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**LEGISLATIVE DECREE NO. 701 - ELIMINATION OF  
MONOPOLISTIC, CONTROLLING AND RESTRICTIVE PRACTICES  
AFFECTING FREE COMPETITION IS ORDERED**

Legislative Decree dated on November 5, 1991 (issued on November 07, 1991).  
Amended by Decree Law No. 25868 issued on November 24, 1992, Decree Law No.  
26004 issued on November 27, 1992, Legislative Decree No. 788 issued on December  
31, 1994 and Legislative Decree No. 807 issued on April 18, 1996.

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

The Congress of the Republic, in accordance with the Article 188 of the Peruvian Constitution, through Law No. 25327, has delegated law-making to the Executive Power, among other things, in order to eliminate monopolistic, controlling and restrictive practices affecting free competition in goods production and service delivery, allowing thus free enterprise to develop in the best interests of users.

With the Cabinet's voting being in favor;  
Has issued the following Legislative Decree:

Legislative decree against monopolistic, controlling and restrictive practices affecting  
free competition

**Title I**

**Scope of the Law**

**A One Chapter**

**Article 1.- Purpose.** This Law is intended to eliminate the monopolistic, controlling and restrictive practices affecting free competition in goods production and commercialization and service delivery, allowing thus free enterprise to develop in the best interests of users.

**Title II**

**Field of Application of the Law**

**A One Chapter**

**Article 2.- Field of Application.** This Law is applicable to all individuals and companies, whether public or private, that develop any economic activities. It is also applicable to persons that manage or represent companies, institutions or entities

provided that they perform acts and practices contrary to this Law (Amended by the Article 11 of Legislative Decree No. 807).

**Article 3.- Forbidden Acts and Conduct.** Pursuant to the provisions of this Law, any acts or conduct related to economic activities constituting an abuse of a dominant position in the market or limiting, restricting or distorting the free competition, in such a way that damages to the general economic interest in the national territory are caused, are forbidden and will be punished.

**Article 4.- Dominant position in the market.** It is understood that one or several companies are in a dominant position in the market when they can act independently regardless of their competitors, buyers, clients or suppliers because of such factors as a significant market share in the corresponding markets, the characteristics of supply and demand of products or services, the technological development and involved services, competitors' access to sources of funds or supply as well as distribution systems.

**Article 5.- Abuse of dominant position in the market.** It is considered that there is an abuse of dominant position in the market when one or several companies being in the position as above described act unduly in order to obtain benefits and cause damages to third parties, which would not have been possible if such dominant position did not exist.

The following cases are an abuse of dominant position:

- a. refusing unjustifiedly to satisfy a demand for buying or purchasing, or an offer for selling or providing, goods or services (Amended by the Article 11 of Legislative Decree No. 807);
- b. applying, in business relations, unequal conditions to equivalent services, which puts some competitors at a disadvantage with respect to others. Discounts and allowances that, as generally accepted business practices, are given under certain compensatory circumstances, such as advance payment, amount, volume and others, and/or that are always given in all the cases where the conditions are the same;
- c. when the signature of a contract is subject to the acceptance of supplementary services that, by their nature or in accordance with the business costumes, are not consistent with the purpose of such contract;
- d. (Derogated by the Article 12 of Legislative Decree No. 807);
- e. (Derogated by the Article 12 of Legislative Decree No. 807);
- f. Other similar cases (Amended by the Article 11 of Legislative Decree No. 807).

**Article 6. Restrictive practices affecting free competition.** We mean by restrictive practices affecting free competition agreements, decisions, recommendations, parallel actions or agreed practices among companies that restrict, impede or falsify, or may restrict, impede or falsify, the competition.

The following are restrictive practices affecting free competition :

- a. fixing by previous agreement among competitors, directly or indirectly, prices or other business or service conditions (Amended by the Article 11 of Legislative Decree No. 807);

- b. dividing the market or the sources of supply;
- c. dividing the quotas on production;
- d. agreeing the product quality, when it is not conforming to national or international technical standards and adversely affect the consumers (Amended by the Article 11 of Legislative Decree No. 807);
- e. applying, in business relations, unequal conditions to equivalent services, which puts some competitors at a disadvantage with respect to others. Discounts and allowances that, as generally accepted business practices, are given under certain compensatory circumstances, such as advance payment, amount, volume and others, and/or are always given in all the cases where the conditions are the same;
- f. when the signature of a contract is subject to the acceptance of supplementary services that, by their nature or in accordance with the business costumes, are not consistent with the purpose of such contract;
- g. refusing concertedly and unjustifiedly to satisfy a demand for buying or purchasing, or an offer for selling or providing, products or services (Amended by the Article 11 of Legislative Decree No. 807);
- h. limiting or controlling concertedly the production, distribution, technical development or investments (Added by the Article 12 of Legislative Decree No. 807);
- i. establishing, agreeing or coordinating bid submission or non-submission in biddings, tenders, auction sales or public auctions (Added by the Article 12 of Legislative Decree No. 807);
- j. Other similar cases (Added by the Article 12 of Legislative Decree No. 807)

**Article 7.-** (Derogated by the Article 5 of Legislative Decree No. 788).

## **Title IV**

### **Competent Bodies**

#### **Chapter I**

#### **Commission on Free Competition**

**Article 8.-** The Commission on Free Competition is a body with technical and administrative autonomy. Its purpose is to watch over the compliance with this Law (Amended by the Article 4 of Legislative Decree No. 788 and by the Article 49 of Legislative Decree No. 807).<sup>1</sup>

**Article 9.-** (Derogated by the Articles 19 y 20 of Legislative Decree No. 25868).<sup>2</sup>

**Article 10.-** (Derogated by the Article 5 of Legislative Decree No. 788).

**Article 11.-** (Article 19 of Legislative Decree No. 25868).<sup>3</sup>

**Article 12.-** (Derogated by the Article 19 of Legislative Decree No. 25868).<sup>4</sup>

**Article 13.-** (Derogated by the Article 51 of Legislative Decree No. 807).<sup>5</sup>

**Article 14.-** the Secretariat's functions. The Secretariat's functions are:

- a. Issuing an opinion in the proceedings for violations of this Law (Amended by the Article 5 of Legislative Decree No. 788).<sup>6</sup>
- b. Making inquiries and investigations, whether on its own initiative or acting upon a petition by a party, by making use of powers vested in the INDECOPI Commissions. Under exceptional circumstances and by a previous agreement of the Commission, it will immobilize for not more than two working days, expandable to a similar period of time, ledgers, files, documents, correspondence and records in general owned by individuals or companies under investigation, and make copies thereof. Under such circumstances, it will be empowered to take them away from the site where they are kept for up to six working days. to this end, a judicial order will be required. The request for taking them away therefrom shall be warranted and decided within twenty-four (24) hours by the lower court judge, without giving notice to the another party. (Amended by the Article 11 of Legislative Decree No. 807);
- c. Carrying out surveys and issuing reports;
- d. (Derogated by the Article 5 of Legislative Decree No. 788);
- e. Preparing proposals for regulations and implementing guidelines as required;
- f. Any another function as stipulated in the law and regulations.

## **Title V**

### **Procedure**

#### **A One Chapter**

**Article 15 .- Initiation of investigation.** The investigation shall be initiated by the Secretariat on its own initiative, by previous consent of the Commission, or acting upon a petition of one of the parties. Whether the Secretariat considers that there is reasonable evidence of violation of this Law, it notifies to the alleged responsible listing the events that are supposed to violate the law.

**Article 16.- Periods of time for answer and evidence.** The accused party shall answer the charges within fifteen (15) days and give the relevant evidence. During this period, other parties who have legitimate interest may appear in the proceeding to allege their arguments and provide the relevant evidence.

Discovery period is thirty (30) days from the due date of period for answer. The expenses of pleadings are borne by the parties who make them, without prejudice of provisions of the Article 23o.

**Article 17.- The Secretariat's opinion and the Commission's decision.** Once the discovery period has expired, the Secretariat issues an opinion on the factual requirements of the claim, suggesting the pertinent sanctions, and submits the case to the

Commission for appealable decision. The Commission shall issue a decision within a maximum of five (05) days.

**Article 18.- Appeal to the Court.** The Commission's decisions can be appealed to the Court of Competition Defense and Intellectual Property. This Court shall decide the appeal within thirty (30) days from the date of appeal. The parties have the right to present written reports and new evidence to the Court (Amended by Decree Law No. 25868).

**Article 19.- Criminal Action.** If the Commission considers that, in relation to violations as characterized in the paragraphs a), b) and c) of the Article 5 above and the paragraphs a), b), d), e), f), g), h) and e) of the Article 6 above, the responsible acted fraudulently and damages were such that they might have had grave consequences for the general economic interest, it shall proceed to bring a criminal action to the Competent Provincial Prosecuting Attorney. Filing a criminal action for violation of the Article 232 of Criminal Code before the Judiciary shall be up to the Provincial Prosecuting Attorney. He shall bring such criminal action only after the accusation has been filed by the Commission.

**Article 20.- Commitment to discontinuance of illegal acts or change of conduct. Discharge from liability.** Within the period for answering the accusation, the alleged responsible may commit himself to discontinuing the illegal acts under investigation or changing his conduct in these respects.

The Secretariat shall evaluate the proposal and, if deemed satisfactory, it shall propose the adjournment of the administrative proceeding, suggesting the relevant measures to verify the compliance with the commitment. The Commission shall decide on the acceptance or reject of the proposal.

In case of noncompliance with the commitment, the proceeding will be reinitiated, *sua sponte* or acting upon a petition by one of the parties. Likewise, the Commission will impose a fine for noncompliance on the accused party.

Without prejudice of the provisions in this article, in an open proceeding for violation of this Law, any person can ask the Secretariat to discharge him from his liability in exchange for providing evidence that contributes to identifying and demonstrating the existence of an illegal practice. If such evidence is deemed to be determining to penalize the responsible, the Secretariat can propose the approval of this offer and the Commission can accept it. to this end, the Secretariat has full powers of negotiation necessary to establish the terms of such offer. An agreement on discharge from liability shall be signed between the interested party and the Technical Secretary and may include the obligation to keep the origin of evidence confidential whether it would been arranged for by the Commission and be allowed by the nature of evidence. The noncompliance with confidentiality will result in administrative and criminal actions for information declared as confidential by the Commission against the officer. The signature of this agreement and the compliance with the above by the interested party discharge him from any liabilities for the illegal practice under investigation. Therefore, neither the Commission nor any another authority can bring an action against him for the same acts. (Last paragraph added by the Article 12 of Legislative Decree No. 807).

**Article 21.- Precautionary measures.** At any stage of the proceeding, on its own initiative or acting upon a petition for one the parties, the Commission on Free Competition can, within its scope of competence, issue any precautionary measures to ensure the compliance with the final decision. For this purpose, the Technical Secretary

can propose to the Commission on Free Competition the adoption of the precautionary measure deemed appropriate by it, especially discontinuance or imposing certain conditions to prevent damages likely to be caused by the conduct being the object of the proceeding.

A precautionary measure can be requested at any stage of the proceeding. The Commission on Free Competition shall accept or reject it within a maximum of ten (10) working days. The precautionary measure can be issued even before starting an investigation process. However, such precautionary measure will expire whether the investigation process is not initiated within fifteen (15) working days from the date of notice.

If the party obliged to comply with a precautionary measure issued by the Commission on Free Competition does not meet, a fine not less than 10 UITs but not more than 100 UITs shall be automatically imposed on him. to fix such fine, criteria as specified in the Article 23 shall be taken into account. The fine shall be paid within five (05) days. Once this five-day period has expired, a coercive collection will be arranged for.

In case that the noncompliance hereinabove remains, the Commission shall impose a new fine, doubling successively and unlimitedly the amount of the last imposed fine until the precautionary measure issued is complied with. The imposed fines shall not prevent the Commission from imposing another fine or a different sanction at the end of the proceeding (Added by the Article 13 of Legislative Decree No. 807).

**Article 22.- Malicious accusations.** Whoever asks maliciously or without a reason worthy of consideration the Secretariat to make investigations, will be responsible for proceeding costs with prejudice of the liability that may arise therefrom. Likewise, he will be penalized for defamation.

The Secretariat shall reject evidently unfounded requests for investigation outright.

## **Title VI**

### **Pecuniary Sanctions**

**Article 23.- Imposition and grading of sanctions.** The Commission on Free Competition will impose the following fines on violators of Articles 3, 5 and 6:

- a. If the violation is graded as light or serious, a fine up to a thousand (1,000) UITs provided that it does not exceed 10% of gross sales or income received by the violator for the immediate fiscal year previous to the Commission's decision.
- b. If the violation is graded as very serious, a fine exceeding a thousand (1,000) UITs provided that it does not exceed 10% of gross sales or income received by the violator for the immediate fiscal year previous to the Commission's decision.

In case that the organization or individual being penalized does not develop any economic, industrial or business activity, or it/he has just initiated such activity after January 01 for the previous fiscal year, the fine shall exceed in no case a thousand (1,000) UITs.

In addition to the sanction that, at the Commission's discretion, shall be imposed on the violator, when a company or organization is dealt with, a fine up to a hundred (100) UITs shall be imposed on each of its legal representatives or persons forming part of the executive bodies according to their liability for the violations.

to determine the seriousness of the violation and impose the corresponding fines, the following criteria shall be considered by the Commission:

- a. the type and scope of the restriction on the competition.
- b. the size of the market being affected.
- c. the market share of the involved company.
- d. the effect of such restriction on the potential or existing competitors, other agents of the economic process and the consumers and users.
- e. the duration of the restriction on the competition.
- f. the repetition of a forbidden conduct.

In case of recidivism, the Commission will double the imposed fines and increase them successively and unlimitedly. to estimate the amount of fines imposed according to this Legislative Decree, UIT in force at the date of payment or the coercive collection of the fine shall be used (Amended by the Article 11 of Legislative Decree No. 807).

**Article 24.- Extinguishment.** The violations of this Law will extinguish after five (05) years from their occurrence.

Extinguishment will be interrupted by any action by the Commission or the Secretariat win respect to the investigation about the violation that is made known to the alleged responsible.

**Article 25.- Civil action.** Any party adversely affected by the agreements, contracts or practices prohibited by this Law will have the right to bring a civil action for damages and losses.

Those who have been falsely accused will have also the right to bring such action.

## **Final Provisions**

**Article 26.-** (Derogated by Legislative Decree No. 25868).

**Article 27.- Derogatory provision.** All statutory provisions contrary to this Law, including the Supreme Decrees No. 467-85-EF and No. 296-90-EF, are derogated.

**Article 28.- Effective Date.** This Law will enter into force after thirty days from the establishment of the National Commission on Free Competition.<sup>10</sup>

Therefore:

An order to be made known and be obeyed, informing the Congress of the Republic.  
Issued at the President's House, at Lima on November 05, 1991.  
Alberto Fujimori F.

President of the Republic  
Carlos Torres y Torres Lara  
Prime Minister and Minister of Foreign Affairs  
Carlos Bolona Behr  
Minister of Economy and Finances  
Victor Joy Way Rojas  
Ministry of Industry, Trade, Tourism and Integration