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### General framework

1. Specific legislation in the field of competition has been in force in Belgium since 1993. In order to make companies legally secure, the Act is based on the European Union legislation in this area.
  2. Substantial amendments were made by the Belgian Parliament in 1999, which were incorporated into the Act on the protection of economic competition, co-ordinated on 1 July 1999.
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### Scope of application

3. Ratione personae, the Act is applicable to “undertakings”, i.e. to any physical or legal person pursuing an economic objective in a sustainable manner. This definition draws upon EU law and is broad in scope.
  4. Ratione materiae, the Act covers two forms of competitive practices: restrictive practices and concentrations.
  5. **Restrictive practices**, in respect of which the Act adopts the principle of prohibition, encompasses:
    - agreements between undertakings, decisions by associations of undertakings and concerted practices, the object or effect of which is to prevent, restrict or materially distort competition in the relevant Belgian market or a substantial part of it;
    - the fact that one or more undertakings abuse a dominant position in the relevant Belgian market or a substantial part of it.
  6. These provisions correspond to Articles 81 EC and 82 EC. As in the European system, the agreements and decisions may be exempt from prohibition if companies give notice thereof. Exemptions of this sort may be granted individually or collectively.
  7. With regard to **business concentrations** (mergers, take-overs and creation of joint ventures), the legislation provides for presumption of control if the firms have aggregate consolidated turnover in excess of 40 million Euros, i.e. BF 1 613 596 000, and at least two of the firms in question each have turnover of 15 million Euros, i.e. BF 605 098 500. These two conditions are cumulative.
  8. The concentration must be deemed permissible when the firms in question together control less than 25 per cent of the market concerned or when the operation does not create or reinforce a dominant position that significantly impedes effective competition in the Belgian market or in a substantial part of it.
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## Bodies

9. The Act assigns responsibility for overseeing competition to four bodies:
  - the Competition service
  - the corps of rapporteurs
  - the Competition Council
  - the Competition Commission
10. In addition, the Minister with responsibility for Economic Affairs and the Council of Ministers have a number of competition-related powers.
11. The **Competition Service**, which is a unit of the Ministry of Economic Affairs, is responsible for seeking out and noting the existence of competitive practices. It investigates all cases in which action must be taken and enforces any rulings.
12. The Competition Service and the rapporteurs assist European competition authorities with enforcement of EU rules on competition.
13. **A corps of rapporteurs** has been set up within the Competition Service. Their main tasks are to:
  - head and organise investigations;
  - issue instructions to agents assigned to carry out investigative measures;
  - prepare investigative reports and submit them to the Competition Council.
14. The **Competition Council**, set up under the auspices of the Ministry of Economic Affairs, is an administrative entity having the authority to take decisions, put forward proposals and give opinions. Under its decision-making powers, it ascertains whether or not prohibitions of restrictive practices have been infringed, and it alone is empowered to grant individual exemptions at the request of the undertakings involved. It also rules on the acceptability of concentrations.
15. The Competition Council is made up of 20 members, appointed for a six-year renewable term, some from among judicial magistrates and some by virtue of their expertise in the area of competition. The Chairman, Vice-Chairman and two other members hold full-time positions.
16. The **Competition Commission** is an advisory body representing the viewpoints of labour, industry, agriculture, commerce, crafts and consumers. Among its functions is to issue opinions, on its own initiative if it so chooses, on any matter involving general competition policy.
17. The **Minister** responsible for Economic Affairs can ask the corps of rapporteurs to carry out investigations and to conduct general or sector-specific investigations. The Minister can also lodge an appeal with the Brussels Court of Appeal contesting the decisions of the Competition Council.
18. When it is in the public interest, the **Council of Ministers** may authorise, either on its own authority or at the parties' request, a concentration that the Competition Council found inadmissible.

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## Rules of procedure

### Procedure concerning restrictive practices

19. Requests and complaints regarding restrictive practices are brought before the Competition Council, which refers them to the corps of rapporteurs for investigation.
20. Following his investigation and prior to making his reasoned report, the rapporteur notifies the undertakings concerned of any allegations against them and summons them in order to let them comment.
21. After the report has been submitted to the Council, the rapporteur notifies the undertakings whose activity is being investigated, as well as the plaintiff if the Council deems this appropriate, and sends them a copy of the report at least one month before the date of the hearing at which the Council will examine the case. The rapporteur informs the parties of the fact that they may consult the case file at the Competition Council secretariat and obtain a copy for a fee.
22. The Council then examines the case at the hearing. It hears the undertakings whose activity is being investigated, as well as any plaintiffs that so request. The Council hears any physical or legal person that it deems necessary. A decision must be taken within six months of the report being submitted to the Council.

23. Upon request, the Competition Council may rule, in a reasoned decision, that individual agreements, decisions or concerted practices are exempt from the prohibition specified in the Act. This exemption may be combined with conditions and instructions, and is granted for a specified period, which is renewable.
24. In the case of a request for negative clearance, the Competition Council may rule in a reasoned decision that, on the basis of the elements at its disposal, there is no need for it to intervene.

#### Procedure concerning concentrations

25. Concentrations must be notified to the Competition Council within one month of the conclusion of the agreement, the publication of the purchase or exchange offer, or the acquisition of a controlling share. The one-month period begins with whichever of these events occurs first. Under certain conditions, the parties may also notify the Council of a planned agreement.
26. The rapporteur designated by the corps of rapporteurs investigates the case as soon as the notification forwarded by the Council has been received or, if the required information is incomplete, as soon as full information has been received.
27. The rapporteur then submits the case file and his reasoned report to the Competition Council. At least two weeks prior to the date of the hearing at which the Council is to examine the case, he sends a copy of his report to the undertakings whose concentration is being investigated and to the most representative organisations of the workers in these undertakings, and he informs these parties of the fact that they may consult the case file at the secretariat and obtain a copy for a fee.
28. The Council then examines the case at the hearing, and hears the undertakings that are parties to the concentration.
29. If concentration falls within the scope of the Act, the Competition Council may, during the first phase of the procedure, either:
  - a. decide that the concentration is permissible. The notifying parties may, until such time as the Competition Council has taken its decision, amend the terms of the concentration; or
  - b. conclude that there are serious doubts as to whether the concentration is permissible and decide to launch Phase II of the procedure.
30. The Council must reach a decision during the first phase within no more than 45 days. The rapporteur must submit his report within one month. These periods begin on the day after the notification was received or, if the information to be provided at the time of the notification was incomplete, on the day after full information was received.
31. The concentration is deemed permissible if the Competition Council has not handed down a decision within 45 days. This period may be extended only at the express request of the parties concerned, and for no longer than they propose.
32. If the Competition Council decides to launch Phase II of the procedure, the rapporteur submits a further report to the Competition Council, which sends a copy to the parties concerned.
33. The concentration is deemed to have been approved if the Competition Council has not handed down a decision within 60 days of the decision to launch Phase II of the procedure. This period may be extended only at the express request of the parties concerned, and for no longer than they propose.
34. Within 30 days of being notified of the Competition Council's decision, the Council of Ministers may, on its own initiative or at the request of the notifying undertakings, authorise a concentration on the grounds that its contribution to the common good would outweigh the risk of restraint of competition.
35. The Council of Ministers must take this decision within 30 days of being notified of the Competition Council's decision. If the Council of Ministers fails to reach a decision within this time, the authorisation is deemed not to have been granted.

#### Provisional measures

36. At the plaintiff's request, or that of the Minister, the Chairman of the Competition Council may take provisional measures to suspend restrictive practices under investigation if there is an urgent need to avert a situation that could cause serious, imminent and irreparable harm to the undertakings whose interests are affected by such practices, or that is contrary to the public interest

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### **Control over decisions of the Competition Council, its Chairman and the Council of Ministers**

37. In order to foster uniformity in competition-related case law, Belgian law has empowered the Brussels Court of Appeal to hear appeals of decisions by the Competition Council and its Chairman. The Court of Appeal has unlimited jurisdiction over such appeals.
38. The Council of Ministers' decisions concerning concentrations may be appealed to the Conseil d'Etat, which verifies their legality.

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### **Implementation of the Act by ordinary jurisdictions**

39. Courts may invalidate agreements that are prohibited under the Act and enjoin abuses of dominant position. Judges may also draw all civil consequences from such prohibition (e.g. by awarding compensation), but they may grant neither exemptions nor negative clearance.
40. Furthermore, if the outcome of a case hinges on whether or not a competitive practice is lawful, the court hearing the case, except for the Cour de Cassation, must stay the proceedings and request a preliminary ruling from the Brussels Court of Appeal.