

Competition Act of 23 October 2011

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

After having heard the Council of State;

The assent of the Chamber of Deputies delivered in the first reading on 30th June 2011 and in the second reading on 12th October 2011;

Have ordered and order:

Art. 1st. Scope of application

This Act shall apply to all activities of production and distribution of goods and provision of services, including those which are the result of legal entities of public law, unless there are legislative provisions to the contrary.

Chapter I – *Competition on the market*

Art. 2. Freedom of pricing

- (1) The price of goods, products, services shall be determined freely by competition.
- (2) However, where price competition is insufficient in specific sectors either due to market structure or customers' impossibility to benefit from market advantages or legislative provisions, Grand-Ducal regulations may set prices or margins applicable to relevant goods, products or services.
- (3) In the event of a market cyclical dysfunction in one or more specific sectors consecutive to a crisis situation, exceptional circumstances or an abnormal market situation, Grand-Ducal regulations may issue temporary measures against substantial rises or falls in prices. These Grand-Ducal regulations shall precise the time period validity of the adopted measures which may not exceed six months.
- (4) The Minister responsible for energy may conclude programme contracts with undertakings in the sector of petroleum products concerning commitments in relation with the level of maximum prices. Those contracts shall be concluded for an indefinite period. If they are not concluded, maximum prices may be set by Grand-Ducal regulations.
- (5) Infringements to regulations adopted pursuant to this Article shall be punished by a fine of 251 up to 50.000 euros.

Art. 3. Cartel prohibitions

Agreements, decisions or concerted practices prohibited pursuant to the provisions of this Article shall be automatically void.

Shall be prohibited any agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the market, and in particular those which:

- 1) directly or indirectly fix purchase or selling prices or any other trading conditions;
- 2) limit or control production, markets, technical development, or investment;
- 3) share markets or sources of supply;
- 4) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- 5) 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.

Art. 4. Exceptions to the cartel prohibitions

The provisions of Article 3 shall not be applicable to:

- agreements or category of agreements between undertakings,
- decisions or category of decisions by associations of undertakings and
- concerted practices or category of concerted practices

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Art. 5. Prohibitions of abuse of a dominant position

Any abuse by one or more undertakings of a dominant position within the market shall be prohibited.

Such abuse may, in particular, consist in:

- 1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- 2) limiting production, markets or technical development to the prejudice of consumers;
- 3) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- 4) making 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.

Chapter II – Competition Council

Art. 6. Missions, competence and powers of the Council

- (1) The Competition Council, hereinafter referred to as the “Council”, is an independent administrative authority, responsible to ensure the enforcement of Articles 3 to 5 of this Act.
- (2) The Council has jurisdiction to apply the Articles 101 and 102 of the Treaty on the Functioning of the European Union, hereinafter referred to as the “Treaty”.
- (3) The Council is the competent authority to withdraw the benefit of the block exemption regulation pursuant to Article 29(2) of the Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.
- (4) The Council represents the Grand Duchy of Luxembourg as part of the European Competition Authorities network as established by the Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.
- (5) To carry out its duties, the Council exercises, in particular, the following powers:
 - a) the research and the sanction, on its own initiative or on complaint, for infringements of Articles 3 to 5 of this Act and articles 101 and 102 of the Treaty;
 - b) the drafting of advices, on its own motion or upon request by the Minister of Economy, hereinafter referred to as the Minister, on any draft legislative text or regulations or any other competition issues;
 - c) the conduction of market surveys;
 - d) the ability to inform the undertakings about the interpretation related to new and unsolved issues of Articles 3 to 5, through an informal orientation letter;
 - e) the execution of national competition authorities’ duties, as provided by Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Council regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

Art. 7. Composition, appointment and functioning of the Council

- (1) The Council is a collegial body composed by four effective councillors, namely, the President and three councillors, and five substitute councillors.

The President manages the Council. He convenes and chairs meetings of the Board, ensures the proper conduct of the session, ensures that the Council's decisions are implemented and that the Council operates properly. He represents the Council in all judicial and extrajudicial acts.

- (2) The substitute councillors are required to make up for the absence or inability of the effective councillors to sit in relation to the adoption of collegial decisions within the scope of competence of the Council. The effective councillors and the substitute councillors are appointed by the Grand Duke for a renewable seven-year term.

One effective councillor and one substitute councillor shall be stem from the magistracy. The other councillors and substitute councillors are selected due to their skills in the economic field or the competition law field.

The councillors must hold a university degree in economic sciences or law.

The councillors cannot be members of the Government, the Luxembourg Parliament, the Council of State or the European Parliament nor exercise an activity incompatible with their duties.

Before taking up their duties, the President of the Council takes in the hands of the Grand Duke or his representative and the other councillors and substitutes take in the hands of the President of the Council the following oath: " I swear loyalty to the Grand Duke, obedience to the Constitution and State laws. I swear to perform my duties with integrity, accuracy and impartiality."

If, during its function, one of the members of the Council ceases to hold office, the function of the successor shall be limited to the period remaining.

The age limit of the members of the Council shall be set at 65 years.

- (3) The Council organises its work and adopts its internal regulation.

The Council meets as often as deemed necessary to discharge its duties properly.

Where the President is prevented to exercising his functions, they shall be exercised by the most senior councillors, and in the event of equal seniority, by the one who is eldest.

Council decisions are adopted by a majority of votes.

The members of the Council cannot intervene in a case when it affects direct or indirect interests that they have in an economic activity, failing which the Council's decisions will be declared void.

- (4) The lead of the implementation of Articles 14 to 19, 25 and 26(2 to 4) is assigned for each separate file to a councillor appointed by a President's order. Article 9(1 and 3) applies to the councillor so appointed. The President cannot be appointed to pursue these tasks.

The councillor so appointed, hereinafter referred to as the appointed councillor, does not take part, in files in which he assumed these functions, to the deliberations and decisions of the Council pursuant to Articles 11 and 13, failing which the Council's decisions will be declared void. Likewise, he cannot take part pursuant to Article 12 in files in which he assumed these functions.

The President also appoints by issuing an order for each separate file a councillor in charge of inspections and investigations pursuant to Article 22 of Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Article 12 of the Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

- (5) The Council draws an annual report of its activities which records its own important decisions, taking care to specify if these decisions are final. The report is forwarded to the minister and the Luxembourg Parliament. It will be available to any interested person.
- (6) The credits allocated to the Competition Council for its functioning shall be entered in the Ministry of Economy budget.

Art. 8. Council's structure

- (1) The President and the councillors shall perform their duties on a full-time basis. Their legal status shall be fixed as follows:
 - The President shall receive an allowance corresponding to the salary of a State official whose function is classified in rank 17 of the "General Administration" heading of the "Classification of the functions" annex A of the amended Act of 22 June 1963 laying down the salary system of State officials. During the performance of his duties, the laws and regulations on salaries and pensions of State officials shall apply to him.
 - The councillors shall receive an allowance corresponding to the salary of a State official whose function is classified in rank 16 of the "General Administration" heading of the "Classification of the functions" annex A of the amended Act of 22 June 1963 laying down the salary system of State officials. During the performance of their duties, the laws and regulations on salaries and pensions of State officials shall apply to them.

In the event where the President or a councillor comes from the administrative state, they shall be placed on leave from their home administration during their function. They shall remain on the old social security scheme. In the event of termination of their function prior to retirement, the incumbents may ask to reintegrate their home administration at a salary they previously earned increased by increments and index increases relating to their experience as President or councillors of the Council up to the last grade increment. In the absence of position vacancy, it may be created a career bracket corresponding to the salary previously mentioned. This position will rightfully be deleted in the first vacancy which occurs in an appropriate function of the normal course.

In the event where the President or a councillor comes from the private sector, they shall remain on the last work position exercise social security scheme. In the event of termination prior to retirement, the incumbents, shall receive a 310 index point annual tideover allowance for a maximum of one year. This tideover allowance shall be reduced to the extent that the incumbents earn income or receive a personal pension.

- (2) The President, the councillors and the substitute councillors shall receive a special allowance taking into account of the functions' commitment, set by Grand-Ducal regulations.
- (3) In the performance of their duties, the members of the Competition Council are assisted by f agents who are a civil servant, an employee or a worker of the State.

The staff shall include civil servants of different salary categories as provided for by the Act of 25 March 2015 laying down the salary system and conditions and terms of promotion of civil servants.

The staff may be completed by trainees, employees and workers within the limits of the appropriations available in the budget.

The conditions for admission, appointment and promotion of Council employees shall be set by Grand-Ducal regulation.

- (4) Before taking up their duties, the persons referred to paragraph 3 shall be required to take the following oath in front of the President of the Council: "I swear that I will perform my duties with integrity, accuracy and impartiality and to preserve the secrecy of all facts that have come to my knowledge in or in connection with the pursuit of my duties."

Art. 9. Investigators

- (1) The Council shall appoint investigators among civil servants from the higher and regular career of the State that are entrusted with the necessary powers granted by the Articles 15 to 17.
- (2) To carry out its duties, the Council, on a proposal from the appointed councillor, may have recourse to civil servants of the higher and regular career coming from other state services or ministerial authorities. To that end, these civil servants shall be temporarily affected by their immediate superior for the length of the inspection to the services of the Competition Council. The Council shall appoint them for investigatory functions purposes. They shall act under the authority of the appointed councillor for the duration of their assignment. They shall be required to take the following oath in front of the President of the Council: "I swear that I will perform my duties with integrity, accuracy and impartiality and to preserve the secrecy of all facts that have come to my knowledge in or in connection with the pursuit of my duties."

The Council may establish a list of public servants meeting such conditions.

- (3) The investigators shall have the law enforcement official quality for the purposes of the enforcement of this Act. Before taking up their duties, they shall be required to take the following oath in front of the Luxembourg court district: "I swear that I will perform my duties with integrity, accuracy and impartiality."
- They shall have jurisdiction within the Grand-Ducal territory. They shall justify their quality by a legitimisation card issued by the President of the Council.

Art. 10. Referral to the Council

In all matters, the Council may intervene on its own initiative or upon request of any natural or legal person claiming a legitimate interest or upon request of the Minister.

The Council shall be seized without any formalities, in case of infringement of Articles 3 to 5 of this Act or Articles 101 and 102 of the Treaty. However, the act of referral must set out a detailed description of the alleged fact and all the relevant elements of its likely existence which shall be available to the person who referred the matter. In any event, the Council shall acknowledge receipt of complaints.

Chapter III – *Infringements of articles 3 to 5 of this Act and articles 101 and 102 of the Treaty*

Section I – Council decisions

Art. 11. Finding and termination of infringement

Where the Council, seized according to the provisions of Article 10, finds out that in the framework of a proceeding there is an infringement of Articles 3 to 5 of this Act or of Articles 101 and 102 of the Treaty, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any remedy which is proportionate to the infringement held against the undertakings and necessary to bring it effectively to an end.

Art. 12. Interim measures

- (1) The President may, from the referral to the Council and after hearing the parties concerned, upon the request of any interested party, take interim measures.

Interim measures may intervene only when the practice denounced affects seriously and irreparably the economic public order or the complainant undertaking and have to be proportionate to the situation found.

The President of the Council may direct parties to suspend the application of concerned practices or to return to the previous state. Interim measures ordered by the President of the Council shall be strictly limited to what is required to deal with the emergency.

- (2) A decision adopted under paragraph 1 shall apply for a period of time necessary to take an enforceable substantive decision.
- (3) The President may impose periodic penalty payments to such interim measures not exceeding 5 % of the average daily turnover in the preceding business year or if not available during the last business year which has been closed, either calculated per day of

delay from the date appointed by it or to compel them to put an end to an infringement of interim measures adopted.

Where the undertakings or associations of undertakings have complied with the obligation which the periodic penalty payment was intended to enforce, the President may fix the definitive amount of the periodic penalty at a figure lower than that which would arise under the original decision.

The recovery of the periodic penalty payment shall be entrusted, as in registration matters, to the Luxembourg Registry.

Art. 13. Commitments

- (1) Where the Council intends to adopt a decision that requires an infringement to be brought to an end and when the undertakings concerned offer commitments in order to meet the concerns expressed by the appointed councillor in his statement of objections, the Council may, by decision, make those commitments binding on the undertakings. Such a decision may be adopted for a specific period of time and shall conclude that there are no longer grounds for action by the Council.
- (2) The Council may, on its own initiative or upon request of an interested party to the dispute or the Minister, reopen the proceedings:
 - a) where there has been a material change in any of the facts on which the decision was based;
 - b) where the undertakings concerned act contrary to their commitments; or
 - c) where the decision was based on incorrect, incomplete or misleading information provided by the parties.

Section II – Powers of investigation

Art. 14. Requests for information

- (1) In order to carry out the duties assigned to it by this Act, the Council may require undertakings and associations of undertakings to provide all necessary information.
- (2) Where the Council requires undertakings or associations of undertakings to supply information, it shall state, under penalty of nullity, the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided, bearing in mind that the time-limit cannot be less than one month. It shall also indicate the penalties provided for in Article 20 and Article 22 as well as legal remedies and time limits set out before the administrative Tribunal.

- (3) Undertakings owned by natural persons or their representatives', holders of an authorisation of establishment, registered or not registered to the Trade and Companies Register shall supply the information requested. For undertakings taking the form of a company or an association, such information will be supplied by managers, managing directors or, in the absence thereof, chairman of the management board or directors, or any persons authorised to represent them by law or by fact. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incorrect, incomplete or misleading.

Art. 15. Power to take statements

In order to carry out the duties assigned to it by this Act, the Council may interview any natural or legal person. The presence of a lawyer during the interview shall be authorised.

Art. 16. Powers of inspection

- (1) In order to carry out the duties assigned to it by this Act, the Council may conduct all necessary inspections of undertakings and associations of undertakings concerned.
- (2) The investigators may enter to any premises, land and means of transport for professional use, take or obtain the communication of books, bills and any other records related to the business and take copies of them, obtain on convening or on-site information and justification.

In any case, they shall show the appointed councillor decision ordering the inspection to the executive manager or the occupant of the premises or the representative.

This decision shall specify, under penalty of nullity, the subject matter and purpose of the inspection.

- (3) The investigators shall only undertake investigation in business premises and also seizure of documents with an authorisation issued by an order from the president of the competent court district *ratione loci* or the substitute magistrate. Whether the investigation sits in two districts, a sole order issued by one of the president shall be sufficient.

To this end, the appointed councillor shall submit a request to the president of the court district. This request must be duly substantiated in detail having regard to proofs that may suspect the existence of prohibited activities or market failures to the seriousness of the practice or the suspected failure and to the possible involvement in such events of the concerned undertakings or associations of undertakings.

Authorisation for searches and seizures shall be denied if this measure is neither justified nor proportionate having regard to the inspection purpose.

An appointed councillor decision copy ordering such an inspection from undertakings or associations of undertakings concerned shall be appended to the request.

The judge authorisation shall specify, under penalty of nullity, the subject matter and purpose of the search.

- (4) The search and seizure shall be performed under the authority and the supervision of the judge authorising it. He shall designate one or more law enforcement officers responsible for being present during these operations and keeping them informed about their conduct. The judge may, after having given notice to his state tribunal prosecutor, travel to attend these searches throughout the national territory with his clerk if the needs of the investigation require so.

The judge assisted by his clerk may access to the premises during the inspection. At any time, he may decide to suspend or stop the searches.

- (5) The order referred to in the first subparagraph of paragraph 3 shall be subject to appeal as in matters of examining magistrate orders. The remedies shall not be suspensive.
- (6) Searches must be carried out from six and a half in the morning to nine in the evening.
- (7) Searches shall be carried out in the presence of the executive manager or the occupant of the premises or the representative.

If any of them cannot be present, the investigator shall invite the person concerned to appoint another representative. In the absence thereof, the investigator shall appoint two witnesses outside his authority required to this effect.

Only the investigators as well as the executive manager or the occupant of the premises or the representative and the law enforcement officers may examine evidence and documents before their seizure.

- (8) Objects, documents and any other things seized shall be recorded in the minutes. If the on-the-spot inventory presents difficulties, they shall be sealed until their inventory is made in the presence of people who previously assisted the searches.
- (9) The minutes of the searches and seizures shall be signed by the executive manager or the occupant of the premises or the representative and individuals who assisted it; the fact that someone refuses to sign the minutes shall be recorded and copy of it shall be forwarded to them.
- (10) The lawyer's presence shall be authorised throughout the search and seizure procedure. However, he shall not be appointed as witness in accordance with provisions of the 2nd subparagraph of paragraph 7.
- (11) Objects, documents and any other things seized shall be deposited to the Competition Council or entrusted to a seizure guardian.
- (12) The appointed councillor may order at any time on its own initiative the total or partial release of the achieved seizures.
- (13) The interested parties may obtain, at their own expenses, copy or photocopy of the seized documents.

Art. 17. Inspection of other premises

(1) If a reasonable suspicion exists that books or other records related to the business and to the subject-matter of the inspection, which may be relevant to prove a serious violation of Articles 3 to 5 of this Act or Articles 101 and 102 of the Treaty, are being kept in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the Council may order an inspection to be carried out in such other premises, land and means of transport.

(2) The investigators may take or obtain the communication of books, bills and any other records related to the business and take copies of them but also obtain on convening or on-site information and justification.

In any case, they shall show the appointed councillor decision ordering the inspection to the executive manager or the occupant of the premises or the representative.

This decision shall specify, under penalty of nullity, the subject matter and purpose of the inspection. It can only be contested together within the subsequent substantive decision.

(3) For all the searches and seizures of documents in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, it shall be carried out in accordance with Article 16. The authorisation issued by an order from the president of the competent court district *ratione loci* or the substitute magistrate shall be specific and designate places where searches and seizures may be carried out.

Art. 18. Expert opinion

The Council may, pursuant to the implementation of this Act, appoint experts and determine precisely the scope of their missions.

Art. 19. Power to collect information

The Council shall be authorised to interview sectoral regulators but also any other administrations or public institutions for the purpose of collecting information, including confidential information, which is necessary to give effect to this Act. .

Section III – Penalties

Art. 20. Fines

(1) The Council may, by decision, impose on undertakings and associations of undertakings fines not exceeding 5 % of the total turnover in the preceding business year or if not available during the last business year which has been closed, where, intentionally or not, in response to a request made by decision adopted pursuant to Article 14(2), they supply

incorrect, incomplete or misleading information or do not supply information within the required time-limit.

- (2) The Council may, by decision pursuant to Article 11, impose fines to undertakings and association of undertakings when either, intentionally or not, they infringe Articles 3 to 5 of this Act or Articles 101 and 102 of the Treaty.

These penalties shall be proportionate to the seriousness and the duration of alleged facts, to the situation of the concerned undertakings or the group which it belongs and to the possible risks of repetition of any of the offences prohibited by this Act.

They shall be reasoned and determined individually for each undertaking.

The maximum amount of the fine, based on the previous paragraph, shall be 10 % of the highest worldwide total turnover before taxes in the preceding business year of the one where the practices have been implemented. Whether the accounts of the concerned undertaking have been consolidated or combined pursuant to the applicable legislation of its legal form, the turnover taken into account shall be the one related in the consolidated or combined accounts of the consolidating or combining undertaking.

- (3) For the purposes of applying the last two paragraphs, the Luxembourg Registry officials shall be required to communicate to the Competition Council any information they held which are necessary to the fixation of the fines.
- (4) The recovery of the fines shall be entrusted, as in registration matters, to the Luxembourg Registry.

Art. 21. Immunity and reduction of fines

- (1) The Council may grant immunity to an undertaking from any fine pursuant to Article 20(2) where:
- a. this undertaking is the first to submit information and evidence which enable to carry out targeted inspections in connection with the alleged cartel according to Article 3 of this Act or Article 101 of the Treaty and
 - b. the Council did not have, at the time of the application, sufficient evidence to adopt a decision to carry out an inspection.
- (2) Where any exemption have been granted pursuant to the precedent paragraph, the Council may still grant immunity to an undertaking lodging a related claim after the Council had collected sufficient evidence to adopt a decision in order to carry out an inspection where:
- a. this undertaking is the first to submit information and evidence which enable to find an infringement of Article 3 of this Act or Article 101 of the Treaty in connection with the alleged cartel and
 - b. the Council did not have, at the time of the submission, sufficient evidence to find an infringement of Article 3 of this Act or Article 101 of the Treaty in connection with the alleged cartel.
- (3) The Council may grant a reduction to an undertaking of a fine which provides, before the notification of the statement of objections, evidence of the alleged cartel which represents

- significant added value with respect to the evidence already in the Council's possession at the time of the application.
- (4) The total immunity shall be excluded to the undertaking which coerced one or more undertakings, by its economic power or any other ways, to participate to the alleged cartel.
 - (5) In order to qualify for such immunity or reduction of fine, the undertaking must:
 - a. end its involvement in the alleged cartel immediately following its application. However, the Council may waive the undertaking of this duty, for the time it determines, if the undertaking continued participation is reasonably necessary to preserve the integrity of the inspection
 - b. cooperate genuinely, fully and on a continuous basis with the Council from the time it submits its application throughout the Council's final decision.
 - (6) Following the undertaking application and comments submission, the Council shall adopt a leniency notice which set out the conditions under which such immunity or reduction of fine is granted; this notice shall be forwarded to the undertaking and must not be published. It shall only be appealed together with the substantive decision.

Art. 22. Periodic penalty payments

- (1) The Council may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding business year or if not available during the last business year which has been closed, per day of delay and calculated from the date appointed by the decision, in order to compel them:
 - 1) to put an end to an infringement of Articles 3 to 5 of this Act or Articles 101 and 102 of the Treaty, in accordance with a decision taken pursuant to Article 11;
 - 2) to comply with a decision ordering interim measures taken pursuant to Article 13;
 - 3) to supply correct, complete, undistorted and within a certain period information which it has requested by decision taken pursuant to Article 14(2).

For the purposes of this paragraph application, the Luxembourg Registry officials shall be required to communicate to the Competition Council any information they held which are necessary to the fixation of the periodic penalty payments.

- (2) Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Council may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.
- (3) The recovery of the periodic penalty payment shall be entrusted, as in registration matters, to the Luxembourg Registry.

Section IV – Limitation periods

Art. 23. Limitation periods for the imposition of penalties

- (1) The powers conferred on the Council by Articles 20 to 22 shall be subject to the following limitation periods:
 - a) three years in the case of infringements of provisions concerning requests for information;
 - b) five years in the case of all other infringements.
- (2) Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.
- (3) Any action taken by the Council shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which have participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:
 - 1) written requests for information by the Council;
 - 2) appointed councillor decisions ordering an investigation;
 - 3) the statement of objections.
- (4) The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.
- (5) Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Council having imposed a fine or a periodic penalty payment. This period shall be extended by the time during which the limitation period is suspended pursuant to paragraph 6.
- (6) The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Council is subject of proceedings pending before the administrative Tribunal.

Art. 24. Limitation period for the enforcement of penalties

- (1) Fines and periodic penalty payments taken pursuant to Articles 12 and 20 to 22 shall be subject to a limitation period of five completed years.
- (2) Time shall begin to run on the day on which the decisions become final.
- (3) The limitation period for the enforcement of penalties shall be interrupted:
 - 1) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
 - 2) by any action of the Luxembourg Registry designed to enforce payment of the fine or periodic penalty payment.
- (4) Each interruption shall start time running afresh.

- (5) The limitation period for the enforcement of penalties shall be suspended for so long as:
- 1) time to pay is allowed;
 - 2) enforcement of payment is suspended pursuant to a court decision.

Section V – Statement of objections, access to the file, hearing and professional secrecy

Art. 25. Statement of objections

- (1) When the appointed councillor discovers facts likely to fall within the Council's competence and before submitting the file to the Council with a view to taking decisions provided for in Articles 11 and 20(2), he shall inform the undertakings or associations of undertakings concerned, by registered letter with a form of acknowledgement of receipt, of the objections raised against them. This statement of objections shall clearly precise the nature and the factual legal assessment behind the initiation of the procedure and the period granted to the recipient to answer, which shall not be less than one month. However, the Council shall not be bound by the legal characterisation proposed in the statement of objections and it may rule in its final decision any behaviours which related by object or effect to the reported facts in the statement of objections.
- (2) An internal regulation of the Council shall set out the statement of objections procedure as to guarantee business secrets as well as the data confidentiality, in accordance with Article 26(2).

Art. 26. Access to the file, hearing of the parties, complainants and others

- (1) The parties shall have access to the file based upon the statement of objections which was sent to them and may freely acquaint all the documents added at a later stage.
All the documents shall be available to the parties or their authorised representatives either in the office of the Council or on electronic device provided by the Council, from the day on which the statement of objections is sent.
The persons empowered to consult the file may, at their own expense, take copies on paper of the provided documents. Whether, between the day on which the statement of objections is sent and the day of the audition pursuant to paragraph 5, new documents are added, the concerned parties receiving information of this addition may freely acquaint these new documents.
- (2) Business secrets or confidential information provided by the undertakings or seized during the investigation for which undertakings have requested in writing the non-disclosure by specifically stating the reasons for the request, shall not be revealed when all or part of the documents' confidentiality is proved, except where their communication or consultation is necessary for the procedure or the exercise of the rights of the parties. The concerned exhibits shall be removed from the file or some particulars shall be overshadowed.

- (3) It shall be up to undertakings or interested parties to claim to the appointed councillor the secrecy or confidential nature of information they have sent or have been seized.
In their request, undertakings or interested parties must specify the nature of information they consider covered by business secrecy or confidentiality as well as the probable damage in case of information disclosure.
- (4) The appointed councillor decision, which completely or partially refuses to grant the requests for confidentiality presented by the undertakings or interested parties, shall be notified to them by registered letter with a form of acknowledgement of receipt specifying the remedies and periods allowed for appeals against the decision. This decision may grant different access rights in the light of the circumstances of the persons concerned.
An internal regulation of the Council shall set out the access to the file procedure so as to guarantee business secrecy as well as the data confidentiality, in accordance with Article 26(2).
- (5) Before taking decisions on the basis of Articles 11 and 20(2), the Council shall give undertakings and associations of undertakings, during a hearing which cannot take place before two months have elapsed from the notification of the statement of objections, an opportunity of making their views known on the objections raised against them.
During the hearing, the Council shall hear successively the appointed councillor, the complainants, the Minister or his representative with special authority and the parties involved.
If the Council considers it necessary, it may also, during a hearing, hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted.

Art. 27. Professional secrecy

- (1) Without prejudice to Article 23 of the Code of criminal procedure, the members, officers and investigators of the Council as well as the appointed experts pursuant to Article 18 or any other person working under the supervision of the Council shall be subject to professional secrecy foreseen in Article 458 of the criminal Code, even after the termination of their duties.
- (2) The members, officers and investigators of the Council shall be bound to keep the secrecy of deliberations as well as the information acquired while carrying out their duties.
- (3) The information collected pursuant to this Act shall be used only for the purpose for which it was acquired.

Section VI – Remedies

Art. 28. Appeals against decisions of the Council

A remedy of full jurisdiction shall be presented before the administrative Tribunal against the decisions of the Council in pursuance of this Act.

Chapter IV – Functions of analysis

Art. 29. Advisory missions

The Council shall deliver an opinion, on its own initiative or upon request of the Minister, on any matter relating to competition.

The Council must be consulted on any draft law or regulation

- (1) amending or implementing this Act;
- (2) establishing a new scheme leading directly to the effect of:
 - a. submitting the practice of a profession or the market access to quantitative restrictions;
 - b. establishing exclusive rights in specific areas;
 - c. imposing uniform practices as to prices and sales conditions.

The provisions of this Article shall be, without prejudice to the consultations of the Competition Council, foreseen by other laws or regulations.

Art. 30. Sector inquiries or inquiries for types of agreement

- (1) When the trend of trade, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted, the Council may carry out its inquiry into a particular sector of the economy or into a particular type of agreement across various sectors. In the course of this inquiry, the Council may request the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 101 and 102 of the Treaty on the Functioning of the European Union or Articles 3 to 5 of this Act and may carry out any inspection necessary for this purpose.

The Council may in particular request the undertakings or associations of undertakings concerned to communicate to it all agreements, decisions and concerted practices.

The Council may publish a report on the results of its inquiry into particular sectors of the economy or particular types of agreements across various sectors and invite interested parties to comment it. Based on the results of its inquiry, the Council may also implement Article 10.

- (2) Articles 14 to 19, 20, 22 and 31 to 32 shall apply *mutatis mutandis*.

Chapter V – Cooperation and assistance

Art. 31. Cooperation with the European Commission and the competition authorities of the other Member States

- (1) The Council may transmit information or documents in its possession to the European Commission or to the competition authorities of the other Member States when they request so, under the condition of reciprocity and upon the condition that the competition authority of the other Member State concerned is subject to the obligation of professional secrecy with the same guarantees as those offered by the Grand Duchy of Luxembourg. When investigations are carried out on behalf and for the account of the competition authority of another Member State pursuant to Article 22(1) of the Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the President of the Competition Council may authorise officials of this competition authority to assist investigators of the Competition Council in their investigations.
- (2) The obligation of professional secrecy shall not prevent the Council from transmitting information or documents in its possession to the European Commission or to the competition authorities of other Member States exercising the same powers and submitted to the same duties regarding obligations of professional secrecy, in compliance with the first paragraph.
- (3) The assistance requested by a competition authority of another Member State, as mentioned in the first paragraph, with a view of conducting investigations or transmission of information kept or collected, shall be refused when the execution of such request affects the sovereignty, security, fundamental economic interest or the public order of Luxembourg, or where a criminal procedure has already been underway in the Grand Duchy of Luxembourg based on the same facts and against the same persons, or where a final judgment has already been delivered in relation to such persons for the same actions.

Art. 32. Assistance to the European Commission

- (1) The Council shall be the competent authority to collect notifications and meet commitments referred to in Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and in Council regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings. The persons referred to in Article 9 shall be empowered to undertake verifications imposed by the European Commission in accordance with Council regulation (EC) No 1/2003 of 16 December 2002 aforesaid as well as Council regulation (EC) No 139/2004 aforesaid.

For the foregoing purposes, the Council shall adopt a decision which should indicate, under penalty of nullity, the subject matter and the purpose of the investigations and verifications. The investigators shall be vested by powers provided for in Article 20(2) of the Council regulation (EC) No 1/2003 of 16 December 2002 aforesaid or in Article 13(2) of the Council regulation (EC) No 139/2004 aforesaid.

- (2) When the investigators are called upon to assist the European Commission pursuant to Article 20 of the Council regulation (EC) No 1/2003 aforesaid or Article 13 of the Council regulation (EC) No 139/2004 aforesaid, an authorisation issued by an order from the president of the competent court district shall be delivered in order to undertake searches and seizures. The applicable procedure is the one laid down in Article 16(3 to 13).
- (3) When the investigators are called upon to assist the European Commission pursuant to Article 21 of the Council regulation (EC) No 1/2003 of 16 December 2002 aforesaid, an authorisation issued by an order from the president of the competent court district shall be delivered. The applicable procedure is the one laid down in Article 17(3).

Art. 33. Cooperation with judges

For the purposes of this Act, the Council may, before the courts of the civil and administrative system, submit written observations. With the permission of the court in question, the Council may also submit oral observations. It may also produce minutes and investigation reports.

Chapter VI – *Specific, amending, repealing and final provisions*

Art. 34. Specific provisions

The Minister shall be the competent authority to collect notifications and meet commitments referred to in Article 22(6) of the Council regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

The civil servants of the higher and regular State career of the Minister's offices may assist the European Commission pursuant to Article 22 of the Council regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty. To this end, the Minister shall issue a writing authorisation to one or more of the above-mentioned civil servants. They shall exercise the powers provided for in Article 22 of the regulation aforesaid concurrently with the European Commission's officials.

Art. 35. Amending and repealing provisions

- (1) The amended Act of 22 June 1963 laying down the salary system of State officials is amended as follows:

- 1) in Article 22, section IV, number 8, the term “councillor of the Competition Council” is inserted after “councillor of the Court of Audit”.
 - 2) in Annex A – classification of the functions – the heading I, “General Administration” is amended and supplemented by the term “councillor of the Competition Council” in rank 16.
 - 3) in Annex D – Determination – the heading I, “General Administration” is amended and supplemented as follows: to the higher administration career, in rank 12 of computation of additional seniority, is added in rank 16 the term “councillor of the Competition Council”
- (2) The amended competition Act of 17 May 2004 is repealed.

Art. 36. Transitional provisions

- (1) The offices of President, councillors and substitutes councillors of the Competition Council appointed under the amended Act of 17 May 2004 shall be terminated from the day this Act will entry into force.
- (2) The civil servants and employees of the Minister of Economy, on duty or on leave without salary at the date of entry into force of this Act from the Council and/or the Inspection, may opt to the Competition Council for an appointment in their career to the attainment rank and salary level by issuing a written request to the Minister within a period of six months.
- (3) The provisions introduced by this Act shall apply immediately to all the ongoing files from the date of entry into force of this Act.

Art. 37. Entry into force

This Act shall enter into force on the first day of the fourth month following its publication in the Memorial.

Let us summon and order that this Act shall be inserted to the Memorial to be implemented and observed by all who may be concerned.

*The Minister of Economy
and of domestic Trade*
Jeannot Krecké

Castle of Berg, 23th October 2011
Henri