

Law to Promote and Protect the Exercise of Free Competition

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THE CONGRESS OF THE REPUBLIC OF VENEZUELA

DECREES

the following,

LAW TO PROMOTE AND PROTECT THE EXERCISE OF FREE COMPETITION

TITLE I. GENERAL PROVISIONS ➔

Article 1: The objective of this Law is to promote and protect the exercise of free competition and the efficiency that benefits the producers and consumers; and to prohibit monopolistic and oligopolistic practices and other means that could impede, restrict, falsify,

or limit the enjoyment of economic freedom.

Article 2: The judicial ordinance of the Cartagena Agreement will apply when restrictive forces are imposed on free competition in the Sub-regional Andean market.

Article 3: For the purposes of this Law, economic freedom is understood as the right of all persons to devote themselves to the economic activity of their choice without any limitations but for those derived by the rights of others and those established by the Constitution and the laws of the Republic.

Economic activity is understood to be every instance of production or sales of goods and services directed towards obtaining economic gains.

Free competition is understood to be a situation characterized by exist adequate conditions which allow any economic agent, be it a supplier or buyer, to freely enter and exit the market, and those that are in the market have the possibility either individually or through concerted action to impose any conditions on the exchange mechanism.

TITLE II. SCOPE OF THE LAW ➔

CHAPTER I. Persons Subject to the Law ➔

Article 4: Subject to this Law are all natural or juristic persons, public or private, engaged in profitable or non-profitable economic activities within the country, or group of agents engaged in such activities.

CHAPTER II. Regulated Activities ➔

SECTION I. General Prohibition ➔

Article 5: Conduct, practices, agreements, conventions, contracts, or decisions that impede, restrict, falsify, or limit free competition are prohibited.

SECTION II. Specific Provisions ➔

Article 6: Acts or conduct of agents not specifically protected by Law, that willfully impede or obstruct the entry or exit of firms, goods or services into any or all areas of the market are prohibited.

Article 7: Prohibited are all actions designed to restrict free competition, induce third parties to refuse to supply goods or services; obstruct access to good or services; or refuse to sell raw materials or factor inputs or offer services to others.

Article 8: All conduct intended to manipulate factors of production, distribution, technological innovation, or investments in such a way as to be detrimental to free competition is prohibited.

Article 9: Agreements or conventions entered into directly or through unions, associations, federations, cooperatives, and other groups subject to this Law which restrict or impede competition between their members are prohibited.

Agreements or decisions taken in merchant or civil associations which are contrary to the ends previously mentioned are also prohibited.

Article 10: Agreements, decisions, collective recommendations or concerted activities are prohibited if they:

1. Fix, directly or indirectly, prices or other conditions essential to the sale or provision of goods or services;
2. Limit production, distribution, and the technical or technological development of investments;
3. Divide markets, geographical areas, supply sectors, or supply sources between competitors;
4. Impose unequal conditions, within any commercial or service transaction, for identical supplies provided that disadvantage one customer over others; and
5. Attach, to any contract, ancillary conditions that because of their nature or because of their accepted commercial use, exhibit no relation to the objective of the contract.

Article 11: Economic concentrations are prohibited, especially if they arise from the exercise of a single activity, when as a consequence of this activity free competition is restricted or a situation of dominance results in the market or in any part of the market.

Article 12: Contracts between persons subject to this Law, are prohibited insofar as they set prices and contractual terms for the sale of goods or provision of services to third parties, and are intended to have, or have, or may have the effect of restricting, falsifying, limiting or impeding competition in all or part of the market.

Article 13: Abuse on the part of one or several persons subject to this Law who hold a dominant position in all or part of the national market is prohibited, and in particular the following conduct is prohibited:

1. Price discrimination and other conditions of sales of services;
2. Unjustified limitations of production, distribution, or technical or technological development, harmful to firms or consumers;
3. The unjustified refusal to meet the demand of goods and services;
4. The imposition, in business and service relations, of unequal conditions for equivalent goods and services that disadvantage some competitors over others;
5. Attach, to any contract, ancillary conditions that because of their nature or because of their accepted commercial use, exhibit no relation to the objective of the contract.

Article 14: For the purposes of this Law, a dominant position exists when:

1. A specific economic activity is conducted by a single person or a group of persons

who are associated as buyers or as sellers or as either providers or purchasers of services; and

2. There exists more than one person conducting a specific type of activity but with no effective competition between them.

Article 15: Associated persons means the following:

1. Persons who own a share of 50 percent or more of the capital of the other or exercises any other form of control over that person;
2. Persons whose capital is 50 percent or more owned by the persons indicated in the preceding subparagraph, or who are subject to control by them; and
3. Persons who, in some form, are subject to the control of the persons described in the preceding subparagraphs.

SINGLE PARAGRAPH: Control means the possibility that one person has of exercising a decisive influence on the activities of one of the persons subject to this Law, be it either through the exercise of property rights or by the use of all or part of the assets of that person, or through the exercise of rights or contracts that permit a decisive influence on the membership, deliberations, or decisions of the bodies of said person or on their activities.

Article 16: For purposes of determining whether effective competition exists in a specific economic activity, it will be important to consider the following factors: The number of competitors participating in the respective activity, their share of the respective market, their installed capacity, demand for the respective product or service, technological innovation that affects the market, the actual and legal likelihood of potential competition in the future, and access by competitors to sources of financing and supply, as well as to distribution networks.

SINGLE PARAGRAPH: When the dominant position is derived from the Law, entities in this position shall be subject to the provisions of this Law unless specific conditions stipulated by the appropriate regulatory bodies dictate otherwise, as in conformity with Article 97 of the Constitution.

SECTION III. Unfair Competition ➡

Article 17: The development of commercial policies which tend to eliminate competitors through unfair methods of competition are prohibited; especially in the following cases:

1. Misleading or false advertising directed to impede or limit free competition.
2. The promoting of products and services based on false declarations with regards to the disadvantages or risks of any other competitors' product or service; and
3. Bribery in commerce, the violation of industrial secrets and the pirating of products.

SECTION IV. Exceptional Treatment ➡

Article 18: The President of the Republic, in Council of Ministers, and having heard the opinion of the Superintendent for the Promotion and Protection of Free Competition shall determine the norms under which the following activities shall be allowed:

1. The fixing directly or indirectly, individually or in concerted action of bid or offer prices of any good or service;
2. The application, in commercial relations, of unequal conditions for equivalent or similar services that fashion inequities into the competitive process, especially if distinct from conditions which would be emerge naturally if there existed effective competition in the market, except in the case of discounts granted for prompt payment, volume discounts, less risk, and other conditions commonly found in commerce; and
3. Exclusive territory arrangements and franchises with exclusive dealership provisions.

SINGLE PARAGRAPH: In establishing the norms under which the activities indicated in the preceding subparagraphs may be conducted, the Executive Branch shall concurrently comply with the following:

1. Authorization of these activities, will have as objectives, contributing to production improvements, commercialization and distribution of goods and services, or promoting technical or economic progress;
2. The authorized activities must entail advantages for consumers or users;
3. Prior authorization of lawful activities, and control over their implementation, by the Office of the Superintendent; and
4. The authorization will contain the minimum required to achieve intended goals.

TITLE III. THE OFFICE OF THE SUPERINTENDENT FOR THE PROMOTION AND PROTECTION OF FREE COMPETITION ➔

CHAPTER I. Its Internal Regulations ➔

Article 19: The Office of the Superintendent for the Promotion and Protection of Free Competition with operational autonomy to act in matters within its competence, attached administratively to the Ministry of Development, is created.

Article 20: The Superintendency will be headquartered in the City of Caracas; however, if deemed necessary it will be able to establish offices in other cities.

Article 21: The Superintendency shall be administered by a Superintendent who shall be appointed by the President of the Republic.

Article 22: The Superintendent will have an Assistant, appointed by the President of the Republic. Both will exercise their office for (4) years, and they may be appointed to serve in future periods.

The Assistant shall assume Superintendent responsibilities during any absences.

In case of a permanent absence, the responsibilities of the Superintendent for the Defense of Free Competition and the Assistant Superintendent shall be assumed, for the remainder of the term, by those designated by the President of the Republic.

Article 23: The Superintendent and the Assistant Superintendent must be over thirty (30) years of age, of recognized integrity and experienced in financial, economic, and commercial affairs related to the matters covered by this law.

SINGLE PARAGRAPH: The following persons may not be appointed to the offices of Superintendent or Assistant Superintendent:

1. Persons who have declared bankruptcy, and persons found guilty of offenses or misdemeanors against property, against the public faith or against public patrimony.
2. Persons related to the President of the Republic, the Minister of Development, or any member of the office of the Superintendent within the fourth degree of consanguinity or second degree of affinity, or who are spouses of any of them;
3. Debtors with delinquent bank or tax liabilities;
4. Members of political party directorates, while exercising their office;
5. Officials, directors, or employees of the natural or juristic persons subject to this law; and
6. Persons holding paid public office.

Article 24: The Superintendent and the Assistant Superintendent will not be removed from office except in the following instances:

1. In case of criminal conviction;
2. In case of a subsequent conflict of interest; and
3. For not complying with the duties of the office and for fully proven ineptitude.

Article 25: The Superintendent shall have a Tribunal [Sala de Sustanciación] which shall have the powers indicated by this Law, its Regulations, and the Internal Regulations of the Superintendency.

The Tribunal shall be under the Assistant Superintendent and shall have a staff of professionals in sufficient number to ensure promptness in resolving matters within the competence of the Superintendency.

Article 26: The Superintendent may not perform any other functions, public or private, except academic and honorary functions which do not interfere with the carrying out his duties and functions.

Article 27: The appointment and removal of functionaries in the Superintendency shall be carried out by the Superintendent.

Article 28: Employees of the Superintendency who have investigated a firm, will not be able to work for said firm or any other firm with which that firm has a shareholder relationship, directly or indirectly, for one year following the investigation. The same prohibition shall apply to spouses and relatives to the fourth degree of consanguinity or second degree of affinity.

An official will disqualify himself if commissioned to investigate firms or persons, if that would involve, in any way, a conflict of interest, or if his spouse or any of his relatives to the fourth degree of consanguinity or second degree of affinity are employed by the firms or persons. The framework of incompatibility spelled out in Chapter II of the Organic Law of Administrative Procedures will also be applied.

CHAPTER II. Its Powers ➔

Article 29: The Superintendency shall be responsible for monitoring and controlling the practices that impede or restrict free competition. Among others, it shall have the following powers and duties:

1. To resolve matters assigned to it by this Law;
2. To conduct the investigations necessary to verify the existence of anticompetitive practices, and prepare case files concerning such practices;
3. To determine the existence or nonexistence of prohibited practices or conduct, act to proscribe them, and impose the penalties provided in this Law;
4. To adopt the necessary preventive measures, at its own initiative or at the request of a concerned party, to avoid the detrimental effects of the prohibited practices;
5. To authorize those practices or conduct in those exceptional cases to which Article 18 refers to, and always within the limits which are in effect;
6. To propose to the Executive Branch the regulations necessary for the application of the law;
7. To issue its internal regulations and the rules necessary for its operation;
8. To issue an opinion on matters within its competence when so requested by the judicial or administrative authorities;
9. To create and maintain the Register of the Office of the Superintendent; and
10. Any other powers and duties indicated by the laws and regulations.

CHAPTER III. The Register of the Office of the Superintendent for the Defense of Free Competition ➔

Article 30: The Superintendency will have to keep a Register in which the following actions

are to be recorded:

1. The investigations that have been initiated and the results obtained. Documents furnished by individuals which should remain confidential shall be incorporated in a separate volume, which shall be reserved for use by the Superintendency;
2. Any measures that have been taken in each case and the provisions made to ensure compliance;
3. Any other decision affecting third parties or officials of the Superintendency; and
4. The sanctions imposed.

CHAPTER IV. The Duty to Inform ➡

Article 31: All persons and firms conducting business in the country, public and private, Venezuelan and alien, must furnish the information and documentation required of them by the office of the Superintendency.

The information and data supplied shall be confidential except when the Law provides for its registration or publication.

TITLE IV. PROCEDURE ➡

CHAPTER I. Procedure in the Case of Prohibited Practices ➡

Article 32: Proceedings shall be initiated at the request of a concerned party or at the initiative of the Office.

The initiation of proceedings may be ordered only by the Superintendent.

Whenever it appears that the rules provided for in this Law may have been violated, the Superintendent will order the opening of the corresponding proceeding, and shall initiate through the Tribunal the investigation of the case when appropriate.

Article 33: With the exception of violations of the provisions of Section III of Chapter II of Title II of this Law, which have a statute of limitations of six (6) months, the other violations have a statute of limitations of one (1) year.

The statute of limitations shall begin to run from the date on which the violation was committed and, for repeated violations, from the day on which the last violation ceased.

Article 34: The Tribunal shall perform the necessary investigation to clarify the facts and determine responsibility.

In the exercise of its powers, the Tribunal shall have the broadest investigative and supervisory powers, and in particular the following powers:

1. To summon any person to appear to testify on pertinent matters related to the alleged

violation;

2. To require any person to present any documents or information that may be related to the alleged violation;
3. During the investigation, to examine ledgers and documents; and
4. To subpoena any person, through the national press, to appear who may be able to furnish information with respect to the alleged violation.

Article 35: During the hearing of the case file, and before its decision is handed down, the office Superintendent may adopt the following preventive measures:

1. It may order the alleged prohibited practice to cease; and
2. Dictate measures to avoid damages that may result from the alleged prohibited practice.

FIRST PARAGRAPH: If the preventive measures have not been solicited by the interested parties the Superintendent may demand a bond to guarantee any eventual damages that may result.

SECOND PARAGRAPH: If the measures are severely biased against the alleged violator, he will be able to petition the Superintendent to suspend measures. In this case the Superintendent will have to demand the creation of a bond large enough to guarantee the measure.

Article 36: When in the course of investigations actions are uncovered that may constitute violations of this Law, the Tribunal shall notify the alleged violators that the respective administrative enquiry has been opened, indicate the alleged violations being investigated, and grant them a fifteen (15) day period within which to present their evidence and put forward their arguments. In those cases where the Tribunal deems it necessary, it will be able to give an extension of (15) days. In the case of several alleged violators, the aforementioned period shall begin to be counted from the date on which the last of the notifications referred to in this Article was given.

Article 37: Once the period of time established in the preceding Article has elapsed, the Superintendent will have a thirty (30) day period in which to issue a decision.

Article 38: In the decision that terminates the proceeding, the Superintendency will decide upon the existence or nonexistence of practices prohibited by this law.

FIRST PARAGRAPH: In case the existence of prohibited practices is determined, the Superintendent will be able to:

1. Order that the prohibited practices cease within a determined period of time;
2. Impose specific conditions or obligations on the violator;
3. Order the elimination of the effects arising from the prohibited practices; and

4. Impose the penalties provided by this Law.

SECOND PARAGRAPH: In the resolution issued by the Superintendent there shall be a determination of the amount of the bond to be posted by the parties concerned in case of an appeal in conformity with Article 54.

Article 39: The decision issued by the Superintendent relating to the preceding Article shall be provided to the violators and parties concerned.

Article 40: During the proceeding, and until the final decision is handed down, the parties concerned shall have up to two (2) days of advance access to the case file, and will be able to advance arguments which shall be taken into account.

Article 41: In all that is not foreseen by this Chapter, the proceeding shall be governed by the provisions of the Organic Law on Administrative Proceedings.

CHAPTER III. Procedure for Authorizations ➡

Article 42: In granting the authorizations provided for in this law, and for the resolution of other matters for which a special procedure has not been established, the regular procedure provided for in the Organic Law on Administrative Proceedings shall be followed.

TITLE V. PENALTIES ➡

CHAPTER I. General Provisions ➡

Article 43: The administrative penalties referred to under this Title shall be imposed by the Superintendency in the final decision that terminates the proceeding.

When notification of the decision is given to the violators, the corresponding payment terms of the fine shall be delivered to them, so that the violators may proceed to pay the fine at the office of the Treasury within five (5) days following the period provided for in Article 53.

Article 44: The penalties provided for in this Title shall be applied without prejudice to the penalties established in other laws.

Article 45: The authors, co-authors, accomplices, and instigators of acts in violation of this Law shall be responsible personally for the infractions they committed.

Article 46: The penalties imposed in conformity with this law shall become void by a statute of limitations after the elapse of four (4) years counting from the date of the definitive ruling.

Legal action to recover payments improperly made as monetary penalties shall become barred by statute of limitations by an equal period of four (4) years.

Article 47: When the person penalized does not pay the fine within the period indicated in the only separate paragraph of Article 43, action shall be taken in conformity with the procedure for the imposition of taxes and charges payable as spelled out in the Code of Civil Procedure.

For this purpose, the terms of payment for the fines issued in conformity with this Title shall become documents proving the plaintiff's right of execution.

Article 48: Absent special provisions in this Title, the principles and rules of penal law compatible with the nature and purposes of the matter governed by this law shall be substituted.

CHAPTER II. Specific Penalties ➔

Article 49: Persons involved in the prohibited practices and conduct indicated in Sections I, II and III of Chapter II of Title II of this Law, may be punished by the Superintendency with a fine of up to ten percent (10%) of the value of the violator's sales, this quantity can be raised up to twenty percent (20%). In case of repeat offenders, the fine will be raised to forty percent (40%). The relevant sales figures to be used in this calculation will be based on data obtained before the resolution of the fine.

Article 50: The amount of the penalty referred to in the preceding article shall be established in keeping with the seriousness of the violation, for which purpose the following shall be taken account:

1. The form and scope of the restriction on free competition;
2. The size of the market affected;
3. The market share of the corresponding person subject to this Law;
4. The impact of the restriction of competition on other actual or potential competitors, on other parts of the economic process, and on consumers and users;
5. The duration of the restriction on free competition, and
6. The frequency of repeat offenses.

Article 51: The Superintendency may impose, independently of the penalties referred to in Article 49, fines up to one million Bolivars (Bs. 1,000,000), on those persons who do not comply with the orders contained in the decisions issued by the Superintendency in conformity with Articles 35 and 38. These fines may be raised by fifty percent (50%) of the original amount for non-payment.

Article 52: All violations of this Law and its regulations not specifically penalized shall be punished by a fine of up to three million Bolivars (Bs. 3,000,000.00) depending on the gravity of the offense, as judged by the Superintendent.

TITLE VI. REMEDIES ➔

Article 53: Decisions adopted by Superintendency exhaust the administrative route, and the only remedy that may be undertaken has to be finalized within the period of forty-five (45) calendar days. This remedy is the contentious-administrative appeal in conformity with the Law on that matter.

Article 54: When the administrative law appeal is being undertaken to review Superintendency resolutions that determined the existence of prohibitive practices, the effects of the resolutions shall be suspended if the appellant posts a bond. The amount of the bond shall be determined in each instance in the final decision, in conformity with the second paragraph of Article 38.

TITLE VII. ACTIONS DERIVED FROM THIS LAW ➔

Article 55: Without prejudice to what is indicated in the Single Paragraph of this Article, persons affected by the prohibited practices may turn to the competent courts to seek indemnification for damages that occurred, once the decision of the Superintendency is final.

SINGLE PARAGRAPH: In case provisions of Section III of Chapter II of Title II of this Law are violated, persons affected may turn directly to competent courts without need to exhaust administrative appeals. However, if the persons affected decide to initiate the respective administrative proceeding in conformity with the provisions of Chapter I of Title IV of this Law, they may not demand redress for any damages they may have suffered as a consequence of the prohibited practices until after the decision of the Superintendency becomes final.

Article 56: Legal actions for damages derived from practices prohibited by this Law shall become barred by statute of limitations in:

1. Six (6) months counting from the date on which the resolution of the Superintendency became final.
2. Six (6) months for violations of the provisions of Section III of Chapter II of Title II of this Law, in the cases where the administrative proceeding of Chapter I of Title IV of this Law are not to be initiated. The statute of limitations shall begin to run from the date on which the infraction occurred; and, for repeated violations from the date on which the last violation occurred.

TITLE VIII. FINAL DISPOSITIONS ➔

Article 57: Legal business transactions which cause or result or are designed to foster practices prohibited by Sections I and II of this Chapter are null and void, provided they are not covered by the exceptions spelled out in this Law.

Presented, signed and sealed in the Legislative Federal Palace, in Caracas, on the thirteenth day of December of nineteen hundred and ninety one. 181st year of Independence and 132nd year of the Federation.

THE PRESIDENT,

PEDRO PARIS MONTESINOS

THE VICEPRESIDENT,

LUIS ENRIQUE OBERTO G.

THE SECRETARIES,

JOSE RAFAEL QUIROZ SERRANO

JOSE RAFAEL GARCIA-GARCIA