

**Decree-Law No. 371/93
of 29 October 1993
on protection and promotion of competition**

After nine years in force, Decree-Law No. 422/83 of 3 December 1993 has in general terms achieved the objectives it provided for when published. It now requires amendment to accommodate it better to the new national and international context and to enable its objectives to be implemented more effectively, thereby fulfilling the requirements of Article 81, paragraph f), of the Constitution.

Major changes have taken place in the structure and functioning of the Portuguese economy as a result of the liberalisation, deregulation and privatisation of important areas of economic activity, the advances in the European integration process and the emergence of new players who have brought about important changes in the business sector and have altered the relations between market forces.

The growing interaction between economies and the integration of national markets have made rationalisation of different national competition policies an essential and indispensable condition for the promotion of competitiveness within the national economies.

This Act aims to integrate within a legal framework for competition policy the development of an open economy involved in the developing process of internationalisation and the drive for competition which will contribute to: the unhindered development of supply and demand and market access, a balance in the relations between economic undertakings, the encouragement of the general objectives of economic and social development, an increase in the competitiveness of business undertakings, and the protection of the interests of the consumer.

The Act includes, therefore, innovative aspects of a global and systematic character which guarantees their essential coherence.

Thus, in addition to dealing with restrictions on competition, this Act deals with concentrations of undertakings and addresses the matter of State aid, filling in the framework set out by the main instruments of Community policy for the protection of competition.

With respect to restrictive practices on competition, it is important to highlight the introduction of the concept of economic dependence. Abuse whereby advantage is taken of economic dependence was considered a restriction on competition only if it was practised by undertakings which had a dominant position in the market for specific goods or services. This prevented the imposition of sanctions where the abuse was practised by undertakings which had great economic power but which did not hold a dominant position in their market. It is emphasised, however, that the object underlying this concept is to punish abuse, not conduct

which is aimed at more effective competition, such as that which results from adopting better business conditions.

The rules for prior notification of concentrations of undertakings, up to now regulated by Decree-Law No. 428/88 of 19 November 1988, have undergone major changes. Closely reflecting (EEC) Regulation No. 4064/89, of the Council, of 21 December 1989, published subsequent to Decree-Law No. 428/88, the procedures have been modified, the scope of application has been widened and difficulties of interpretation arising from the previous legislation have been resolved. At the same time, in line with the more recent legislation of other Community countries, the underlying policy has been adjusted. Now the aim is to regulate only those concentrations which have a major impact on the market, by making it possible to check whether, as a result of such concentrations, a dominant position would be created or strengthened which might hinder effective competition in the market. Therefore, the thresholds triggering the application of the legislation have been considerably increased.

Thus:

In accordance with the legislative authority conferred upon it by Law No. 9/93, of 12 March 1993, and under the provisions of paragraphs a) and b) of no. 1 of Article 201 of the Constitution, the Government decrees as follows:

CHAPTER I
Rules applying to competition
SECTION I
General provisions

Article 1

Scope of the Act

1 — This Act applies to all economic activities, whether lasting or occasional, undertaken in the private, public and cooperative sectors.

2 — Without prejudice to the international obligations of the Portuguese State, this Act applies to restrictions on competition which occur in the national territory or which may have an effect within it.

3 — Restrictions on competition which derive from specific laws are exempt from the application of this Act.

SECTION II
Prohibited practices

Article 2

Agreements, concerted practices and decisions by associations of undertakings

1 — All agreements between undertakings, decisions by associations of undertakings and concerted practices, in whatever form, which have as their object or effect the prevention, distortion or restriction of competition in the national market or a part thereof are prohibited, in particular those which:

- a) directly or indirectly fix purchase or selling prices or interfere with the setting of prices by the free market, leading to prices which are artificially high or low;
- b) directly or indirectly fix other trading conditions at the same or different stages of the economic process;
- c) limit or control production, distribution, technical development or investment;
- d) share markets or sources of supply;
- e) apply, whether systematically or occasionally, dissimilar conditions, in respect of prices or
- f) otherwise, to equivalent transactions;
- g) directly or indirectly refuse to purchase or sell goods or to pay for services;
- h) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2 — Any agreements or decisions prohibited under this Article are void unless they are considered justified under the provisions of Article 5.

Article 3

Abuse of a dominant position

1 — Any abuse by one or more undertakings of a dominant position within the national market, or in a substantial part of it, which has as its object or effect the prevention, distortion or restriction of competition shall be prohibited.

2 — A dominant market position for specific goods or services is constituted where:

- a) an undertaking operates in a market in which it is not exposed to significant competition or in which it has the predominant market share in relation to its competitors;
- b) two or more undertakings operate jointly in a market in which they are not exposed to significant competition or in which they have a predominant market share in relation to third parties.

3 — While due consideration must be given in each particular case to other factors affecting the undertakings and the market, it shall be presumed that:

- a) an undertaking falls within the provisions of paragraph 2 a) above if it holds a share of at least 30 per cent of the national market in specific goods or services;
- b) undertakings fall within the provisions of paragraph 2 b) above if, together, they hold in the national market for specific goods or services:
 - i) in the case of 3 or fewer undertakings, a combined share of at least 50%;
 - ii) in the case of 5 or fewer undertakings, a combined share of at least 65%.

4 — An abuse is deemed to have occurred if any of the restrictive practices provided for in Article 2, paragraph 1, occur.

Article 4

Abuse of economic dependence

Also prohibited is the abuse, by one or more undertakings, of a position of economic dependence upon that undertaking by a supplier or buyer as the result of the absence of an equivalent alternative, whereby the behaviour of the undertaking takes any of the forms provided for in Article 2, paragraph 1.

Article 5

Economic balance

1 — Restrictive practices on competition which contribute to improving the production or distribution of goods or services or to promoting technical or economic progress may be considered justified if:

- a) they allow consumers of those goods or services a fair share of the resulting benefits; and
- b) they do not impose on the undertakings concerned any restrictions which are not indispensable for the attainment of these objectives; and
- c) they do not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the market in the goods and services in question.

2 — Practices provided for in Article 2 may be subject to prior evaluation by the Council for Competition according to procedures to be established by decree by the Minister for Trade.

Article 6

Undertakings

For the purposes of this Section, a group of undertakings, although distinct in legal terms, is to be considered as a single undertaking if it maintains interdependent or hierarchical links between the undertakings by means of those rights or powers provided for in Article 9, paragraph 2.

SECTION III

Concentrations of undertakings

Article 7

Prior notification

1 — Prior notification is required where the proposed concentration fulfils one of the following conditions:

- a) the creation or strengthening, as a result of the concentration, of a share greater than 30% of the national market in specific goods or services, or in a substantial part of it;
- b) the turnover in Portugal of the participating undertakings was more than thirty thousand million escudos in the preceding financial year, after deduction of tax directly related to the turnover.

2 — The provisions of this Section do not apply to credit institutions, financial companies or insurance companies.

3 — Prior notification shall be given before the legal transactions putting the concentration into effect are concluded and before the announcement of any public bid.

4 — Until tacit or express authorisation is given, any legal transaction establishing the concentration shall be null and void.

Article 8

Market share and turnover

1 — In calculating market share and turnover for the purposes of Article 7, the turnover of the following is to be taken into account:

- a) the undertakings participating in the concentration;
- b) those undertakings in which the participating undertakings hold, directly or indirectly:
 - a majority share of the capital,
 - more than half the voting rights,
 - the power to appoint more than half the members of the governing or supervisory boards,
 - the power to direct the business of the undertaking;
- c) the undertakings which hold undertakings that participate in rights or powers set out in paragraph b);
- d) the undertakings in which an undertaking referred to in paragraph c) holds rights or powers set out in paragraph b);
- e) the undertakings in respect of which undertakings referred to in paragraphs a) to d) together hold rights or powers set out in paragraph b).

2 — Notwithstanding the provisions of paragraph 1 of this Article, where the concentration consists in the acquisition of parts of one or more undertakings, only the turnover relating to the parts of the undertakings which are the subject of the transaction shall be taken into account with regard to the seller or sellers.

3 — The turnover referred to in Article 7, sub-paragraph 1b), comprises the value of products sold and services provided to undertakings and consumers in Portuguese territory, but does not include the sale of products or the provision of services carried out between the undertakings referred to in paragraph 1 of this Article.

Article 9

Concentrations of undertakings

1 — A concentration of undertakings is to be treated as occurring where:

- a) two or more previously independent undertakings merge;
- b) one or more persons already controlling at least one undertaking, or one or more undertakings, acquires direct or indirect control of the whole or part of one or more undertakings;
- c) two or more undertakings create a joint venture, which is intended to be an autonomous economic entity performing on a lasting basis and does not give rise to coordination of competitive behaviour between the undertakings party to the joint venture or between them and the joint venture.

2 — For the purposes of the previous paragraph, control shall be constituted by an act, of whatever form, which confers the possibility of exerting, whether separately or jointly, a decisive influence, in the given legal and factual circumstances, on the activities of an undertaking, in particular:

- a) the acquisition of all or any part of the capital;
- b) the acquisition of ownership or the right to use or enjoy all or part of the assets of an undertaking;
- c) the acquisition of rights, or conclusion of contracts, which confer a decisive influence on the composition or in the decision-making of the governing body of an undertaking.

3 — The provisions on concentrations do not apply to:

- a) the acquisition of shares within the framework of a special procedure for restructuring undertakings;
- b) the acquisition of shares for the purposes of guaranteeing or satisfying credits.

Article 10

Prohibition of concentrations

1 — Unless authorised under the provisions of the following paragraph, any agreement putting into effect a concentration which is subject to prior notification is prohibited if, in the market for the specific goods or services, or a substantial part of it, it creates or strengthens a dominant position in a way likely to prevent, distort or restrict competition.

2 — An agreement to put into effect a concentration of the kind referred to in the previous paragraph may be authorised to the extent that:

- a) it falls within the provisions of Article 5; or
- b) the international competitiveness of the participating undertakings is significantly increased.

SECTION IV

State aid

Article 11

State aid

1 — Aid to undertakings granted by the State or any other public body must not restrict or have a significant effect upon competition in the market or a part thereof.

2 — At the request of an interested party, the Minister for Trade may examine aid as described in the previous paragraph with a view to proposing to the relevant Minister measures aimed at maintaining or re-establishing competition.

3 — For the purposes of this article, the following shall not constitute aid:

- a) compensation, in whatever form, provided by the State in payment for the provision of a public service;
- b) benefits provided under the terms of incentive programmes or other specific schemes approved by the Government or the Assembly of the Republic.

CHAPTER II

Organs for the protection of competition

Article 12

Directorate-General for Competition and Prices

1 — The Directorate-General for Competition and Prices shall have the following functions:

- a) to identify practices which may breach the current law, to institute and conduct the appropriate legal processes and to ensure that decisions taken are complied with;
- b) to undertake, with respect to concentrations subject to prior notification, the appropriate processes provided for under this Act;

- c) at the request of the Competition Council, to carry out the studies necessary for the formulation of an opinion under Article 13, sub-paragraph 1c);
- d) to undertake necessary sectorial studies, in the field of competition;
- e) to propose, to the responsible body, measures which are regarded as appropriate for the proper functioning of competition;
- f) to impose fines in cases where that power is expressly conferred upon it by this Act.

2 — The Directorate-General for Competition and Prices shall also have the following functions:

- a) to perform the functions conferred upon the authorities of the Member-States by the regulations made under Article 87 of the Treaty establishing the European Economic Community, in particular by Regulation (EEC) No. 4064/89, of the Council, of 21 December 1989, without prejudice to the authority of other bodies;
- b) to participate in activities promoted by bodies and international organisations in the matter of competition;
- c) to institute the appropriate processes for the purposes of Article 11.

3 — Without prejudice to the provisions of Sections I and II of Chapter III, the Directorate General for Competition and Prices, in performing the functions conferred by paragraphs 1 and 2 a) of this Article, may request any undertaking or association of undertakings, as well as bodies with which they have links, to provide commercial, financial or other necessary information and documents, within time limits which it considers reasonable and convenient.

4 — The Directorate-General for Competition and Prices may also request any central, regional or local administration to provide any information which it considers necessary for the performance of its functions.

Article 13

Functions of the Council for Competition

1 — The Council for Competition shall have the following functions:

- a) to decide on the appropriate processes to be instituted with respect to restrictive competition practices prohibited by this Act, and to others referred to it by the Directorate-General for Competition and Prices when acting under Article, 12 sub-paragraph 2a);
- b) to formulate opinions, at the request of the Minister for Trade, in proceedings with respect to concentrations subject to prior notification;
- c) to advise on questions relating to competition at the request of the Minister for Trade;
- d) to provide guidance to the Minister for Trade in matters falling within the scope of this Act;

- e) to participate in activities initiated by international bodies and organisations which are within its functions;
- f) to impose fines in cases where it has the power to do so.

2 — For the purpose of formulating its opinions under paragraph c) of the previous paragraph, the Council for Competition may request the Directorate-General for Competition and Prices to undertake appropriate studies.

3 — The Council for Competition shall present to the Minister for Trade an annual report of its activities, to which shall be annexed all decisions reached by it; the report is to be published in the Official Journal.

Article 14

Composition of the Council for Competition

1 — The Council for Competition shall comprise a president and 4 or 6 voting members, who shall be appointed by written order of the Prime Minister, acting on the recommendation of the Ministers responsible for Justice and for Trade.

2 — The President shall be a magistrate or a judicial officer from the State Legal Service, who shall be appointed for a renewable period of 3 years, with the authorisation of the Superior Council for the Judiciary or for the State Legal Service, as appropriate.

3 — In the selection of the voting members, due regard shall be had to their ability and suitability to perform the functions of the post.

4 — The President of the Council for Competition may, when he considers it necessary, invite other persons with special knowledge of matters to be discussed, or representatives of the Public Service or other bodies with relevant interest in those matters, to participate in meetings of the Council without the right to vote.

5 — Without prejudice to the provisions of the previous paragraph, the President may summon a representative of the Institute of Consumers to participate in meetings of the Council at which matters of special relevance for consumers are to be discussed.

Article 15

Remuneration and expense allowances

1 — The members of the Council shall receive, in addition to any other remuneration, a monthly allowance, at a level to be set, by written order of the Ministers responsible for Finance and for Trade, as provided by legislation in force.

2 — The members of the Council and others who participate in its meetings as provided for in Article 14, paragraphs 4 and 5, shall be entitled to an allowance for travel and towards expenses, as provided by the law.

Article 16

Operating costs

The operating costs of the Council for Competition shall be borne from funds allocated for this purpose in the budget of the Secretariat-General of the Ministry for Trade.

Article 17

Support

1 — The Secretariat-General of the Ministry for Trade shall provide the Council with all the administrative support it requires to enable it fully to perform its functions.

2 — The Minister for Trade, on the recommendation of the President of the Council for Competition, shall designate the officials from the Secretariat-General, or from any other service in the Ministry, who are to have particular duties in connection with the Council; one of the officials, of senior rank and preferably legally qualified, shall perform the functions of Secretary to the Council for Competition.

Article 18

Internal regulations

The Council for Competition has power to make, and amend, regulations governing its internal proceedings; the regulations, after approval by the Minister for Trade, are to be published in the Official Journal.

Article 19

Secrecy

1 — In performing its functions the Directorate-General for Competition and Prices shall maintain the utmost secrecy and shall comply with the rules on confidentiality by which it is bound.

2 — The members of the Council for Competition and the invited persons referred to in Article 14, paragraph 4, are subject to the rules on confidentiality applicable to civil servants, with respect to those facts about which they are informed in the course of performing their functions.

Article 20

Disqualifications

The members of the Council for Competition are subject to the same disqualifications as those which apply to judges.

CHAPTER III

Procedures

SECTION I

Procedures in respect of agreements, concerted practices, decisions by associations and abuses of economic power

Article 21

Applicable rules

1 — The procedure with respect to breaches of the provisions of Articles 2, 3 and 4 shall be conducted in accordance with the provisions of this Section and, subject to those contained in Decree-Law No. 433/82 of 27 October 1982.

2 — The provisions of this Section shall also apply, with necessary modifications, to the performance of the functions provided for in Article 12, sub-paragraph 2a), and in final phrase of Article 13, sub-paragraph 1a).

Article 22

Notice of breaches

1 — When the Directorate-General for Competition and Prices becomes aware, by any means, of practices which may be prohibited by Articles 2, 3 and 4 above, it shall take steps to identify those practices and, once it has credible evidence of their existence, it shall institute and conduct appropriate proceedings.

2 — All central, regional and local administrative services and all public institutions are under a duty to inform the Directorate-General of facts in their possession which may constitute evidence of restrictive competition practices.

Article 23

Investigatory functions

1 — Subject to the restrictions provided for in this Section, the Directorate-General for Competition and Prices, when performing its lawful functions, shall enjoy the same rights and is subject to the same obligations as the criminal police service and, in particular, may:

- a) question the legal representatives of undertakings or of associations of undertakings involved, and request them to provide documents and other information that it considers convenient or necessary to elucidate the facts;
- b) question the legal representatives of other undertakings or associations of undertakings and any other persons whose testimony it considers pertinent, and request them to provide documents and other information;
- c) search for, examine and seize copies or extracts of written documentation and other matter, on the premises of undertakings or associations of undertakings involved, in places which are private or not freely accessible to the public, where considered necessary in order to obtain evidence;
- d) request, through the appropriate ministerial offices, any other public administration service, including the criminal police, to provide such collaboration as it shows to be necessary for the full performance of its functions.

2 — The procedures set out in sub-paragraph c) of the previous paragraph are subject to the issue of a warrant authorising their execution issued by a judicial authority upon prior request by the Directorate-General for Competition and Prices showing just cause; a decision on that request shall be handed down within 48 hours.

3 — The officials carrying out the procedures provided for in sub-paragraphs 1 a) to c) shall carry with them:

- a) in the cases falling under sub-paragraphs 1a) and b), authorisation issued by the Director-General of Competition and Prices, in which the purpose of the procedure shall be stated;
- b) in the case falling under sub-paragraph 1c), authorisation as provided for in the previous subparagraph and the warrant specified in paragraph 2 of this Article.

4 — Without prejudice to the provisions of Article 37, paragraph 4, the officials mentioned in paragraph 3 of this Article may request the assistance of the police authorities, where necessary.

Article 24

Suspension of prohibited practices

1 — At any stage of the proceedings, and as soon as the investigation indicates that the practice which is the subject of the procedure is seriously damaging to economic and social progress or to the interests of trading parties or of consumers, the Council for Competition may, on the proposal of the body conducting the procedure, giving its reasons, order immediate preventive measures for the suspension or modification of the practice in question.

2 — The measures authorised by this Article shall last no longer than 90 days, subject to extension, on one occasion only, for the same length of time.

3 — The Council for Competition shall request an opinion from the Bank of Portugal, and, if it considers it necessary, from the Commission of the Stock Exchange, under Article 88 of Decree-Law No. 298/92 of 31 December 1992 (Credit Institutions and Financial Companies: Legal Framework); the opinion shall be issued within 7 days.

4 — Where the practices of insurance companies are in question, the Council for Competition shall request an opinion from the Portuguese Institute of Insurance on the activities of the insurer which is the subject of the proceedings; the opinion shall be issued within 7 days.

Article 25

Hearings

1 — During the proceedings, the Directorate-General for Competition and Prices shall give the undertaking or association of undertakings the opportunity of stating their position either in writing or orally with respect to the matter on which a decision is to be taken and on the evidence presented and may request supplementary investigations which they consider appropriate.

2 — During the hearing, procedure provided under the previous paragraph, the Directorate-General for Competition and Prices shall protect the legitimate interests of the undertakings by not disclosing business secrets.

3 — The Directorate-General for Competition and Prices may refuse a supplementary investigation if it is clear that the evidence requested is irrelevant or that the request is aimed at delaying the proceedings.

4 — After the hearing provided for in paragraph 1, the Directorate-General for Competition and Prices may, of its own motion, undertake a supplementary investigation; any evidence obtained shall be subject to the right of reply.

Article 26

Conclusion of proceedings

1 — Once the proceedings are concluded, the Directorate-General for Competition and Prices shall draw up its final report and submit the file to the Council for Competition for decision.

2 — The Council for Competition may, when it considers it necessary, request that the Directorate-General for Competition and Prices conduct supplementary proceedings, or may undertake them itself.

3 — If the defending undertakings are credit institutions, financial companies, or their associations, the Council for Competition shall request an opinion from the Bank of Portugal and, if it considers it necessary, from the Stock Exchange Commission, under Article 88 of Article 88 of Decree-Law No. 298/92 of 31 December 1992 (Credit Institutions and Financial Companies: Legal Framework); an opinion shall be issued within 30 days.

4 — In the case of insurance or pension fund management companies, the opinion referred to in the previous paragraph shall be requested from the Portuguese Insurance Institute, which shall provide it within 30 days.

Article 27

Decisions of the Council for Competition

1 — The Council for Competition, in its decision, may:

- a) order the case to be closed;
- b) declare the existence of a restrictive practice in competition and, in that event, order the offender to take measures required to bring that practice, or its effects, to an end within a specified period of time;
- c) impose the fines set out in Article 37, paragraph 2.

2 — The Council for Competition shall order the defending undertakings to publish the decision in the Official Journal and in a newspaper that has a national or regional or local circulation, depending on the size of the market in which the practice, which gave rise to the contravention, was identified and on its seriousness or effects.

3 — The Council for Competition shall send a copy of all decisions taken under the provisions of paragraph 1 to the Minister for Trade and to the Directorate-General for Competition and Prices.

Article 28

Appeals

1 — An appeal against a decision of the Council for Competition lies with the Lisbon District Court.

2 — An appeal made under the previous paragraph has no suspensory effect, except where it concerns the imposition of a fine or a publication order as provided for under paragraph 2 of the previous article; in which case the measures may be suspended.

SECTION II

Procedures with respect to the control of concentrations of undertakings

Article 29

Applicable rules

The procedure for the control of concentrations is set out in this Section as supplemented by the Code of Administrative Procedure.

Article 30

Notifications

1 — The prior notification of concentrations required by Article 7, paragraph 1 shall be given to the Directorate-General for Competition and Prices.

2 — Notification shall be given:

- a) in cases of a concentration or establishment of common control, by the group of participating undertakings;
- b) in other cases, by the undertaking or by the persons intending to acquire control of the all or part of one or more undertakings.

3 — The following information must be provided in a notification:

- a) the identity of the individuals or undertakings participating in the actions to establish the concentration;
- b) the nature and legal form of the concentration;
- c) the type of goods and services to be provided;
- d) a list of the undertakings which have inter-dependent or hierarchical links with the participants resulting from the rights or powers provided for in Article 8, sub-paragraph 1b);
- e) the market share that will result from the concentration, and details of how that share was calculated;
- f) the turnover in Portugal of the participating undertakings and of those referred to in Article 8, paragraph 1, by reference to the preceding financial year;
- g) the annual reports and accounts of the participating undertakings relating to the three preceding financial years;
- h) an indication of the main competitors;
- i) an indication of the main customers and suppliers;
- j) such other information which the parties to the notifications consider relevant in the particular case in order to determine whether the conditions set out in Article 10, paragraph 2, are fulfilled.

Article 31

Procedures

1 — The Directorate-General for Competition and Prices, after conducting the appropriate proceedings, shall submit the file to the Minister for Trade within 40 days after the date of receiving the notification.

2 — If, during the course of the proceedings, the information set out in the notification is found to be incomplete in terms of the provisions of Article 30, paragraph 3, or if additional information is thought to be advantageous, the Directorate-General for Competition and Prices shall communicate that fact to the parties to the notification, and shall set them a reasonable time limit by which they must complete, correct or provide the information in question.

3 — Without prejudice to the provisions of Article 37, sub-paragraph 3d), the same procedure shall apply if false information is included in the notification.

4 — Communication as provided for in paragraph 2 of this Article suspends the time limit provided for in paragraph 1 with effect from the day following the dispatch of the notification to the day when the Directorate-General for Competition and Prices receives the requested information.

5 — During its proceedings, the Directorate-General for Competition and Prices may request any other undertakings or association of undertakings to provide any information it considers appropriate within time limits that it considers reasonable.

6 — The Directorate-General for Competition and Prices shall request the parties to the notification to state their position in writing up to 10 days before the end of the time provided for in paragraph 1.

7 — Supplementary investigations for evidence may be requested, during the written procedure, by the parties to the notification, which, if granted, shall result in the suspension of the time limit provided for in paragraph 1.

8 — The suspension referred to in the previous paragraph shall begin on the day following the receipt by the Directorate-General for Competition and Prices of the request for supplementary investigations and end on the day they are concluded.

9 — The provisions of the previous paragraphs apply, with necessary modifications, but without affecting the provisions of Article 37, sub-paragraph 3c), to proposed concentrations of which the Directorate-General for Competition and Prices becomes aware and of which it has not received prior notification; in which case, the time limit provided for in paragraph 1 shall be 90 days, beginning on the date of the formal initiation of proceedings.

Article 32

Communications or tacit authorisation

1 — If the concentration in question is considered likely to have a negative effect on competition according to the criteria provided for in Article 10, paragraph 1, the Minister for Trade shall submit the file to the Council for Competition for its opinion, within 50 days after the date of receipt by the Directorate-General for Competition and Prices of the notification referred to in Article 7, paragraph 1, and shall, on the same date, communicate that fact to the parties to the notification.

2 — If no communication is sent within the time period prescribed by the final phrase of the previous paragraph, this shall be regarded as a decision not to oppose the establishment of the concentration.

3 — In calculating the time period provided for in paragraph 1, days during which time limits for the conduct of proceedings were suspended pursuant to the provisions of Article 31, paragraphs 4 and 8, shall not be counted.

Article 33

Opinions of the Council for Competition

The Council for Competition shall, within 30 days of receipt of the file, return it to the Minister for Trade with its opinion in which it shall:

- a) assess whether the concentration is likely to have a negative effect on competition according to the criteria provided for in Article 10, paragraph 1;
- b) consider whether, in the particular case, the conditions provided for in Article 10, paragraph 2, are met.

Article 34

Decisions

1 — Within 15 days of receipt of the opinion of the Council for Competition, the Minister for Trade may decide:

- a) not to oppose the concentration;
- b) not to oppose the concentration, subject to the imposition of conditions and obligations appropriate for the maintenance of effective competition;
- c) to prohibit the concentration and, if it has already been put into effect, order appropriate measures to create effective competition, in particular the separation of the undertakings or of the combined assets or cessation of control.

2 — Decisions under sub-paragraphs lb) and c) shall be presented in the form of a joint order from the Minister for Trade and the Minister responsible for the economic activities affected by the concentration.

3 — Legal transactions relating to a concentration are void to the extent to which they give effect to activities condemned by the joint order which prohibited the concentration or imposed conditions on its establishment or ordered appropriate measures to create effective competition.

Article 35

Appeals

Appeals against decisions made pursuant to Article 34, sub-paragraphs lb) and c), shall be heard by the Supreme Administrative Court.

Article 36

Special procedures

1 — Notwithstanding the application of appropriate sanctions, if it is found that a decision not to oppose a concentration was based on false information in respect of matters essential to the decision, the Directorate-General for Competition and Prices shall, of its own motion, institute proceedings with a view to the application of measures referred to in Article 34, sub-paragraph lc).

2 — The provisions of Articles 31 to 34 shall apply, with necessary modifications, to the proceedings instituted pursuant to paragraph 1.

CHAPTER IV

Sanctions

Article 37

Fines

1 — Without prejudice to any criminal liability that may arise, breaches of the provisions of this Act constitute contraventions punishable with a fine in accordance with the following paragraphs.

2 — Conduct restricting competition as described in Articles 2, 3, and 4 constitutes a contravention punishable with a fine of 100,000 escudos to 200,000,000 escudos.

3 — The following contraventions are punishable with a fine of 100,000 escudos to 100,000,000 escudos:

- a) failure to comply with an order of the Council for Competition under Article 24, paragraph 1;
- b) failure to comply with decisions made under Article 34, sub-paragraphs lb) and c);
- c) failure to give prior notification of a proposed concentration that is subject to prior notification under the provisions of Article 7, paragraph 1;
- d) providing false information in a notification given under Article 7, paragraph 1;
- e) providing false information in reply to a request made under Article 31, paragraph 2, or failing to provide information.

4 — The following contraventions are punishable with a fine of 100,000 escudos to 10,000,000 escudos:

- a) obstructing an investigation pursuant to Article 23, paragraph 1;
- b) providing false declarations or information in reply to a request made under Article 23, subparagraph lb) or Article 31, paragraph 5.

5 — The following contraventions are punishable with a fine of 50,000 escudos to 5,000,000 escudos:

- a) providing false declarations or information in reply to a request made under Article 12, paragraph 3, or refusal to provide such declarations or information;
- b) failure to comply with a publication order by the Council for Competition under Article 27, paragraph 2.

6 — Failure to comply with an order under Article 27, sub-paragraph lb) shall lead to the institution of fresh proceedings with a view to fines being imposed under paragraph 2 of this Article.

7 — A fine imposed under sub-paragraph 5b) of this Article shall always be greater than the cost of the publication, which shall be carried out by the Secretary-General of the Ministry for Trade.

8 — Negligent conduct shall be punished.

9 — Where the defender is an individual, the sums specified in paragraphs 2 and 5 shall be reduced by half.

Article 38

Functions in respect of the imposition of fines

The Directorate-General for Competition and Prices has the function of imposing fines, except in the case of fines provided for under Article 37, paragraph 2 and sub-paragraphs 3a) and 5b), imposition of which is the function of the Council for Competition.

Article 39

Revenue from fines

Of the revenue from fines imposed in respect of breaches of this Act, 60% shall be allocated to the State, 30% to the Directorate-General for Competition and Prices and 10% to the Secretary-General of the Ministry for Trade.

CHAPTER V

Final provisions

Article 40

Repeals

1 — Decree-Law No. 422/83, of 3 December 1983, and supplementary legislation, Decree-Law No. 428/88, of 19 November 1988, and the Legal Order No. 59/87, of 9 July 1987, are repealed.

2 — Provisions which confer functions in respect of the protection of competition upon other bodies not referred to in Articles 12 and 13 are repealed.

3 — The provisions of Decree-Law No. 422/83, of 3 December 1983, apply to contraventions that occurred prior to the date on which this Act comes into force, but without affecting the application thereto of provisions of this Act which may be more favourable.

Article 41

Final and transitional provisions

1 — The provisions of this Act do not apply to concentrations of undertakings that have been notified under the terms of Decree-Law No. 428/88, of 19 November 1988, in relation to which a decision is pending on the date on which this Act comes into force.

2 — In the case of public services, this Act does not apply to undertakings legally awarded concessions by the State, within the scope and terms of the relevant concession contract.

3 — The President and the voting members of the Council for Competition, as well as the officials and other personnel concerned in its functioning, continue in their posts under the terms of their respective appointments.

Article 42

Commencement

This Act comes into force on 1 January 1994.

Seen and approved by the Council of Ministers meeting of 15 July 1993.

The PRIME MINISTER,

The MINISTER FOR FINANCES,

The MINISTER FOR JUSTICE,

The MINISTER FOR TRADE AND TOURISM,