

## **Legislative Power**

### **DEDREE No. 357-2005**

#### **THE NATIONAL CONGRESS,**

**WHEREAS:** In agreement to the Article 339 of the Constitution, monopolies, monopsonies, oligopolies, accumulation of commodities and similar practices in the industrial and mercantile areas are prohibited;

**WHEREAS:** Competition is indispensable to assure the national economic development, the efficient resources allocation and the consumer's welfare;

**WHEREAS:** In agreement to the mandate of the Article 333 of the Constitution, the State's intervention in the Economy will be based on the public and social interest and limited by their recognized economic rights and liberties and this obliges to precise the criteria oriented by the legislation dictated in this subjects, in order to assure the balance and the coexistence of these public interests and private rights;

**WHEREAS:** The existence of conditions for free competition is a warranty of the protection of consumers;

**WHEREAS:** To guarantee the existence of a sufficient competition and to protect it from any attack is a public interest activity;

**WHEREAS:** In order to execute the constitutional mandate and to an effective promotion of competition; it is required to have a substantial legislation to its application and administration,

**THEREFORE,**

#### **DECREES**

The following:

#### **LAW FOR THE DEFENSE AND PROMOTION OF COMPETITION**

## TITLE I

### **OBJECTIVES OF THE LAW**

**Article 1:- Objective:** The present law has as its objective to promote and to protect the free competition exercise in order to procure the efficient functioning of the market and the welfare of the consumers.

## TITLE II

### **CONCEPTS AND DEFINITIONS:**

**Article 2:- CONCEPTS AND DEFINITIONS.** For the purpose of this Law, the following terms will be understood as detailed hereinafter:

- 1) **THE COMMISSION:** The Commission for the Defense and Promotion of the Competition;
- 2) **FREE COMPETITION:** Situation in which there exists the conditions for any economic agent, may this be supplier or demander, to have the complete liberty to participate in the market, and that those who are already in do not have the possibility, individually or in collusion with other participants to impose any condition in the exchange relations that affect the efficient functioning of the market;
- 3) **CONSUMER:** The legal entity or individual, self existing or created by law, private or public that as a final beneficiary, acquires, enjoys or uses the goods and services, receives or is offered information;
- 4) **ECONOMIC COMPETITOR AGENTS:** The economic agents operating in the same relevant market;
- 5) **POTENTIAL ECONOMIC COMPETITOR AGENTS:** The economic agents who, on the basis of realistic criteria, are capable to realize the additional investments or the necessary adaptation expenses in order to be able to participate on the market within a short period of time;
- 6) **MARKET:** Conjunct of facts and relationships that make possible the exchange of goods and services on circumstances determined by supply and demand that fixes the prices and other conditions of commercialization; and,
- 7) **RELEVANT MARKET:** Is defined in relation of the product market and the geographical market. The product market is the addition of the goods and services that consumers consider exchangeable or replaceable because of their characteristics, their price or the use they plan to give to them. The geographical market requires the evaluation of the territorial reach of the zone where the activities of providing goods and services are developed, in which the conditions

for competition are homogenous and can be distinguished from other zones due, in particular, to the sensible difference of the conditions for competition between one zone and the other.

### TITLE III

#### **THE APPLICATION AREA OF VALIDITY OF THE LAW**

**Article 3: PUBLIC ORDER.** The present law is applicable to all the areas of the economic activity, even when these areas are regulated by special laws, regulations or resolutions. The dispositions of the present law are of public order and there cannot be allegation of customs, uses, practices or commercial stipulations against it.

**Article 4:- PERSONS SUBMITTED TO THE LAW.** The provisions herein are binding to every economic agent or their associations, be they natural or juristic person, public administration entities, municipalities, industrial, commercial, professionals, non-profit or for-profit entities or other entities legally constituted or not, that by any means, participate as active subjects on the economic activity inside the Territory of the Republic of Honduras.

Also professional groups legally constituted or not, are considered to be economic agents submitted to the present Law.

Likewise, the provisions herein are binding to those persons whose head office is outside the territory of the Republic of Honduras, when their activities, contracts, agreements, practices, acts or businesses create effects in the national territory.

The exercise of economic activities corresponds fundamentally to the private persons. However, for reasons of public order and social interest, the State may reserve itself the right to exercise some basic industries, exploitations or public interest services and may dictate economic, fiscal and security measures and laws to channel, to stimulate, to orient or to supply the private initiative, based on a rational and planned economic policy.

### TITLE IV

#### **IN REGARDS TO COMPETITION**

#### CHAPTER I

#### **THE PROHIBITED PRACTICES AND CONDUCTS**

**Article 5:- PROHIBITED ANTICOMPETITIVE PRACTICES DUE TO THEIR NATURE.** Verbal or written contracts, agreements, arranged practices, among competitors or potential competitors are prohibited, when their objective or fundamental effect is one of the following:

- 1) Establishing agreements to fix prices, tariffs or discounts;
- 2) Restraining, totally or partially, the production, the distribution, the provision or the commercialization of goods and services;
- 3) Distributing, directly or indirectly the market in territorial areas, clients, provision sectors or supply sources.
- 4) Establishing, agreeing or coordinating positions or agreeing to abstain to participate in biddings, quotations, call for tenders or public auctions.

**Article 6:- JURIDICAL DISSABILITY.** The contracts, agreements, arranged practices, combinations or arrangements prohibited by Article 5 of the present law are null. The economic agents who realize these activities shall be sanctioned according to this law, without prejudice of the corresponding penal or civil responsibility. These economic agents shall be sanctioned even when these contracts, agreements, arranged practices or combinations have not yet produced any effect.

**Article 7:- PROHIBITED ANTICOMPETITIVE PRACTICES DUE TO THEIR EFFECT.** Contracts, agreements, combinations, arrangements or conducts not included in Article 5 of the present law are prohibited when they restrict, diminish, damage, impede or weaken the exercise of free competition in the production, distribution, supply or commercialization of goods and services.

The following anticompetitive practices are prohibited due to their effect:

- 1) Among non competitors, the imposition of restrictions concerning the territory, the volume or the clients, as well as the obligation to not produce or distribute goods and services for a determined period to an economic agent such as a distributor or supplier in order to sell goods or provide services;
- 2) Fixing the prices or other conditions that the economic agent such as a distributor or a supplier has to observe when selling goods or providing services;
- 3) The agreement among economic agents to exert pressure against any other economic agent with the purpose of dissuading him from a determined conduct or obliging him to act on a certain way;
- 4) The subordination of performing a contract, under the condition of accepting supplementary expenses, which have no relation with the subject of the contracts due to their nature or uses of commerce.
- 5) The transaction bounded to the condition of not using, acquiring, selling or providing the goods and services produced, distributed or commercialized by a third person;
- 6) Fixing the prices under the costs to eliminate competitors in a total or partial way or the application of unfair practices;

- 7) Limiting the production, the distribution, or the technological development from an economic agent in prejudice of the other economic agents or consumers;
- 8) Granting favorable conditions, from an economical agent to his buyers with the requirement that his purchases represent a determined volume or percentage of the demand, and;
- 9) Any other act or negotiation that the Commission considers it restricts diminishes, damages, impedes or weakens the process of free competition in the production, distribution or commercialization of goods or services;

By means of regulations or other legal instruments, the Commission will determine and will develop the criteria established on the articles 8 and 9 of the present law for the qualification of the contracts, agreements, combinations, arrangements, or conducts that weakens the process of the free competition.

**Article 8:- SUPPOSAL OF FACT.** The contracts agreements, combinations, arrangements or conducts that are considered to infringe the provisions set forth in the Article 7 of this law, can only be declared prohibited if there is proof that the participation on the affected market by an involved group of economic agents or by one of them, is superior to what is established by the Commission to determine if the conducts of this economic agents are prohibited, the Commission is authorized to establish greater or smaller quotas of participation in the relevant market to respond to the conditions of the market and to the behavior of those involved in it.

**Article 9:- ECONOMIC EFFICIENCY AND THE CONSUMER'S WELFARE.** Contracts, agreements, combinations, arrangements, or conducts that increase the economic efficiency and the welfare of the consumer and compensate the negative effects on the process of free competition do not restrict, diminish, damage, impede or weaken the process of free competition.

Improvements in the conditions of production, distribution, supply, commercialization or consumption of goods and services are considered to be increases of the economic efficiency.

Those invoking the increases of the economic efficiency and the welfare of the consumer as a result of their acts, have to prove it.

**Article 10:- OBTAINING AND FINDING A NOTEWORTHY MARKET PARTICIPATION.** The economical agent who has a significant participation on the market does not infringe the present law, if this position has not been obtained by means of the practices or conducts prohibited by the present law.

## CHAPTER II

### CONCENTRATIONS

**Article 11:- ECONOMIC CONCENTRATIONS.** Concentration shall be understood as the taking or changing of control in one or more corporations by means of shareholder participation, administration control, merger, acquisitions or any other right

on the shares or capital participation or debt titles that causes any type of influence in the shareholder decisions or any other act in virtue of which shares are grouped, social parts, trusts realized by suppliers, clients or any other economic agent.

Associations formed for a determined duration of time in order to develop a determined project are not considered to be concentrations.

**Article 12: - PROHIBITED CONCENTRATIONS.** Concentrations which effects are to restrict, diminish, damage, or impede the free competition are prohibited.

Concentrations that generate increases on the economic efficiency and the welfare of the consumer under the terms of Article 9 herein and compensate the negative effect of the free competition process are compatible with the law and do not restrict, diminish, damage or impede free competition.

**Article 13:- PREVIOUS MANDATORY NOTIFICATION AND PREVIOUS VOLUNTARY VERIFICATION.** Concentrations must be notified to the commission by the economic agents before the effects take place, and may be verified by the commission in agreement to the Articles 54 and 55.

The Commission must define what concentrations shall be verified according to the amount of the actives, participation in the relevant market or the volume of sales.

The omission by any of the economic agents involved related to the previous notification referred on the first paragraph of the present article shall be considered to flaw to the established herein.

**Article 14:- THE EFFECTS OF THE PREVIOUS VERIFICATION IN CASE OF APROVAL.** Concentrations which have been approved by the Commission can not be opposed to on the basis of the verified elements, except when the approval was obtained on the basis of false information provided by the involved economic agents.

**Article 15:- INVESTIGATION.** When a concentration has not been submitted to the previous verification and it is presumed that it restricts, diminishes, damages or impedes the free competition, during a term no longer than three (3) months after the beginning of the concentration or after the date of the acknowledge of its existence, the Commission shall begin ex-officio or by request of parts, an investigation during in which it shall demand the relevant information for the referred investigation.

**Article 16:- THE ANALYSIS OF THE CONCENTRATION: ELEMENTS OF VERIFICATION AND INVESTIGATION.** To determine whether the concentration is in agreement to the law herein, an economical analysis is begun in which the following must be considered:

- 1) The market quota of the participating economic agents and their effects related to the other competitors and buyers of goods and services, and related to other markets and economic agents directly related;

- 2) When it is possible that the concentration allows, promotes or realizes practices or conducts prohibited or the imposition of entry barriers to new economic agents;
- 3) When it is possible that the concentration facilitates the unilateral elevation of prices, without making it possible for the competing agents to act or potentially counteract this power; and,
- 4) The necessity of the concentration as an only option to avoid the exit of the market of productive assets of one of the participating economic agents in the concentration involved.

The Commission can, by means of regulations or resolutions, determine and develop the other criteria for the analysis of economic concentrations.

**Article 17:- MEASURES OF PRECAUTION.** When the Commission has acknowledge that an operation of concentration is being carried out, in which it is presumed it restricts, diminishes, damages or impedes the free competition due to its potential effects, it can order a temporary suspension of the operation until the investigation is concluded.

**Article 18:- DECISIONS ON CONCENTRATIONS.** As a result of a previous investigation of a concentration, the Commission may take a favorable decision, prohibit it or order conditional measures for its approval.

As a result of an ex-officio investigation or by request of parts, the Commission may take a favorable decision, order the deconcentration, or dictate corrective measures based on Article 19 of the law herein.

**Article 19:- CORRECTIVE MEASURES.** The Commission shall order corrective measures in order to adjust a concentration to the law herein. In this case it shall:

- 1) Oblige to divide, to alienate, to sell, or to transfer to third parties not related to the parts involved in the concentration, rights on determined corporal or incorporeal assets, social parts or shares;
- 2) Oblige to modify, transfer or eliminate a determined line of production; and,
- 3) Oblige to modify or eliminate clauses from contracts, agreements, or arrangements celebrated.

Corrective measures that are not directly related to the correction of the effects of the concentration shall not be imposed. Measures adopted have to be in proportion to the pretended correction.

## TITLE V

### **ON THE COMMISSION FOR THE DEFENSE AND PROMOTION OF COMPETITION**

#### CHAPTER I:

##### **GENERAL DISPOSITIONS**

**Article 20:- CREATION.** Create the Commission for the Defense and Promotion of Competition, as an Independent Institution; who has legal status and its own equity, with functional, administrative, technical and budgetary autonomy in its internal regime and independence in the exercise of its functions.

**Article 21:- HEAD OFFICE.** The Commissions head office will be in the capital city of the Republic, being empowered to establish branch offices and dependencies through out the national territory. The Commissions jurisdiction is at national level.

**Article 22:- DIRECTION.** The Superior Direction will be in charge of the Commission and its administration; it is composed by three (3) Commissioners that constitute the plenary session of the Commission.

The Commission shall adopt the resolutions, the regulations and other pertinent dispositions to assure the correct application of this law and its regulation.

#### CHAPTER II

##### **ON THE ORGANIZATION**

**Article 23:- ADMINISTRATION.** The President shall be the legal representation of the Commission, he will summon sessions to confer or revoke powers and to coordinate the activities of the Commission.

**Article 24:- APPOINTMENT.** The three (3) commissioners will be appointed by the National Congress for a period of seven (7) years, selected from a list of three (3) candidates proposed by the organizations and institutions referred on Article 61 of the present law.

In accordance to the order in which the candidates integrating the Commission were elected, the first two (2) shall have the charges of President and Vice President.

**Article 25:- GOVERNMENT FUNCTIONARIES.** Commissioners are full time government functionaries; they carry out their activity in exclusive way, and shall not be able to hold other position or to perform any other professional remunerated or not remunerated activities, except educational ones.

There can not be any juridical action against the members of the Commission, based on the decisions and agreements adopted by them in fulfillment of the law, without previously promoting the administrative contentious action and when this has been



resolved favorably to the pretensions of the actor or plaintiff by means of firm judicial sentence.

Without accomplishing requirement signaled before, no court or tribunal shall continue the actions individually against the Commissioners.

Notwithstanding the mentioned before, the Commissioners will enjoy the benefits existing before a trial foreseen in the Article 78, Attribution 4) of the Tribunals Organization and Attributions Law (Ley de Organización y Atribuciones de los Tribunales).

The legal defense services by juridical action exerted in any time against the Commissioners, based on the decisions and agreements adopted in the fulfillment of their functions, even after leaving their charge, will be under the responsibility of the Commission, with no prejudice to the action of repetition of the State in case of proving felony or blame.

**Article 26:- APPOINTMENT REQUIREMENTS.** To be a Commissioner, it is required:

- 1) To be a Honduran citizen over thirty (30) years;
- 2) To Be in full enjoyment of all citizen rights;
- 3) To not have any penal background;
- 4) To have a diploma in Economics, Law or Business Administration; and,
- 5) To have an experience of at least five (5) years of professional or academic practice.

**Article 27:- INHABILITIES.** The following cannot be appointed as a Commissioner:

- 1) Any person who has pending accounts with the State;
- 2) Any person who has directly or indirectly contracted with the Estate or is concessionary of the Estate;
- 3) Spouses or relatives until the forth degree of cognateness and second of affinity of the President or Vice-president of the Republic, Secretary of State, of the presidents or directors of the decentralized or deconcentrated institutions of the State or of the presidents of other powers of the State, of the Republic General Attorney and associate;
- 4) The shareholders or administrators of the financial system institutions supervised by the National Commission of Banks and Assurance (Comisión Nacional de Banca y Seguros) that have been or are being submitted to a process of forced liquidation or to extraordinary mechanism of capitalization;
- 5) Any legally declared incapable person; and,

- 6) Any sanctioned person for violation or for not accomplishing the present law.

**Article 28:- EXCUSE FOR PERSONAL INTEREST.** When a member of the Commission or her or his spouse has a personal interest in any matter that has to be discussed or resolved by the Commission, or his or her relatives until the fourth degree of cognateness and second of affinity, shall have to excuse himself or herself since the presentation until the conclusion of the matter. He or she must put on record a statement of the retirement.

The Commissioner will be temporarily replaced to constitute a quorum to the sessions of the Commission, in order to make this possible the Commission will appoint one of the functionaries responsible of the technical or administrative units of greater hierarchy in the organization.

When a Commissioner has to be replaced due to a major force reason, illness, or any other reason, the temporary substitution cannot exceed of six (6) months.

If at the end of the six months term the Commissioner cannot reintegrate his duties, the Commission will notify it to the National Congress to proceed to the appointment of the substitute according to the established herein.

**Article 29:- CAUSES FOR REMOVAL.** The members of the Commission will cease their functions due to the following reasons:

- 1) Death;
- 2) Resignation;
- 3) Preventive arrest warrant, substitute measures or criminal declaration;
- 4) Physical or mental incapacity properly verified; and,
- 5) Declared negligence in the accomplishment of its duties.

In the case of cessation of a Commissioner, the Commission will notify the National Congress in a period of ten (10) working days. The National Congress will appoint the new member of the Commission in the term of thirty (30) working days. In the meantime and before the substitute takes charge, the second paragraph of the previous article will be applied. The appointment of the new commissioner will be for the rest of the period the last commissioner had to finish.

**Article 30:- HIRING RESTRICTIONS.** The Commissioner, who ceases in the exercise of its functions, cannot be hired in any way during a period of six (6) months, by the enterprises that have been subject of investigation in the last two (2) years.

**Article 31:- SESSIONS OF THE COMMISSION.** The Commission must summon ordinarily once a week. It will summon extraordinarily when it is necessary. An Internal Regulation will rule its functioning.

A session of the Commission is valid when the totality of the members concurs and the vote is taken by simple majority.

**Article 32:- CONFIDENTIALITY-** The Commissioners, the functionaries, and the employees who disclose information about the matters known by the Commission, the State or third persons, will incur in civil and criminal responsibility.

**Article 33:- TECHNICAL AND ADMINISTRATIVE UNITS.** The Commission will appoint a Secretary who must be elected by it, in addition it will count on administrative and technical units required for the exercise of its functions. The internal organization will be ruled by a Regulation.

### CHAPTER III

#### **ON THE COMMISSION FUNCTIONS**

**Article 34:- FUNCTIONS.** The Commission has the following functions:

- 1) To express opinions or recommendations in the cases it is considered convenient or it is asked for, about the projects of law, regulations, decrees or executive arrangements, resolutions, agreements, arrangements, international treaties and other acts of the Public Administration that are related to the present law;
- 2) To investigate the existence of practices or conducts prohibited by the present law and to take the necessary measures for the cessation of this practices or conducts, applying the necessary sanctions.
- 3) To verify and investigate the concentrations to determine their compatibility with the present law and when it is prohibited, to dictate the measures according to Article 19 of the present law;
- 4) To dictate provisional measures in order to avoid damaging effects of this acts and practices not compatible with the present law;
- 5) To celebrate audiences with the participation of presumed responsible people, witnesses and experts;
- 6) To dictate the dispositions and rules that are pertinent to the application of the present law;
- 7) To disclose in the national territory the subject of the law herein by means of campaigns of information;
- 8) To realize studies related to the structures and the behavior of the market;
- 9) To issue judgments on the matters of its competition, when it is required by the judicial or administrative authorities.

10) To define the mechanisms of internal organization to the functioning of the Commission; and,

11) Other attributions that this law specifies.

**Article 35:- AID.** To the performance of its functions, the Commission will count with the help of the Public Ministry (Ministerio Público), of the State Secretariat in the Office of Security (Secretario de Estado en el Departamento de Seguridad), of the municipal corporations and public and private right institutions. Whoever neglects this disposition, will incur on the corresponding responsibility according to the law.

## TITLE VI

### **ON THE SANCTIONS AND OTHER MEASURE**

**Article 36:- ADMINISTRATIVE SANCTIONS.** The infractions to the rules of the law herein and its regulations must be sanctioned by administrative seizure by the Commission with no prejudice to the corresponding penal or civil actions, according to the procedure anticipated and other applicable dispositions

**Article 37:- SANCTIONING FINES.** The Commission shall impose by means of motivated resolution and considering the criteria of Article 39, a fine by economic agent equivalent to three (3) times the amount of the economic benefit obtained due to practices or conducts prohibited by Article 5 and 7. In case it is not possible to determine the amount of the benefit, the Commission will fix a fine that in any case shall not exceed ten percent (10%) of the gross utility in sales of the last fiscal year.

In case of an ex-post notification of a concentration operation, a lack of delivery or a delay in the delivery of the information solicited by the Commission, the same fine established in Article 41 will be imposed to the violator.

Notwithstanding the imposition of fines according to the present article, the Commission will order the ceasing of the practices or conducts prohibited by the law herein.

The regulation of this law will establish different degrees on the application of these penalties, taking in consideration the gravity of the conduct and the other parameters established by Article 39 of this law.

**Article 38:- RECIDIVISM.** In case of recidivism the Commission will impose the double of the last fine imposed according to Article 35.

**Article 39:- TO DETERMINE THE AMOUNT OF THE FINE.** To determine the amount of the fine that has to be imposed in each case, the Commission will take into count the gravity of the fault, the repeated infractions to the present law, the modality and the reach of the restriction of the free competition or the damage to the consumers, the dimension of the affected market, the duration of the infraction and other similar factors.

**Article 40:- PROVISIONAL MEASURES.** In any moment of the investigation process, when ever considered necessary the Commission can apply provisional measures for the ceasing of the acts that are violating the present law and its regulations, to avoid a serious and an irreparable prejudice to the process of free competition or serious damages to the consumers, as long as the proof exists and is documented in the motivated resolution. The provisional measures adopted, must be proportional with the pretended correction.

Every adopted resolution according to this article, will be applicable during a period determined by the Commission and can be prorogued as long as it is necessary and adequate.

**Article 41:- SUCCESIVE FINES.** The Commission, by means of motivated resolution, can apply successive sanctions to the economic agents and to the associations of economic agents from a Thousand Lempiras (L.1, 000.00) to Fifty Thousand Lempiras (L.50, 000.00) for every day of delay in the accomplishment of the resolution order, until a maximum of thirty (30) calendar days, counted from the date of the notification of the resolution, in order to:

- 1) Put an end to the practices or conducts infringing the dispositions of the present law and its regulations;
- 2) Accomplish the imposed provisional measures and measures of precaution; and,
- 3) Fulfill the corrective measures applicable to an act of economic concentration or the order of a partial or total deconcentration.

**Article 42:- SUMMONINGS.** The Commission will expedite a summoning document to the economic agents, indicating the place, date and motive of the diligence. In case of not attending to the first summoning, the Commission shall impose a fine from Ten Thousand Lempiras (L.10,000.00) to Five Thousand Lempiras (L.5,000.00).

The Commission shall issue a second summoning five (5) calendar days after the breach of the first summoning. In case of not attending to the second one, it will be considered as disobedience and will be sanctioned according to the Article 346 of the Penal Code (Código Penal).

**Article 43:- ADJUSTMENTS DUE TO INFLATION.** To maintain its constant value, the amount of the fines must be adjusted during the first quarter of each year according to the official data of the Consumer Price Indicator (Indice de Precios al Consumidor) from the last year, published by the Central Bank of Honduras (Banco Central de Honduras).

**Article 44:- THE FINE PAYMENT.** When the administrative seizure is used up and when there is a firm declared resolution of paying a fine, it must be paid to the General Treasury of the Republic (Tesorería General de la República) or to an authorized collector in a period no longer than five (5) working days after the date of the resolution. The fines that have not been paid on the established term must draw moratorium interests to the last highest average rate of the banking system, published by the Central Bank of Honduras (Banco Central de Honduras).

If an appealing to the sanction existed or a juridical decision was produced revoking the decision of the Commission because it is judged that the sanction imposed is not proportional to the committed infraction, then the fine must be refunded totally or partially, depending on what is determined by the juridical sentence. In that case, the refunded part must be increased by the moratorium interests to the highest average rate published by the Central Bank of Honduras (Banco Central de Honduras) since the date of the payment.

**Article 45:- APPEALING.** There is the reposition appealing against the resolutions dictated by the Commission. The administrative seizure is used up with this appealing. When the administrative seizure is used up against the decisions of the Commission, the Administrative Contentious seizure is opened

## TITLE VII

### **ON THE ADMINISTRATIVE PROCEDURE**

#### CHAPTER I

#### **ON THE PROCEDURE TO DEMAND INFORMATION**

**Article 46:- SOLICITING INFORMATION.** Using its faculties and to the effect of investigating the behavior of the economic agents of the market, the Commission can solicit the necessary written documents and information indicating the legal basis. The solicitude will be done by means of the available communication resources, directed to the involved person and to the address registered.

The owner and the legal representations of the economic agents are obliged to furnish the solicited information.

If an economic agent does not furnish the solicited information on the term fixed by the Commission or if the information provided is incomplete, the Commission will demand it by means of resolution. In the resolution the documents and the information needed will be specified, an appropriate term will be fixed for its presentation and the sanctions will be indicated according to the next paragraph.

In case the information is not provided or it is incomplete or inexact, deliberately or by negligence, the Commission can impose a fine until Fifty Thousand Lempiras (L.50,000.00 )

**Article 47:- INVESTIGATIONS OR INSPECTIONS IN THE PLACE.** When rational indications of a violation to the dispositions of the present law and its regulations exist, with the appropriate authorization, the functionaries and employees appointed by the Commission shall make investigations in the establishments indicated in this authorization without a previous notification.

In this case, the economic agents involved will be obliged to allow free access to the establishment and to put at the disposition of the investigative commission all the documents to realize the investigation.

**Article 48:- INVESTIGATION OR INSPECTION STATEMENT.** The statement done by the officials and employees of the Commission of the establishments shall have full validity and probative strength to the effects of the resolutions issued by the Commission and must be signed by the natural person or legal representative of the juridical person investigated and by the official or employee realizing the investigation or inspection. If the investigated person refuses or can not sign, it will be noticed in the statement.

## CHAPTER II

### **THE PROCEDURE TO SANCTION PROHIBITED PRACTICES, ACTS AND CONDUCTS.**

**Article 49:- INITIATION OF THE PROCEDURE.** According to Title III of the present law, the procedure to sanction the prohibited practices, acts or conducts will be initiated ex-officio or by request of parts, in which it must include information or the indication to where the pertinent documentation can be found, corroborating the facts denounced.

To initiate the procedure by request of parts, the denouncer must provide the documents with the denouncement, in accordance to Article 58 of the present law.

**Article 50:- PROCEDURE TO SANCTION THE PROHIBITED PRACTICES, ACTS AND CONDUCTS.** To determine if a practice, act or conduct is prohibited, the Commission will follow the following procedure:

- 1) When the circumstantial evidence is sufficient to judge that it is a prohibited practice, act or conduct, the Commission will formulate a document of charges in which it will expose the imputable facts and this will be notified to the legal representatives of the economic agents involved, conceding them a maximal term of thirty (30) working days to appeal it and to propose any proof or other charges;
- 2) If the charges are accepted, the Commission will proceed in relation to the person involved with no other step than the corresponding administrative sanction;
- 3) The Commission will give to the economic agents or to the association that would have solicited in their written observations, the opportunity to develop verbally their points of view, if those would have accredited a provable interest to those effects or if the Commission, proposed to impose a fine or an order to cease;
- 4) The Commission will summon the persons that must be heard. The summoning will be to the economic agents or to the association of economic agents by

means of a certificate that will be addressed to the head office operating in the country. The certificate will contain the motives of the summoning, the place, the day and hour in which they must appear and the legal basis;

- 5) The audiences will be done by the personal of the administrative unit appointed by the Commission to this effects;
- 6) The natural persons summoned will appear by themselves and the juridical entities by means of their legal representatives;
- 7) The summoned persons can be accompanied by their attorney.
- 8) The declarations of each person heard will be signaled in a document which will be confirmed by that person after reading it;
- 9) If the Commission concludes, at the end of the administrative procedure, that a prohibited practice or conduct exists, by means of motivated resolution it must oblige the economic agents or the association of economic agents involved to cease or desist from the practices originating the infraction and apply the corresponding sanctions;
- 10) The resolution shall be notified to the economic agents involved or the association of economic agents and it must be published by means of a bulletin in the two (2) journals of highest circulation in the country; and,
- 11) In any case, the procedure will last more than six (6) months counted from the date of the formulation of the document of charges indicated in numeral 1) of this article.

**Article 51:- ACCEPTING THE CHARGES.** In any moment of the procedure before dictating the resolution, the economic agent or the association of economic agents can solicit to the Commission to consider the charges as accepted and to impose the corresponding fine in which case it will be reduced to a third that it would have been paid in case of not accepting the charges, the mentioned before is not applicable to the cases referred on Article 38 of the present law.

### CHAPTER III

#### **THE PROCEDURE RELATED TO ECONOMIC CONCENTRATIONS**

**Article 52:- INFORMATION.** To make possible a previous verification of an economic concentration, the economic agents involved will provide the Commission the following information:

- 1) The general information about the economic agents notifying the concentration and from those directly participating in it;



- 2) The financial statements of the economic agents from the last fiscal year, certificated by an authorized public accountant ;
- 3) Description of the economic concentration, its objectives and type of operation, copy of the first draft of the project of contract that will regulate the relation;
- 4) Description of the main goods or services produced or provided by each agent, the list of the substitute goods or services of the main economic agents not involved that produce or commercialize them in the territory of the Republic, and the data about their participation in the market; and,
- 5) Any other information determined by the Commission by means of regulation or resolution.

**Article 53:- PROCEDURE FOR PREVIOUS VERIFICATION.** In all the cases that the Commission is required to determine about the project of concentration set forth on Article 13, the following procedure will be followed:

- 1) The economic agent involved, will make the solicitude of the judgment about the concentration project according to the terms of Article 52;
- 2) The Commission may require additional data and documents, under the ten (10) working days following the reception of the solicitude; and,
- 3) Starting from the date of reception of the solicitude or in the case that additional information or data had been required, starting from the date the Commission satisfactorily receives the additional data and documents, the Commission has Forty Five (45) working days to emit the resolution; if this period expires without emitting the resolution, it will be understood the concentration is approved and it can be done.

**Article 54:- PROHIBITION, CORRECTIVE AND DECONCENTRATED MEASURES.** In case the Commission prohibits an economic concentration and dictates corrective measures, it must be done by means of motivated resolution, under the following rules:

- 1) In case the Commission determines the existence of an illicit situation, it must notify it on written paper within the Forty Five (45) working days available to emit its resolution. In the notification there will be included, if they exist, the corresponding corrective measures. A term no longer than Fifteen (15) working days, will be conceded to the economic agent, to present in written paper its observations and proposals to the adjustment of the present law;
- 2) When the document containing the observations and proposals is received, the Commission will dispose of Fifteen (15) working days starting from the reception of this document, to emit the definitive resolution; and,
- 3) Despite what is set forth in numeral 2) of the present article, the Commission may prohibit the concentration or impose corrective measures by means of resolution, if the investigated concentration was of such a nature that an

immediate intervention would be appropriate to avoid an important deterioration to the process of free competition.

#### CHAPTER IV

##### **ON THE PROCEDURE RELATED TO PROVISIONAL MEASURES**

###### **Article 55:- THE PROCEDURE TO DICTATE PROVISIONAL MEASURES.**

The Commission may dictate provisional measures under the following rules:

- 1) Before taking provisional measures, the intention of the Commission to dictate such measures must be notified to the economic agent of the presumed violation on a written notification; conceding a period of ten (10) working days to present its discharges in written.
- 2) The notification will be delivered to the legal representatives of the economic agent involved, to its attorney or to its manager. If this is not followed, it will be communicated by means of a bulletin published in a journal of national circulation; and,
- 3) In any case, provisional measures will be ordered by means of motivated resolution that must be notified to the economic agents involved.

#### CHAPTER V

##### **PUBLISHING REGIME**

**Article 56:- PUBLICATION.** Once the resolutions are firm, the Commission must publish them by the most convenient means.

Likewise, when the Commission esteems that the resolutions, the opinions or the recommendations are of general interest, they may be published according to Articles 32 and 37 and the adopted measures of precaution and provisional measures according to Articles 17 and 40.

#### TITLE VIII

##### **FINAL DISPOSITIONS**

#### CHAPTER I

##### **GENERAL DISPOSITIONS**

**Article 57:- PRESCRIPTION.** The actions to impose fines and to exercise the other attributions of the Commission prescribe:

- 1) In two (2) years in order to impose fines, and,

- 2) In five (5) years to exercise the actions derived from the dispositions of the present law.

The term of prescription will start from the day the violation is committed. However, regarding the continuous or successive infractions, the prescription will start from the day the prohibited conduct ceased.

The prescription related to the imposition of sanctioning fines or successive fines, will be interrupted only one time, by any act of the Commission destined to the investigation of the corresponding violation.

**Article 58:- DAMAGES AND PREJUDICES.** In every case of transgression of the prohibitions included in the present law and its regulations, the affected people may, by means of civil action, reclaim damages and prejudices.

The resolutions of the Commission, as well as the Sentences of the Administrative Contentious Tribunals determining, in a definitive way, that an economic agent has transgressed one of the prohibitions included in the present law, will be the proof against this economic agent in the processes third persons start in order to obtain an indemnity.

**Article 59:- RULES FOR THE DEVELOPMENT.** The Commission may adopt all the pertinent measures to the application of the present law.

## CHAPTER II

### **ENTRANCE INTO FORCE AND TRANSITORY DISPOSITIONS**

**Article 60:- ABOLISHMENTS.** The present law abolishes:

- 1) The Articles 422, 423, 424 and 425-III (a) of the Code of Commerce; and,
- 2) Every other legal dispositions opposing to what is set forth in the present law.

**Article 61:- SELECTION AND DURATION OF THE COMMISSIONERS.** The established by Article 24 of the present law, will be in force according to the following system:

The list of three candidates the Congress will review and select, coming from the following Organizations or Institutions:

- 1) Three (3) candidates proposed by the Honduran Counsel for the Private Enterprise (Consejo Hondureño de la Empresa Privada (COHEP));
- 2) Three (3) candidates proposed by the Forum of National Convergence (Foro Nacional de Convergencia (FONAC));

- 3) Three (3) candidates proposed by the Competitive National Commission (Comisión Nacional de Competitividad);
- 4) Three (3) candidates proposed by the Executive Power; and,
- 5) Three (3) candidates proposed by the Professional College of University Professionals (Federación de Colegios Profesionales Universitarios de Honduras (FECOPRUH)).

The election of the three (3) candidates by the National Congress will be by qualified majority voting of two third parts, for a period of seven (7) years.

**Article 62:- EFFECTS IN TIME.** The dispositions of the present law related to the verification and investigation of economic concentrations will only be applied to the concentrations that are being realized or that will occur after the entering into force of the present law.

During the six (6) months following the entering into force of the law herein, the prohibitions of Title IV, Chapter I of the present law, will not be applicable to the contracts, agreements, practices, combinations, arrangements or conducts that are already functioning at the time of the entering into force of the present law. In case these continue functioning after the term of six (6) months, this law will be entirely applied to these since the beginning of their entrance into force.

**Article 63:- PATRIMONY AND BUDGET.** The Commission will formulate the budget and it will be approved by the Executive Power and then it will go to the National Congress to its discussion and final approval, by means of the corresponding legal way.

**Article 64:- APPOINTMENT OF THE COMMISSIONERS.** According to the Articles 24 and 61 of the present law, the National Congress will appoint the first Commission for the Defense and Promotion of the Competition during the first following thirty (30) days of entrance into force of the law. The appointed commissioners will have a term of no longer than one hundred and twenty (120) calendar days since the date of the oath to put into operation the operative functioning of the Commission.

**Article 65:- ENTRANCE INTO FORCE OF THE LAW.** The present decree will enter into force since the day of the publishing in the La Gaceta Official Journal (Official Journal La Gaceta).

Given in the city of Tegucigalpa, Central District Municipality in the Sessions Hall of the National Congress the sixteenth day of December of the year two thousand and five.

**POFIRIO LOBO SOSA**

PRESIDENT

**JUAN ORLANDO HERNÁNDEZ A.**

SECRETARY

**GILLIAM GUIFARRO MONTES DE OCA**

SECRETARY

To the executive power

To be executed.

Tegucigalpa, M.D.C., December 29<sup>th</sup> 2005.

**RICARDO MADURO**

PRESIDENT OF THE REPUBLIC

**IRVING GUERRERO**

SECRETARY OF STATE IN THE INDUSTRY AND COMMERCE DISPATCH