

# **COUNCIL OF MINISTERS**

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**Decree Law n° 53/2003**

**Of 24 November 2003**

**Law on Competition**

The growing dismantling of the administrative barriers and the installation of an economy, whose operation is ever more regulated by market instruments, allied to the growing liberalization of the national and international economies, on the one hand and the need to safeguard the interest of the consumers, on the other hand, require the conception and the adoption of legislative measures that promote competition in the market, thus enabling its operation on a sound bases.

The safeguard of sound competition among the operators in the market, the repression of restrictive practices from competition and the promotion of fair competition, are the principal objectives foreseen in this law.

On the other hand, to be efficient, the competition policy requires follow-up and control instruments, to define and ensure effective compliance of the rules of competition in the repression of restrictive practices of the same.

Although it is recent, Decree-Law 2/99, of 1 February, which establishes the rules of competition, requires a readjustment and improvement in some aspects, in order to face up to the growing level of competition in the national market, particularly in the latter years.

Under these terms,

Having the Chambers of Commerce and the commercial associations been heard, and

In the use of faculties conferred by subparagraph a) of n° 2, article 203 of the Constitution, the Government decrees the following:

## **CHAPTER I** **Competition rules**

### **SECTION I** **General provisions**

#### **Article 1** **Ambit**

1. This diploma applies to all the economic activities, whether with a permanent or an occasional character, in the private, public or cooperative sectors.

2. Except in the cases where the Government of Cape Verde might determine otherwise, this law applies to the practices that restrict competition that occur in the national territory or whose effects are or may be felt therein.
3. The restrictions resulting from special legislation are exempted from the provisions of this diploma.

## **SECTION II**

### **Prohibited practices**

#### **Article 2**

#### **Accords, concerted practices and decisions from associations**

1. Accords and concerted practices between enterprises and the decisions of the associations of enterprises, regardless of the form in which they are presented, are prohibited, if their object or effect is to impede, distort or restrict competition, in the whole or in part of the national market, namely those that translate into:
  - a) Directly or indirectly fixing the purchase and sale prices or interfere in its determination by the free market play, artificially inducing either it to go higher or lower;
  - b) Directly or indirectly fixing other conditions for the transactions carried out in the same or in different stages of the economic process;
  - c) Limiting or controlling, production, distribution or technical development and investments;
  - d) Dividing the market or supply sources;
  - e) Systematically or occasionally applying discriminatory conditions of price or others relatively to equivalent situations;
  - f) Directly or indirectly reusing the purchase or sale of goods or the rendering of services;
  - g) Subordinate contracts celebration to accepting supplementary obligations that, by their nature or according to their commercial uses, have no connection with the object of these contracts.
2. Except in the cases where it is justified, under the terms of article 5, the agreements or decisions prohibited by this article are null.

#### **Article 3**

#### **Abuse of dominant position**

1. It is prohibited for one or more enterprises to abusively explore a dominant position in the national market or in a substantial part of the same, for the purpose of distorting or restricting competition.

2. The following are considered dominant positions relatively to the market of a specific good or service:
  - b) An enterprise that operates in a market in which it does not have significant competition or is preponderant relative to its competitors;
  - c) Two or more enterprises act concertedly in a market, in which they have no significant competition or are preponderant relative to third parties.
3. In each concrete case, without prejudice to the weight of other factors relative to the enterprises and the market, it is presumed that:
  - a) An enterprise that has a market share equal to or greater than 30%, for a particular good or service, is in the condition described in subparagraph a).
  - b) The enterprises that hold in the whole of the national market of a specific good or service namely,
    - (i) A share greater than 50% if three enterprises or less, or
    - (ii) A share greater than 65%, if five enterprises or less,are in the condition described in subparagraph b) of the preceding number.
4. The adoption of any of the behaviors referred to in n° 1 of article 2 may be considered abusive.

#### **Article 4** **Abuse of economic dependence**

The abusive exploitation by one or more enterprises, of the state of economic dependence in which a supplier or client may find themselves in, relatively to the one or more enterprises, because there is no alternative available, is prohibited when such action translates into the adoption of any of the behaviors described in n° 1 of article 2.

#### **Article 5** **Economic balance**

Actions that restrict competition may be considered justifiable when they contribute to improve the production or the distribution of goods and services or to promote technical or economic development as long as, cumulatively:

- a) They reserve to the users of these goods and services an equitable part of the benefits resulting therefrom;
- b) They do not impose on the enterprises in question any restrictions that are not indispensable to attain these objectives;

- c) They do not give to these enterprises the opportunity to eliminate the competition in the goods and services market in question.
2. The practices foreseen in article 2 may be the object of prior evaluation by the Competition Council, in accordance with a process to be established by decree from the Government member responsible for trade.

## **Article 6**

### **Notion of enterprise**

1. For the purpose of application of the provisions of this section, any physical or moral person who, in durable fashion pursues an economic objective is considered an enterprise.
2. The group of enterprises that, although juridically distinct, maintain between them interdependence or subordination ties ensuing from the rights or powers enumerated in nº 2 of article 9, is considered a single enterprise.

## **SECTION III**

### **Grouping of enterprises**

## **Article 7**

### **Prior notification**

1. The enterprise grouping operations that fulfill one of the following requisites are subject to prior notification:
  - a) Creation or increase in its share of the national market to over 30% for a specific good or service, or in a substantial part of same, as a consequence of the grouping operation;
  - b) Realization by the group of enterprises involved in the grouping operation of a business volume greater than one billion CVE, in Cape Verde, in the last exercise, after taxes directly related with the business volume.
2. The provisions of this article do not apply to credit and parabanking institutions or to the insurance companies.
3. Prior notification must be made before concluding the juridical businesses necessary to grouping process and before the announcement of any public offer of acquisition.
4. Until the express or tacit approval of the grouping, the juridical businesses celebrated with the intent to create it have no effect.

## **Article 8**

### **Market share and business volume**

1. To calculate the market share and business volume described in the preceding article, the business volume must be taken into account of:

- a) The enterprises participating in the grouping;
  - b) The enterprises that directly or indirectly dispose of:
    - (i) A monetary participation in the capital;
    - (ii) More than half the votes;
    - (iii) The possibility to designate more than half the members of the administration and oversight entity;
    - (iv) The power to manage the businesses of the enterprise;
  - c) Of the enterprises in which one enterprise referred to in subparagraph c) disposes of the rights or powers enumerated in subparagraph b);
  - d) Of the enterprises in which the enterprise referred to in subparagraph c) dispose of the rights or powers enumerated in subparagraph b);
  - e) Of the enterprises in which the various enterprises referred to in subparagraphs a) to d) dispose jointly of the rights or powers enumerated in subparagraph b).
2. In derogation of the provisions of the preceding number, if the grouping operation consists in the acquisition of part or parts of an enterprise or parts of the group of enterprises, the volume of business to be considered relatively to the grantor or grantors shall be that of the enterprise or enterprises, or parcels thereof, that is object of the transaction.
3. The volume of business referred to in subparagraph b) of number 1 of the preceding article consists in the values of the products sold and the services rendered to enterprises and consumers in the Capeverdean territory, but it does not include transactions made between the enterprises referred to in n° 1.

## **Article 9**

### **Grouping of enterprises**

1. A grouping of enterprises is said to have occurred:
- a) When there is a merger of two previously independent enterprises;
  - b) When one or more persons who already have control over at least one enterprise, or in the case of one or more enterprises, directly or indirectly acquire control of the whole or parts of one or of various other enterprises;
  - c) When two or more enterprises constitute one common enterprise, as long as the latter corresponds to one autonomous economic entity of a lasting character and does not have for object or as effect the coordination of the competition behavior between the founding enterprises or between the latter and the common enterprise.
2. For the purposes of the provisions of the preceding number, the control ensues from any act, independently of the form the latter assumes, that implies the

possibility of exercising isolatedly or jointly, and taking in consideration the circumstances of fact and of law, a determinant influence over the activities of an enterprise, namely:

- a) Acquisition of the whole or part of the capital stock;
  - b) Acquisition of property rights, or use or fruition over the whole or part of the assets of an enterprise;
  - c) The acquisition of rights or the celebration of contracts that confer a preponderant action in the composition or in the deliberations or the organs of the enterprise.
3. The following is not considered a grouping of enterprises:
- a) The acquisition of participations in the framework of a special process to recover the enterprise;
  - b) The acquisition of participations to guarantee or to satisfy credit requisites.

#### **Article 10** **Prohibition of the grouping**

- 1. When not justifiable under the terms of the number that follows, grouping operations of enterprises subject to prior notification is prohibited if they strengthen a dominant position in the national market of a specific good or service or in a substantial part of the same, susceptible of impeding, distorting or restricting competition.
- 2. The grouping operations referred to in the preceding number may be authorized if:
  - a) The presumptions of article 5 are verified;
  - b) The grouping operation significantly strengthens the international competitiveness of the participating enterprises.

### **SECTION IV** **State enterprises**

#### **Article 11** **State support**

- 1. Support to the enterprises by the State or by any other public entity may not significantly restrict or affect competition in the whole or in part of the market.
- 2. At the request of any interested party, the Government member responsible for Trade may examine the supports referred to in the preceding number so as to propose to the competent Government member the measures conducive to the maintenance or reestablishment of the competition.

3. For the purpose of the provisions of this article, the following are not considered:
  - a) The compensatory indemnities, regardless of the form they assume, paid by the State as remuneration for public services rendered;
  - b) The benefits granted under specific programs approved by the State.

## **CHAPTER II**

### **Agencies for the defense of competition**

#### **Article 12**

#### **General Directorate of Trade**

1. It behooves the General Directorate of Trade:
  - a) To identify the practices susceptible of infringing this law, proceed to the documentation of the respective legal processes and strive for the compliance of the decisions proffered on them;
  - b) Proceed, relatively to the grouping operations subject to notification, to document the respective proceedings, under the terms of this law;
  - c) Carry out, upon solicitation by the Competition Council, the studies necessary to fundament the opinion referred to in No. 2 of article 13;
  - d) Proceed to sectoral studies, in matters of competition, that prove to be necessary;
  - e) Propose the measures that are deemed appropriate with a view the good operation of the competition;
  - f) Apply fines, whenever competence to do so is expressly attributed to it in this law.
2. Without prejudice to the Sections I and II of Chapter III, in the exercise of the competences conferred by the preceding number the General Directorate of Trade may solicit to any enterprise or association, as well as the entities with which they have commercial, financial and other connections, the information and documents necessary, fixing, to that end, the deadlines it deems necessary or convenient.

3. The General Directorate of Commerce may further solicit to any central or local administrative service, the information deemed necessary to carry out its attributions.

### **Article 13**

#### **Competition Council**

1. It behooves the Competition Council:

- a) To decide on the cases pertaining to the practices that restrict competition, prohibited by this law;
- b) Formulate opinions relative to grouping operations subject to prior notification, at the request of the Government member responsible for trade;
- c) Pronounce on the competition issues that the Government member responsible for trade decides to submit to it;
- d) Propose to the Government member responsible for trade guidelines on the various domains in which this law applies;
- e) Participate in activities developed by international organizations and institutions that pertain to its competences;
- f) Apply fines, whenever such competence is legally attributed to it.

2. To formulate the opinions referred to in subparagraph b) for the preceding number, the Competition Council may solicit adequate studies to the General Directorate of Trade.

3. The Competition Council shall present to the Government member responsible for trade an annual activity report, which will be published in the *Official Bulletin*, and to which shall be annexed all the decisions it proffered.

### **Article 14**

#### **Composition of the Competition Council**

1. The Competition Council is constituted by one president and four Council Members, appointed by dispatch of the Prime Minister, under proposals of the Government members responsible respectively for Justice and for Trade.

2. The president is a jurist of recognized merit, appointed for a renewable three-year period.

3. The Council Members are designated taking into account their recognized competence in matters of competition and aptness to discharge the respective function.

4. The President of the Competition Council may, whenever it deems so necessary, invite to participate in the meetings, without the right to vote, individualities with



special competence in the matters to be dealt with or representatives of the public Administration services or other individuals with relevant interest in those matters.

5. Without prejudice to the provisions of the preceding number, whenever the matter to be dealt with have special relevance in matters of consumers defense, the President may convoke a representative of the consumer's defense Association to participate in the meetings.

### **Article 15**

#### **Reimbursement of per diem**

3. The members of the Competition Council shall receive a monthly allowance whose amount shall be fixed by joint dispatch of the Government members responsible for finances and trade, respectively, cumulative with any remuneration, under the terms of the legislation in effect.
4. The individualities that participate in the meetings of the Council under the provisions of the numbers 4 and 5 of the preceding article shall be entitled to presence voucher and per diem under the terms of the legislation in effect.

### **Article 16**

#### **Expenses**

The operation expenses of the Competition Council shall be supported by funds attributed to that purpose, in the budget of the Government department responsible for trade.

### **Article 17**

#### **Support**

1. The General Directorate of Trade shall provide to the Council the administrative support the Council may need to fully carry out its functions.
2. The Government member responsible for trade shall designate, under proposal of the Competition Council President, the functionaries of the Ministry that will be especially assigned to that Council, one of which, belonging to the superior technical career and preferentially with a License Degree in Law, shall discharge the functions of secretary of the Competition Council.

### **Article 18**

#### **Internal Regulation**

It behooves the Competition Council to elaborate and alter its internal regulation, which shall be published in the *Official Bulletin*, upon approval by the Government member responsible for trade.

**Article 19**  
**Duty to secrecy**

1. In the exercise of its competences, the General Directorate of Trade shall keep the most rigorous secrecy and shall observe the rules of confidentiality to which it is committed.
2. The members of the Competition Council and the individualities alluded to in No. 4 and 5 of article 14 are subject to the rules of confidentiality applicable to the Government's civil service employees regarding the facts that may come to their knowledge in the exercise of their functions.

**Article 20**  
**Impediments**

The members of the Competition Council are subject to the impediments and suspicions applicable to judges.

**CHAPTER III**  
**Cases**

**SECTION I**  
**Cases pertaining to prohibited practices**

**Article 21**  
**Applicable norms**

Cases due to infraction of the provisions of articles 2, 3, and 4 are governed by the provisions of this law and, subsidiarily, by the contra ordination juridical regime.

**Article 22**  
**Knowledge of infraction**

1. Whenever the General Directorate of Trade has knowledge, from any source, of eventual practices prohibited by articles 2, 3 and 4, it should proceed to the identification of these practices and as soon as it has indication that they exist, it should organize and initiate its respective cases.
1. All services of the central and local administration and the public institutes have the duty to report to the entity referred to in the preceding number the facts they may be aware of that are susceptible of being qualified as restrictive competitive practices.

**Article 23**  
**Competence to document the case**

Except for the restrictions foreseen in this law, in the ambit of its competence to document cases, the General Directorate of Trade enjoys the same rights and is submitted to the same duties of the criminal police agencies and can, specifically:

- a) Inquire to the legal representatives of the involved enterprise associations, as well as solicit from them, documents and other information it deems convenient or necessary to clarify the facts under the terms of the law;
  - b) Inquire to the legal representatives of other enterprises or associations and of any other persons whose declaration it considers pertinent, as well as solicit from them documents and other information, under the terms of the law;
  - c) Proceed, in the installations of the enterprises or associations involved, to a search, exam and collection of copies or extracts from writs and other documentation that are reserved or not to free access by the public, whenever such diligences are deemed necessary to obtain proof, under the terms of the law;
  - d) Require any other services of the Public Administration, including agencies of the criminal police, through representatives of the ministerial offices, the collaboration deemed necessary to capably discharge its functions.
2. The diligences foreseen in subparagraph c) of the preceding number require a dispatch from the judiciary authority who authorizes their execution, previously solicited by the highest administrative entity responsible for competition in a duly fundamented request. The decision should be preferred within forty-eight hours.
3. The functionaries who, on the outside, carry out the diligences foreseen in the subparagraphs a) to c) of No. 1, should carry with them:
- a) In the cases of subparagraphs a) and b), a credential emitted by the General Director of Trade, which will indicate the objective of the diligence;
  - b) In the case of subparagraph c), of the credential alluded to in the preceding subparagraph and of the dispatch foreseen in No. 2.
4. The functionaries alluded to in the preceding number may solicit the intervention of the police authorities, if such is deemed necessary.

## **Article 24**

### **Suspension of the prohibited practices**

1. At any time while documenting the case, and immediately after the investigation has indicated that the practice upon which the case incides is gravely harmful to the social end economic development or of the interest of the economic operators and the consumers, the Competition Council may, under fundamented proposal of the documenting entity, order preventively the immediate suspension or modification of the referred practice.
2. The measures foreseen in this article shall be in effect for a time not greater than 90 days, and may be prorogued once only, for an equal period.
3. Whenever the practices of credit and parabanking institutions and insurance companies are in question the Competition Council shall solicit the opinion of the

Bank of Cape Verde, about the institution upon which the case incides. The opinion is to be emitted within seven working days.

## **Article 25**

### **Auditing**

1. In the ambit of the documenting, the General Directorate of Trade shall to verbal or written audiences with the accused enterprise or association of enterprises so that the latter may pronounce themselves on the issues that are pertinent to the decision and on the proof produced and solicit the complementary diligences of proof they consider convenient.
2. During the audience referred to in the preceding number, he General Directorate of Trade shall protect the interests of the enterprises by not divulging their business secrets.
3. The General Directorate of Trade may refuse to carry out complementary diligences of proof whenever the relevance of the proof required is irrelevant and its purpose simply dilatory.
4. After the audiences referred to in No.1, the General Directorate of Trade may, ex-officio, proceed to complementary diligences of proof as long as he assures of the principle of the contradictory.

## **Article 26**

### **Conclusion of the documenting**

1. Having concluded the documenting, the General Directorate of Trade shall elaborate a final report and remit the case to the Competition Council for a decision.
2. Whenever it considers so necessary, the Competition Council may solicit that the General Directorate of Trade carry out complementary documenting diligences, or it will carry them out itself.
3. If the accused enterprises are insurance, credit or parabanking institutions or enterprise associations thereof, the Competition Council shall solicit the respective opinion from the Bank of Cape Verde, to be emitted within seven workdays.

## **Article 27**

### **Decisions of the Competition Council**

1. In its decision, the Competition Council may:
  - a) Order that the process be archived;
  - b) Declare the existence of a competition restrictive practice and, if such is the case, order that the infractor adopt the measures indispensable to cease the practice or the effects thereof within the deadline indicated to it;
  - c) Apply the fines authorized under No.2 of article 27.

2. The Competition Council shall order the infractor to publish its decision in the *Official Bulletin* and in a newspaper with nation-wide circulation.
3. The Competition Council shall send to the Government member responsible for trade and to the General Directorate of Trade a copy of all the decisions made under the terms of n° 1.

## **Article 28**

### **Appeal**

1. The decisions of the Competition Council may be appealed to the Judicial Court of the Praia District.
2. The appeal foreseen in the preceding number has a merely devolving effect, except in what pertains to the application of fines and the publication determined by n° 2 of the preceding article.

## **SECTION II**

### **Procedures in the matter of control Of enterprise groupings**

## **Article 29**

### **Applicable norms**

The provisions of this law and of complementary legislation shall govern the procedure in the matter of control of the groupings of enterprises and, subsidiarily, by the Law that establishes the basis of administrative contracts juridical regime.

## **Article 30**

### **Presentation of the notification**

1. The prior notification of the enterprise grouping operations foreseen in n° 1 of article 7 shall be addressed to the General Directorate of Trade and is presented:
  - a) In the event of a merger or constitution of a common control, by the group of participating enterprises;
  - e) In remaining cases, by the enterprise or by the entities that intend to acquire control of the group or of parts of one or more enterprises.
2. The notifications should contain the following information:
  - a) The identification of the individual or collective persons that participate in the grouping operation;
  - b) Nature and juridical form of the grouping;
  - c) Nature of the goods or services produced;

- d) List of the enterprises that maintain interdependence or subordination ties with the participants ensuing from the rights or powers enumerated in subparagraph b) of No. 1 article 8;
- e) Market share as a consequence of the grouping operation and basis for determining it;
- f) Business volume of the participating enterprises in Cape Verde, as well as from those referred to in No. 1 of article 8, relatively to the last exercise;
- g) Accounting report of the participating enterprises relatively to the last three exercises;
- h) Disclosure, if such is the case, of the information that the authors of the notification consider relevant for the investigation of the conditions enunciated in subparagraphs No 2 of article 10.

## **Article 32**

### **Tramits**

1. Within 30 days, counting from the date the notification is received, upon having documented the respective procedure, the General Directorate of Trade shall remit the case file to the Government member responsible for trade.
2. If, during the documenting process, the documents contained in the notification prove to be incomplete, in the light of the provisions of No. 2 of the preceding article, or yet, if supplying additional elements turns out to be deemed convenient, the General Directorate of Trade shall communicate such facts to the authors of the notification and will fix for them a reasonable deadline to complete, correct or supply the elements.
3. Without prejudice to the provisions of sub-paragraph d) of No3 of article 37, similar procedure shall be adopted if false elements were furnished at the time of the notification.
4. The communication foreseen in No. 2 suspends the deadline foreseen in No. 1 of this article, effective on the day following that in which the notification was sent, and ends on the day the solicited elements are received by the General Directorate of Trade.
5. In the course of the documenting, the General Directorate of Trade may solicit from any other enterprises or associations of enterprises all the information it considers convenient in the deadlines it considers reasonable.
6. Up to ten days before the end of the deadline referred to in No. 1, the General Directorate of Trade shall proceed to the written audience of the authors of the notification.

7. Complementary diligences of proof may be solicited during the written audience by the authors of the notification, and carrying it out implies the suspension of the deadline foreseen in No. 1.
8. The suspension foreseen in the preceding number begins on the day following that of the reception by the General Directorate of Trade of the request for complementary diligences and ends on the day such diligences are concluded.
9. The provisions of the preceding number applies with the necessary adaptations and without prejudice to the provisions of subparagraph c) of No.3 article 37, to the grouping operations whose execution the General Directorate of Trade has knowledge of and that have not been the object of prior notification. In this case, the deadline is 90 days counting from the date of the ex-officio beginning of the documenting process fixed in No. 1.

## **Article 32**

### **Communication or tacit authorization**

1. Within 30 days, counting from the date the General Directorate of Trade receives the notification foreseen in No.1 of article 7, if the Government member responsible for trade determines that the grouping operation in question is susceptible of affecting competition negatively, in the light of the criteria defined in No.1 of article 10, it will remit the case to the Competition Council for an opinion. On the same date, it should communicate such fact to the authors of the notification.
2. The absence of the communication foreseen in the final part of the preceding number, within the established deadline, will be the same as a decision not to oppose the grouping operation.
3. The days in which the deadline for documenting are suspended by reason of the provisions of Nos. 4 and 8 of the preceding article shall not be included in counting the deadline referred to in No.1.

## **Article 33**

### **Opinion of the Competition Council**

Within 30 days, counting from the date the Competition Council receives the case file, the same shall return it to the Government member responsible for trade, accompanied by an opinion which:

- a) Shall evaluate if the grouping operation is susceptible of negatively affecting competition under the terms defined in No.1 of article 10;
- b) Shall ponder from the verification, in the specific case, the conditions foreseen in No.2 of article 10.

## **Article 34**

### **Decision**

1. The decisions regarding the grouping operations is of the competence of the Government member responsible for trade, who may:
  - a) Not oppose to the grouping operation;
  - b) Not oppose to the grouping operation, by imposing adequate conditions and obligations in order to maintain an effective competition;
  - c) Prohibit the grouping operation, ordering, should the same have already been accomplished, adequate measures to establish an effective competition, namely the separation of the enterprises or of the grouped assets or the ceasing of the control.
2. The decisions foresee in subparagraphs b) and c) of the preceding number shall be in the form of a joint dispatch of the Government members responsible, respectively, for trade and for the economic activities affected by the grouping.
3. The juridical business related to the grouping are nulled to the extent that they accomplish operations condemned by a decision that has condemned the grouping, that has imposed conditions to its materialization or that has ordered adequate measures to reestablish effective competition.

## **Article 35**

### **Appeal**

The decisions foreseen in subparagraphs b) and c) of N0.1 of the preceding article can be appealed litigiously to the Supreme Court of Justice.

## **Article 36**

### **Special proceeding**

1. Without prejudice to the application of the corresponding sanctions whenever it is verified that a decision not to oppose a grouping operation is fundamented on false information pertaining to circumstances essential to the decision, the General Directorate of Trade shall initiate an *ex-officio* proceeding with a view to the application of the measures foresee in subparagraph c) of No.1 of article 34.
2. To the proceedings referred to in the preceding number, the procedure of article 31 and 34 are applied, with the necessary adaptations.



## **CHAPTER IV**

### **Infractions and penalties**

#### **Article 37**

#### **Contra ordinations**

1. The infractions to the norms described in this law constitute contra-ordination punishable with fine under the terms of the numbers that follow.
2. Any of the restrictive behaviors described in articles 2, 3, and 4 constitute contra-ordinations punishable by fines of ECV 50,000\$00 to ECV 75,000,000\$00.
3. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 40.000.000\$00:
  - a) Non-compliance with an order issued by the Competition Council under n° 1 of article 24;
  - b) Non-compliance with the decisions referred to in sub-paragraphs b) and c) of n°1 of article 34;
  - c) Non-notification of a grouping operation subject to prior notification under the terms of n° 1, article 7;
  - d) Providing false information on the notification presented under n° 1 of article 7.
  - e) Providing false information in response to a request elaborated under n° 2 of article 31 or not supplying the information.
4. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 5.000.000\$00:
  - a) Opposition to the diligences foreseen in No. 1 of article 23;
  - b) Providing false declarations or information in response to a request elaborated under subparagraph b) of No. 1, article 23 or of No. 5, article 31.
5. The following constitute contra-ordination punishable by fines of ECV 50,000\$00 to ECV 2.500.000\$00:
  - a) Providing false declarations or information in response to a request elaborated under No.3, article 12 or refusing to provide the information
  - b) Non-observance of a publication order emanated from the Competition Council under No.2 of article 27.
6. Non-observance by the infractor of an order foreseen in sub-paragraph b) of No.1, article 27 implies the initiation of a new case with a view to the application of the fines foreseen in No. 2 of this article.

7. The fine foreseen in subparagraph b) of No.5 shall always be greater than the cost of publication, which shall be effected by the Office of the Government member responsible for trade.
8. Negligence is punishable.
9. When the infractor is a singular person, the amounts foreseen in No.2 and 5 shall be reduced by half.

**Article 38**  
**Competence to apply the fines**

Except in the application of the fines referred to in No.2, in subparagraph a) of nº 3 and subparagraph b) of No. 5 of the preceding article, which is of the competence of the Competition Council, the competence to apply the fines goes to the General Directorate of Trade.

**CHAPTER V**  
**Final dispositions**

**Article 39**  
**Revocation**

Decree-Law 2/99, of 1 February, is hereby revoked.

**Article 40**  
**Effective Date**

This law goes into effect 60 days after its publication

Reviewed and approved by the Council of Ministers

*José Maria Neves, Avelino Bonifácio Fernandes Lopes*

Promulgated on 12 November 2003

Publish it.

The President of the Republic, PEDRO VARONA RODRIGUES PIRES

Referended on 12 November 2003

The Prime Minister

*José Maria Pereira Neves*