

LAW AGAINST LIMITING COMPETITION

(Official Gazette 80/99)

Part One

LIMITING COMPETITION

Chapter One

CARTEL CONTRACTS AND CARTEL DECISIONS

Article 1

Invalid Contracts and Decisions

- (1) Contracts signed between enterprises or groups of enterprises to achieve a common goal and decisions enacted by a group of enterprises shall be invalid and shall not arise any legal action when such contracts or decisions through limiting competition shall influence the production or market conditions related to trade of certain products or trade services. The provision in this paragraph shall not apply to those cases where otherwise is prescribed by the provisions of this Law.
- (2) The decision enacted by the Assembly of the affiliates of the legal entity shall be considered as a decision enacted by a group of enterprises when as affiliates to the legal entity appear other enterprises.
- (3) The enterprise shall mean any type of business venture disregarding the way of its organization (tradesmen, individual tradesmen, trade company, cooperative, public enterprise, association), free professions (lawyers, doctors, architects, bookkeepers, notaries), as well as every natural and legal entity or public authority involved in conducting economic activity, disregarding they are considered as tradesmen or not (herein after: enterprise).

Article 2

Uniform Implementation of the General Business Conditions, Notification

- (1) The provisions of Article 1 of this Law shall not apply to contracts and decisions that have been enacted on the basis of a uniform implementation of the general business conditions or by which uniform conditions are determined related to the delivery of products or the manner in which payments are made, including discounts. In order to implement the provision stated in this paragraph, this contracts and decisions shall not related to prices but to certain elements that determine the prices.
- (2) When delivering a notice according to the provisions stated in Article 12, paragraph 2 of this Law, attached to the notice must be evidence that the suppliers and buyers affected by the contract or decision stated in paragraph 1 of this Article have been given reasonable opportunity to state their position and opinion about those contracts and decisions. Their opinion and position shall be attached to the notification.
- (3) The contracts and decisions stated in paragraph 1 of this Article shall produce legal action only when the cartel authority, within three months upon receipt of notification, does not state a complaint related to those contracts or decisions. The cartel authority may state a complaint only when it has been determined that the conditions stated in Article 15, paragraph 1 of this Law have been fulfilled.

Article 3

Discount Cartels

- (1) The provisions stated in Article 1 of this Law shall not apply to contracts and decisions related to discounts given at sales or delivery of products, provided that such discounts represent a real award (original compensation) and do not lead to unjustified differential treatment of different stages of the economic process, that is, the different levels on the market or to unjustified differential treatment of the buyers at the same stage or market level.
- (2) When delivering the notification according to the provisions stated in Article 12, paragraph 2 of this Law, evidence must be attached to the fact that the conditions stated in paragraph 1 of this Article have been fulfilled and that the representatives of the economic process, that is, the representatives of the market levels that the arrangements related to

the discount shall be implemented have been given the possibility to express their position and opinion related to that. Their positions and opinion shall be attached to the notification.

(3) The contracts and decisions stated in paragraph 1 of this Article shall cause legal action only when the cartel authority, within three months upon receipt of the notification, does not file a complaint related to those contracts or decisions. The Cartel authority may file a complaint when:

1. the conditions stated in paragraph 1 of this Article have not been fulfilled and when the representatives of the stages of the economic process, that is, the representatives of the market levels affected by the discount arrangement have not had a possibility to express their position and opinion; or
2. the contract or decision has an obvious harmful impact on the course of production or trade, or an obvious harmful impact on the adequate supply of the consumers (users), and especially when such contracts or decisions hamper, limit or make difficult the start up of any trade or general business activity, on any market level; or
3. the participants on the market, within a period of one month upon publication of the notice from Article 13, paragraph 1 of this Law, prove that as a result of an execution of a contract or enactment of a decision they are subject to unjustified differential or discriminatory treatment.
4. The cartel authority may proclaim as invalid the contracts or decisions stated in paragraph 1 of this Article even after the three-month period upon receipt of the notification has expired when any of the causes stated in paragraphs 1 or 3 of this Article exist.

Article 4

Crisis Cartels

In situations where there is a decrease in sales due to permanent changes of the demand, the cartel authority may, upon request, allow the contracts or decisions stated in Article 1 of this

Law executed between enterprises engaged in production or processing of certain products or in giving certain trade services, when those contracts or decisions are essential until the planned adjustment of the production facilities to the demand is performed and when the adequate arrangement takes into consideration the economy of the country and the public interest in general.

Article 5

Rationalization Cartels

- (1) Provisions stated in Article 1 of this Law shall not apply to contracts and decisions that exclusively and as a whole relate to the uniform implementation of the standards or norms. Attached to the notification stated in Article 12, paragraph 1 of this Law will be the opinion of the Standardization Bureau.
- (2) The cartel authority, upon request, may allow an contract or decision stated in Article 1 of this Law, when such contracts and decisions directly serve the rationalization of the economic process and probably shall lead to a significant increase in efficiency or productivity of adequate enterprises from a technical, economic or organizational point of view and by that shall lead to the demand being met with a better quality. The effects of the rationalization must correspond and be reasonably in proportion with the caused limitation of the competition.
- (3) When the contract or decision should achieve rationalization by executing price contracts or by establishing joint organizations of buying or selling enterprises (trade unions), the cartel authority may allow an contract or decision only when the goal of the rationalization can not be achieved in any other way and when such rationalization is in public interest. The effects of the rationalization must correspond and reasonably be adequate to the caused limitation of the competition.
- (4) The provisions stated in Article 1 of this Law shall not apply to contracts and decisions that, for the economic sectors stated in this paragraph, create uniform or standardized methods of specification, description or classification of the products and services or a specification, description or classification is made of the different elements that determine the price of those products and services, provided that in those contracts or decisions prices are not determined, nor the elements that determine the prices. The provision stated

in this paragraph shall not apply to those economic sectors where at the first call to a determined or undetermined number of people to submit offers, the offers related to the products or trade services may be given only on the basis of a specification or description that does not allow a good quality review at the time of the execution of the contract.

Article 6

Specialization Cartels

- 1) The provisions in Article 1 of this Law shall not apply to contracts and decisions directed towards rationalization of the economic processes through specialization, provided that there still is a significant volume of competition on the market. The provisions stated in this paragraph shall also apply when by contract or by decision efforts are made to reach such a specialization through agreements or decisions stated in Article 5, paragraph 2 or 3 of this Law, provided that they are necessary for the realization of such a specialization.
- 2) When delivering the notification according to the provisions in Article 12 paragraph 1 of this Law it has to be proven that all the conditions determined in paragraph 1 of this Article have been met.
- 3) The contracts and decisions stated in paragraph 1 of this Article shall produce legal action only when the cartel authority, within three months from the receipt of the notification, does not file a complaint related to those contracts or decisions. The cartel authority shall file a complaint when it has not been proven that all the conditions stated in paragraph 1 of this Article have been met. When delivering the notification about the changes or additions to the contracts or decisions stated in paragraph 1 of this Article, the time limit stated in this paragraph shall be one month, provided that changes or additions do not change the circle of enterprises that are obliged by the contract or decision, and the specialization is not extended to other goods and services.

Article 7

Cooperation Contracts

- (1) The provisions stated in Article 1 of this Law shall not apply to the contracts or decisions directed towards rationalization of the economic processes through cooperation between enterprises of the type not covered by the provisions stated in Article 6 of this Law,

provided that such contracts or decisions do not significantly disturb nor limit the competition on the market and with them the efficiency of small or medium size enterprises is improved. The provisions in Article 6, paragraphs 2 and 3 of this Law shall adequately be applied.

Article 8

Cooperation between buyers

The provisions in Article 1 of this Law shall not apply to contracts or decisions that cover joint purchase of products or trade services, provided that such contracts or decisions do not force enterprises by the contract or decision to buy, that by them the competition on the market is not significantly disturbed nor limited and that they are directed towards improving the competitiveness of small or medium size enterprises.

Article 9

Export Cartels

- (1) The provisions stated in Article 1 of this Law shall not apply to contracts and decisions that insist on protecting and improving import, but only when such contracts or decisions are intended to regulate the competition on the markets outside of the Republic of Macedonia.
- (2) The cartel authority, upon request, shall allow an contract or decision stated in Article 1 of this Law when the contracts or decisions stated in paragraph 1 of this Article also relate to trading goods or trade services on the markets in the Republic of Macedonia, but only if such regulation is necessary to provide the desired regulation of the competition on the markets outside the country. The provisions stated in this paragraph shall be applied regardless of the provisions determined in Article 18 of this Law. Together with the request, the position and opinion of the domestic producers and buyers affected by the relevant contract or decision should also be attached.
- (3) The cartel authority shall not issue a permit according to paragraph 2 of this Article when the contract or decision or the manner of their implementation in practice:

1. represent a breach of the principles in trade and trade services determined by international contracts binding for the Republic of Macedonia; or
 2. may lead to a significant disturbance or limitation of the competition on the markets in the Republic of Macedonia when there is a decisive and predominant interest to preserve the competition.
- (4) The cartel authority may allow parties to execute contracts or enact decisions to regulate the competition stated in paragraph 2 of this Article in precisely determined framework or under precisely determined terms.

Article 10

Import Cartels

- (1) The cartel authority may, upon request, allow a contract or decisions stated in Article 1 of this Law that regulate import in the Republic of Macedonia, provided Macedonian importers (buyers) are faced with the non existence of competition or existence of insignificant competition among suppliers (foreign sellers). Provisions stated in Article 9, paragraphs 2 and 3 of this Law should adequately be applied.

Article 11

Public Interest Cartels

- (1) When the conditions stated in articles 2 to 10 of this Law have not been met, the relevant Minister of economy, may, upon request, allow a contract or decision stated in Article 1 of this Law when in a specific situation limiting competition is necessary because of the existence of certain decisive and predominant reasons linked to the overall economy of the country and the public interest.
- (2) When there is immediate danger of further existence and operation of the majority of enterprises in the relevant economic sector, the permit stated in paragraph 1 of this Article may be issued only when other legal or economic measures cannot be undertaken or cannot be undertaken on time and when the limitation of competition shall suppress than danger. The permit may be issued only in special serious individual cases.

(3) The opinion and position of the domestic producers and buyers affected by the relevant contract or decision have to be attached to the request from paragraph 1.

Article 12

Notification of the Cartel Authority

(1) The contracts and decisions for which a permit is issued according to Article 4, Article 5, paragraphs 2 and 3, Article 6, paragraph 3, Article 7 and Article 8 of this Law are registered in a separate register at the cartel authority.

(2) The contracts and decisions stated in Article 2, Article 3, Article 5 paragraph 1, Article 6 paragraph 1, Article 7 and 9, paragraph 1 of this Law, as well as their changes and additions shall produce legal action only when a notification about these contracts or decisions has been delivered before that to the cartel authority. In the cases stated in Article 5 paragraph 1, the notification shall be considered as being made in case the opinion of the Standardization Bureau has been attached to the notification. The notification on contracts and decisions stated in Article 5 paragraph 4 must be submitted to the cartel authority without any delay. The contracts and decisions about which notification has been given shall be registered in a separate register of the cartel authority, except the contracts and decisions stated in Article 9 paragraph 1 of this Law.

(3) The cartel authority must be informed about the termination of the validity of the contracts and decisions stated in paragraphs 1 and 2 of this Article and that fact must be registered in a separate register of the cartel authority.

(4) The separate register (cartel register) shall be kept at the cartel authority. The following data shall be registered in the separate register:

1. the names and locations of all enterprises obligated by the contract or decision;
2. the legal form and location or address of the cartel;
3. the name, surname and addresses of the affiliates and of the legal representatives of the relevant enterprises;
4. the name, surname and address of the appointed representative (article 43) or of the other representative or authorized representative of the cartel. When it is a

legal entity the names, surnames and addresses of the legal representatives should be stated.

5. the basic contents of the contract or decision, especially data about the products and services that they relate to, the goals that should be achieved, the planned measures and the timing of their implementation, the termination period of the contract or decision;
6. the changes and amendments of the data stated in items 1 to 5 of this paragraph;
7. the termination of the validity of the contract or decision;
8. the time limits, limitations and conditions stated by the cartel authorities, as well as the termination or changes of the permit of the cartel authority or the decisions by which the relevant contracts or decisions are declared as invalid.

(5) The notification to the cartel authority must be delivered in writing.

(6) The cartel authority shall request opinion from the Ministry of economy in writing regarding the requests for issuing permission for contracts and decisions described in paragraph 1 of this article, as well as for notifications of contracts described in paragraph 2 of this article.

(7) Any interested person may have an insight in the special register of the cartel authority stated in this Article.

Article 13

Notification in the Official Gazette

(1) The following notification shall be published in the Official Gazette of the Republic of Macedonia:

1. the submitted request for permit related to contracts and decisions stated in Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10 and Article 11 of this Law;
2. delivered notification about contracts and decisions stated in Article 2, Article 3, Article 5 paragraphs 1 and 4, Article 6 paragraph 1 and Article 7 paragraph 1 of this Law;

3. delivered notification about recommendations stated in Article 47 paragraph 2, items 2 and 3 of this Law;
4. data registered in the separate register of the cartel authority according to Article 12 paragraph 4, items 3, 5, 6, 7 and 8 of this Law;
5. delivered notifications about mergers according to provisions stated in Article 26 and the submitted request for a merger permit according to provisions stated in Article 28 paragraph 3 of this Law.

(2) The content of the notifications that shall be published according to items 1 and 2 of this paragraph shall adequately apply to the provisions stated in Article 12 paragraph 4, items 3, 5 and 6 of this Law. The provisions stated in Article 12 paragraph 4 item 5 of this Law shall adequately apply to the content of the notifications published according to item 3 of this paragraph. Besides, in the published notification the names and surnames of the persons that have delivered the notification related to recommendations and of the persons the notifications are directed shall be stated in the published notification. The provisions stated in Article 26 paragraph 5 items 1 and 2 of this Law shall adequately apply to the contents of the notifications published according to item 5 of this paragraph.

(3) When the request or notification stated in paragraph 1 of this Article lead to a registration of the contract or decision in the separate register of the cartel authority, when publishing the registration it can only call upon the previous published request or notification.

Article 14

Issue and Termination of the Permit

(1) By rule, the permit according to Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10 or Article 11 of this Law shall not be issued for a period longer than three years.

(2) The cartel authority, upon request, may extend the validity of the issued permit, where the provision stated in paragraph 1 of this Article shall adequately be applied. The validity of the permit shall be extended only in relation to those enterprises that have informed in writing the cartel authority that they agree to such an extension. This consent must be declared by each enterprise separately and it is declared at the earliest three months before

the expiration of the current permit validity. The consent stated more than three months before the validity of the current permit expires shall not produce legal action.

(3) The permit may contain limitations and conditions.

(4) The permit may be revoked or changed by imposing new or additional limitations and conditions, when:

1. There has been a significant change in the relevant circumstances; or
2. the cartel or the enterprises obligated by the contract or decision have made a breach of any limitation or condition stated in the permit.

(5) The permit shall be revoked or changed by imposing new or additional limitations and conditions, when:

1. the entity submitting the request or some third party has obtained the permit in an illegal manner, especially by fraud or threat; or
2. the cartel or the enterprise obligated by the contract or decision has abused the exemptions of the application of the provisions stated in Article 1 of this Law obtained by the issued permit; or
3. the contract or decision or the manner in which they have been put into practice represent a breach of the principles of trade with goods and trade services determined by international contracts that obligate the Republic of Macedonia; or
4. the cartel has breached a ban determined in Article 32 paragraph 2 or 3 or the ban determined by Article 33 of this Law.

Article 15

Measures of the Cartel Authority

(1) In relation to the contracts and decisions stated in Article 2, Article 3, Article 5 paragraphs 1 and 4, Article 6 paragraph 1, Article 7 paragraph 1 and Article 8 of this Law, the cartel authority may undertake measures stated in paragraph 3 of this Article:

1. when the contracts and decisions or the manner in which they have been put into practice represent an abuse of the market position obtained as a result of the exemption of the application of the provisions stated in Article 1 of this Law, or
2. when they represent a breach of the principles of trade of goods and trade services determined by international contracts obligating the Republic of Macedonia.

(2) In relation to the contracts and decisions stated in Article 9 paragraph 1 of this Law, the cartel authority may undertake the measures stated in paragraph 3 of this Article:

1. when the conditions stated in paragraph 1 item 2 of this Article exist; or
2. when the implementation of the contracts or decisions in practice significantly endangers or harms the predominant interests of the Republic of Macedonia related to foreign trade or international payments.

(3) The cartel authority may:

1. order the enterprises obligated by the contract or decision to stop abusing the exemption;
2. order the enterprises obligated by the contract or decision to change the signed contract or the enacted decision; or
3. to declare invalid the signed contract or enacted decision.

Article 16

Cancellation of Contracts and Decisions

(1) Any party may cancel a contract or decision stated in Articles 2 to 11 of this Law by delivering a previous written notification that immediately produces legal action, when there is serious reason for such a procedure. A serious reason may exist when there is dishonest limitation or danger to the freedom of commercial action by the party that has announced the cancellation in relation to the other parties through a different treatment of that party. The invalidity of the cancellation due to the nonexistence of a serious reason can be stated by the other parties only by filing a suit within 30 days from the receipt of the cancellation notification.

(2) Until the cartel authority gives a permit for the contract or decision stated in Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10 or Article 11 of this Law,

each party may declare a cancellation of the contract or decision when there is a serious reason for that. The provision stated in paragraph 1 of this Article shall apply to situations covered by this paragraph. When the request for a permit has been delivered to the cartel authority before the cancellation stated in this paragraph has been declared, the cartel authority must be additionally informed about the declared cancellation.

- (3) Invalid are those contracts that exempt or ban the right to declare a termination or cancellation, as well as all contracts that contrary to the provisions of this Law exempt or limit these rights through other legal and economic resources.

Article 17

Realization of Security

- (1) The security provided according to the contracts or decisions stated in articles 2 to 11 of this Law may be realized only when the cartel authority, upon request of the cartel, allows such a realization. The cartel authority shall not give its consent when by the realization of the security the freedom of economic activity of the party concerned has been dishonestly limited or when that has a harmful impact on that party through unjustified different treatment of that party compared to the other parties.
- (2) The permit issued by the cartel authority according to paragraph 1 of this Article may contain time limits, conditions and other limitations.

Chapter two

OTHER CONTRACTS

Article 18

Vertical Limitations to the Competition

Contracts among enterprises about products or trade services that relate to the markets in the Republic of Macedonia shall be invalid if they limit the freedom of any of the contractual parties to freely negotiate or determine the prices or the general conditions of the contracts it signs with third parties about products that it buys or sells or about other products or trade services.

Article 19

Maintaining and Determining Prices

The provisions stated in Article 18 of this Law shall not be applied to publishing houses that obligate the buyers of their publications with legal or economic action to maintain certain retail prices or that obligates them to impose that obligation also to all its users up to the final users.

Article 20

Maintaining and Determining Prices Abuse

(1) The cartel authority may, upon own initiative or upon request of the buyer obligated in the manner stated in Article 19 of this Law to declare as invalid the contract on maintaining or determining prices, immediately or on some future date established by it and to ban the implementation of any other new and similar system to maintain or determine prices, if it has determined that:

1. the system to maintain or determine prices has been abused; or
2. the system to maintain or determine prices, in itself or together with some other limitations to the competition, most probably will lead to an increase of the prices of products in a manner that does not have any justification in the existing economic conditions or stops the decrease in prices of the products or limits the production and sales of those products.

(2) Before undertaking action according to paragraph 1 of this Article, the cartel authority shall call the enterprise that imposes the contracts to maintain or determine the prices to stop abusing that system.

Article 21

Exclusive Sales Rights Contracts

(1) The cartel authority may annul, immediately or on some future date determined by it, the contracts of enterprises related to products and trade services and to ban the realization of new similar contracts, when by those contracts a contractual party has been obligated to:

1. limitations related to its freedom to use the purchased goods, other goods or trade services; or
2. limitations related to purchase of other products or trade services from third parties or limitations related to sales or delivery of other products or trade services to third parties; or
3. limitations related to the resale of the purchased products to third parties; or
4. have to buy or receive a delivery of products or trade services that by its nature or according to the trade customs do not have anything to do with the subject of the contract.

(2) The provision stated in paragraph 1 shall be applied when:

1. a significant number of enterprises, that in some other conditions could impact the competition on the market, are obligated in some way and through other same or similar contracts and in a dishonest manner their freedom to compete in the market has been limited; or
2. by such contracts other enterprises have been limited, in an illegal manner, in their approach to the relevant markets; or
3. due to the volume of such limitations the competition on the market has been disturbed and endangered for those or some other products or trade services.

(3) The limitations that are insignificant compared to the sources of the supply and demand available to other enterprises shall not be deemed dishonest in the sense of paragraph 2 of this Article.

Article 22

Validity of Other Parts of the Contract

(1) When the cartel authority shall declare invalid a contract to maintain or determine prices or the limitation stated in Article 21 of this Law, the validity of the other provisions of the contract shall be determined according to the general legal regulations, except when the provisions in paragraph 2 of this Article provide otherwise.

(2) When enacting a decision stated in paragraph 1 of this Article, the cartel authority may, upon request of any of the contractual parties, at the same time declare that the annulment

does not impact the validity of the other provisions of the contract. The cartel authority shall enact such a decision only when it is necessary to prevent or avoid unnecessary difficulties or damages to any of the contractual parties and when that is not against the predominant interest of any of the contractual parties.

- (3) In case there are some provisions that the party which according to the contract to maintain or determine prices or according to the determined limitations is given the right in cases stated in paragraph 1 of this Article do declare cancellation or termination of the contract or change the content of the contract damaging the other contractual party, especially through increase of its obligations, rights deriving from such provisions may be performed only when the cartel authority, upon request, has allowed the exercise of those rights. The cartel authority shall give its permission when the exercise of those right does not represent dishonest limitation of the freedom of economic action of the other contractual party. The permission given by the cartel authority may contain limitations, time limits and other conditions.

Article 23

License Contracts

- (1) The contracts to obtain or use patented innovations, protected marks, samples, models or protected seed varieties shall be invalid when by the provisions of the contract the freedom of business operation of the licensee has been limited in a manner that surpasses the volume of the protected right or essence of the property right. The limitations that relate to the type, volume, amount, territory or term to exercise that right shall not be considered limitations that surpass the volume of the protected right.
- (2) The provisions stated in paragraph 1 of this Article shall not be applied to:
1. limitations that have been imposed by the licensor or licensee, when such limitations may be justified by the interest of the seller or licensor to have certain technically satisfactory way to use the protected object of the license or by the interest to avoid any technical defects in the use of the object on which there are property rights;
 2. obligations of the licensor or licensee in relation to the price that is paid for the protected product;

3. obligations of the licensor or licensee to exchange experiences or to give license for addition improvements of the object of the license or for additional improvements in the ways to use that object by the licensor or the licensee, when such obligations correspond to similar obligations of the licensor or licensee;
4. obligations of the licensor or licensee not to endanger the protected right;
5. obligation of the licensor or licensee related to the regulation of the competition on the markets outside the Republic of Macedonia.

(3) The provision stated in paragraph 2 shall be implemented only when the limitations stated here exist at the time when there is protection of rights being transferred or licensed.

(4) Upon request, the cartel authority may allow an contract as stated in paragraph 1 of this Article when such an contract does not represent dishonest limitation of the freedom of economic action of the licensor or licensee or of some other enterprises and when competition on the market is not significant, nor has been disturbed by the volume of the adequate limitation. The provisions stated in Article 14, paragraphs 3 to 5 of this Law should be adequately implemented.

(5) The provisions stated in paragraph 1 to 4 of this Article shall not influence the implementation of the Articles 1 to 17 of this Law.

Article 24

License Contracts Related to the Right to Use Technical Know - How and Seed Varieties

The provisions stated in Article 23 of this Law shall be adequately implemented also on contracts related to giving up or using the legally unprotected innovations, production procedures, technical know - how and other technical achievements, as well as legally unprotected improvements of the cultivation methods in plant growing, when they represent trade and business secrets.

Chapter three

ENTERPRISES THAT DOMINATE ON THE MARKET

Article 25

Definition. Authorizations of the Cartel Authority

- (1) An enterprise has a dominant position on the market in the spirit of this Law when that enterprise as a potential seller or buyer of a certain type of product or trade services:
 1. does not have competitors or is not exposed to a serious competition; or
 2. compared to its competitors, the enterprise has a leading, dominant or superior position on the market.

- (2) When determining whether an enterprise has a superior position on the market pursuant to paragraph 1 item 2 of this article, the market share of the enterprise, its financial power, access to markets where the relevant products or service are sold or bought, the connection with other enterprises, legal and existing obstacles that unable or limit the access to other enterprises to the relevant markets, the capability to adjust the offer and demand of other products or trade services and the possibilities that enterprises have on the other side of the market to trade with other enterprises, should be specially be taken into account.

- (3) Two or more enterprises have a dominant position on the market in the spirit of this Law, when in fact there is no significant competition in relation to certain products or trade services between those enterprises, in general or only on certain markets, and when those enterprises together fulfill the requirements stated in paragraph 1 of this Article.

- (4) It shall be assumed that the enterprise has a dominant position on the market, in the spirit of paragraph 1 of this Article, when it participates on the market for a certain type of products or trade services with at least one third of that market. This assumption shall not be implemented when sales of enterprises in the current business year do not go over 5 million German marks in denar counter value;

- (5) the conditions stated in paragraph 3 of this Article have been met when for a certain type of products or trade services:
 1. the joint participation of two or three enterprises on the market amounts to 50% or more; or

2. the joint participation of two to five enterprises on the market amounts to two thirds or more.

(6) This assumption from paragraph 5 of this article shall not be applied when the relevant enterprises during the previous business year have a total sales less than 2 million German marks in denar counter value.

(7) Provisions stated in Article 26 paragraph 1 of this Law shall be applied when calculating the participation on the market and when calculating the sales.

(8) In relation to enterprises that can hold a dominant position on the market, the cartel authority may perform authorizations determined in paragraph 9 of this Article when those enterprises are abusing their dominant position on the market for certain or some other products or trade services. The abuse in the sense of this paragraph shall exist when the enterprise holding the dominant position on the market as a potential buyer or seller of certain types of products or trade services:

1. endangers or harms the competitive possibilities of the other enterprises in a manner that is relevant to the competition on the specific market even though there are no serious reasons that would justify such behavior;
2. request certain giving or acts or imposes certain additional business conditions that decline from the usual and would most probably not request, nor impose if there is on the relevant market an efficient competition. In relation to this the behavior of enterprises on some similar or comparable markets with efficient competition shall be taken especially into consideration.
3. requests certain giving or action or imposes certain additional business conditions that are more unfavorable than those that the enterprise request or imposes on the buyers of the same type on some other similar or comparable markets, except when there are some serious reasons that would justify such different treatment.

(9) When the conditions stated in paragraph 8 of this Article are fulfilled, the cartel authority may ban the abuse of such a position to the enterprise that holds a dominant position on the market and may declare certain contracts as invalid. The provisions stated in Article 22 of this Law shall apply to the validity of the other provisions of the contract. Before

undertaking an adequate measure the cartel authority shall request from the relevant enterprises to stop the abuse of their dominant position.

- (10) In case the conditions stated in paragraph 1 of this Article in relation to the dependent association in the sense of the provisions of the Law on Trade Companies are met, the cartel authority may perform the authorizations stated in paragraph 9 of this Article in relation to all dependent associations.

Article 26

Notification of Merger of Enterprises

- (1) The cartel authority must immediately be informed about the merger of enterprises when the enterprises that participate in the merger during the business year before the merger have achieved sales in the value of at least 10 million German marks in denar counter value.
- (2) In case one of the enterprises that participate in the merger is a governing or dependent association in the sense of the Law on Trade Companies, when calculating the sales or when determining the market share, all enterprises linked in such a way shall be treated as one enterprise.
- (3) In case several enterprises contractually or in any other way act jointly where all the enterprises together may achieve a governing impact on the enterprise that participates in the merger, each of those enterprises shall be considered as governing enterprise (company).
- (4) When calculating the income from sales, the income obtained from sales, lease or rent of typical products of the enterprise produced within its regular operations, as well as the income obtained from typical services that the enterprise gives within its regular operation deducting the paid sales tax or the value added tax shall be calculated.
- (5) When calculating the income from the linked governing and dependent enterprises, the income obtained from sales and purchases within the group shall not be taken into consideration.

- (6) The income obtained in foreign currency shall be expressed in denars according to the average exchange rate of the National Bank of the Republic of Macedonia.
- (7) When calculating the sales of banks and savings houses, the sales shall be replaced by the value of one tenth of the total assets of the bank or savings house.
- (8) When calculating the sales of the insurance companies, the sales shall be substituted by the income obtained from premiums for the last business year. The amounts that are kept as participation in other enterprises shall not be taken into consideration when compiling the final balance sheet. Under income obtained from premiums in the sense of this Law shall comprise the income obtained from insurance and re insurance, including the amounts transferred to the re insurers.
- (9) In enterprises that as a whole or in part deal with sales of products, only three fourths of the income obtained from sales shall be taken in the calculations.
- (10) In enterprises that in whole or in part deal with publishing, printing or distribution of newspapers, periodicals, publications or their parts, in calculations the real income obtained shall be taken as value of sales multiplied by twenty.
- (11) When acquiring the whole or a significant part of the assets of another enterprise, when calculating the market share and when calculating the income obtained from sales, only the share and the sales of assets that are sold shall be taken into consideration. This provisions shall be applied in an adequate way also in acquiring shares, when the seller has retained for himself at least 25% of the shares and when the merger does not fulfill the conditions stated in paragraph 13 of this Article, items 2, 5 or 6.
- (12) When one person or a inter linked group of people that are not treated as an enterprise possess the majority share in an enterprise, that person or persons shall be treated as an enterprise in the sense of this Law.
- (13) In the sense of this Law the following legal matters shall be considered as merger:

1. acquisition of assets of another enterprise, in whole or in a significant part, by merger, foundation of a new enterprise, reorganization or in any other way;
2. acquisition of a share (shares or stocks) in another enterprise, when that share by itself or together with other previously acquired shares or stocks in that enterprise:
 - a) represent 25% of the capital or of the voting rights in another enterprise; or
 - b) represent 50% of the capital or of the voting rights in another enterprise; or
 - c) of an enterprise that acquires the share that gives him the majority share in the sense of the provisions of the Law on Trade Companies.
3. signing contracts with another enterprise according to which:
 - a) in a certain way a joint or accorded action or behavior will be determined or the number of contractual parties in such contracts is increased; or
 - b) another enterprise undertakes the obligation to lead its business venture on the account of that enterprise or undertakes the obligation to transfer to that enterprise its profit, as a whole or in part; or
 - c) the business venture of another enterprise, as a whole or in one part is taken under lease or transferred in some other way;
4. creation of situations where at least half of the members of the management or supervisory board, the board of directors, the managers or some other organs and bodies authorized to manage or lead the enterprise are in fact the same persons.
5. every other possible association, combination or relation between enterprises on the basis of which one or several enterprises, directly or indirectly, may have or hold a dominant influence on some other enterprise;
6. every association, combination or relation between enterprises, even though it does not lead to the fulfillment of the conditions stated in items 2, 4 or 5 of this paragraph, that enables one or more enterprises, directly or indirectly, to have an influence over the competitive position of some other enterprise.

(14) In the sense of paragraph 13, item 2 of this article as shares or stocks that are already owned by the governing enterprise shall be considered also the shares and stocks that are

owned by the dependent enterprises. When several enterprises, at the same time or successively, have acquired shares or stocks in an enterprise in the above mentioned ratios, it shall be considered that a merger has happened between the involved enterprises (“joint business venture”) in relation to those markets on which the enterprise the shares or stocks were acquired from appears on. The acquisition of shares or stocks in another enterprise shall also be treated as a merger if the enterprise - acquirer by contract, statute or decision acquires a position of a partner that owns over 25% of the total voting rights in another enterprise.

(15) Merger, in the sense of this Law, shall be assumed when two or more enterprises are already linked in the sense of paragraph 19 of this Article, except when such a merger, that is, link, did not lead to a significant strengthening of the already existing links between the enterprises.

(16) When a bank or another credit institution acquires shares or stocks in another enterprise, at its foundation, under increased basic principal or some other way at trade or mediation in trade with securities, with the only goal to sell them again on the market, such acquisition will not be considered as merger in the sense of this Law provided that the bank or other credit institution does not exercise the voting rights that derive from those shares or stocks and provided that the acquired shares or stocks are sold within one year at the latest.

(17) At the foundation of an enterprise, the exercise of the voting rights at the first assembly of the company after the foundation shall not be treated as a merger in the sense of this Law.

(18) When an enterprise that participates in the merger is a dependent company in the sense of the provisions of the Law on Trade Companies, as participants in the merger shall be considered the governing enterprise, as well as all other enterprises in relation to which the governing enterprise appears as a dependent enterprise.

(19) When two or more enterprises are merged, as participants of the merger in the sense of this Law shall be considered also all their dependent enterprises.

(20) Notification of the merger must be delivered:

1. in case of a merger, affiliation or reorganization, by the owners of the enterprise - users in the sense of the provisions of the Law on Trade Companies or by the owners of the newly founded enterprises or by their representatives;
2. in all other cases:
 - a) by the owners of the enterprises that participate in the merger; and
 - b) if the provisions in paragraph 13 items 1 and 2 of this Article, by the sellers or by their representatives.

(21) In the notification the form of merger must be stated. The notification of the merger must also contain the following data about all the enterprises that participate in the merger:

1. company name and seat;
2. subject of operations;
3. market share, the basis for the calculation or evaluation and the total sales, provided that the participation on the domestic market of all the enterprises that participate in the merger together does not surpass 20%. For banks and other credit institutions instead of the amount of sales, the notification must contain the value of the total assets, while for the enterprises in the field of insurance to state the total premium income;
4. when shares or stocks in another enterprise are acquired, the acquired share and the total share in the enterprise.

(22) When the enterprise that participates in the merger is a governing or dependent association in the sense of the provisions of the Law on Trade Companies, in the notification of paragraph 21 of this article, the data on all the involved dependent and governing enterprises as a whole or in part, the degree of dependence and a description of the connections between them shall be stated.

(23) The cartel authority may require from all the participants in the merger data on the market share, the basis and manner of calculations or assessment, as well as data on sales of certain types of products or trade services for the last business year before the merger. When an enterprise that participates in a merger is a dependent or governing enterprise in the sense of the provisions of the Law on Trade Companies, the cartel authority may request data stated in this paragraph from the other entire dependent or governing enterprises in relation to the enterprise that participates in the merger. The provisions stated in Article 51 paragraphs 2, 5

and 8 of this Law shall adequately be applied. The cartel authority shall determine a reasonable time limit for the delivery of the requested data. The provisions of this paragraph shall not influence the authorizations of the cartel authority determined in Article 51 of this Law.

Article 27

Legal Assumptions in Relations to Mergers

(1) Regardless of the provisions stated in Article 25 paragraphs 1 to 7 of this Law, for the purposes of the control of the merger it shall be assumed that the merger shall lead to creation of a dominant position on the market or strengthen the already dominant market position, when:

1. the enterprise that has in the last business year before the merger achieved sales of at least 50 million German marks in denar counter value is merged with another enterprise that:
 - a) actively operates on the market on which small and medium size enterprises act together with at least two thirds, and the enterprises that participate in the merger together participate with at least 5 percent; or
 - b) dominates on one or several markets on which in the last calendar business year has obtained total sales of at least 30 million German marks in denar counter value; or
2. enterprises participating in the merger have in the last business year before the merger, together, obtained sales of at least one billion German marks in denar counter value, and at least two of the enterprises participating in the merger have obtained individual sales of at least 20 million German marks in denar counter value.

- (2) The provisions stated in Article 26 paragraph 1 to 12 of this Law shall be applied in an adequate way when calculating the market share and the amount of the achieved sales of enterprises from paragraph 1 of this article.

Article 28

Merger Control

- (1) When it is expected that the merger shall lead to creation of a dominant market position or to strengthening of the already existing dominant market position, the cartel authority may perform the authorizations stated in this Article, except when enterprises that participate in the merger have proven that the merger shall lead to an improvement of the competitive conditions and that the effects of such improvement of the competition are more important than the damaging effects caused by the dominant market position.
- (2) When the conditions stated in paragraph 1 of this Article have been met, the cartel authority shall ban the merger. The cartel authority may ban the merger immediately after it has learned about the proposed merger. The cartel authority, within a period of one year after the receipt of the notification stated in Article 26 of this Law, may ban the already performed mergers. The provisions of Article 29 paragraph 3 items 1, 5 and 6 of this Law shall adequately be applied. Before stating the ban the cartel authority shall give an opportunity to the municipalities where the enterprises that participate in the merger are located to state their opinion. When the cartel authority has stated the ban expressed in this paragraph, the enterprises may not continue with the merger, nor may participate in the merger without the consent of the Minister of economy. The legal issues and actions undertaken contrary to this ban are invalid. This provisions shall not be applied to legal affairs that have lead to a registration in the trade register. The merger that has been conducted in spite of the ban stated by the cartel authority shall be annulled, except when the Minister of economy gives an authorization for the merger.
- (3) The Minister of trade, upon request, shall issue a permit for the merger in those cases where the limitation of the competitions is balances with the advantages that the merger shall produce in the overall economy of the country, as well as in other cases where the merger is justified by some prevailing public interest. When deciding on the issue of a permit the capability of the relevant enterprises to compete on the markets of the economy shall be taken into consideration. The permit may be issued only when the effects of the

caused limitation of the competitions does not endanger the system of the market economy. The permit may contain limitations and special conditions. The limits and conditions determined in the permit may not be directed towards submission of the relevant enterprises and their operations to permanent control. The provisions in this paragraph shall not influence the application of the provisions stated in Article 25 of this Law.

- (4) The request for the issue of a permit for merger shall be submitted to the Minister of trade in writing. The request must be stated within one month after the receipt of the decision of the cartel authority by which the merger has been banned. When in the time limit stated in Article 68 paragraph 1 of this Law a complaint has been filed against the decision of the cartel authority, the time limit to submit the request stated in this paragraph starts on the day that the decision of the cartel authority has become final. The Minister of trade must enact the decision on the submitted request within four months upon the receipt of the request.
- (5) In case the enterprises breach or do not fulfill the limitations and conditions determined in the issued permit, the Minister of trade may cancel or change it by imposing additional limitations or conditions. The Minister of trade may annul the decision when it has been obtained under pressure, extortion, blackmail, fraud, threat, bribe or by giving incorrect or insufficient data that have significantly influenced the decision related to the issue of the permit.
- (6) The conducted merger may be annulled without returning to the previous situation in case the limitations on the competition may be removed in some other way. The cartel authority shall order measures necessary to annul the merger be conducted, when:
1. its decision that has banned the merger has become final; and
 2. enterprises that have participated in the merger have declared a request to obtain a permit for the merger to the Minister of economy, and the decision by which such request has been rejected has become final;
 3. in cases stated in paragraph 5 of this Article, the decision by which the issued permit has been annulled, changed or revoked has become final.

(7) When performing authorizations stated in paragraph 6, the cartel authority protecting the interests of all third parties shall order such measures to be conducted by which the aimed goal will be achieved with the least possible costs and burden on the involved parties.

(8) To conduct measures stated in paragraph 6 of this Article, the cartel authority may:

1. determine a one time or repeated forceful fine in the amount of 200.000 German marks in denar counter value, to force the executors to conduct the imposed measured directed towards annulment of the merger;
2. to ban the exercise of the voting rights from the shares or stock in some dependent enterprise that has participated in the merger or in exercising those voting rights or condition the manner of exercising those voting rights with acquiring a permit from the cartel authority;
3. to pronounce as invalid the contracts and other legal actions that have lead to the mergers stated in Article 26 paragraph 13 items 1 and 3 of this Law. This provisions shall not be applied to contracts and other legal actions that have lead to the registration in the trade register;
4. to appoint a trustee that shall conduct all the legal matters and actions on behalf and for the account of the enterprises that are obligated to annul the merger and that shall undertake all the necessary measures related to that. The cartel authority shall precisely determine the measure to the extent of which the entities involved may exercise their rights during the mandate of the appointed trustee. The provisions of the Law on Debenture Relations that relate to the contract for order shall be adequately applied to the legal relations between the trustee, the relevant enterprise and the cartel authority. The trustee may request an adequate compensation from the enterprises that have participated in the merger for performing his/her duties.

(9) The provisions stated in paragraphs 1 to 8 of this Article shall not be applied when:

1. all enterprises that have participated in the merger together, in the previous business year have had a total sales less than 10 million German marks in denar counter value; or
2. the enterprise, that in the previous business year has had sales less than 2 million German marks in denar counter value, has become with the merger a dependent

enterprise. This provision shall not be applied when the governing enterprise in the previous business year has had a sales over 20 million German marks in denar counter value; or

3. the merger influences the market on which the relevant products or trade services are sold at least for five years, and in the previous calendar year have realized sales on the specific market that do not surpass one million German marks in denar counter value.

(10) When calculating the sales the provisions of Article 26 paragraph 1 to 12 of this Law shall be applied.

(11) The provisions stated in paragraph 9 item 2 of this Article shall not be applied on limitations of the competition caused by merger of enterprises that act in the field of publishing, printing and sales of newspapers and other periodicals or their parts.

Article 29

Notification on Planned Merger

(1) The cartel authority must be informed about each planned merger. A notification about the planned merger must be delivered to the cartel authority, when;

1. some of the enterprises that participate in the merger, in the previous business year, has obtained sales of at least 50 million German marks in denar counter value; or
2. at least two enterprises that have participated in the merger, in the previous business year have obtained sales of 20 million German marks in denar counter value or more; or
3. the merger should be performed according to a special law enacted by the Assembly of the Republic of Macedonia or according to an act of the Government of the Republic of Macedonia.

(2) The provisions stated in Article 26 of this Law shall be applied adequately on the notification stated in this paragraph. In the application of the provisions stated in Article 26 paragraphs 1 and 23 of this Law, the date of the merger shall be substituted by the date of the notification, while the owners and the representatives are the persons that have been

obligated to deliver a notification on the merger, affiliation or reorganization of the enterprises. The obligation to deliver a notification to the cartel authority shall be considered as fulfilled only when the delivered notification contains the data stated in Article 26 paragraph 21 and 22 of this Law. The provisions stated in Article 51 paragraph 8 of this Law shall be applied on the data and documents received in relation to the notification.

(3) When the cartel authority has been informed about the planned merger, it can ban the merger provided that it informs the person that has delivered it, within a one month upon the receipt of the notification, that it has started the procedure to review the proposed merger. In any case, the cartel authority has to enact its decision according to Article 28 paragraph 2 of this Law within a time limit of four months upon receipt of the notification about the planned merger. The cartel authority may ban the merger even after the time limit of four months has expired, when:

1. the enterprises that participate in the merger have agreed to the extension of the stated time limit' or
2. the planned merger has been performed even though the time limit of one month has not yet expired within which the cartel authority could have stated whether it will take into consideration the planned merger or the planned merger has been realized even before the time limit of four months from the day of the receipt of the notification has expired within which the cartel authority could have enacted its decision stated in Article 28 paragraph 2 of this Law; or
3. the merger has been performed in manner that is different to that stated in the notification; or
4. the merger has not yet been performed in full, and the conditions have significantly changed that have influenced the cartel authority not to deliver a notification that it shall take into consideration the planned merger, that is, the conditions have significantly changed that have influenced the cartel authority not to ban the merger according to Article 28 paragraph 2 of this Law; or
5. the cartel authority has not given a notification that it shall take into consideration the planned merger or has not banned the planned merger according to Article 28 paragraph 2 of this Law because the enterprises that have participated in the merger or some third party have delivered incorrect or incomplete data or documents; or

6. data stated in Article 26 paragraph 23 or Article 51 of this Law were not delivered or were not delivered on time and this has induced the cartel authority to act in the manner stated in item 5 of this paragraph.
- (4) The delivery of the notification on the planned merger shall not impact the obligation to deliver also a notification about the merger according to the provisions stated in Article 26 of this Law. In the notification delivered according to Article 26 of this Law the documents and other submittals delivered together with the notification of the planned merger may be recalled.
- (5) When according to the provisions stated in paragraph 1 of this Article notification of the planned merger is delivered to the cartel authority, the merger may not be performed before the time limit of one month stated in paragraph 2 of this Article has expired, and if the cartel authority has delivered a notification that it shall review the proposed merger, the merger may not be performed before the time limit of four months has expired or before the extended time limit agreed by all the interested parties has expired. The ban stated in this paragraph relates also to any possible participation in the performance of the merger. The ban stated in this paragraph shall not be applied only when the cartel authority has delivered, before the time period of four months upon receipt of the notification of the planned merger has expired, a notification in writing that the proposed merger does not fulfill the conditions of the ban stated in Article 28 paragraph 1 of this Law. The private matters and actions undertaken contrary to the ban determined by this paragraph shall not produce any legal action. This provision shall not be applied to legal affairs or action that have lead to registration in the trade register.

Article 30

Monopoly Commission

- (1) A Monopoly Commission shall be established that shall give its opinion in relation to the trends and developments in the area of business concentration. The Commission shall consist of five members that must have special knowledge and experience in the area of the economy, management of enterprises (business administration, management), social policy, technology or trade right.

- (2) The members of the Commission on Monopolies shall be appointed from among university professors or members of scientific institutions. The members of the Monopoly Commission may not be representatives in the Assembly of the Republic of Macedonia, members of the Government of the Republic of Macedonia, nor persons employed in the state administration organs. They must not be representatives of business associations, of organizations of employers or employees, nor be regularly employed or have contracts with such organizations. The members of the Commission may not have held the stated positions in the previous twelve months before their appointment.
- (3) In its opinion the Commission on Monopolies shall give an assessment of the present situation in the business concentration, assessment of the foreseeable trends and development of the concentrations from the point of view of the economic policy, and especially from the point of view of the policy related to competition and assessment of the implementation of Articles 25 to 29 of this Law. The Commission shall specially point out in its opinion the necessary changes or additions to the provisions of this Law.
- (4) The Commission on Monopolies shall perform its authorizations independently where only obligated by the provisions of this Law. The members of the Commission whose positions have not prevailed may register their opinion as a separate one.
- (5) The Commission on Monopolies shall prepare its opinion in regular intervals, each two years, the latest by June 30. The opinion shall contain an analysis of the prevailing situation in the past two years. Immediately after it has been prepared, without delay, the Commission on Monopolies shall submit its opinion before the Government of the Republic of Macedonia. The Government of the Republic of Macedonia must, without delay, present the submitted opinion to the Assembly of the Republic of Macedonia. On the day the Government submits the opinion to the Assembly of the Republic of Macedonia, the Commission on Monopolies must publish that opinion. The Government of the Republic of Macedonia, at the latest 60 days upon receipt of the opinion, shall present its opinion and comments on the opinion of the Commission on Monopolies to the Assembly of the Republic of Macedonia.
- (6) The Commission on Monopolies, according to its own free assessment, may prepare an additional opinion. The Government of the Republic of Macedonia may request from the Commission on Monopolies to prepare an additional opinion. The Commission on

Monopolies shall submit to the Government of the Republic of Macedonia the additionally prepared opinions and publish them at the same time.

- (7) The Minister of trade shall request the opinion of the Commission on Monopolies in relation to individual cases that have been submitted for decision according to the provisions stated in Article 28 paragraph 3 of this Law.
- (8) The members of the Commission on Monopolies, at the proposal of the Government of the Republic of Macedonia, are appointed by the President of the Republic of Macedonia. Each year, on July 1, one member of the Commission on Monopolies shall be withdrawn from the function of member of the Commission. The schedule for such withdrawals of the first appointed Commission shall be determined by drawing at the first session of the Commission on Monopolies. On proposal by the Government of the Republic of Macedonia, the President of the Republic of Macedonia shall appoint a new member with a four year mandate. The members of the Commission may be appointed again. Before giving its proposal for a new member of the Commission, the Government of the Republic of Macedonia shall request the opinion of the Commission on Monopolies.
- (9) Each member of the Commission on Monopolies may retire from the function by submitting a notification to the President of the Republic. When the member withdraws before the mandate has expired, the new member shall be appointed only for the remaining period of the mandate of the member that has retired.
- (10) The decisions of the Commission on Monopolies shall be considered as enacted when at least three members have voted in favor. From among the members, the Commission shall elect a chairperson. The Commission on Monopolies shall enact its Rules of Procedure.
- (11) The Government of the Republic of Macedonia shall provide facilities for the work of the Commission on Monopolies.
- (12) The members of the Commission on Monopolies are obliged to observe the secrecy of the discussions in the Commission and the secrecy of the working papers that the Commission has marked as confidential. The duty to observe secrecy relates also to the information that has been submitted to the Commission on Monopolies as confidential.

(13) The members of the Commission on Monopolies shall receive an adequate fee for their work and travel expenses compensation, The fee and the travel expenses compensation shall be regulated by the Minister of economy. The expenses related to the work of the Commission shall be covered by the Republic of Macedonia.

Article 31

Use of Statistical Data

(1) In order to give its opinion in relation to trends and development of the business concentrations in the Republic of Macedonia, the Commission on Monopolies may use the collective data of the economic statistics from the Statistics Bureau of the Republic of Macedonia or of some other public institution that keeps some relevant statistics (statistics on production industries, crafts, foreign trade, taxes, transport, trade, restaurants and press) in relation to the participation of the three, six and ten largest enterprises in the relevant economic sectors, having in mind:

1. the value of the products produced for sales;
2. total sales;
3. number of employed;
4. amount of the total paid wages and other fees;
5. investments;
6. the amount of the paid taxes, especially the value added tax;
7. the number of plants;
8. the circulation and sales of newspapers and periodicals by types.

(2) The members of the Commission on Monopolies are obliged to keep the secrecy of the received collective data even after their mandate has finished.

(3) The Commission on Monopolies and its members may use the obtained statistical data only for the purposes they have been given for. Immediately after the purpose stated in paragraph 1 of this Article has been fulfilled, those data should be destroyed.

- (4) The Commission on Monopolies must undertake all organizational and technical measures to ensure secrecy of the statistical data and their use only by authorized persons to be observed.
- (5) When, according to paragraph 1 of this Article, the Statistics Bureau collects the economic statistical data, the covered enterprises shall be informed in writing that the data stated in paragraph 1 of this Article may be delivered to the Commission on Monopolies.

Chapter four

LIMITING COMPETITION AND UNEQUAL TREATMENT

Article 32

Joint Planned and Agreed Behavior

- (1) Joint planned or joint agreed behavior and action of the enterprise or groups of enterprises is banned when such behavior or action according to the provisions of this Law may not be subject of agreement, nor subject of an undertaken contractual obligation.
- (2) Enterprises or groups of enterprises may not impose or threat to impose unfavorable or harmful conditions, nor promise or give advantages to some other enterprises with the only purpose of stimulating others to accept some kind of behavior that according to the provisions of this Law or according to the decision of the cartel authority may not be subject of agreement, nor subject of a undertaken contractual obligation.
- (3) Enterprises or groups of enterprises may not force other enterprises:
1. to become a contractual party in contracts or feel obliged by decisions of the types stated in Articles 2 to 11, Article 36, Article 76 paragraph 1, Article 77 paragraphs 1 and 7, Article 79 and Article 81 of this Law; or
 2. to merge with other enterprises, in the sense of the provisions stated in Article 26 of this Law; or
 3. to act uniformly on the market with the aim of limiting the competition.

Article 33

Rejection to Trade and Unequal Treatment

- (1) Enterprises or groups of enterprises may not instigate, nor request other enterprises or groups of enterprises not to buy or not to sell to a certain enterprise, with the purpose of damaging that enterprise in a dishonest way.

- (2) Enterprises that dominate on the market, the groups of enterprises stated in Articles 2 to 11, in Article 76 paragraph 1 items 1 and 2 and paragraph 2, in Article 77 paragraphs 1 and 7 and in Articles 79 and 81 of this Law and enterprises that determine the prices according to Article 19, Article 77 paragraph 3 or Article 81 paragraph 1 item 3 of this Law may not, neither directly nor indirectly, in a dishonest way hamper some other enterprise to undertake business activities that may be undertaken by other similar enterprises, nor directly or indirectly can that enterprise treat in an unequal way in spite of the fact that there are no serious reasons, facts or circumstances that would justify such different treatment compared to other similar enterprises. The provision stated in this paragraph shall be applied also to all other enterprises and groups of enterprises if the small and medium size enterprises as sellers or buyers of a certain type of product or trade services depend to such an extent on those enterprises or groups of enterprises so that there are neither sufficient nor reasonable possibilities for trade with some other enterprises. It shall be assumed that the seller of a certain type of product or trade service depends on a certain buyer, in the sense of the above mentioned provision, when apart from the regular trade price discounts the seller regularly receives certain special benefits and advantages that usually are not given to other similar buyers.

- (3) Enterprises that dominate on the market and groups of enterprises stated in paragraph 2 of this Article may not use their own market position to gain a more favorable treatment from their business partners even though there are no serious reasons, facts or circumstances that would justify such different treatment. The provisions stated in this paragraph shall be applied also on all other enterprises or groups of enterprises stated in paragraph 2 of this Article, in relation to small and medium size enterprises that depend on them.

- (4) Enterprises that hold a superior market position compared to their small and medium size competitors may not use their own market power for direct or indirect dishonest hampering of such competitors.

- (5) When some specific facts or circumstances exist from which, according to the general experience, it can be assumed that an enterprise is using its own market power in the way stated in paragraph 4 of this Article, that enterprise is obliged to prove that it is not using its dominant position and to clarify the circumstances and reasons for its own behavior.

Article 34

Expulsion from Trade Companies

- (1) When an application of an enterprise to be accepted into some trade or professional association has been rejected, the cartel authority, upon request of the interested enterprise, may order acceptance in the association when the rejection in fact represents unjustified unequal treatment and if by that the relevant enterprise has been put in an unfavorable competitive positions in a dishonest way.
- (2) The order stated in paragraph 1 of this Article may be issued by the cartel authority under certain conditions. The provisions stated in Article 14 paragraph 4 item 1 and paragraph 5 item 1 of this Law will adequately be applied.

Chapter five

RULES OF COMPETITION

Article 35

Trade and Professional Rules on Competition

- (1) Trade and professional associations may determine their own rules on competition within their competence.
- (2) Under rules on competition in the sense of this Law shall be considered those rules that regulate the competitive behavior of enterprises on the market, the behavior that represents a breach of the principles of honest competition and its effective function and rules that enhance competitive behavior that is in accordance with the stated principles.

(3) Trade and professional association may request from the cartel authority to register their own rules on competition in the register of the cartel authority.

(4) The request for registration of rules on competition must contain:

1. name, legal status of organization and seat of the trade or professional association;
2. names and addresses of the appointed representatives;
3. precise statement of the markets, entities and territory that the rules on competitions shall be applied;
4. copy of the rules on competition.

(5) Together with the request stated in paragraph 4 the following must be attached:

1. Statute of the trade or professional association;
2. proof that the rules on competition have been compiled and enacted in accordance with the provisions of the attached statute;
3. list of other trade or professional associations and a list of other enterprises at the same level or stage of economic process, as well as a list of the existing association of sellers or buyers or other organizations interested in the relevant level or stage of the specific economic sector.

(6) The cartel authority must be informed about every change or addition to the rules of competition that are registered in its register.

Article 36

Legal Effect of the Rules on Competition Approved by the Cartel Authority

The contracts or decisions by which the contractual parties or participants in the decision making commit to abide by the rules on competition sated in Article 35 of this Law, shall not be considered as contracts or decisions in the sense of Article 1 of this Law when approved by the cartel authority.

Article 37

Hearing the Interested Parties

The cartel authority shall give an opportunity to the enterprises at the same level or stage of economic process that are not obligated by the rules on competition stated in Article 35 of this Law, as well as other trade or professional associations or other associations of sellers and buyers that in any way may be affected by this rules on competition to express their position related to the rules on competition and a possibility to state their view on the facts and circumstances that are relevant for the decision of the cartel authority to issue a consent on those rules. The cartel authority may decide to conduct a public debate related to the request to give a consent on the rules of competition. Any person may attend the public debate and may state comments and complaints against the issue of consent on the rules on competition.

Article 38

Rejection to Issue a Consent and Annulment of a Given Consent

- (1) The cartel authority may reject the request to issue a consent on the rules of competition, when these rules or contracts and decisions stated in Article 36 of this Law are contrary to the provisions of this Law, the Law against unfair competition or contrary to any other legally binding provision.
- (2) The trade and professional associations are obliged to inform the cartel authority about the termination of the validity of any one of their rules on competition that has been approved by the cartel authority.
- (3) The cartel authority may cancel or annul the decision by which it has given its consent, when additionally is determined that according to paragraph 1 of this Article conditions for such cancellation or annulment exist.

Article 39

Publication in the Official Gazette

- (1) The cartel authority shall publish in the Official Gazette of the Republic of Macedonia notifications of:
 1. request submitted according to Article 35 paragraph 3 of this Law;
 2. date determined to hold a public debate, according to Article 37 of this Law;

3. given consent on rules on competition and changes and amendments;
4. cancellation or annulment of rules on competition according to Article 38 paragraph 3 of this Law.

(2) The published notification according to paragraph 1 item 1 of this Article related to the submitted request shall, at the same time, contain a note that the rules on competition that consent has been requested for shall be displayed to the public at the cartel authority.

Article 40

Information Given by the Cartel Authority

The cartel authority, upon request, shall give information on the approved rules on competition by giving data stated in Article 35 paragraph 4 of this Law.

Chapter six

GENERAL PROVISIONS

Article 41

Written Form of Cartel Contracts

The cartel contracts and cartel decisions stated in the articles 2 to 11 of this Law, as well as contracts that contain limitations stated in articles 19, 21, 23 and 24 of this Law must be given in a written form. The requirement about the form shall be considered fulfilled when the parties have signed a document that relates to a decision, statute, price list, tariff list or other document compiled in a written form.

Article 42

Compensation of Damage

(1) Any person that intentionally or by negligence breaches any provision of this Law, any decision of the cartel authority or court sentence enacted according to the provisions of this Law shall be obliged to compensate the damage made to a third party, when the breached legal provision, decision or court sentence has been directed to protect third parties and when the damage has risen as a consequence of the made infraction. When the

order breached was issued according to Article 34 of this Law, the damaged entity has the right to a reasonable cash compensation for the non-material damage suffered.

- (2) Every person that intentionally or by negligence breaches a decision of the cartel authority or a court sentence stated in paragraph 1 of this Article must compensate the entire damage made upon receipt of the decision or sentence, when the decision of the cartel authority or the sentence has become final.
- (3) In cases stated in paragraph 1 of this Article, the request to issue a interim decision may be declared also by the association founded to improve the interests of the trade, provided the association has process capability.

Article 43

Representatives in Cartel Cases

- (1) The cartels that do not have the functions of a legal entity shall appoint a special representative authorized to represent them before the cartel authority and in other disputes raised in relation to the implementation of the provisions of this Law. The name and address of the appointed representative must be submitted to the cartel authority.
- (2) When the cartel has not appointed a representative stated in paragraph 1 of this Article, upon request of the cartel authority, representative shall be appointed by the Supreme Court of the Republic of Macedonia. The cartel authority shall submit a request to the Supreme Court for the appointment of a special representative at own initiative or upon request of a third party that has some legal interest for the appointment of a special representative. When the cartel itself appoints the representative stated in paragraph 1 of this Article and informs the cartel authority and the Supreme Court about the fact, the authorizations of the special representative appointed according to the provisions of this paragraph shall cease.

Article 44

Responsibilities of the Members of the Cartel

The members of the cartels that do not have the function of a legal entity shall have unlimited and solidarity responsibility for the damages that the representative of the cartel has made to

third parties with action performed in the realization of the entrusted authorizations, when such action according to the provisions of this Law represents a basis to claim damage compensation.

Chapter seven

BAN TO FULFILL PROPERTY BENEFIT

Article 45

Ban to Fulfill Cartel Contracts

- (1) The cartel authority may ban the fulfillment of contracts or decisions that are invalid according to the provisions stated in Article 1, Article 18, Article 23 paragraph 1, Article 24, Article 77 paragraph 1 or Article 81 paragraph 2 of this Law.
- (2) The cartel authority may prohibit enterprises or groups of enterprises to act in a manner that is contrary to Article 32, Article 33 and Article 47 paragraph 1 items 11 and 12 of this Law.

Article 46

Additional Property Benefit

- (1) When the enterprise, upon receipt of the decision of the cartel authority enacted according to Article 25 paragraph 9 or Article 81 paragraph 7 of this Law, has obtained additional property benefit by action or behavior that has been banned by the stated decision, the cartel authority may, after the decision or sentence become final, to issue a confiscation order for that additionally obtained property benefit. The provisions stated in this paragraph shall not be implemented when the additionally obtained property benefit is equal to the compensation paid according to Article 42 of this Law or equal to the paid fine. The cartel authority may order the obtained property benefit be transferred at a given date after the day the decision or sentence has become final, where the stated time period may not be longer than three years.

- (2) When the confiscation of all the additionally obtained property benefit stated in paragraph 1 of this Article should lead to unnecessary difficulties, the cartel authority may order transfer of a reasonable money compensation or may in full renounce the request for transfer of such obtained property benefit. The cartel authority may also renounce the request when only an insignificant additional property benefit has been obtained.
- (3) The amount of the additionally obtained property benefit may be assessed by experts. In the assessments the expert shall precisely determine the money amount that should be paid.
- (4) When the enterprise that has been ordered to transfer the additionally obtained property benefit submits to the cartel authority a final decision that orders the payment of money compensation for the damages caused by the same infraction, the cartel authority shall not request the fulfillment of its property benefit transfer order. When the additionally obtained property benefit has already been transferred to the cartel authority and when the enterprise has proven that on the basis of a final decision has already paid the damages, the cartel authority shall return to the enterprise a part of the transferred property benefit in the amount that corresponds to the paid damages.

Part two

INFRACTIONS

Article 47

Infractions

- (1) A person shall be held responsible for an infraction when that person:
1. has not taken into consideration the invalidity and void of the contracts or decisions that are invalid or void according to Article 1, Article 18, Article 23 paragraph 1 and 2, Article 24, Article 77 paragraph 1, Article 81 paragraph 2 or Article 85 of this Law.
 2. has not taken into consideration the invalidity of the contract or decision that the cartel authority according to Article 3 paragraph 4, Article 15 paragraph 3 item 3, Article 20 paragraph 1, Article 21, Article 25 paragraph 9, Article 28 paragraph 8 item 3, Article 79 paragraph 4 or 5, Article 80 paragraph 2, Article 81 paragraph 7

- item3, Article 82 paragraph 4 or Article 83 paragraphs 2 item 1 of this Law, by a decision that is final, has declared them invalid.
3. by breach of the provisions stated in Article 17 paragraph 1, it has realized the given security without the consent of the cartel authority.
 4. intentionally or by negligence has breached a final decision of the cartel authority enacted according to Article 15 paragraph 3 item 1, Article 20 paragraph 1, Article 21, Article 25 paragraph 9, Article 28 paragraph 8 or Article 83 paragraph 2 item 1 of this Law, when the decision makes specific reference to the provision in this item.
 5. has made a breach of the temporary decision of the cartel authority enacted according to Article 61 for the decision of the cartel authority enacted according to Article 65 or shall breach an executive decision of the cartel authority enacted according to Article 48 paragraph 3 or paragraph 6, when the stated decisions makes specific reference to the provision in this item.
 6. shall breach the conditions imposed by the cartel authority, provided the decisions where the terms are determined has become final and in it specific reference is made to the provision in this item.
 7. shall give or use incorrect data with the purpose of fraud, to obtain itself or for a third party a permit, consent or approval according to the provisions of this Law or with the purpose of inciting the cartel authority not to file a complaint according to Article 2, Article 3, Article 6 paragraphs 1 and 3 or Article 7 paragraph 2, to withhold the enactment of a ban according to Article 28 paragraph 2 or to withhold the delivery of notification according to Article 29 paragraph 3 of this Law.
 8. shall breach the ban declared according to Article 28 paragraph 2 or Article 29 paragraph 5 or shall be a accessory in that breach or shall breach the ban stated according to Article 32 or 33 of this Law.
 9. shall cause material damage or some economic disadvantage to a third party only because that party has submitted or initiated the enactment of a decision of the cartel authority or only because it has been exercising its rights according to Article 16 of this Law.
 10. has instigated or recommended any infraction stated in items 1 to 9 of this paragraph.
 11. has given recommendations for some kind of uniform behavior that has lead to indirectly avoid the ban declared on the basis of the provisions of this Law or the decision of the cartel authority enacted on the basis of this Law.

12. has recommended to the buyers of its products to seek or offer specified prices when they re sell those products to third parties, to implement some special methods to determine the prices or when determining the prices to abide by some higher or lower framework price limitations.

(2) The provisions stated in paragraph 1 item 11 and 12 of this Article shall not be applied to:

1. recommendations made by the associations of small and medium size enterprises directed only to the members of the association, when such recommendations:

a) are aimed to increase the efficiency of the associated small and medium size enterprises in relation to the big enterprises by which the competitive conditions are improved; and

b) are not obligatory for the enterprises that they are directed to and no economic, social or other type of pressure has been used to provide these recommendation to be respected.

2. recommendations exclusively related to the uniform application of standards and types, when:

a) the conditions stated in item 1 under (b) of this paragraph have been fulfilled; and

b) the cartel authority has been informed about the recommendation by the party that has issued such recommendation and has attached to the notification the opinion or positions of the Standardization Bureau. The notification that does not have attached the opinion of the Standardization Bureau shall be considered as not submitted.

3. recommendations given by trade and industrial associations and professional organizations that exclusively relate to the uniform application of the determined general conditions of sales, delivery or payments, including the price discounts in the sense of Article 2 paragraph 1 of this Law.

(3) The recommendations stated in paragraph 2 of this Article the cartel authority may declare as not permissible and may ban the issue of similar recommendations in the future if it

assesses that the conditions stated in paragraph 2 of this Article do not exist any more or that the recommendations themselves represent an abuse of the exemption from the application of paragraph 1 items 11 or 12 of this Article.

(4) For the made infraction stated in paragraph 1 of this article, the legal entity shall be penalized with a cash fine of 100.000,00 to 600.000,00 denars.

(5) For the made infraction stated in paragraph 1 of this article, the responsible person within the legal entity shall also be penalized with a cash fine of 30.000,00 to 100.000,00 denars.

Article 48

Price Recommendations

(1) The provisions stated in Article 47 paragraph 1 items 11 and 12 of this Law shall not be applied on non binding price recommendations given by the enterprise in relation to the re sale of its products protected by a stamp or in some other way, when there is a price competition for those products with similar products of other producers and when such recommendations:

1. have been specifically marked as non binding, contain only one specified price and do not exercise any economic, social or any other type of pressure to provide the recommendations to be respected; and
2. are given with expectations that the majority of those that the non binding recommendations have been directed to shall respect the so recommended price.

(2) Under protected products in the sense of paragraph 1 of this Article are understood those products that the enterprise giving the price recommendation guarantees will be delivered with a constant quality and when the products themselves, their packaging or image adjusted for delivery to consumers or the containers from where the products will be sold are marked with a stamp or mark of the product's origin. The provision stated in this paragraph shall be applied to agricultural products, where the insignificant changes in quality resulting from the very nature of the product shall not be taken into consideration and changes that the producer can not avoid by measures that reasonable can be expected in relation to that.

(3) The cartel authority may declare the recommendations stated in paragraph 1 of this Article as non permissible and may ban the issue of similar recommendations in the future when it has assessed that such recommendations represent an abuse of the exemption from application of the provisions stated in Article 47 paragraph 1 items 11 and 12 of this Law. The stated abuse shall exist especially when:

1. the recommendation, by itself or together with some other permanent limitation of the competition may lead to an increase of the products' price, shall prevent the decrease in the price of those products or shall limit the volume of the production or sales of such products, and regardless of the fact that the general condition of the economy in the country as a whole does not justify the manner it has been done in; or
2. the recommendation probably shall cause a wrong impression among the consumers in relation to the price that the majority of the enterprises that have received such recommendation collect; or
3. the amount of the recommended price in most of the cases surpasses the amount of the prices that is usually collected for that product on the territory of the Republic of Macedonia or some major part of that territory; or
4. by signing contracts or by some other measures the enterprise that gives the recommendation, without justified reason, excludes some enterprises or some groups of buyers from the possibility to provide the specific product.

(4) The cartel authority may request that specific data be delivered to it when such data are necessary to determine whether the conditions stated in paragraph 3 of this Article exist. The provisions stated in Article 51 paragraphs 2, 5 and 8 of this Law shall be adequately applied. The cartel authority shall determine a reasonable time limit for the delivery of the requested data. The provision in this paragraph does not have an impact on the authorizations of the cartel authority determined in Article 51 of this Law.

(5) Before enacting the decision according to paragraph 3 of this Article, the cartel authority shall request from the enterprise that has given the price recommendation to stop the abuse state in paragraph 3 of this Article.

(6) The cartel authority may prohibit the enterprise to give recommendations stated in paragraph 1 of this Article when there is fear that the enterprise shall continue to give

recommendations in a manner that represents an infraction or abuse and when against that enterprise the following have already been enacted:

1. two final decisions according to paragraph 3 of this Article; or
2. two final decisions according to Article 47 paragraph 1 items 11 or 12 of this Law by which money fines have been ordered; or
3. one final decision according to paragraph 3 of this Article and one final decisions according to Article 47 paragraph 1 items 11 or 12 of this Law for which a money fine has been ordered.

(7) Upon request of the enterprise, the cartel authority may cancel the ban when some special circumstances exist from which it can be with certainty expected that in the future such abuse as stated in paragraph 3 of this Article or infraction as stated in Article 47 paragraph 1 items 11 or 12 of this Law shall not be repeated.

Article 49

Other Infractions

(1) A persons shall be held responsible for an infraction when:

1. contrary to Article 26 paragraph 23, Article 48 paragraph 4 or Article 51 of this Law, intentionally or by negligence shall not deliver the requested data, shall deliver incorrect or incomplete data or shall not deliver the requested data within the determined time limit, as well as any person that contrary to Article 51 of this Law shall not deliver the requested business documents, those documents shall not be delivered within the determined time limit, shall deliver false or incomplete documents or shall not allow insight to an authorized person;
2. shall not deliver the notification stated in Article 12 paragraph 1, Article 77 paragraph 1 or Article 85 paragraph 3 of this Law, as well as any person that has not delivered without delay a notification stated in Article 26 of this Law or has stated in the notification incorrect or incomplete data;
3. has delivered incorrect or incomplete data in the notification stated in Article 29 paragraph 1 and 2 of this Law.

(2) For the made infraction stated in paragraph 1 of this article, the legal entity shall be penalized with a cash fine of 100.000,00 to 600.000,00 denars.

(3) For the made infraction stated in paragraph 1 of this article, the responsible person within the legal entity shall also be penalized with a cash fine of 30.000,00 to 100.000,00 denars.

Part three

COMPETENT AUTHORITIES

Chapter one

CARTEL AUTHORITIES

Article 50

Competence of the Cartel Authority

(1) Authorizations given by this Law to the cartel authority shall be performed by:

1. the cartel administration:

- a) in relation to the cartels stated in Articles 4, 9 and 10 of this Law,
- b) in relation to contracts stated in Article 19 of this Law and recommendations stated in Article 48 of this Law;
- c) in relation to mergers stated in articles 26 to 29 of this Law,
- d) when the consequences of the influences on the market from limiting the competition, from unjustified different treatment or from the enacted rules on competition are felt even outside the territory of the Republic of Macedonia;
- e) in relation to the post offices and railways.

2. The Minister of trade in cases stated in Article 11, Article 15 paragraph 2 in relation to Article 9 paragraph 1 and in Article 28 paragraph 1 in relation to paragraphs 3 to 5 of this Article;

3. The cartel administration, in all other cases.

(2) When according to the provisions of this Law a money or other kind of fine is to be ordered against an insurance company, bank, savings house or against associations of such enterprises, the cartel authority shall order such a fine in agreement with the competent supervisory authority. When the cartel authority can not reach an agreement with the competent supervisory authority, it is obligated to submit the whole subject to the Minister of economy. The directions of the Minister of economy shall replace the agreement.

Article 51

Authorizations of the Cartel Authority

(1) To perform the authorizations determined by this Law, the cartel authority may:

1. request from the enterprise or groups of enterprises to deliver data related to their economic and financial situation and related to their business relations and connections;
2. during the normal working hours, to make a review of the trade books and other business documents of the enterprise or groups of enterprises;
3. request from the trade, industrial or professional association and organizations data related to their statutes and enacted decisions, as well as data about the number and identity of the members affected by those decisions.

(2) The owners of the enterprises or their representatives, as well as the representatives appointed according to Article 43 of this Law are obliged to give the requested data, to give for review their trade books and other business documents and to allow access to all relevant business facilities.

(3) The persons authorized by the cartel authority may enter into the business facilities of the enterprise or group of enterprises.

(4) Inspection may be performed only by a written order of the basic court on the territory the inspection is to be performed at. The provisions of the Law on Infractions shall adequately be applied to orders for inspection and complaints filed against such orders. When the review or inspection has to be performed without delay because there is some immediate danger, the cartel authority may, without a court order, request from the persons stated in

paragraph 3 of this Article within the normal working hours themselves to perform the necessary inspection or review. The stated persons must write a minute of the performed review and of the basic findings and describe in the minutes the facts that have lead to the assumption that there is some immediate danger.

- (5) Each person that some data has been requested from may refuse to answer the posed questions when the answer may expose himself and the members of his family to criminal or infractions persecution.
- (6) The Minister of trade or the Cartel administration shall request the necessary data to be delivered by a special decision. The legal basis, the subject of the request and the purpose of the request must be stated on the decision, as well as a reasonable time limit for the execution of the requested action.
- (7) When review of the business and other documents is to be performed in the business premises of the enterprise or group of enterprises, the Minister of economy or the cartel administration shall enact a special decision. The legal basis, subject and purpose of the review, must be stated on the decision, as well as the time limit the action is to be executed within.
- (8) The knowledge and documents obtained through data stated in paragraph 1 items 1 and 3 of this Article or through measures stated in paragraph 1 item 2 of this Article may not be used in other administrative or infraction procedures. The provision in this paragraph shall not be applied when the knowledge and documents indicate some criminal act or when the person the data has been request from has intentionally delivered untrue data.

Chapter two

CARTEL ADMINISTRATION

Article 52

Decision Making

- (1) Within the Ministry of trade a special cartel administration shall be established as an independent organ.

- (2) The cartel administration shall operate under the chairmen of a Director.
- (3) The Director shall be appointed and dissolved by the Government of Republic of Macedonia upon the request of the Minister of trade.
- (4) Upon the request of the Minister of trade, the Government of Republic of Macedonia shall also appoint and dissolved the deputy director of the cartel administration.
- (5) The decisions of the cartel administration shall be enacted at the Department for enactment of decisions to be created as a separate department within the Administration, according to the directions given by the Minister of economy. For all the other issues concerning the distribution of work tasks, the president of the Administration, appointed by the Minister of trade, shall decide. The president of the Cartel administration shall enact special rules related to the internal organization and work of the Administration. The stated rules must get previous approval of the Minister of trade.
- (6) The Department for enactment of decision shall consist of three members. All decisions must be enacted by consensus.
- (7) The members of the department for enactment of decision shall be appointed by the Government of Republic of Macedonia with a mandate of four years and possibility of reelection.
- (8) The legal provisions in force for the appointment and in compliance with the provisions of paragraph 8 of this article, related to necessary qualifications, the members of the Department shall fulfill all needed criteria for election of judges in Appellate courts.
- (9) Persons appointed or employed a the cartel administration must not be owners, members of the management or supervisory organs, nor persons with special functions in an enterprise, group of enterprises, cartel, trade, industrial or professional association or organization.

Article 53

Publication of General Directions

The general directions of the Minister of economy related to the work and enactment of decision of the cartel administration shall be published in the Official Gazette of the Republic of Macedonia.

Article 54

Work Report

- (1) The cartel administration shall publish, every two years, a report on its work in the last two calendar years and a report on the conditions and trends in the area of its competence. The year in which the cartel administration publishes the biannual report must not coincide with the year in which the Commission on Monopolies publishes its report according to Article 30 paragraph 5 of this Law. In the report of the cartel administration and as its integral part the general directions of the Minister of trade shall be published enacted according to Article 53 of this Law.
- (2) The cartel administration may submit the published report to the Government of Republic of Macedonia.

Part four

PROCEDURE

Chapter one

ADMINISTRATIVE PROCEDURE BEFORE CARTEL AUTHORITY

Article 55

Initiating and Parties in the Procedure

The cartel authority conducting the procedure shall operate according to the Law on General Administration procedure, unless it is otherwise prescribed by the Law.

Article 56

Initiating of a procedure and the parties in the procedure

- (1) The cartel authority shall initiate a procedure in line of duty or upon request of the party.
- (2) As parties in a procedure before the cartel administration the following may appear:

1. Any person by whose request a procedure is initiated.
2. Cartels, enterprises, trade, industrial or professional associations and organizations against which a procedure has been initiated;
3. In cases stated in Article 17, 22 or 84 of this Law, enterprises and groups of enterprises that in order to protect their rights and interest have the right to participate in the procedure;
4. Persons and association whose interests and rights have been put at stake by the decision and that have been summoned upon their request by the cartel authority to participate in the procedure;
5. the seller, in the cases stated in Article 26 paragraph 2 items 1 or 2 of this Law.

(3) The cartel administration may participate as a party in the procedures initiated before other organs that perform public authorizations.

Article 57

Temporary Decision on Competence

- (1) When the participant in the procedure points out that the cartel authority is not competent to proceed on a specific matter, the cartel authority may first enact a special decision on competence. The participant in the procedure may file an administrative dispute against the decision within 8 days by stating a special complaint. The complaint suspends the effect of the decision.
- (2) When the participant in the procedure has not disputed the real competence of the cartel authority, it can not start later an administrative dispute on the grounds of non competence of the cartel authority.

Article 58

The Principle of Hearing the Parties and Oral Debate

- (1) The cartel authority must give all parties in the procedure a possibility to state the facts and circumstances important for the enactment of the decision . Upon proposal of the party, the cartel authority is obliged to set a oral debate. The oral debate is public.

- (2) When it is relevant, the cartel authority may allow the representatives of certain economic groups that do not have the status of legal entity, but whose rights or interests may be affected to state the facts and circumstances relevant for the procedure or the enactment of the decision.
- (3) In the cases stated in Article 25 of this Law, before enacting its decision, the cartel authority must hold a public hearing. When all the participant in the procedure agree to it, the cartel authority may enact its decision without a public hearing. Upon proposal of any party in the procedure or in the line of duty, the cartel authority may exclude the public from the overall oral debate or only from part of it when that is necessary due to reasons of moral or public security, when there is a serious and immediate danger of disturbances during the oral debate, when the debate is held on relations in a family, when the debate is held on the circumstances that represent an official, business, professional, scientific or artistic secret. In the cases stated in Article 28 and 29 of this Law the provisions stated in this paragraph shall adequately be applied also on the procedures before the Minister of economy.

Article 59

Course of the procedure. Evidence

- (1) The cartel authority shall determine all the facts and circumstances relevant for the enactment of its decision and for that purpose it may state all necessary proof.
- (2) The provisions of the Law on General Administrative Procedure shall adequately apply in relation to producing evidence and proof.

Article 60

Temporary Confiscation of Objects

- (1) In every situation in the procedure, even before initiating the procedure, the cartel authority may, in order to provide evidence, temporarily confiscate an object that could represent an important proof in the investigation. The cartel authority must, without any delay, inform the person the objects are confiscated from.
- (2) The cartel authority is obliged to inform the competent court immediately for temporarily confiscation of objects and to kept it as an evidence until the court procedure is initiated.

- (3) As in cases of paragraph 2 of this article, the cartel authority is obliged to submit request for initiating court procedure within eight days from the day of confiscation of objects. In other cases it is obliged to return the confiscated object to the person the objects have been confiscated from.
- (4) The persons the objects have been confiscate from may at any time file a complaint before the court stated in paragraph 2 of this Article. The cartel authority is obliged when confiscating an object to state to that person his/her rights.
- (5) A complaint may be filed against a court decision enacted upon complaint stated in paragraph 3 of this Article.
- (6) The Law on infractions shall adequately be applied to temporarily confiscation of objects.

Article 61

Temporary Decisions

The cartel authority may, before the end of the procedure, enact a temporary decision that shall temporarily govern certain issues or relations until the enactment of the final decision related to:

1. Issue of a permit according to Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10, Article 11, Article 23 paragraph 4, Article 24 or Article 28 paragraph 3 of this Law, extension of the validity of a permit according to Article 14 paragraph 2 of this Law, cancellation or change of permit according to Article 14 paragraphs 4 or 5 of this Law;
2. Issue of a permit according to Article 17 of this Law;
3. enactment of a decision according to Article 3 paragraph 4, Article 15 paragraph 3, Article 20 paragraph 1, Article 21, Article 25 paragraph 9, Article 28 paragraph 2 and paragraphs 5 to 8, Article 34, Article 38 paragraph 3, Article 45, Article 47 paragraph 3, Article 48 paragraphs 3 and 6, Article 79 paragraphs 3 and 4, Article 81 paragraph 7, Article 84 paragraph 6, Article 84 paragraph 3 or Article 83 paragraph 2 of this Law.

Article 62

Decision of the cartel authority, Delivery

- (1) The provisions of the Law on General Administrative Procedures shall adequately be applied to the decisions of the cartel authority and their delivery to the parties in the procedure.
- (2) The decisions of the cartel authority may be explained.
- (3) The participant in the procedure may file a complaint within 15 days against the decision of the cartel authority, where the Minister of trade is in charge for resolution of the complaint.
- (4) The participant in the procedure may file a complaint within 15 days to the competent commission of the Government of Republic of Macedonia, against the decision of the Minister of trade of first instance.

Article 63

Publishing Decisions

In the Official Gazette of the Republic of Macedonia the following decisions of the cartel authority shall be published:

1. by which a request for the issue of a permit for contracts or decisions stated in Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10 and Article 11 of this Law or request for registration of rules on competition stated in Article 35 of this Law have been rejected;
2. by which the cartel authority has expressed complaints stated in Article 2 paragraph 2, Article 3 paragraph 3, Article 6 paragraph 3, Article 7 paragraph 2 or Article 79 paragraph 1 of this Law;

3. by which a ban is formulated stated in Article 28 paragraph 2 of this Law, by which a permit has been issued stated in Article 28 paragraph 3 of this Law, as well as its cancellation or change, or that have been enacted according to Article 28 paragraphs 6, 7, 8 of this Law;
4. that have been enacted according to Article 15 paragraph 3, Article 20 paragraph 1, Article 21, Article 25 paragraph 9, Article 34, Article 47 paragraph 3, Article 48 paragraphs 3 or 6, Article 79 paragraphs 3 or 4, Article 80, Article 81 paragraph 7, Article 82 paragraph 4 or Article 83 paragraph 2 of this Law.

Chapter two

ADMINISTRATIVE DISPUTE

Article 64

Complaints

- (1) Against the decisions of the cartel authority an administrative dispute may be initiated. The complaints by which the administrative dispute is initiated may be based on new facts and evidence.
- (2) An administrative dispute may be initiated also when the competent secondary administrative authority have not enacted a decisions upon the complaint of the applicant.
- (3) The provision from the Law on administrative disputes shall be adequately applied to the administrative disputes initiated in compliance with paragraphs 1 and 2 of this article.

Article 65

Delayed Action

- (1) Complaints shall delay the execution of a decision enacted in an administrative procedure only when:
 1. by the decision a permit is canceled or changed, according to Article 14 paragraphs 4 and 5 or according to Article 28 paragraph 5 of this Law; or
 2. the decisions has been enacted according to Article 3 paragraph 4, Article 15 paragraph 3, Article 20 paragraph 1, Article 21, Article 23 paragraph 4, Article 25

paragraph 9, Article 34, Article 38 paragraph 3, Article 45, Article 46 paragraph 1, Article 47 paragraph 3, Article 79 paragraph 5 and 6, Article 80 paragraph 2, Article 81 paragraph 7, Article 82 paragraph 4 or Article 83 paragraph 2 of this Law.

- (2) When a complaint is expressed against a permit that has been enacted according to Article 17 of this Law or against a temporary decision enacted according to Article 61 of this Law, the court may enact a decision to postpone the execution in whole or in part, to order provision of adequate security or enact a conclusion to execute due to security, The court may cancel or change at any time the decisions enacted according to this paragraph.

Article 66

Execution

- (1) In the cases stated in Article 65 paragraph 1 of this Law, when public interest is concerned or some prevailing interest of one of the parties, the cartel authority may impose the execution of the enacted decision.
- (2) The order according to paragraph 1 of this Article may be issued by the cartel authority even before the time limit to initiate an administrative dispute has expired.
- (3) Upon submitting a complaint, the court, upon request, may postpone the execution in whole or in part, when:
1. the conditions necessary for the enactment of the decision stated in paragraph 1 of this Article have not been fulfilled or do not exist any more; or
 2. there are serious doubts related to the validity of the decision against which a complaint has been filed; or
 3. the execution shall give rise to unnecessary difficulties for the executor or damage that could not easily be amended, and the postponement is not contrary to the public interest.
- (4) In those cases where the complaint shall not postpone the execution, the cartel authority may enact a decision that shall postpone the execution. The cartel authority shall do so when there condition stated in paragraph 3 of this Article exist. Upon request, the court

may postpone the execution in whole or in part when the condition stated in items 2 or 3 of this paragraph are fulfilled.

- (5) The executor may submit a request for postponement of the execution according to paragraph 3 of this Article even before filing complaints. The facts stated in the request must be supported by proof. When the decision of the cartel authority has been executed or is executed at the time the court decides on the request of the executor, the court may stop the execution and annul the conducted actions. The postponement of the execution, stopping the execution and annulment of the already executed actions may be conditioned by provision of adequate security or by fulfilling some other conditions or terms.
- (6) The court may at any time cancel or change the decisions enacted in relation to the request stated in paragraph 3 of this Article. The decisions of the court that accept the submitted request are final.

Article 67

Compensations, Time Limits

When by the sentence enacted regarding a complaint the decision by which the cartel authority has issued a permit according to Article 17 of this Law is annulled or changed, the parties that have undertaken certain actions on the basis of the annulled or changed decision are obliged to compensate the damage caused to the damaged by these actions. The right to request compensation of damages expires after six months from the day the damaged entity has been handed the final sentence.

Article 68

Filing a Complaint

The complaint shall be submitted in writing to the cartel authority that has enacted the decision against which the complaint is expressed. The complaint shall be submitted within 30 days from the day the administrative act has been handed to the party that has filed it.

Article 69

Parties in the Procedure

(1) The following may appear as parties in the administrative procedure:

1. the entity filing the complaint;
2. the Government of Republic of Macedonia ;
3. interested third parties, associations or organizations.

Chapter three **COMMON PROVISIONS**

Article 70

Request for legal protection **Request for repeating the procedure**

The provisions from the Law on administrative disputes in relation to the request for legal protection and repeating of procedure shall be adequately applied to the procedures initiated in compliance to the provisions of this law.

Article 71

Costs in the Procedure before the Cartel Authority

The provisions of the Law on General Administrative Procedure related to cost of the procedure shall be adequately applied also on the procedures before the cartel authority.

Article 72

Other Court and Administrative Procedures

(1) All courts and all other competent organs are obliged to inform the cartel authority about all the procedures that are conducted before them related to the cartel contracts or the cartel decisions stated in this Law. Upon request of the cartel authority they are obliged to submit copies of all the documents and decisions in those procedures.

(2) Due to the protection of the public interest or due to performance of authorizations determined by this Law, the cartel administration may appoint its own representatives that shall represent it in the procedures stated in paragraph 1 of this Article.

Article 73

Arbitration Void Contracts

(1) The arbitration contracts that relate to future disputes that may arise in relation to contracts or decisions stated in articles 1 to 8, Article 10, Article 11, Article 36, Article 76 paragraph 1 item 2, Article 77, Article 79, Article 80 and Article 81 of this Law, as well as the arbitration contracts related to request for damage compensation stated in Article 42 of this Law shall be void when each of the contractual parties has not been given the right for each separate case to request that the dispute, instead of being resolved with arbitration, to be resolved at a competent regular court.

(2) The arbitration contracts that relate to future disputes that may arise related to the contracts or decisions stated in Article 9 of this Law by which the contractual parties are not given the right to request for each separate case that the dispute, instead of with arbitration, to resolve the case before the competent regular court shall be void, except when the cartel authority, upon request, shall allow such arbitration contract.

Article 78

Interruption of Court Procedures

When the resolution of a certain issue in the court procedure, in whole or in part, depends on the decision that is to be enacted according to the provisions of this Law, the court shall interrupt the procedure until the decision is enacted according to the provisions of this Law by the relevant cartel authority or by the Supreme Court of the Republic of Macedonia. Each of the parties in court procedures stated in this paragraph may address the competent cartel authority or the Supreme Court and may request enactment of decisions essential to continue the procedure before the competent court.

Part five

EXTENT OF IMPLEMENTATION

Article 75

Public Enterprises. Extraterritorial Validity of the Provisions of the Law

- (1) The provisions of this Law shall be applied also on those enterprises that in full or in part are owned or managed by a public authority or physical and legal entities that perform public authorizations, except when the provisions in articles 76 and 81 of this Law do not otherwise provide.
- (2) The provisions of this Law shall be applied on all limitation on the competition that produce action on the territory of the Republic of Macedonia, even when they derive from acts and actions undertaken or made outside the territory of the Republic of Macedonia.
- (3) The provisions of this Law shall also be applied to the export cartels stated in Article 9 paragraph 1 of this Law, when in the cartel participate also enterprises with a registered seat in the Republic of Macedonia or enterprises that perform their activities mainly on the territory of the Republic of Macedonia.

Article 76

Public Carriers

- (1) The provisions stated in Article 1 and Article 47 paragraph 1 item 11 of this Law shall not be applied on:
 1. the contracts of air carriers and on contracts of enterprises that perform transport in internal water traffic, as well as the decisions and recommendations of their associations, when they relate to providing transport services outside the territory of the Republic of Macedonia;
 2. contracts of enterprises and groups of enterprises that perform public transport of passengers, when such contracts relate to the foundation, satisfactory functioning, continuation or change of communication lines according to the needs of the public transport of passengers. The contracts stated in this item shall produce legal action only when submitted to the Ministry of transport that is obligated to deliver a copy of those contracts to the cartel authority. The decisions of the cartel authorities enacted according to the provisions of this Law that affect or may affect the contracts, the decisions or recommendations stated in this item the cartel authority shall enact in agreement with the Ministry of transport;

3. contracts between railways and the contracts of the railways with other enterprises that perform transport of passengers and goods to determine or accord the conditions of transport or the prices of the services, when such agreements have been approved by the competent public authority.

(2) The provisions stated in Article 47 paragraph 1 item 11 of this Law shall not be applied on price recommendations given by:

1. associations of forwarders, when such price recommendations relate to joint expedition of goods through railway or by motor vehicles;
2. associations of enterprises that deal with transport and storage of goods or provisions of other similar services at Macedonian airports and river or lake ports.

(3) Such price recommendations shall be allowed only when:

- a) delivered to the cartel authorities by the association that has given them, together with the positions and opinions of the economic sectors affected by such limitation of competition; and
- b) in the price recommendation it has been specifically stated that it does not obligate and any kind of economic, social or other type of pressure shall not be made to implement it.

Article 77

Associations of Agricultural Producers

(1) The provisions stated in Article 1 of this Law shall not be applied to contracts or decisions of the producers, as well as of groups and associations of producers that relate to the production or sales of agricultural products or the use of joint storage facilities, preparation or processing of agricultural products, provided such contracts or decisions do not determine prices. The cartel authority must, without delay, be informed about such contracts or decisions. The contracts or decisions stated in this paragraph must not exclude competition.

(2) The provisions stated in Article 18 of this Law shall not be applied to contracts that relate to marking, packing or classification of agricultural products.

(3) The provisions stated in Article 18 of this Law shall not be applied on:

1. the producers or associations of producers that with the help of some legal or economic resources are obligated or force their buyers to charge for seed and seed material some precisely determined or determinable prices at the re sale of the seed and seed material or obligate them to impose that obligation on their buyers until the seed or seed material is sold to the end user; or
2. enterprises and groups or associations of enterprises that with the help of some legal or economic resources obligated or force the buyers of animals aimed for reproduction in the multi phase process of breeding to collect some determined or determinable prices at resale of those animals or they themselves impose the same obligation to their buyers unit the animal has been sold to the end user.

(4) The provisions stated in Article 21 of this Law shall not be applied to contracts concluded between producers or associations of producers, as one contractual parties and other enterprises, as the other contractual party when such contracts relate to the production, storage, processing, packing, marking, classification, manipulation or sale of agricultural products.

(5) The following shall be considered as agricultural products in the sense of this Law:

1. agricultural products, fruit and vegetables, horticulture, winery, bee keeping, as well as products obtained from fish and fishing;
2. products obtained by processing of products stated in item 1 of this paragraph, where the processing is usually performed by producers or associations of producers. The products stated in this item shall in detail be determined by a special regulation that shall be enacted by the Government of the Republic of Macedonia.

(6) The enterprises that produce or acquire products stated in paragraph 5 item 1 of this Article, as well as enterprises that are engaged in growing plants or breeding animals shall be considered producers in the sense of this Law.

(7) The provisions stated in Article 1 of this Law shall not be applied to the decisions of the association of enterprises engaged in forestry, when such decisions relate to the production or sales of forest products, provided that prices are not determined by them.

(8) The provisions of this Law shall not be applied also when certain special laws or other legal regulations that regulate the regime of wheat, sugar, milk, oil, meat or some similar basic products allow some limitations of the competition. In those cases the provisions of this special regulations shall be applied.

Article 78

National Bank

This Law shall not be applied to:

1. the National bank of the Republic of Macedonia;
2. special public legal persons or funds aimed to help the development of underdeveloped municipalities or regions;
3. other similar public legal persons, when it has been determined by a special law.

Article 79

Credit Institutions and Insurance Companies

(1) Provisions stated in Article 1, Article 18 and Article 47 paragraph 1 item 11 of this Law shall not be applied to contracts and recommendations of credit institutions or insurance companies, as well as to decisions and recommendations of associations of such enterprises:

1. When such contracts or recommendations are related to the factual situation and according to laws and other regulations that regulate banking or insurance such act must be approved and controlled by the competent supervisory authority: and
2. such contracts or recommendations are adequate and necessary to increase or maintain the efficiency of the enterprises - participant from a technical, economic or organizational aspect, and especially through cooperation between enterprises or through standardization or introduction of uniformity of the contractual and other general conditions of work. When determining the adequacy and necessity of

the contracts or recommendations it must be determined whether there is a reasonable balance between the limitations of the competition and the expected favorable effects for the enterprises and for their users.

- (2) The contracts, decisions and recommendations stated in this paragraph must, without delay, be delivered to the cartel authority. The cartel authority is obligated, without delay, to deliver a copy of the received contract, decision or recommendation to the relevant supervisory authority. When delivered to the cartel authority, the contracts, decisions or recommendations must have attached an explanation of the reasons why the application of the provisions of this paragraph and the evidence that the conditions stated in items 1 and 2 of this paragraph are fulfilled, are requested. The contracts and recommendations stated in this paragraph shall come into force and produce legal action only when the cartel authority, within a time limit of three months upon receipt of the notification, does not express a complaint or when the cartel authority even before the stated time limit has expired delivers a written notification that it shall not express a complaint. In the stated time limit of three months, the cartel authority shall give a possibility to the economic sectors that are and might be affected by the limitation of the competition to present their own views and opinion.
- (3) The provisions stated in Article 18 of this Law shall not be applied to contracts that relate to individual cases. Articles 1 and 18 of this Law shall not be applied to individual cases of contracts for joint individual risk sharing in joint insurance and re insurance, as well as to consortiums (trade unions) of credit institutions. The provisions stated in paragraph 1 item 2 of this Article and the provisions of Article 15 of this Law shall adequately be applied to such contracts.
- (4) The provisions stated in Article 12, Article 13, Article 15, Article 16, Article 17 and Article 47 paragraph 3 of this Law shall adequately be applied to the cases stated in paragraph 1 of this Article. In cases of publication according to Article 13 of this Law, the cartel authority shall take into consideration the legal interests of third parties. In those cases and in cases where the limitation of competition is quite obviously neglectable, the cartel authority may not perform the publication.
- (5) The cartel authority shall enact its decisions according to paragraphs 1, 2 or 4 of this Article in agreement with the competent supervisory authority. When the supervisory

authority enacts a formal decision when executing its legal authorizations, the cartel authority shall not review the findings of the supervisory authority contained in the decision and shall not assess their compatibility with the right to competition. The provisions stated in this paragraph shall be applied only when the findings in the decision of the supervisory authority are not within the legal authorizations of that authority.

- (6) The contracts, decisions and recommendations stated in paragraphs 1 to 5 of this Article that have become fully valid before this law has come into force shall continue to be fully valid. Such contracts, decisions and recommendations, within a time limit of three years after this Law has come into force, the cartel authority shall declare invalid or illegal when they do not fulfill the conditions stated in paragraph 1 item 2 of this Article.

Article 80

Authors' Associations

- (1) The provisions stated in Article 1 and Article 18 of this Law shall not be applied to associations of authors created to exercise the collective rights according to the Law on Copyright and related rights, nor to contracts or decisions of such associations that limit competition, provided that such contracts and decisions have been submitted to the cartel authority and to the Copyright Agency.
- (2) When the contracts, decisions or activity of the authors' associations stated in paragraph 1 of this Article represent an abuse of the market position obtained as a result of the exemption from the application of the provisions stated in articles 1 and 18 of this Law, the cartel authority may prohibit such action or declare void the adequate contracts and decisions.
- (3) Decisions enacted according to the provisions of this Law related to contracts, decisions or activity of the authors' associations, the cartel authority shall enact in agreement with the Copyright Agency.

Article 81

Public Goods

- (1) Articles 1, 18 and 21 of this Law shall not be applied to:

1. contracts of enterprises that supply the public with electricity, gas, water and other public goods concluded with other public enterprises or public authorities , when with such a contract one of the contractual parties commits to restrain itself from supplying the public on a certain territory with electricity, gas or water through fixed installations;
2. contracts concluded between public goods and competent public authorities, when by such contracts the competent public authorities undertakes the obligation to allow only one enterprise exclusively to place and manage the existing installations (pipes, cables and similar), under or above public roads for the purposes of current or plant supply of electricity, gas or water to the public on a certain territory ;
3. the contracts concluded between two public goods at a level of distribution, when by such contract the enterprise undertakes the obligation at a distribution level to supply its users with electricity, gas or water through fixed installations at prices or under conditions that are not less favorable then those given by the other public good to its own comparable users ;
4. contracts concluded between two or more public goods, when common goal of such contract is to make available certain precisely determined services through fixed installations to one or more enterprises that should supply the public goods.

(2) When contracts stated in paragraph 1 items 1 and 2 in this Article are directed towards excluding from public supply a certain type of energy or water supply, such contract shall be void. The provisions stated in paragraph 1 in this Article shall not be applied to such contracts.

(3) Provisions stated in Article 12 of this Law shall adequately be applied to contract stated in paragraph 1 items 1, 2 and 4 of this Article. Such contracts will not be registered at the cartel authorities.

(4) The cartel authority shall enact the decisions enacted according to the provisions stated in this Law related to public supply of electricity, gas or water through fixed installations. In agreement with the competent supervisory authority.

(5) In cases stated paragraph 1 of this Article, the cartel authority may undertake measures stated in paragraph 7 of this Article having in mind the goal of the exemption, and especially regular supply at as reasonable as possible prices:

1. when the contracts or the manner in which they are executed represent an abuse of the market position obtained as the result of the exemption from the application of the provisions of this Law ; or
2. when there is a breach of the principles of trade with goods or trade services, accepted by international contract that obligate the Republic of Macedonia.

(6) It shall be considered that there is an abuse in the sense of item 1 especially when:

1. the behavior of the enterprise that manages the public good on the market contrary to the principles that determine the market behavior of enterprises that are exposed to efficient competition ; or
2. the enterprise that manages the public good charges more unfavorable prices or imposes more unfavorable conditions of other enterprises of the same kind, except when the enterprises proves that those differences are a consequence of the existence of different circumstances that do not depend on the enterprise and its behavior. In any case stated in item 1 shall adequately be applied ; or
3. the enterprise managing the public good hampers, in a dishonest way some other enterprise in the use of the energy it generates in its own facilities or installations.

(7) The cartel authority may:

1. order enterprises to stop the abuse ;
2. order enterprises to change the signed contracts or enacted decision or ;
3. declare as void the signed contracts or enacted decision.

(8) The provision stated in paragraph 5 and 6 of this Article shall adequately be applied to procedures against abuses by enterprises that manages public goods initiated according the Article 25 paragraph 5 of this Law.

Article 82

Conditions for Exemption

- (1) Exemption stated in Article 81 paragraph 1 items 1, 2 and 4 of this Law shall be applied to contracts for the supply of electricity or gas only the conditions that the contract is not valid for more than 12 years. Contracts stated in Article 81 paragraph 1 item 1 of this Law for the supply of this electricity or gas shall be void when by them one the contractual parties undertakes the obligations, after the contract stated in Article 81 paragraph 1 item 2 of this Law expires to constrain itself of direct supply of the public in the area the contracts relates to or in case the obligation has been taken over by third parties , it undertakes the obligations to constrain itself to supply those third parties directly or indirectly. When an existing contract is extended or when a new contract is signed between the same contractual parties, a new notification must be delivered to the cartel authority. The provisions stated in Article 12 paragraphs 2, 3, 5, and 6 of this Law shall adequately be applied.
- (2) When a notification stated in paragraph 1 of this Article for the extension of a contract stated in Article 81 paragraph 1 items 1 or 4 of this Law is delivered and when there are serious reasons to assume that the contract hampers, in a dishonest way, other enterprises at the purchase or sales of energy or when such a contract determines the conditions for the supply of energy that are significantly more unfavorable than those offered by similar public goods, the cartel authority shall inform the contractual parties, within a time limit of three months upon the receipt of the notification, that it shall take the contract in review. In such a case the cartel authority:
1. shall publish the notification in the Official Gazette of the Republic of Macedonia ;
and
 2. shall give the contractual parties and the competent supervisory authority the possibility to express their opinion and position.
- (3) When in the stated time limit the cartel authority has not delivered a notification in the term stated in paragraph 2 of this article that it shall review the contract or when in spite of delivering such a notification the cartel authority does not enact a decision according to paragraph 4 of this Article within the time limit of three months, the exemption related to the application of the provisions of this Law on the relevant contract shall be postponed

for the next (20) twenty years. The cartel authority may also enact its decision according to paragraph 4 of this Article after the stated additional time limit of three months has expired, when the contractual parties have agreed to such an extension of the time limit. The provisions of this paragraph shall not influence the authorizations of the cartel authority stated in Article 81 paragraphs 5 to 8 of this Law.

(4) Upon receipt of the notification stated in paragraph 1 of this Article the cartel authority may annul the contract stated in Article 81 paragraph 1 items 1 or 4 of this Law, in whole or in part, when by such a contract on the territory that the contract covers or in some part of it the supply of electricity, gas or water is hampered at more favorable terms. The provision stated in this paragraph shall not be applied when:

1. there are factual justified reasons for that; or
2. the annulment of the contract shall significantly impair the market conditions, especially the conditions in the supply of the users that are not covered by the change or shall endanger the essential security of the supply.

Article 83

Measures of the Cartel Authority

(1) In the cases stated in Article 76 paragraph 1 items 1 and 2 and paragraph 2 and 3 and in cases stated in Article 77 of this Law, the cartel authority may undertake the measures stated in paragraph 3 of this Article:

1. when the contracts, decisions or recommendations or the manner in which they are fulfilled represent an abuse of the market position acquired as a result of the exemption from the application of the provisions of this Law; or
2. when they are contrary to the principles of trade with goods and trade services determined by international agreements that obligate the Republic of Macedonia.

(2) In the cases stated in Article 76 paragraph 2 and 3 of this Law it shall be considered significantly that there is an abuse when the recommendations lead to a significant disturbance or exclusion of the competition at a relevant market. The provisions stated in Article 48 paragraph 3 items 1 to 3 of this Law shall adequately be applied.

(3) When the conditions stated in paragraph 1 and 2 of this Article are fulfilled, the cartel authority may:

1. order the relevant enterprises to stop the abuse;
2. to order the relevant enterprises to change the signed contracts or enacted decisions; or
3. declare as void all signed contracts or enacted decisions.

Article 84

Application of Other Provisions

In cases stated in Article 76 paragraph 1 items 1 and 2, Article 77, Article 80, Article 81 of this Law the provisions stated in articles 16, 17 and 41 of this Law shall adequately be applied.

Part six

FINAL AND TRANSITIONAL PROVISIONS

Article 89

Transitional Provisions

(1) The contracts stated in Article 18 of this Law, signed before this Law has come into force, shall become void after the period of six months expires, when not in accordance with the provisions of Article 18.

(2) Contracts and decisions stated in articles 1 to 4, Article 5 paragraphs 1, 2 and 3, articles 9 to 11, Article 23 paragraph 1, Article 24, Article 76 paragraph 2, and Article 81 paragraph 1 items 1, 2 and 4 of this Law, concluded or enacted before this Law came into force, become void after the time limit of six months expires, except when before the time limit expires:

1. in cases stated in Article 2, Article 3, Article 5 paragraph 1, Article 9 paragraph 1 and Article 81 paragraph 1 items 1, 2 and 4 of this Law, a notification has been delivered to the cartel authority regarding the signed agreements or the enacted

decisions. The provisions stated in Article 12 paragraph 2 and paragraphs 3 to 7 and the provisions stated in Article 13 of this Law shall adequately be applied.

2. in cases stated in Article 4, Article 5 paragraphs 2 and 3, Article 9 paragraph 2, Article 10, Article 11, Article 23 paragraph 1 and Article 24 of this Law, the cartel authority was asked for a permit related to adequate contracts or decision;
3. in cases stated in Article 76 paragraph 2 to 4 of this Law, a notification has been delivered to the cartel authority about the signed contracts or enacted decisions. The provisions stated in Article 80 paragraph 3 of this Law shall adequately be applied;
4. in cases stated in Article 79 of this Law, a notification was submitted to the competent supervisory authority about the signed contracts or enacted decisions.

(3) The cartel authority must be informed without any delay about all the contracts or decisions stated in Article 5 paragraph 4 and Article 81 of this Law, that have been signed or enacted before this Law has come into force. The provisions stated in Article 12 paragraphs 2 to 7 and Article 13 of this Law shall be adequately applied to the contracts and decisions stated in Article 5 paragraph 4 of this Law.

(4) Arbitration contracts for future legal disputes, signed before this Law has come into force, related to contracts or decisions stated in Article 1 of this Law shall be considered void according to Article 73 of this Law. The provision stated in this paragraph shall not be applied to arbitration contracts for the already initiated arbitration procedures.

Article 86

Cessation of validity of certain provisions

Upon the entrance into force of this law, the articles 18, 19, 20, 22, 23, 35 and 36 and items 4,5 and 6 of article 46 paragraph 1 from the Law on trade ("Official Gazette of Republic of Macedonia" no. 23/95, 30/95, 43/95, 23/99 and 43/99) and article 2 paragraph 2 notion 2 from the Law on market inspection ("Official Gazette of Republic of Macedonia" no. 35/97 and 23/99) shall not be valid anymore only the part concerning the unfair competition.

Article 87

Enacting

This Law shall come into force on the 8 (eight) day it is published in the Official Gazette of the Republic of Macedonia, and shall be implemented from April 1, 2000.