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Prime Minister's Decree
No. 1316 Of The Year 2005
Issuing

The Executive Regulations

Of The Law On

Competition Protection And Prevention Of Monopolistic Practices

As Promulgated by Law No. 3 of the year 2005

The Prime Minister,

After reviewing the Constitution;

The law on Competition Protection and Prevention of Monopolistic Practices as promulgated by Law No. 3 of the year 2005; And

Upon the view adopted by the State Council,

DECREES THE FOLLOWING

Article : 1

The provisions of the attached executive regulations of the Law on Competition Protection and Prevention of Monopolistic Practices as promulgated by Law No. 3 of the year 2005 shall come into force.

Article : 2

The present decree shall be published in the Official Journal and come into force effective from the day following the date of its publication.

Issued at the Cabinet Premiership on 11 Ragab 1426 (Islamic Calendar), corresponding to 16 August 2005 (Gregorian Calendar).

Prime Minister
Dr. Ahmed Nazif

The Executive Regulations
Of The Law On
Competition Protection
And Prevention Of Monopolistic Practices
As promulgated by Law No. 3 of the year 2005

Part – 1
General Provisions And Definitions

Chapter-1
General Provisions

Article : 1

In applying the provisions of the present regulations, the term 'law' shall mean the Law on Competition Protection and Prevention of Monopolistic Practices as promulgated by Law No. 3 of the year 2005, and the term 'concerned minister' shall mean the Prime Minister.

Also, the term 'Agency' shall mean Competition Protection and Monopolistic Practices Prevention Agency as established according to the provisions of the Law, and the term 'board of directors' shall mean the board of the Competition Protection and Monopolistic Practices Prevention Agency.

Article : 2

Practicing the economic activity shall be in a way that does not lead to preventing, restricting or prejudicing the free competition. This shall all be according to the provisions of the Law and the present regulations.

Article : 3

The provisions of the Law and the present regulations shall apply to the deeds, including the practices, contracts or agreements, that constitute crimes according to the Law and are committed abroad, if they result in preventing, restricting or prejudicing the free competition in Egypt.

Chapter – 2
Definitions

Article : 4

In applying the provisions of the law and these regulations, the expressions and words to be mentioned in the following articles shall denote the meaning determined for them in these articles.

Article : 5

Persons

The term 'persons' shall denote the natural and juridical persons, the economic entities, the financial unions' leagues and groups, as well as the groups of persons of all different formation methods, whatever the means of financing these persons, their nationalities, their head offices, or the headquarters of their activities.

The associated parties that are formed of two or more persons, each having an independent legal personality, and the majority of shares or portions of one of these parties are directly or indirectly owned by the other party or owned by one party shall be considered among the persons referred to in the first clause.

Also, the person(s) that are subject to another person's factual control shall be considered among these associated parties. Factual control shall denote all situation, agreement or ownership of shares or portions whatever their percentage, in a way that leads to controlling the management or taking the decisions.

Article : 6

Concerned Market

The 'concerned market' shall denote the market that is based on two elements, namely the concerned products and the geographic scope. Each of these two elements shall be determined as follows:

First - Concerned Products:

They are the products of which each is considered, from the consumer's point of view, a practical and objective substitute to the other. In this definition, any one of the following criteria shall in particular be adopted:

1. Similarity of products in properties and usage;

2. Extent of the buyers' possible switching from one product to another as a result of the relative change in the price or any other competitive factors;

3. Whether the sellers take their commercial decisions on basis of the buyers' switching from the products to other products as a result of the relative change in the price or in the other competitive factors;

4. Relative easiness by which the other persons can enter the product market;

5. Extent of availability of substitute products before the consumer.

Second - Geographic scope:

It is the geographic area in which the competition conditions are consistent, and in this respect the potential competition opportunities and also any of the following criteria shall be taken into consideration:

1- Extent of the buyers' ability of traveling between geographic areas as a result of the relative changes in prices or in the other competitive factors;

2- Whether the sellers take their commercial decisions on basis of the buyers' move between the different geographic areas as a result of the relative change in prices or in the other competitive factors;

3- Relative easiness by which other persons can enter the concerned market;

4- Cost of transport between the geographic areas, including the insurance cost and the time required for providing the geographic area with the concerned products from other markets or other geographic areas or from abroad;

5- Customs duties and non-customs restrictions at the local and international levels.

Article : 7

Control

A person's control on a concerned market shall be realized with the availability of the following elements:

1- Increase of the person's share over 25% of the concerned market. Calculating this share shall be on basis of the two elements of this market; namely the concerned products and the geographic scope together, during a specific period;

2- Ability of the person to create an effective influence on the prices of products or the volume of displayed products in the concerned market;

3- Inability of the persons competing with such person to limit his/her effective influence on the prices or on the volume of products displayed in the concerned market.

Article : 8

The person shall have an effective influence on the prices of products or the volume of products displayed in the concerned market if, through his/her individual practices, he/she has the ability to determine the prices of these products or the volume of displayed amounts of these products in this market without his/her competitors having the ability to prevent these practices, subject to the following factors:

a) Share of the person in the concerned market and his/her situation in relation to the rest of competitors;

b) The person's behaviors in the concerned market in the previous period;

c) Number of the competing persons in the concerned market and their relative influence on the structure of this market;

d) Extent of each of the person and his/her competitors ability to reach the materials required for production;

e) Existence of obstacles to the entry of other persons in the concerned market.

Article : 9

Competing Persons

The competing persons shall denote the persons that can each practice the same activity in the concerned market at present or in the future.

Part - 2

Agreements and Contracts Between Competing Persons

Article : 10

The agreements and contracts that are concluded between the competing persons in the concerned market shall comprise the written and verbal agreements and contracts.

Article : 11

Concluding an agreement or contract between competing persons in any concerned market shall be prohibited if such agreement or contract is liable to cause any of the following:

a) Raising, decreasing or fixing the sale or purchase prices of the products subject of the dealing. The interest payable on the installments, guarantee period, post-sale services and other contractual conditions influencing the decision of purchase or sale shall be included in determining the price;

b) Dividing or specifying the products markets on basis of the geographic areas, distribution centers, types of customers and goods as well as seasons or time periods;

c) Coordination in connection with participating in or refraining from the tenders, bids, negotiations and all supply offers. The following shall in particular be taken as a guide in performing the coordination:

1- Submitting similar tenders, including agreement on common rules for calculating the prices or determining the tenders conditions;

2- Agreeing on the person who shall submit the tender, including a prior agreement on the person who shall be declared the successful tenderer whether by alternation or on a geographical basis or on basis of apportionment among customers;

3- Agreeing on submitting nominal tenders;

4- Agreeing on preventing a person from entering or participating in submitting tenders.

d) Restricting the manufacturing, distribution or marketing operations or limiting the distribution of services, their type or volume, or setting conditions or restrictions on their availability.

Part - 3

Agreement or Contracting Between a Person and Any of His/Her Suppliers or Customers

Article : 12

Agreeing or contracting between the person and any of his/her suppliers or customers shall be prohibited, if such agreement or contract is liable to limit competition.

Assessing whether the agreement or contract between the person and any of his/her suppliers or customers is liable to limit competition shall be based on inspection to be carried out by the Agency, for each case independently, in light of the following factors:

1- Influence of the agreement or contract on the free competition in the market;

2- Existence of benefits obtained by the customer from the agreement or contract;

3- Considerations of maintaining the product's high quality and goodwill, and the security and safety exigencies, in a way that does not harm the competition;

4- Extent of conformity of the agreement or contract conditions to the commercial practices as established in the activity subject of the inspection.

Part - 4

Abuse of Control on a Concerned Market

Article : 13

Whoever has control on a concerned market shall be prohibited from performing any of the following:

a) Any deed liable to result in the non-manufacture, non-production or non-distribution of a product, wholly or partially, for a determined period(s). The determined period(s) shall mean the period adequate for causing the prevention, restriction, or harming of free competition.

b) Refraining from concluding sale or purchase deals of a product with any person or discontinuing dealing with him/her in a way that limits his/her freedom of entering in or exiting from the market at any time, including imposing financial conditions or obligations, or arbitrary or unfamiliar contractual conditions in the activity subject of the dealing.

Refraining from the conclusion of dealings with any person or discontinuing dealing with him/her shall not be considered prohibited if it has justifications connected with this person's inability to fulfill his obligations resulting from the contract.

c) Any deed liable to limit the distribution of a product exclusively on basis of geographic areas, distribution centers, customers, seasons or time periods between persons with vertical relationship. A vertical relationship shall denote the relationship between the controlling person and any of his/her suppliers or between him/her and any of his/her customers.

d) Making the conclusion of a contract or agreement for the sale or purchase of a product conditional upon accepting obligations or products that are by their nature or by virtue of a commercial use of the product non-connected with him/her, or with the original subject of the dealing or the agreement.

e) Differentiating between sellers or buyers whose commercial centers are similar in the sale or purchase prices or the dealing conditions, in a way that leads to weakening the competitive ability of some of them against the others or to driving some of them out of the market.

f) Refraining, wholly or partially, from producing or providing a scarce product whenever its production or provision is possible economically.

The scarce product shall denote the product, of which the available amount does not satisfy except a meager portion of the volume of demand in the concerned market.

g) The controlling person that stipulates for those dealing with him/her not to allow a competitor to use what he needs from their facilities or services, although allowing such access to these facilities is economically possible.

The facilities and services personally owned by those dealing with the controlling person, and which are indispensable to his/her competitors for entering and remaining in the market, shall be considered among the foregoing facilities and services.

h) Selling the products at a price lower than their marginal cost or their average variable cost.

The marginal cost shall denote the share of a unit of the products in the total costs during a specific time period. The variable cost shall denote the cost that varies with the change in the volume of products offered by the person during a specific time period.

The average variable cost shall denote the total variable costs divided by the number of units of the products.

The following shall be observed in determining whether the product shall be sold for a price lower than its marginal cost or its average variable cost:

1- Whether the sale shall lead to driving competitors of the controlling person out of the market;

2- Whether the sale shall lead to preventing competitors of the controlling person from entering the market;

3- Whether the sale shall result in the inability of the controlling person to raise the prices after driving his/her competitors out of the market;

4- Whether the time period for selling the product at a price lower than its marginal cost or average variable cost shall lead to realizing any of the aforementioned cases.

i) Obliging any supplier by the controlling person not to deal with any competitor.

Non-dealing shall mean the supplier's refrainment from dealing wholly with the competing person, or reducing the volume of dealing with him/her to the limit that leads to driving him/her out of the market or preventing the potential competitors from entering the market.

Part - 5

Public Utilities and Basic Products

Chapter - 1
Public Utilities

Article : 14

The provisions of the Law and the present regulations shall not apply to the public utilities managed by the government. The decisions, agreements, contracts and works with regard to these public utilities that are managed by the government shall not be subject to any of the prohibition provisions prescribed in articles Nos. (6, 7, 8) of the present law.

Article : 15

Each company subject to the provisions of the private law and assuming the management of a public utility may, before concluding agreements or contracts or carrying out works that are connected with the activity of such utility and included within the range of the prohibition cases prescribed in articles Nos. (6, 7, 8) of the law, request from the Agency excluding all or some of these agreements, contracts or works from the prohibition if this is likely to realize the public interest or benefits for the consumer exceeding the effects of limiting the free competition.

Article : 16

Submitting and adjudicating on the request referred to in article-15 of the present regulations shall be according to the following controls and procedures:

1- The request shall be submitted in writing to the board chairman of the Agency before concluding the agreement or contract or carrying out the work subject of the request, providing the request shall comprise a complete presentation of its reasons and an indication of the public interest that would be realized by the agreement, contract or work, or

the benefits it would materialize for the consumer. The request shall be accompanied by documents supporting it;

2- The board chairman shall submit the request to the board of directors for considering it at the first subsequent meeting or the meeting to be determined by the board chairman when necessary;

3- The board of directors may refer the request to the concerned department at the Agency for studying it and drawing up a report in respect thereof within the period to be determined by it, providing it shall not exceed thirty days. The board of directors may extend this period for not more than another thirty days upon the proposition of the executive manager of the Agency;

4- The concerned department may require further information and data from the concerned parties or from others and hold hearing sessions to which the applicant shall be invited to attend;

5- The concerned department shall submit to the executive manager its report concerning the request for raising it to the board of directors at the first session following the completion of the report. The board of directors shall adjudicate on the request within thirty days from the date of submitting it to the board;

6- The Agency's board decision approving the exclusion from the range of prohibition shall be based on realizing a public interest or benefits for the consumer exceeding the effects of limiting the free competition; otherwise, the request shall be refused. The approval decision shall comprise charging the applicant with or refraining from some performance;

7- The executive manager of the Agency shall undertake notifying the applicant of the board's decision by virtue of a registered letter with acknowledgement of receipt, and the refusal decision as issued shall be substantiated.

Article : 17

The Agency's approval of excluding from the prohibition range shall be valid for a period of two years, and it may be renewed on the basis of a request to be submitted by the concerned person to the Agency before the expiry of sixty days from the termination of the period. The Agency shall

consider the renewal request according to the same provisions and procedures prescribed in article-16 of the present regulations.

Chapter - 2
Basic Products

Article : 18

The sale price of one basic product or more may be determined for a specific time period by virtue of a decision from the Cabinet of Ministers after consulting the Agency's view.

Article : 19

The Agency shall undertake carrying out the studies necessary for the Cabinet of Ministers to practice its powers as prescribed in article-10 of the Law with respect to determining the sale prices of the basic products and drawing up the reports with regard to the Agency's view in this respect.

Article : 20

Any agreement concluded by the government for applying the sale prices of the basic products to be determined according to the provisions of article-10 of the Law shall not be considered an activity harmful to competition.

Part – 6

Competition Protection And Monopolistic Practices Prevention Agency

Chapter – 1
Meetings of the Agency's Board of Directors And the System of Work in it

Article : 21

A board of directors formed of a chairman and fourteen members to be established according to the provisions of article-12 of the Law shall assume the management of the Agency. The board shall have a secretariat the establishment of which and the system of work in it shall be determined by a decision to be issued by the board of directors.

Article : 22

The board of directors shall meet by invitation from its chairman at least once every month and when necessary. The call for the meeting shall be addressed in writing at least four days before the day determined for it, and the agenda shall be attached to it.

The board's meetings shall be valid with the attendance of at least ten of its members, and its decisions shall be issued with the majority of its members' votes.

Article : 23

No board member shall be allowed to participate in the deliberations or voting in a case submitted to the board of directors in which that member has a direct or indirect personal interest, or a kinship up to the fourth degree exists between that member and one of the parties to that case, or where he represented or is representing one of its parties. The board member shall declare in writing about the existence of any of the said motives with him before the start of the deliberations or voting concerning the submitted case.

Article : 24

The board of directors may invite to its meetings such specialists as it views necessary to seek their assistance, providing he/she shall not have a counted vote in the voting.

Article : 25

The minutes of the board meetings shall be recorded regularly in a special book after each session. The board chairman and the secretary shall sign these minutes.

Chapter – 2
Powers of the Board of Directors

Article : 26

The board of directors shall be concerned with the following:

a) Expressing the view to the Cabinet of Ministers in determining the sale price of one or more basic products, for a specific period, according to the provisions of article-10 of the Law;

b) Accepting the grants, donations and any other resources to be offered to the Agency in a way not contradicting its purposes;

c) Setting the statutes connected with regulating work at the Agency, and with the financial and administrative affairs of its workers without being restricted by the rules and systems prescribed for the civil servants of the government, and raising these statutes to the concerned minister for issuing them;

d) Suggesting the names of the Agency's workers required to be vested with the quality of law officers in applying the provisions of the Law, and who shall be determined by a decree to be issued by the Minister of Justice in agreement with the concerned minister;

e) Approving the annual report on the activities, future plan and propositions of the Agency;

f) Expressing the view in the draft laws and the statutes connected with regulating the competition;

The foregoing shall be in addition to the powers prescribed in the Law and the other articles of the present regulations.

Article : 27

The board of directors may charge one of its members or a committee to be established from among them for performing a specific work or supervising one of the Agency's aspects of activity. In these cases, reports shall be drawn up on the work or supervision to be submitted to the board of directors.

Article : 28

The board chairman shall be concerned with the following:

a) Coordinating with the counterpart agencies in the other countries with regard to the matters of common interest and submitting the reports connected therewith to the board of directors;

b) Preparing an annual report on the activities, future plan and propositions of the Agency and submitting it to the board directors for its approval;

c) Nominating the executive manager of the Agency and raising the nomination to the concerned minister;

d) Supervising the organization of the training and cultural programs connected with the awareness of the provisions of the Law and the free market principles in general;

e) Supervising the issue of periodical bulletins that comprise the decisions, recommendations, procedures, measures and others as taken by the Agency in connection with its affairs.

Chapter – 3
Fees

Article : 29

A fee amounting to ten thousand Egyptian pounds shall be paid for the request concerning the exclusion from the range of prohibition prescribed in article-9 of the Law, and also the request for renewing the validity period of that exclusion. The fee shall be settled and the receipt indicating the settlement shall be attached upon submitting the request.

Article : 30

A fee of one hundred Egyptian pounds shall be paid on each request for reviewal or for obtaining a certificate or an official copy of one of the documents that the Agency is permitted to circulate.

Part – 7

Submission of Reports, Procedures of Fact-Finding and Search, Gathering Factual Materials, and Receiving Notifications

Chapter – 1
Submission of Reports

Article : 31

Any person may notify the Agency of any violation of the provisions of the Law, and the Agency does not be entitled to any fees or charges in return for receiving or examining the report.

Article : 32

The report shall be submitted to the Agency in writing accompanied with the following data and documents:

1- Name, address, work, quality of the person submitting the report, and his interest in submitting it and the documents supporting these data;

2- Name, address and nature of activity of the person reported against;

3- Kind of the reported violation;

4- Evidences on which the report is based and the documents related to them, if any;

5- A statement of the harm caused to the person submitting the report, if any;

The Agency may disregard examining any report not fulfilling the said data and documents.

Chapter – 2
Procedures of Fact-Finding and Search, As Well As Gathering Factual Materials

Article : 33

The Agency shall examine the reports submitted to it, and, without need for submitting a report, it may take the procedures of fact-finding and search, as well as of Gathering factual materials, and it may order carrying out these procedures with regard to the cases of agreements and practices that are harmful to competition.

Article : 34

The procedures of fact-finding and search, as well as of gathering factual materials with regard to the cases of agreements and practices that are harmful to competition or to any other violation of the provisions of the Law shall be as shown in the following articles.

Article : 35

The report shall be registered, on its submission to the Agency, in the register provided for the purpose, and the person submitting the report shall be given a receipt carrying the number and date of registering the report.

The cases in which the Agency assumes, of its own initiative, taking the procedures of fact-finding and search, as well as of gathering factual materials or orders taking these procedures with regard to them shall be recorded in another register to be provided for that purpose.

In the two registers shall be recorded regularly the procedures taken in respect of the cases recorded in them and the decisions or rulings issued in this concern.

Article : 36

The reports shall be submitted to the executive manager of the Agency for ascertaining their fulfillment of the data and documents prescribed in article-32 of the present regulations, and for referring those

fulfilling the data and documents to the concerned department along with notifying the board chairman of the Agency of this referral.

Article : 37

The concerned department at the Agency shall assume taking the procedures of fact-finding and search, as well as of gathering factual materials in the reports referred thereto from the executive manager within a period not exceeding ninety days from the date of referral, and a report shall be drawn up on all the procedures to be taken.

The executive manager shall charge the said department with taking the aforementioned procedures in the cases where the board chairman of the Agency decides taking them.

Article : 38

The Agency's workers who are vested with the quality of law officers may carry out the following procedures after revealing their identity and demonstrating their identification to the concerned party:

1- Reviewing, at any governmental or non-governmental entity, the books and documents, and obtaining the information and data necessary for examining the cases submitted to the Agency;

2- Accessing, during the official working hours, the work places or locations of the persons who are subject to examination, after obtaining a written permission from the executive manager. They may resort to the public authority men when necessary;

3- Taking the procedures of gathering the factual materials necessary for examination and questioning any person concerning his/her commitment of any violation of the Law provisions.

Article : 39

The concerned department, after completing the procedures of fact-finding and search, as well as of gathering factual materials, shall prepare a report of its view and submit it to the executive manager of the Agency.

The executive manager shall raise it to the board of directors, coupled with his view, at the first session following the submission of the report to him.

Article : 40

The board of directors, after considering the report concerning the case brought up before it, may issue a substantiated decision for keeping the case in files, or carrying out more fact-finding and search missions, as well as gathering factual materials by means of the concerned department at the Agency.

Article : 41

The board of the Agency, upon the establishment of a violation of one of the provisions prescribed in articles Nos. (6, 7, 8), shall charge the violator with modifying his/her situations and removing the violation forthwith or within a period to be determined by the board of directors.

The executive manager of the Agency shall notify the violator of this charge by virtue of a registered letter with acknowledgment of receipt.

The board of directors may issue a decision for halting the prohibited practices immediately or after the lapse of the said period without modification of the situations or removal of the violation.

Article : 42

Subject to the provision of article-40 of the present regulations, the board of directors may raise the report concerning the propounded case to the concerned minister or to whoever is delegated by him for taking the procedures of filing the criminal action.

Article : 43

The executive manager of the Agency shall notify the concerned person(s) of the decision reached by the board of directors with regard to the reporting or the propounded case by virtue of a registered letter with acknowledgment of receipt.

Chapter – 3
Receiving the Notifications

Article : 44

The Agency's receipt of notifications from the persons shall be within thirty days from their acquisition of any assets, property rights, usufruct or shares, establishment of unions or mergers, merging or combining the management of two persons or more.

Article : 45

Submitting the notification to the Agency shall be in writing and it shall comprise the following data:

1- Names, nationalities, head offices, and headquarters of activities of the persons submitting the notification, and of the persons of connection;

2- The legal disposition notified, its date and the legal situation ensuing from it;

3- A statement of the licenses and approvals to be obtained;

All documents supporting the said data shall be attached to the notification.