

**UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT**

**HANDBOOK ON COMPETITION LEGISLATION**

**VOLUME II**

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## INTRODUCTION

UNCTAD is the focal point on all work related to competition policy and consumer welfare within the United Nations system. This mandate is established by the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (also known as the United Nations Set of Principles and Rules on Competition), unanimously adopted by the General Assembly in 1980. It has as a main objective “to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries”. The Set establishes broad principles and rules encouraging the adoption and strengthening of competition legislation and policies at the national and regional levels, and at promoting international cooperation in this area.

In sections F.5 and F.6 (c) the Set provides for the compilation of the Handbook on Restrictive Business Practices Legislation and for the continued work within UNCTAD on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. The Set also envisages that, in this connection, States should provide necessary information and experience to UNCTAD. The Fifth United Nations Conference to Review All Aspects of the Set (UN Review Conference), held in Antalya, Turkey, from 14 to 18 November 2005, requested the UNCTAD secretariat to publish further issues of the Handbook on Competition Legislation and decided that UNCTAD should continue to work on periodic revision of the commentary to the Model Law in the light of legislative developments and comments made by member States (see the resolution adopted by the Review Conference contained in TD/RBP/CONF.6/14).

Despite the general trend towards the adoption, reformulation or better implementation of competition laws and policies in developing countries and economies in transition, many of these countries still need to improve their competition legislation or strengthen their institutions for effective enforcement, and therefore rely, to a large extent, on UNCTAD capacity building for this work. This Handbook was prepared by the Secretariat taking into account that commentaries contributed by States together with texts of their national competition legislation could be used by countries for preparation and/or further revision and updating of national competition legislation, in particular as complementary material to

the UNCTAD Model Law on Competition (its latest version was issued as TD/RBP/CONF.7/8). Moreover, this Handbook together with the Model Law could be used in the provision of UNCTAD's technical assistance activities to countries introducing or revising their legislation.

The Handbook contains commentaries on competition legislation provided by States and published by the Secretariat in 2013-2014, as well as commentaries not included or provided after the publication of the previous (first) edition of the Handbook. It includes competition legislation of Albania, Algeria, Argentina, Armenia, Brazil, Chile, China, Colombia, Comoros, Ecuador, Ethiopia, Fiji, India, Israel, Jamaica, Malaysia, Mexico, Mongolia, Namibia, Pakista, Papua New Guinea, Paraguay, Peru, Philippines, Senegal, Seychelles, and Zambia. The UNCTAD Secretariat is grateful to the States that contributed to this issue of the Handbook. As it is envisaged to update the Handbook every year on the basis of contributions submitted, member States are encouraged to provide the Secretariat with their commentaries on recent developments in national competition legislation and jurisprudence, as well as their revised competition laws.

**ALBANIA**

**LAW**

**NO. 9121 date 28.07**

**“ON COMPETITION PROTECTION”**

In pursuance of article 11 point 1, 78 and 83, point 1 of the Constitution, by the proposal of Council of Ministers,

**THE ASSEMBLY**

**OF REPUBLIC OF ALBANIA**

**DECIDED**

**PART I GENERAL**

**PROVISIONS**

**Article 1**

**Subject of the Law**

This law aims the protection of fair and effective market competition, defining the rules of conduct by undertakings, as well as the institutions responsible for protection of competition and their competencies.

**Article 2**

**Applicability**

1. This Law shall apply to:

- a) all undertakings and associations of undertakings, which directly or indirectly have or may have an influence in the market;
- b) all undertakings, as in paragraph 1 of this article, that exert activities in the territory of the Republic of Albania, as well as to the undertakings that exert activities abroad, when the consequences of this activity are demonstrated in the domestic market.

2. This Law shall not apply to relations between employers and employees, and to relations which are object of a collective contract between employers and trade union.

**Article 3**

**Definitions**

Under this Law, the below-mentioned terms have these meanings:

1. “Undertaking” means any legal or natural person, private or public, which performs economic activity. Public and local administration bodies, as well as public authorities and entities, are considered as undertaking if they engage in economic activity.
2. “Associations of undertakings” means any kind of associations, having regard to the considerations of fact or law involved, legal or natural person, private or public, profitable or not profitable, which protects the interests of member undertakings.
3. “Economic Activity” means the type of manufacturing, commercial, financial or professional activity, associated with purchase or sale of goods, as well as with offering of service.
4. “Agreements” means agreements of any kind between undertakings, with or without compelling force, decisions, or recommendations of associations of undertakings, or concerted practices among them operating at the same level(s), so horizontal agreements, or different level (s), so vertical agreements in the market.
5. “Dominant position” means the position of one or more undertakings if they are capable, as regards supply or demand, to behave in a substantially independent manner with regard to the other participants in the market, such as competitors, clients or consumers.
6. “Product” means any goods sold or purchased, or services offered in the market by an undertaking.
7. “Relevant Market” means the market of products, which are mutually interchangeable from the point of view of the consumer related to its characteristics, price and their intended use in the area, and which are supplied and demanded by the undertakings concerned in a geographic area where the competition conditions are sufficiently homogenous and which can be clearly distinguished from neighboring areas.
8. “Authority of Competition”, hereinafter the Authority, is the body charged with the control of the application of this law.
9. “Commission of Competition”, hereinafter the Commission, is the decision-taking body of the Competition Authority.

## **PART II RESTRAINTS OF**

### **COMPETITION CHAPTER I**

#### **AGREEMENTS**

##### **Article 4**

##### **Prohibition of agreements**

1. All agreements which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- a) directly or indirectly fix purchase or selling prices, or any other trading conditions;
  - b) limit or control production, markets, technical development, or investment;
  - c) share markets or sources of supply;
  - ç) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - d) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
- shall be prohibited.

2. The prohibited agreements, under paragraph 1 of this article and those exempted under articles 5, 6 and 7 are not valid.

#### Article 5

##### **Exemption for Horizontal Agreements**

1. May be exempted from prohibition under article 4 the horizontal agreements which in particular, have as their object or effect the specialization or rationalization of economic activities, the research and development of products and processes, the joint purchasing or selling of products, from and to a single source, provided that they are justified on grounds of economic efficiency.

2. Agreements are deemed to be justified on grounds of economic efficiency, when they:

- a) reduce production and distribution costs, increase productivity, improve products or production processes, promote research into or dissemination of technical or professional know-how, or exploit resources more rationally, promote development of small and medium enterprises, results, which cannot be achieved otherwise;
- b) allow consumers a fair share of resulting benefit;
- c) do not substantially restrict competition.

#### Article 6

##### **Exemption for Vertical Agreements**

1. May be exempted from prohibition under article 4 of this law, the vertical agreements, which are justified on grounds of economic efficiency, and have, in particular, as their object or effect:

- a) The restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;
- b) The restriction of sales to end users by a buyer operating at the wholesale level of trade;

- c) The restriction of sales to unauthorized distributors by the members of a selective distribution system, where the supplying undertaking, directly or indirectly, sells the contracted products to selected distributors on the basis of specific criteria;
- ç) The restriction of the buyers ability to sell components, supplied for the purposes of incorporation to customers who use them to manufacture the same type of products as those produced by the supplier.

2. Article 5, paragraph 2 of this law shall apply mutatis mutandis for paragraph 1 of this article.

## Article 7 Exemption for License Agreements

1. License agreements and selling agreements of industrial property rights, may be exempted from the prohibition under article 4 of this law, if:
  - a) the commercial freedom of the acquirer or licensee or other undertakings is not unfairly restricted, and
  - b) competition on the market is not substantially impaired.
2. The prohibition under article 4, in particular, shall not apply to commitments restricting the acquirer or licensee if:
  - a) they are justified by the seller's or licensor's interest in a technically satisfactory exploitation of the subject matter of the protected right,
  - b) impose an obligation to exchange experience or to grant non-exclusive licenses in respect of inventions relating to improvements or new applications, provided such obligations correspond to similar obligations on the part of the seller or licensor,
  - c) don't challenge the licensed protected right,
  - ç) make minimum use of the licensed protected right or to pay a minimum fee,
  - d) label the licensed products in a manner which does not exclude the reference to the manufacturer,

insofar as such restrictions do not exceed the term of the acquired or licensed protected right or of the right which constitutes the object of the license.

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