall be replaced by one-tenth (1/10) of the total assets multiplied by the ratio between loans and advances to credit institutions and customers being located or having their residence in Greece; to the total sum of loans and advances to credit institutions and customers.

b) for insurance undertakings, the total value of gross premiums written within the national market, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after

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deduction of taxes and levies charged by reference to the amounts of individual premiums or to the total volume of premiums.

As regards Article 4b(1)(b), the gross premiums received from those located or having their residences in Greece shall be respectively taken into account.

5. Without prejudice to the provisions of paragraph 3, the aggregate turnover and the market share of an undertaking concerned within the meaning of Articles 4b(1)(b) and (4), 4e(1) indent 3 and (4) indent 2 shall be calculated by adding together the respective turnovers and markets shares of the following:

- a) the undertaking concerned;
- b) those undertakings in which the undertakings concerned, directly or indirectly :
  - aa) own more than half the capital or business assets, or
  - bb) have the power to exercise more than half of the voting rights, or
  - cc) have the power to appoint or discharge more than half of the members of the administrative bodies of the undertakings concerned, or
  - dd) have the right to manage the undertakings' affairs.
- c) those undertakings which have in the undertaking concerned the rights or powers listed in case (b);
- d) those undertakings in which an undertaking as referred to in case (c) has the rights or powers listed in case (b);
- e) those undertakings in which one or more undertakings as referred to in cases (a) to (d) jointly have the rights or powers listed in case (b).

6. Where undertakings concerned by the concentration jointly have the rights or powers listed in paragraph 5(b), in calculating the aggregate turnover of the undertakings concerned within the meaning of Articles 4b(1)(b) and (4), 4e (1) indent 3 and (4) indent 2:

- a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, within the meaning of paragraph 5(b) to (e);
- b) account shall be taken of the turnover resulting from the sale of products and the provisions of services, or the provision of services between the joint undertaking and any third undertaking. This turnover shall be apportioned equally among the undertakings concerned.

## CHAPTER II

### SPECIAL REGULATIONS AND EXEMPTIONS

#### Article 5 Special Regulations

1. The provisions of the present Act shall also apply to public undertakings or to undertakings of public utility; however, the Ministers of National Economy and Development may, by joint decisions issued after the Competition Committee has been consulted, exempt certain of the aforementioned



enterprises or categories of them from the application of the present Act, provided that they are of general importance to the national economy.

2. The provisions of the present Act shall also apply to undertakings and associations of undertakings engaged in the production, processing, transformation or trading of agricultural or livestock products, forestry or fisheries, unless the Ministers of National Economy, Development and Agriculture by joint decisions, issued after the Competition Committee has been consulted, exempt categories of these undertakings or sectors of their activities from the application of the present Act.

3. The provisions of the present Act shall also apply to transport undertakings and its associations, unless the Ministers of National Economy, Development and Transport & Communications in the case of land and air transport, or the Ministers of National Economy, Development and Merchant Marine in the case of maritime transport, by joint decisions, issued after the Competition Committee has been consulted, introduce special regulations or exemptions necessitated by transport policy.

4. The provisions of the present Act shall not apply to the extent that the Treaty establishing the European Coal and Steel Community provides for special regulations.

#### **Article 6** **Exemption of Export Cartels**

Without prejudice to the country's international obligations, the provisions of the present Act shall not apply to agreements, decisions and concerted practices, the exclusive aim of which is to insure, promote or strengthen exports, unless the Ministers of National Economy and Development, by joint decisions issued after the Competition Committee has been consulted, decide otherwise with respect to categories of undertakings or products.

#### **Article 7** **Exemptions of Agreements or Categories of Agreements**

1. The jurisdictions of the Minister of Development, as provided by Article 66(11)(b) of P. D. 397/1988 (Government Gazette No 185/25. 8. 1988, issue A') are exercised, without prejudice to the provisions of the present Act, by the Competition Committee as this is provided by Article 8 of the present Act.

2. The Minister of Development may, after obtaining the concurrent opinion of the Competition Committee, issue ministerial decisions exempting certain categories of agreements in accordance with Article 1(3) of the present Act.

3. The Minister of Development may, after obtaining the concurrent opinion of the Competition Committee, issue ministerial decisions which define agreements or categories of agreements which do not fall within the provisions of Article 1(1) of the present Act.

## CHAPTER III

### COMPETITION COMMITTEE

#### Article 8

#### Competition Committee

1. A Competition Committee is being established, functioning as an Independent Authority. Its members shall enjoy personal and functional independence and shall be bound solely by the present Act and their conscience during the exercise of their duties. The Competition Committee is administratively and financially independent.

2. A levy of 0.001 calculated either upon the capital of newly established companies or their respective increment shall be collected in favor of the Competition Committee. The levy shall be deposited in a special bank account hold by the Competition Committee. The Competition Committee shall administer the revenues collected in accordance to its Regulation of Internal Operation and Administration. The procedural matters concerning the collection of the levy shall be regulated by a Joint Ministerial Decision issued by the Ministers of Development and Finance following the Competition Committee's proposal

The Competition Committee is obliged to keep records of accounts including Income Statements and Balance Sheets as provided in its Regulation of Internal Operation and Administration.

The budget of the Competition Committee shall be annexed to the budget of the Ministry of Development.

The auditing of the financial records, annual accounts and financial statements shall be exercised by two (2) certified auditors. The financial statements shall be published in two daily newspapers of wide coverage and in the Governmental Journal. They will also be submitted to the Speaker of the Parliament accompanied by the annual report provided by Article 13c and the following year's budget.

The Competition Committee is subject to the control of the Comptrollers Council.

In case the financial result (revenues minus expenses) on a two (2) year basis, exceeds the expenses of the preceding fiscal period, an amount up to 80% of this result will be transferred by a Joint Ministerial Decision of the Ministers of Development and Finance to the State budget as a revenue.

The Competition Committee can undertake on its own capacity any procurement or assignment according to its Regulation of Internal Operation and Administration.

3. The Competition Committee shall be composed of nine (9) members:

a) a member or an ex-member of the Legal Council of State or an ex-judge of the highest rank of the Civil or Administrative Justice.

b) a representative from the Economic and Social Committee, the Association of Greek Industries, the National Confederation of Greek Trade, the General Confederation of Small & Medium Sized Businesses, Craftsmen & Traders of Greece together with their deputies.

The representatives are persons of recognised status with experience in competition issues and are appointed by the Minister of Development among three names proposed by the above institutions for the regular members and their substitutes respectively.

c) a member from the faculty of a Greek University, specialized in Competition Law;

d) a member from the faculty of a Greek University specialized in the economic issues of the competition policy and

i) two persons of recognised status with experience in the public and community law as well as in issues of competition policy.

The Minister of Development shall appoint the members of the Competition Committee and their substitutes.

4. The Director of the Secretariat shall act as General Rapporteur assisted by the Rapporteur(s) of the case under discussion. An official of the Secretariat shall act as Secretary of the Competition Committee.

5. Without prejudice to other provisions of the present Act, the President, the members of the Competition Committee and their substitutes shall be appointed by decision of the Minister of Development, for a three-year period, which can be renewed. In case of a premature termination of the period of service of any member, including the President, for any reason, a new member shall be appointed for the remaining period of service of the retired member. Those who have been forfeited the Committee, for reasons that are defined in the present Act, cannot be appointed as members or deputy members of the Competition Committee.

6. The Minister of Development shall appoint the President of the Competition Committee and his deputy among its members. The Parliament's competent committee has to deliver an opinion before the nomination according to its internal rule of procedure. The President shall be a state functionary being exclusively employed. During the period in office his professional activity will be suspended, while in case he is a faculty member of a University he will be on a leave according to Article 17 (4) indent (a) of Act.1286/1982.

The President's monthly compensation and the allowance per sitting given to the members of the Competition Committee and their deputies, to the acting General Rapporteur and the assistant Rapporteur(s) of the case under discussion, to the Competition Committee's Secretary and their deputies shall be determined by a joint decision issued by the Ministers of Finance and Development. When the members of the Competition Committee reside outside Athens a transportation allowance shall be regulated by this paragraph.

7. During their period of service, the President of the Competition Committee and its members shall not perform any other salaried or not public service or practice any other private professional activity of business or non-business nature, which may be incompatible with the characteristics and the duties of a member of the Competition Committee. Members shall be obliged to inform the President in case of undertaking any of the aforementioned activities. Its incompatibility or not shall be decided by the Competition Committee's plenary session while the member(s) concerned, shall abstain from the sessions during which the decision shall be taken. The relevant decision must be justified. It shall be notified to the Minister of Development and published according to the provisions of the present Act.

Following the Competition Committee's opinion a Code of Professional Ethics is being enacted by ministerial decision regulating the exercise of duties for the members of the Competition Committee and the personnel of the Secretariat.

8. The President, the members of the Competition Committee and their substitutes shall submit each year to the Prosecutor's office of the Supreme Court, the statement of property provided by Act No 1738/1987.

9. Judicial functionaries in office, appointed as members of the Committee, may, by decision of the Supreme Judicial Council, be relieved of their official duties during their period of service. All other civil functionaries, civil servants and officials of corporate bodies of public law when appointed as members of the same Competition Committee, may, by joint decision of the Minister of Development and the Minister heading their service, be relieved of other official duties during their period of service. For all

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the above mentioned members, this period shall be deemed as period of actual service for all purposes and in no case shall such membership adversely affect their position or status in the service.

10. Following a suggestion made by the Competition Committee a Joint Decision of the Ministers of Finance, Presidency of Government and Development introduces the Regulation of Internal Operation and Administration which is published in the Governmental Gazette. The Regulation provides for the operation of the Competition Committee, the administration of its revenues and matters related to the circumstances under which its President, members or Secretary, should be excused or disqualified the preliminary procedure of cases referred to it, the procedure before it, the drafting, publication and notification of its decisions, the granting of copies of or extracts from its decisions or opinions and any other detail.

11. The Competition Committee may, by decision, operate in divisions composed of four (4) members. By the same decision its duties, composition and the person chairing the relevant divisions shall be determined.

12. The Competition Committee sits duly in session if the President or its deputy, at least four (4) of its members and its secretary are present at the meeting. Decisions shall be taken by majority vote. In case of a tie, the President's vote shall be dominant. The divisions of the Competition Committee sit duly in session if the President or its deputy, at least two (2) of its members and its Secretary are present at the meeting. Decisions shall be taken by majority vote. In case of a tie, the President's vote shall be dominant.

13. After a member's unexcused absence in five (5) consecutive regular meetings, the Competition Committee may be called upon by three (3) of its members or by its President and decide by majority vote of four (4) of its members to expel the inexcusably absent member.

14. During the discussion before the Competition Committee of applications or complaints submitted according to the present Act, the persons who have made them may appear in person or accompanied or represented by attorneys-at-law; to this purpose they shall be given notice thirty (30) days in advance. The same rule shall apply to undertakings or associations of undertakings against which the procedure before the Committee has been initiated and which are also given notice thirty (30) days in advance. If no notice is given or in case of an undue or delayed notice the party that failed to appear at the hearing may submit a request for a new hearing before the Competition Committee within a time limit of fifteen (15) days as from the date the decision was served on it.

15. The decisions and the opinions of the Competition Committee shall be served by its Secretariat on those persons entitled to appeal pursuant to the provisions of the present Act.

### **Article 8a**

#### **Authorities of the Competition Committee**

1. The Competition Committee is the competent authority for the observance of the provisions of the present Act.

2. In particular, the Competition Committee has the following authorities:

a. decides whether the prohibited agreements, decisions and concerted practices of the kind described in Article 1(1) of the present Act are valid according to the provisions of Article 1(3);

b. certifies that there is no infringement of the provisions of Articles 1(1) and 2, according to the specific provisions of Article 11 of the present Act;

c. prohibits, according to the specific provisions of Articles 4c and 4d of the present Act, the realisation of a concentration notified according to Article 4b of the present Act, if the concentration can

significantly restrict competition. In case where the concentration has been put into effect in breach of the provisions or decisions, the Committee may take measures pursuant to the provisions of Article 4d(4) of the present Act;

- d. it may grant a derogation from the obligation regarding the suspension of a concentration, according to the specific provisions of Article 4e(1) to (3) of the present Act;
- e. threatens and imposes the fines, penalty payments and the sanctions, as provided for in Articles 4b(4), 4e(1) and (4), 9(1) and (2), 21(2), 25(2) and 26(6) of the present Act;
- f. takes provisional measures under the circumstances referred to in Article 9(4) of the present Act;
- g. keeps the Provisional and Definite Registers of Cartels and registers the notifications and decisions, according to the specific provisions of Article 19 of the present Act;
- h. expresses its concurrent opinion for the issuance of Ministerial decisions exempting categories of agreements according to Article 1(3) of the present Act;
- i. expresses its concurrent opinion for the issuance of Ministerial decisions determining agreements, decisions and concerted practices or categories thereof that do not fall within the provisions of Article 1(1) of the present Act;
- j. expresses its concurrent opinion for the issuance of the Competition Committee's Rules of Procedure;
- k. expresses its concurrent opinion for the appointment of the Director of its Secretariat;
- l. delivers its opinion for the issuance of Ministerial decisions pursuant to Articles 5 and 6 of the present Act;
- m. delivers its opinion with respect to competition matters and proposals amending the present Act according to what is provided in Article 8d of the present Act;
- n. collects, studies and evaluates, under its obligation for professional secrecy, all the necessary for the attainment of its tasks, information and documents obtained pursuant to what is particularly provided in Articles 25 and 26 of the present Act.

3. Following the Competition Committee's President request the Services of the General Secretariat of Commerce may assist the functioning of the Competition Committee especially co-operating within the light of Article 26 for the conduct of investigations and the collection of information in relation:

- a) to the development, structure and trends of the internal market, the functioning and structure of market sectors ; as well as, the competitive conditions of every sector
- b) to the evaluation of intersectoral relations in terms of cost and indices
- c) to the evaluation of the degree of concentration among business undertakings per sector of economic activity or the existence of concerted practices or abuse of dominant positions by firms.
- d) to monitoring the execution of Competition Committee's decisions and the Ministerial and Judicial decisions issued upon them.

### **Article 8b**

#### **Authorities of the President of the Competition Committee**

1. The President of the Competition Committee represents it against any third party and he is, pursuant to the present Act, the regulatory Acts and the decisions adopted in its plenary sessions, responsible for its functioning, exercising the relevant jurisdictions and in particular:

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- a. he follows the execution of the decisions of the Competition Committee, informing accordingly its plenary session and the Minister of Development;
  - b. he co-ordinates and directs the activities of the Competition Committee's Secretariat;
  - c. he represents the Competition Committee in the Committees, Working Parties, Conferences and Meetings held within the framework of the European Union, the Organisation of Economic Co-operation and Development and other international organisations, being empowered to authorise for this purpose, his Deputy, the Director or an official of the Secretariat;
  - d. he is the administrative supervisor of the personnel of the Competition Committee's Secretariat exercising the relevant disciplinary power.
2. In case of the President being absent, obstacle or passed away his Deputy replaces him
  3. The President is empowered to authorise an Official(s) of the Secretariat to sign document for him or act accordingly.

### **Article 8c**

#### **Organisation and Personnel of the Competition Committee**

1. A Secretariat shall be set up and operate within the Competition Committee headed by a Director appointed for five-year period of service that can be renewed. His appointment is effected by decision of the Minister of Development, after the opinion of the Competition Committee has been obtained. Detachment or transfer from another state position can also fill the Director's position. The Director supervises the functions of the Secretariat and provides for its efficient and effective operation.
2. The organisation of the Secretariat, its structure and duties, the number of the staff employed, its classification and qualifications; as well as, any other necessary detail shall be laid down by Presidential Decree, issued on the proposal of the Ministers of Presidency of Government, Finance and Development. The total number of the staff positions of any nature cannot be greater than eighty (80). The number of the staff positions can be increased up to one half by Presidential Decree issued on the proposal of the Ministers of Presidency of Government, Finance and Development, upon a suggestion of the Competition Committee.
3. The staff positions shall be filled either by appointment or recruitment according to the existing provisions; as well as, by detachment or transfer of state employees of permanent tenure or state employees under private contracts, as defined by Article 14 (1) of Act 2190/1994 and amended by Article 1 (1) of Act 2527/1997, following a public announcement for the submission of applications.

Until the employees' council of the Secretariat's personnel is being established the detachment or transfer of state employees shall be effected in derogation of the existing regulating provisions after a joint decision of the Ministers of Presidency of Government, Development and the competent in each case Minister is being issued, after the opinion of the Competition Committee is being delivered in a plenary session.

The opinion of the employees' council of the service he is being transferred or detached from is not required.

The opinion of the President of the Competition Committee is required for a transfer to be recalled.

The positions of specialised personnel shall be filled by private contracts of indefinite duration in accordance to the provisions of Article 1 (3) of Act 2527/ 1997. By by detachment or transfer The staff positions shall be filled

The procedure and any other detail regarding the public announcement and the submission of applications are determined by decision of the Minister of Development.

4. The Competition Committee may be consulted by experts for particular issues, when it is deemed necessary and appropriate. The procedure, as well as any issue related to their remuneration shall be determined by joint decision of the Ministers of Finance and Development in derogation of the existing provisions.

5. The employees' council of the Secretariat's personnel shall be established by decision of the President of the Competition Committee. It shall consist of two (2) members from the Competition Committee, elected by its plenary session, the Director of the Secretariat and two (2) elected employees' representatives of the C' at least ranking. In case there are no employees with the previously mentioned ranking the employees' council shall be established by exception. The representatives of the employees shall be nominated among employees being transferred from other Ministries. The existing legislative provisions governing employees' council shall regulate all other matters.

6. The supervision of Directorate, Sections and Offices of the Competition Committee's Secretariat may be assigned to personnel that has been transferred to it.

7. The personnel of the Secretariat as well as the staff being transferred receives an additional remuneration that is being determined by a joint decision of the Ministers of Finance and Development according to their classification. The remuneration is being covered by the Competition Committee's budget. In case the transferred personnel receives an additional remuneration from the service it has been transferred from, it has to state to the Competition Committee's Secretariat as well as to its service which remuneration will be received. The remuneration of the specialised personnel could not be less that the one provided in Article 92A of the Code for Lawyers. The recruitment of a lawyer as scientific personnel has the effect of his professional activity being suspended.

#### **Article 8d**

#### **Opinion Authorities of the Competition Committee**

1. Following its own initiative the Competition Committee has the competence to deliver opinions to the Minister of Development or to any other Minister in relation to competition issues and if so requested to the Minister of National Economy, the Minister of Development, associations of trade and industry and industrial or commercial unions.

2. At the request of the Minister of Development, the Competition Committee delivers an opinion with respect to proposals amending the present Act.

#### **Article 8e**

#### **Relations with Regulatory Authorities**

The Competition Committee co-operates with authorities which regulate and monitor the functioning of specific sectors of economy, such as the National Telecommunications Authority and Post Services and the Regulatory Authority of Energy. The Competition Committee delivers opinions for competition policy issues in these sectors and decides for cases that have been referred to it as having the sole competence for the application of the present Act

**Article 9**  
**Powers of the Competition Committee with Regard to Infringements of**  
**Articles 1(1) and 2**

1. Where the Competition Committee, upon its own initiative or upon a complaint lodged or a request made by the Minister of Development finds that there has been an infringement of Articles 1(1), and 2, it may by decision:

- a) address to the interested undertakings or associations of undertakings recommendations to put an end to such infringement;
- b) require the undertakings concerned to put an end to such infringement and to refrain from committing it in the future;
- c) threaten to impose a fine or penalty payment or both in the case of continuing or repeating the offence;
- d) consider that the fine or penalty payment or both are due, where it confirms by decision that the infringement has been continued or repeated;
- e) impose a fine on the undertakings or associations of undertakings that have committed the offence.

2. The fine imposed or threatened under the preceding paragraph may amount up to 15% of the gross receipts of the offending undertaking(s) or association of undertakings in the financial year in which the offence was committed or in the preceding year. In fixing the amount of fine the gravity and the duration of the infringement should be taken into account. The penalty payment provided under the preceding paragraph amounts up to Drs 2 million per each day of delay to comply with the decision, calculated from the date appointed by it.

3. The undertakings or association of undertakings concerned are obliged within 15 days from the date of the notification of the decision to inform the President of the Competition Committee for the actions they have taken or are going to take in order to put an end to the infringement. The obligation also applies to undertakings and associations of undertakings where they have to comply with a court decision issued after an appeal against a Competition Committee's decision.

4. The Competition Committee has the exclusive competence to take provisional measures, upon its own initiative or upon request of the person who brought the complaint pursuant to Article 24 of the present Act or of the Minister of Development, where an infringement of Articles 1, and 2 of the present Act is most probable to occur and where there is an urgent need for an imminent and incurable damage to the complainant or to the public interest to be prevented.

The Competition Committee may threaten to impose a penalty payment amounting up to Drs 1 million per each day of non-compliance with its decision and consider it as being due when non-compliance is being confirmed by its decision.

The Competition Committee is obliged to take a decision within fifteen (15) days as from the date of the relevant request at most, provided that the interested parties are being heard.

This decision can be appealed only before the Athens Administrative Court of Appeal. The provisions of Article 14 (2) to (4) are applied by analogy.

5. Decisions taken pursuant to paragraph 1 shall be independent of the notification submitted under Articles 20 and 21, or the expiration of the time limit set for notification.



**Article 10**  
**Decisions Pursuant to Article 1(3)**

1. The Competition Committee shall have the sole power to apply the provisions of Article 1(3).
2. Whenever the Competition Committee issues a decision pursuant to the provisions of Article 1(3):
  - a) it shall specify therein the date from which the decision shall take effect without prejudice to the provisions of Article 21(3). Such date shall be in no case, prior than the date of the notification;
  - b) it shall specify the period of validity thereof; and
  - c) it may make the decision conditional upon certain conditions and obligations.
3. The Competition Committee may, on request of the undertaking or association of undertakings concerned, renew its aforementioned decision, if the conditions of Article 1(3) continue to be fulfilled.
4. The Competition Committee may, after informing the undertakings or associations of undertakings concerned, revoke or amend a decision pursuant to Article 1(3), where:
  - a) there has been a change in any of the facts which were basic to the issuance of the decision declaring valid by exemption, agreements, decisions and concerted practices, prohibited by Article 1(1) of the present Act or where the parties abuse the exemption granted to them;
  - b) the contracting parties do not comply with the conditions or obligations imposed;
  - c) the conditions for the revocation of administrative acts are being fulfilled. In the cases (b) and (c) of the present paragraph, the revoking or amending decision may have retroactive effect.

**Article 11**  
**Negative Clearance**

1. Upon application by the undertaking or association of undertakings concerned, which is submitted to the Secretariat, the Competition Committee may certify within two months after such submission, that, on the basis of the facts in its possession, there is no infringement of the provisions of Articles 1(1), and 2 of the present Act. Such clearance may be sought even for a cartel, abuse of a dominant position or of a relation of economic dependence, which are merely anticipated to arise in the future.
2. The granting of negative clearance as provided in the previous paragraph does not exclude the possibility of a later contrary decision to be taken by the Competition Committee concerning the same case.
3. Until the issuance of a decision contrary to the negative clearance previously granted, the undertakings or associations of undertakings involved, shall not be liable to the consequences and sanctions provided for in the present Act, unless they have misled the Competition Committee by providing it with inaccurate information or by concealing real facts.

**Article 11a**  
**Simplified procedure for notifications and complaints**

Files of unfounded complaints against violations of Articles 1(1) and 2 ; as well as, notifications according to Article 21 paragraphs 1 and 3 that refer to practices which apparently do not affect competition can be

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closed without being heard before the Competition Committee by a justified Presidential decision and the concurrent opinion of two (2) members of the Committee. The President is nominating these two (2) members within the first fifteen (15) days of the year and for one (1) year period

## **Article 12**

### **Imposition of Fines**

The fines and the penalty payments provided for in the present Act shall be imposed by decision of the Competition Committee.

## **Article 13**

### **Revocation of Decisions of the Competition Committee**

The Competition Committee has the right to revoke its decision as to the non-violation of the prohibitions laid down in Articles 1(1), and 2 of the present Act, should its attention be drawn by an investigation upon its own initiative, complaint or any other source, to facts of which it had been informed or which have come to light after the decision has been taken and which provide evidence of a violation of the aforementioned Articles.

## **Article 13a**

### **Publication of Decisions of the Competition Committee**

1. The decisions of the Competition Committee, pursuant to the provisions of the present Act, must be specifically justified and shall be published in the Government Gazette.

2. The Competition Committee may order an undertaking or association of undertakings that violated the present Act to publish its decision in the national or local press depending on the magnitude of the market in which the violation occurred; as well as, on its gravity and effects. If the decision of the Competition Committee is being revoked by an irrevocable court decision, the Competition Committee is obliged to publish that decision in the same newspaper and on its own expenses.

## **Article 13b**

### **National Competition Authority**

1. The Competition Committee, as the National Competition Authority, is competent for the co-operation:

- a) with the competition authorities of the Commission of the European Union providing the necessary assistance to its authorized officials in carrying out investigations provided by the community law;
- b) with the competition authorities of other countries;
- c) with international organisations.

2. Where an undertaking, which has its headquarters or exercises its activity in Greece, opposes an investigation ordered pursuant to community provisions, the Competition Committee and its authorized officials, upon its own initiative or upon the request of the authorized officials of the Commission, shall take all the necessary measures for the normal conduct of the investigation especially by providing the necessary assistance according to the provisions of Article 26 of the present Act.

3. The Competition Committee and its Secretariat shall perform the tasks which have been assigned to the national authorities of the member states by Articles 84 and 85 of the Treaty establishing of the European Economic Community; as well as, by Regulations pursuant to Article 83 of the same Treaty in conjunction with other enabling provisions of the Treaty. To perform these tasks the Competition Committee and its Secretariat shall have the powers granted to them for the application of the present Act.

### **Article 13c**

#### **Annual Report of the Competition Committee**

1. The Annual Report of the Competition Committee shall be submitted to the Ministers of National Economy and Development and to the Speaker of the Parliament during the month of June. It shall include a full report of its activities and decisions; as well as, its evaluations regarding the conditions and developments in the area of its competence.

2. The first annual report will be submitted by the Competition Committee in the month of April of the year following the commencement of its functioning.

## **CHAPTER IV**

### **LEGAL PROTECTION**

#### **Article 14**

##### **Appeal Before the Athens Administrative Court of Appeal**

1. The decisions of the Competition Committee; as well as, the decisions of the Ministers of National Economy and Development which are issued pursuant to Articles 4c(3) of the present Act, may be challenged on appeal to the Athens Administrative Court of Appeal within 60 days as from their notification.

2. The time limit for the appeal to be brought; as well as, the appeal its self does not suspend the execution of the Competition Committee's decision. However the President of the Athens Administrative Court of Appeal may suspend - after the request of the person concerned - wholly or in part, or subject to certain conditions, the execution of the contested decision if there are sufficient grounds for such suspension, applying by analogy the provisions of Article 200 of the Code of Procedural Law.

3. The right to appeal may be exercised:

- a) by the undertakings or associations of undertakings against which the decision was issued;
- b) by the person who submitted a complaint regarding an infringement of the provisions of the present Act;

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- c) by the State through the Minister Development;
- d) by any third party having a legitimate interest.

4. The appeal must be heard within three months from the day on which it was brought before the Athens Administrative Court of Appeal. An adjournment of the hearing may be granted only once, on sufficient grounds and to a hearing date not more than one (1) month later than the original hearing date, unless several appeals are to be jointly heard.

### **Article 15**

#### **Legal Remedies**

1. Against the decisions of the Athens Administrative Court of Appeal, delivered in accordance with this Act, the parties to the case before that Court shall be allowed to appeal by a writ of error to the Council of State. This appeal shall be brought and heard in accordance with the provisions governing appeals to the Council of State.

2. The State General Commissioner for the ordinary administrative courts shall be entitled to appeal by a writ of error even though he was not a party to the proceedings in which the decision appealed against was issued. In this case, the time allowed for exercising the legal remedy shall be of three months as from the date on which the decision was published.

3. An appeal by a writ of error must be heard within three months from the date on which it was brought before the competent court. An adjournment of the hearing may be granted only once, on sufficient grounds and to a hearing date not more than one (1) month later than the original hearing date, unless several appeals are to be jointly heard.

4. The provisions of Article 52 of Presidential Decree No 18/1989 concerning the stay of execution of administrative acts challenged on appeal to be set aside, shall apply by analogy to the stay of execution of ordinary administrative courts' decisions in case where an appeal by writ of error is exercised against them, according to the present Act.

5. Where in Act reference is made to ordinary administrative courts it is implied that only the Athens Administrative Court of Appeal is concerned by this regulatory provision.

### **Article 16**

#### **Procedural Provisions**

1. Unless otherwise provided or regulated by this Act, the provisions applicable to the procedure before the administrative courts according to it, shall be the provisions of the Code of Procedural Law and the provisions governing appeals to the Council of State as they are in force. This concerns, in particular, those provisions which refer to jurisdiction and competence of the Courts; the exclusion, the challenge and the abstention of judges; the parties to a case; joint actions; connection and intervention; joint hearing and separation of cases; appearance at the hearing; the fundamental rules of conducting the case; the reports and legal documents of the case; the service of documents; the time limits; the procedural nullities, the opposition and the additional reasons; the preparation of the hearing; the public hearing; the discontinuance, resumption and cancellation of the hearing; the decisions; the rectification and the interpretation of decisions; the "res judicata"; the evidence; the general provisions concerning legal remedies; the opposition in case of default to appear at the hearing; the appeal, the revision and the appeal by a writ of error.

2. The provisions of Articles 70, 71, 72 and 74(2) of the Code of Procedural Law shall not apply to disputes proceedings arising under paragraph 1 of the present Article.

3. Undertakings or associations of undertakings which have participated in a practice within the meaning of Articles 1, and 2 of the present Act, with an undertaking or association of undertakings which is party to a case; as well as, any third party having a legitimate interest shall be authorised to intervene in the proceedings referred to in paragraph 1 of this Article.

4. By Presidential Decree issued on a proposal of the Ministers of Justice and Development, special divisions of the Athens Administrative Court of Appeal may be established to hear appeals, interventions, oppositions in case of default to appear and applications for review made in accordance with the present Act. The same Decree shall also regulate any question concerning the procedure to be followed before these divisions when judging according to the provisions of the present Act.

### **Article 17**

#### **Exercise of Legal Remedies by the State General Commissioner**

1. The provision in Article 16 of the Code of Procedural Law \* shall apply equally to the procedure of legal remedies exercised according to the present Act by the State General Commissioner for the ordinary administrative courts.

2. The State General Commissioner shall not be required to appear before the courts, including the Council of State, during the hearing of legal remedies exercised by him in accordance with the present Act; such remedies shall be tried in his absence as if he were present.

3. The State General Commissioner may entrust the exercise of any of his powers provided by this Act, to the Deputy Commissioner or to any other lawful deputy.

4. The right of the State General Commissioner to appeal by a writ of error, to the benefit of the Law, against any decision of the administrative courts in accordance with Article 16 of the Code of Procedural Law \*, shall be independent of his right to appeal to the Council of State in accordance with Article 15(2) of the present Act.

*\* Article 29 case ( 6 ) of the Rules of the Courts is being implied ( Act . 1756/ 1988 )*

### **Article 18**

#### **Jurisdiction of Other Courts**

1. Decisions of the Athens Administrative Court of Appeal and Council of State which are delivered, following an appeal in accordance with the present Act, shall have the force of "res judicata". Decisions of the Competition Committee; as well as, of the Minister of Development which are not appealed within the time limit specified, are only incidentally judged by the Courts as far as their validity is concerned.

2. Except in cases within the meaning of Article 1(3) and without prejudice to the provisions of the preceding paragraph, the courts of whatever nature shall be entitled to judge incidentally the validity of agreements and decisions of the kind described in Article 1(1) or the existence of a prohibited concerted practice or abuse of a dominant position or abuse of a relation of economic dependence.

**CHAPTER V**  
**REGISTERS AND NOTIFICATIONS**

**Article 19**  
**Registers**

The Competition Committee shall keep:

1) the Provisional Register of Cartels, where the notifications, pursuant to Articles 20 and 21, shall be registered. The Provisional Register of Cartels shall be confidential;

2) the Definite Register of Cartels where, within thirty public.

3) The Provisional Register of Concentrations subject to preventive control where the notifications, pursuant to Article 4b, shall be registered. The Provisional Register of Concentrations shall be confidential;

4) The Definite Register of Concentrations subject to preventive control where shall be registered:

a) the Competition Committee's decisions pursuant to Articles 4d and 4e, provided that they are no longer subject to legal remedies;

b) the Ministers' of National Economy and Development decisions pursuant to article 4d;

c) the Administrative Court of Appeal's decisions provided that they are no longer subject to legal remedies;

d) the Council of State's decisions on the same matters or disputes.

The Definite Register of Concentrations shall be accessible to the public.

**Article 20**  
**Notification of Existing Cartels**

1. Agreements, decisions and concerted practices of the kind described in Article 1(1) of the present Act which were in existence at the date of entry into force of Act No 703/77 (Government Gazette No 278/26.9.77, issue A'), should have been notified by the undertakings or associations of undertakings concerned to the Service for the Protection of Competition, within four (4) months as from the date of entry into force of Act No 703/77.

2. In case the above notification has not been effected, each of the undertakings or associations of undertakings which omitted the notifications will suffer the following consequences:

a) total withdrawal of the benefit of the provisions of Article 1(3), being applied, and

b) a fine of not less than Drs 100.000 nor more than Drs 200.000 shall be imposed.

**Article 21**  
**Notification of New Cartels**

1. Agreements, decisions and concerted practices of the kind described in Article 1(1) must be notified by the undertakings or associations of undertakings concerned to the Competition Committee, within 30 days as from the date on which they were concluded, taken or exercised.

2. In case the aforementioned notification is not effected, each of the undertakings or

associations of undertakings, which omitted the notifications, will suffer the following consequences:

a) total withdrawal of the benefit of the provisions of Article 1(3), being applied, and a fine of not less than Drs 3 million nor more than 10% of the gross receipts that the undertakings achieved during the present or the previous financial year in which the offence was committed, shall be imposed.

3. The obligation to notify according to paragraph 1 does not apply agreements and concerted practices when :

these agreements and concerted practices are entered by two or more undertakings, each operating, for the purpose of the agreement, at a different level of the production or distribution chain ,and relate to the condition under which the parties may purchase, sell or resell certain goods or services ,

b) not more than two undertakings are party thereto, and the agreements only impose restrictions on the exercise of the rights of the assignee or user of industrial property rights – in particular patents, utility models, designs or trade marks – or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and the application of industrial processes.

The possibility of an individual exemption according to Article 1(3) to agreements and concerted practices mentioned in the previous paragraph, presupposes their notification to the Competition Committee. A decision in question pursuant to Article 1(3) may come into force on a date prior to the notification of these agreements and concerted practices.

## **Article 22**

### **Content of Notification**

1. The notification must contain all the necessary information for the examination by the Competition Committee of the particular case submitted to it or for the conduct of inquiries into the sectors involved or for the control of cartels of undertakings. The following must be included in every case; otherwise, the notification will be inadmissible:

a) the business name and registered office of all participating undertakings and the appointed authorised attorney registered in Athens;

b) the documents incorporating the agreement concluded or evidencing the decision taken;

c) any other information evidencing the cartel notified.

2. Further documents and evidence may be demanded by decision of the Competition Committee in order to ensure the admissibility of the notification.

3. The content, form and procedure in respect of submission and entry of the following, shall be determined by decision of the Competition Committee:

a) notifications pursuant to Articles 20 and 21;

b) applications for negative clearance pursuant to Article 11;

c) applications for the implementation of Article 1(3) pursuant to Article 10;

d) complaints concerning violations of Articles 1(1) and 2 pursuant to Article 24(1);

e) any other matter relevant to the aforementioned notifications, applications or complaints.

4. The application for negative clearance pursuant to Article 11(1) or the application for the implementation of Article 1(3) pursuant to Article 10, shall be simultaneously submitted at the time of notification.

## **Article 23**

### **Consequences of Notification**

1. Until a decision is taken by the Competition Committee pursuant to Article 1(3), the agreements and decisions duly notified pursuant to Articles 20 and 21 by the undertakings concerned, shall be deemed provisionally valid.

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2. Agreements and decisions which were not notified and which existed at the date of entry into force of Act No 703/77, shall be deemed null and void as from that date.

3. Notified agreements and decisions, which existed at the date of entry into force of Act No 703/77, shall be deemed null and void as from the date on which the time limit for their notification expired.

4. Agreements and decisions which are not notified and which were concluded or taken after the date of entry into force of Act No 703/77, shall be deemed null and void as from the date on which such agreements were concluded or such decisions were taken.

5. Notified agreements and decisions, which were concluded or taken after the date of entry into force of Act No 703/77, shall be deemed null and void as from the date on which the time limit for their notification expired.

## **CHAPTER VI**

### **COMPLAINTS AND INVESTIGATIONS**

#### **Article 24 Complaints**

1. Any natural or legal person shall be entitled to submit a complaint regarding the infringement of the provisions of Articles 1(1) and 2

2. Civil servants, officials of corporate bodies of public law, employees of public undertakings or undertakings of public utility and persons temporarily entitled to an administrative service shall report, without fail, to the Competition Committee any information which comes to their knowledge regarding an infringement of the provisions of Articles 1(1), 2, and 4 to 4f. In case of failing to do so, a penalty of imprisonment for up to six (6) months or a fine of not less than Drs 100.000 nor more than Drs 500.000 can be imposed.

3. The secretaries of the Courts shall be obliged to send, free of charge, copies of decisions issued in accordance with the present Act to the Competition Committee. In case of failing to do so, they shall be subject to disciplinary sanctions.

4. The Competition Committee shall be obliged to issue a decision within six (6) months from the date a complaint was lodged. Under special circumstances and when the case calls for further investigation, the Competition Committee can extend the aforementioned period by two (2) months.

#### **Article 25 Collection of Information**

1. In carrying out the duties assigned to the Competition Committee by the provisions of the present Act, its President or the authorized by him Director or official of its Secretariat shall be entitled to obtain all necessary information from undertakings, associations of undertakings, other natural or legal persons, public or other authorities by sending a written request. The document shall state the legal provisions on which the request is based, the time limit for supplying the information requested, which can not be less than five (5) days for cases of provisional measures, ten (10) days for decisions of Article 4e(3) and twenty (20) days for the rest of the cases; as well as, the penalties provided for non-compliance with the obligation to supply information under the present Act.

The persons the document is addressed to shall be obliged to supply the information requested immediately, accurately and completely. In the case of information requested from undertakings or



associations of undertakings, the designated under Article 30 of the present Act persons and their competent officials are obliged to supply the information.

Persons who under Article 212 of the Code of Criminal Procedure cannot be examined in criminal proceedings, shall not be required to supply the aforementioned information provided that they comply with the obligation imposed on them by paragraph 3 of that same Article. The provisions of this paragraph shall be without prejudice to the provisions concerning banking secrecy.

2. Where the supply of information requested in accordance with the previous paragraph, is being refused, obstructed or delayed, or where information is inaccurate or incomplete, the Competition Committee, without prejudice to the penal sanctions provided under Article 29, shall:

a) in the case of undertakings or associations of undertakings, their directors and employees; as well as, in the case of individuals or private legal entities impose a fine not exceeding Drs 3 million, on each of them and in respect of each infringement;

b) in the case of civil servants or officials of public corporate bodies, refer the matter to the competent supervisory authorities for disciplinary proceedings, since such non-compliance constitutes a disciplinary offence.

### **Article 26** **Conduct of Investigations**

1. Without prejudice to specific laws introducing an obligation to keep secrecy, all Public Authorities and Public Corporate Bodies shall be obliged to inform; as well as, to assist the Competition Committee and its authorized officials in the execution of their duties.

2. In order to establish the existence of an infringement of Articles 1(1), 2, and 4 to 4f the authorized officials of the Competition Committee's Secretariat having the powers of a tax inspector, may inter alia:

a) examine all books, records and documents held by undertakings or associations of undertakings and take copies of or extracts from them;

b) carry out investigations in the offices and other premises occupied by the undertakings or the associations of undertakings;

c) make house searches in conformity with the provisions of Article 9 of the Constitution;

d) take sworn or unsworn evidence, where they find it appropriate, subject to the provisions of Rule 212 of the Code of Criminal Procedure.

3. The relevant authorisation to conduct an investigation shall be given in writing by the President of the Competition Committee or the entitled Director of the Competition Committee's Secretariat. The authorization shall specify the subject matter of the investigation and the consequences of any attempt to impede or obstruct the conduct of such investigation or to refuse to show books, records and other documents or to provide copies of or extracts from them.

4. The President of the Competition Committee or the authorized by him Director of the Competition Committee's Secretariat may request in writing the assistance of the competent services of the Local and Prefectural self-government agencies in carrying out the investigations referred to in paragraph 2(a) to (d) of the present Article.

5. The official responsible for the inspections and investigations carried out, shall make a report, a copy of which will be sent to the undertakings or association of undertakings concerned.

6. By decision of the Competition Committee and without prejudice to the penal sanctions provided for in Article 29 of the present Act, a fine not exceeding Drs 3 million shall be imposed on those persons impeding or obstructing the conduct of the investigations referred to in paragraphs 1 and 3 of this Article; as well as, on those persons refusing to produce books, records and other documents or to provide copies of or extracts from them.

7. In case of the authorized employees of the Secretariat being refused or being impeded during the execution of their duties, the assistance of the Local Police authorities may be requested through the

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competent Public Prosecutor.

### **Article 27** **Obligation of Secrecy**

1. Information acquired as a result of the application of the present Act shall be used only for the purpose of the relevant request for information, investigation or hearing.

2. Without prejudice to the provisions of Article 37 (2) of the Code of Criminal Procedure, the authorised according to Article 26 (2) to (4) of the present Act officials of the Competition Committee's Secretariat and the employees of the competent services of the Local and Prefectural self-government agencies who, in the exercise of their duties, have access to confidential information unrelated to the implementation of the present Act, shall be required to keep such information secret.

3. Without prejudice to the provisions of Article 37 (2) of the Code of Criminal Procedure, the aforementioned officials shall be bound by the same obligation of secrecy concerning confidential information related to the implementation of the present Act. This information shall be communicated to the President of the Competition Committee annexing in their report the relevant documents. This report and the documents annexed thereto may be included in the file submitted to the Competition Committee, the Athens Administrative Court of Appeal and the Council of State, thus ceasing to be confidential.

4. Any official committing a breach of the obligations imposed by the preceding paragraphs, shall be liable:

a) to the penalties provided for in Article 252 of the Criminal Code and to a fine of not less than Drs 20.000 nor more than Drs 200.000;

b) to disciplinary proceedings since non-respect of the obligation of secrecy constitutes a disciplinary offence.

5. The President and the members of the Competition Committee that commit a breach of the obligations imposed by the preceding paragraphs, shall be liable to the penalties provided for in Article 252 of the Criminal Code and to a fine of not less than Drs 500.000 nor more than Drs 3 million. By the same decision they are being forfeited from the Competition Committee.

## **CHAPTER VII**

### **SANCTIONS - PAYMENT OF DUTIES**

#### **Article 28** **Obligation to Report Offences**

When the Competition Committee ascertains that an offence has been committed contrary to the provisions of Articles 1(1), 2, and 4 to 4f, shall report such offence to the competent prosecuting authority not later than 10 days after the issuance of its relevant decision.

#### **Article 29** **Penal Sanctions**

1. Any person who, either personally or as representative of a legal entity, concludes agreements, takes decisions or applies a concerted practice prohibited pursuant to Article 1(1) and any person acting in breach of Articles 4 to 4f; as well as, anyone who, in the same capacities and contrary to

Article 2 abuses a dominant position in market of his own undertaking or the undertaking he represents with respect to him or to the undertaking he represents, shall be punished by a fine of not less than Drs 1 million nor more than Drs 5 million. In case of relapse, the aforementioned limits shall be doubled.

2. A sentence of at least three (3) months' imprisonment and a fine of not less than Drs 1 million nor more than Drs 3 million, shall be imposed on any person who:

a) impedes, in any way, the investigations carried out by the authorized officials pursuant to Article 26, especially by creating obstacles or concealing documents;

b) delays or refuses to supply the Competition Committee or its authorized officials with information requested pursuant to Article 25;

c) knowingly provides the Competition Committee or its authorized officials with false information or conceals true information in breach of the provisions of Articles 25 and 26;

d) refuses to give sworn or unsworn evidence to an authorized, pursuant to Article 26(1) to (3), official of the Competition Committee or to any other authorized

official when called upon to do so according to the provisions of Article 26(2). The same applies to anyone who, in giving evidence, knowingly makes a false statement, denies or conceals the truth. In case of relapse, the aforementioned limits shall be doubled.

### **Article 30** **Liability of Natural Persons**

1. The persons liable for observing the provisions of Articles 1(1) and 2 of the present Act, against whom criminal prosecution is exercised and a penalty is imposed pursuant to Article 29(1), shall be, in the case of personal undertakings the entrepreneurs, in the case of partnerships the general partners, in the case of limited liability companies and co-operatives the administrators, and in the case of joint-stock companies the members of the Board of Directors. The designation of any other person, to be the person liable, shall be prohibited. In the case of decisions taken by majority vote, those who voted with the majority shall be liable. The same natural persons shall be liable to the extent of their personal property and by personal detention, jointly with one another and along with the legal entity concerned for the payment of the fines imposed on the latter in accordance with the provisions of the present Act.

2. As long as the conditions provided for in the present Act are met, the aforesaid natural persons shall be liable as stated in the previous paragraph, regardless of the validity of the respective agreements, decisions or concerted practices.

3. The notification of an agreement, decision or concerted practice of the kind described in Article 1(1), by the respective undertaking or association of undertakings pursuant to Articles 20 and 21, exempts the persons mentioned in the paragraph 1 of the present Article from being held criminally liable according to Article 29(1). However these persons may be held criminally liable, where the undertaking or association of undertakings concerned does not comply with the decision of the Competition Committee ordering the cessation and the future omission of the offence committed, within fifteen days as from its notification.

4. The provisions of the aforementioned paragraph, shall apply by analogy in the case of concentrations between undertakings referred to in Articles 4 to 4f .

### **Article 31** **Duties**

1. The notification pursuant to Article 4b, the requests pursuant to Articles 4d(7) and 4e(3), the notifications pursuant to Articles 20 and 21, the application for the implementation of the provisions of

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Article 1(3) or for the renewal of a relevant decision pursuant to Article 10 and the application for negative clearance pursuant to Article 11 must be accompanied by a voucher evidencing the deposit of Drs 40.000 to the appropriate Treasury; otherwise, the aforementioned actions shall be deemed inadmissible. The request pursuant to Articles 9(4) for the granting of provisional measures must be accompanied by a voucher evidencing the deposit of Drs 100.000 to the appropriate Treasury; otherwise, the aforementioned action shall be deemed inadmissible.

2. The appeal, the appeal by a writ of error, the opposition, the appeal for revision and the intervention which are brought to the Administrative Courts according to the provisions of the present Act; as well as, any application made to the Competition Committee for the reopening of hearings, must be accompanied by a voucher evidencing the deposit of Drs 30.000 made payable to the appropriate Treasury and a voucher evidencing the payment of Drs 10.000 as hearing charges issued by the appropriate Treasury; otherwise, the aforementioned actions shall be deemed inadmissible. The deposit shall be refunded in accordance to the provisions of Article 171(5) of the Code of Procedural Law and Article 36(4) of the Legislative Decree No.170/1973 re the Council of State. The State is exempted from the aforementioned obligation.

3. The stamp duties payable to the State in connection with the legal documents, the pleadings and the duties payable to the Lawyers' Pension Fund, the Fund for the Financing of Judicial Buildings and the Athens Lawyers' Welfare Fund for enrolment in the Courts' register, legal representation, submission of legal documents or memoranda and in general for the hearing, shall be of the same amount to the duties paid for the proceedings before the Administrative Court of First Instance in the case of proceedings before the Competition Committee; while, in the case of proceedings before the Athens Administrative Court of Appeal and the Council of State, they shall be at the double rate of the duties fixed to apply in the usual proceedings in question.

4. The State General Commissioner for the ordinary administrative courts shall enjoy the same exemptions as the State in respect of any legal remedy exercised by him in accordance with the provisions of the present Act and its proceeding.

5. By Presidential Decree issued on the proposal of the Ministers of Finance and Development, the details for the application of the provisions of the present Article shall be determined.

## CHAPTER VIII

### FINAL AND TRANSITORY PROVISIONS

#### Article 32

##### Extent of Application of the Act

The present Act shall apply to all restrictions of competition that have effects or may have effects within the country, even where they are due to agreements between undertakings, decisions of associations of undertakings, concerted practices thereof or mergers, concluded, taken practised or effected outside the country or are due to undertakings or associations of undertakings having no establishment therein.

#### Article 33

##### Publication of Decisions

The joint decisions of the competent Ministers, the decisions with regulatory content issued by the Minister of Development and the Competition Committee's decisions, opinions and reports provided by the present Act, shall be published in the Government Gazette.

**Article 34**  
**Application of Provisions Regarding the Service of Summonses**

The provisions of Articles 56 to 67 of the Code of Procedural Law concerning the service of summonses shall be applied by analogy to the service of notices to appear before the Competition Committee according to the provisions of the present Act; as well as, to the service of decisions and documents. The service of the other documents can be effected by registered mail.

**Article 35**  
**Collection of Fines**

1. The fines provided for in the present Act, shall be deemed as a public revenue and shall be collected in accordance to the Code for the Collection of Public Revenues.

2. The limits of the fines and money penalties imposed in accordance with the present Act may be readjusted by a Presidential Decree issued on the proposal of the Ministers of Justice and Development.

**Article 36**  
**Provisions Remaining in Force**

Specific provisions protecting the freedom of competition or providing for compulsory cartels of undertakings, shall remain in force.

**Article 37**  
**Legal Remedies - Pending Lawsuits**

The exercise of legal remedies and the adjudication of pending lawsuits, initiated on the basis of the legal status that existed before Act No 1934/91 entered into force, shall be judged by the courts accordingly.

**Article 38**  
**Commencement of the Competition Committee's Functions**

The commencement of the Competition Committee's functioning shall be determined by decision of the Minister of Development. Until the appointment of the Competition Committee's members and its composition under the new structure provided by Article 8a of the present Act, the provisions of Act No 703/77 concerning the Competition Committee and the Directorate for Market Research & Competition as they were in force before the amendment introduced by Act No 2296/95, shall remain into force. Until the formation of the National Consumers' Council and the designation of its representative and deputy, a representative and its deputy from the General Confederation of Greek Workers will participate in the Competition Committee. Since the appointment of Competition Committee's members and its composition and until its Secretariat starts functioning, the Competition Committee will be served by temporarily transferred personnel in derogation of the existing provisions. The transfer will be effected by joint decision of the Ministers of Presidency of Government, Development and the competent Minister, as the case may be. For the same period of time the settlement of expenditure accounts shall be carried out by the competent Directorate of the Ministry of Development.

**Article 39**  
**Codification of Provisions**

The provisions of present competition legislation may be codified in a unified text by Presidential Decree issued upon proposal of the Minister of Development.

During codification the change in the order of Articles, paragraphs and subparagraphs, the deletion, the contradiction or the addition of new Articles; as well as, any necessary phrasal change is allowed, provided that the meaning of the text in force is not being altered.

**Article 40**  
**Abolished Provisions**

After Act No 2296/24.2.95 is being entered into force Articles 13, 14, 15, 16(1), (2) and (4) of Act No 1934/91 on "Amendments of competition legislation and other provisions" as well as Art.11 of Act 1542 /1985 shall be abolished.

**Article 41**  
**Entry into Force of the Act**

The present Act enters in force after its publication in the Government Gazette, unless otherwise provided herein.

**Transitory Provisions of Act 2837/3000**

**Art.1**

**26.** The concentrations that have been realised or notified to the Competition Committee in accordance with Articles 4a and 4b of Act 703/77 (as was in force) and for which no decision had been issued by the time this Act was enacted, shall be appraised according to the provisions of the previous paragraphs

**27.** The provisions of Article 21(3) and (4) of Act 703/77 that have been added by this present Act apply to agreements or concerted practices that were in force when this Act was enacted.

**28.** The organisation of the Secretariat, its structure and competences , the number of the staff employed, its classification and qualifications; as well as, any other necessary detail shall be laid down by Presidential Decree, issued on the proposal of the Ministers of Presidency of Government, Finance and Development.

**29.** Only for the fiscal year 2000 through a joint decision of the Ministers of Presidency of Government, Finance and Development a state allowance amounting to a portion of the amount pertaining to code KAE 2419 "Allowances to various Scientific Institutions "of the budget for the Ministry of Development shall be deposited as revenue of the Comprtition Committee, in the account mentioned in paragraph 2 of Article 8 of Act. 703/77 as in force today that substitutes the existing one

**30.** The provisions of paragraph 25 of Article 1 of Act 2837/2000 are applied also to appeals that have not been heard untill its publication as well as in cases of petitions for suspension for which no decision had been issued untill the publication of the present Act. These are referred to the competent court before the reference of the respective appeals