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Law No. 3 of 2005

Promulgating the Law on the

Protection of Competition and the Prohibition of Monopolistic Practices

In the name of the People

The President of the Republic,

The People's Assembly has decided the following law and we hereby promulgated it:

(Article One)

This Law shall apply with regards to the protection of competition and the prohibition of monopolistic practices.

(Article Two)

The Prime Minister is the minister competent to give effect to the provisions of this Law.

(Article Three)

The Executive Regulations of this Law shall be issued by a Prime Ministerial Decree within one month, from the date of the entry into force of this Law.

(Article Four)

This Law shall be published in the Official Gazette, and shall enter into force after three months from the following day of the date of its publication.

This law shall be stamped by the seal of the State and executed as one of its laws.

Issued by the Presidency of the Republic on 6 Moharam, 1426 H.

(corresponding to 15 February, 2005)

Hosni Mubarak

The Law on the Protection of Competition and the Prohibition of Monopolistic Practices

Article 1

Economic activities shall be undertaken in a manner that does not prevent, restrict or harm the freedom of competition in accordance with the provisions of the Law.

Article 2

For the application of this Law, the following terms and phrases shall have the meanings indicated next to each of them:

a) *Persons*: Natural and juristic persons, economic entities, unions, financial associations and groupings, groups of persons, whatever their means of incorporation, and other related parties as set forth in the Executive Regulations concurrently with the objectives and provisions of this Law.

b) *Products*: Goods and services.

c) *The Authority*: The Authority for the Protection of Competition and the Prohibition of Monopolistic Practices established in accordance with the provisions of this Law.

d) *The Board*: The Board of Directors of the Authority for the Protection of Competition and the Prohibition of Monopolistic Practices.

Article 3

The relevant market, in the application of the provisions of this Law, is the market that consists of two elements, namely, the relevant products and the geographic area. Relevant products are products considered to be practical and objective substitutes to

each other. The geographic area means a certain geographical territory where competition conditions are homogenous while taking into consideration the potential opportunities for competition, all in accordance with the criteria set out by the Executive Regulations in a manner consistent with the objectives and provisions of this Law.

Article 4

In the application of the provisions of this Law, dominance in a relevant market is the ability of a Person, holding a market share exceeding 25% of the aforementioned market, to have an effective impact on prices or on the volume of supply on it, without his competitors having the ability to limit it.

The Authority shall determine the situations of dominance according to the procedures provided for in the Executive Regulations of this Law.

Article 5

The provisions of this Law shall apply to acts committed abroad should these acts result into the prevention, restriction or harm of the freedom of competition in Egypt and which constitute crimes under this Law.

Article 6

Agreements or contracts between competing Persons in any relevant market are prohibited if they are intended to cause any of the following:

- a) Increasing, decreasing or fixing prices of sale or purchase of products subject matter of dealings.
- b) Dividing product markets or allocating them on grounds of geographic areas, distribution centers, type of customers, goods, seasons or time periods.
- c) Coordinating with regard to proceeding or refraining from participating in tenders, auctions, negotiations and other calls for procurement.
- d) Restricting the production, distribution or marketing operations, or limiting the distribution of services in terms of its kind or volume or applying restrictions or conditions for their availability.

Article 7

Agreements or contracts between a Person and any of its supplier or clients are prohibited if they are intended to restrict competition.

Article 8

A Person holding a dominant position in a relevant market is prohibited from carrying out any of the following:

- a) Undertaking an act that leads to the non-manufacturing, or non-production or the non-distribution of a product for a certain period or certain periods of time.
- b) Refraining to enter into sale or purchase transactions regarding a product with any Person or totally ceasing to deal with him in a manner that results in restricting that Person's freedom to access or exit the market at any time.

- c) Undertaking an act that limits distribution of a specific product, on the basis of geographic areas, distribution centers, clients, seasons or periods of time among Persons with vertical relationships.
- d) To impose as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement.
- e) Discriminating between sellers or buyers having similar commercial positions in respect of sale or purchase prices or in the terms of the transaction.
- f) Refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible.
- g) Dictating on Persons dealing with him not to permit a competing person to have access to their utilities or services, despite this being economically viable.
- h) Selling products below their marginal cost or average variable cost.
- i) Obliging a supplier not to deal with a competitor.

The Executive Regulations shall set out the conditions and procedures for implementing the provisions of this Article.

Article 9

The provisions of this Law shall not apply to public utilities managed by the State.

The Authority may, upon the request of the concerned parties, exempt some or all the acts provided for in articles 6, 7 and 8 regarding public utilities that are managed by companies subject to the Private Law where this is in the public interest or for attaining benefits to the consumers that exceed the effects of restricting the freedom of competition. This shall be done in accordance with the regulations and procedures set out by the Executive Regulation of this Law.

Article 10

The Cabinet of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one or more essential products for a specific period of time.

Any agreement concluded by the Government for the purposes of the implementation of these prices shall not be considered an anti-competitive practice.

Article 11

There shall be established an authority called “The Authority for the Protection of Competition and the Prohibition of Monopolistic Practices”. The Authority shall be located in Cairo and shall have the public juristic personality. The Authority shall be affiliated to the Competent Minister and shall have, in particular, the following powers:

- (1) Receiving requests for inquiry, inspection, collecting information or issuing orders to initiate such actions in relation to anti-competitive agreements and

practices. This shall be done in accordance with the procedures set out by the Executive Regulations.

(2) Receiving notifications from Persons immediately upon their acquisition of assets, proprietary rights, rights of use, shares, the establishment of unions, mergers, amalgamations or joint management of two Persons or more.

The Executive Regulations of this Law shall specify the notification date and data, documents attached thereto and procedures of its submission.

(3) Setting up a comprehensive database relating to the economic activity, regularly updating and developing it to serve the Authority in all aspects that pertains the protection of competition. Setting up a database and conducting necessary studies and researches to detect acts that are harmful to competition.

(4) Taking the measures stipulated in Article 20 of this Law.

(5) Giving its opinion on draft laws and regulations relating to the regulation of competition.

(6) Coordinating with its counterparts in other countries on matters of common interest.

(7) Organizing training and educational programs with a view of creating awareness about the provisions of this Law and free market principles in general.

(8) Issuing periodicals containing decisions, recommendations, procedures and measures adopted and pursued by the Authority as well as other matters relating to the Authority.

(9) Preparing an annual report on the activities of the Authority and its future plans and recommendations to be submitted to the Competent Minister upon its approval by the Board of Directors. A copy thereof shall be sent to the People's Assembly and the Shura Council.

The Executive Regulations of this Law shall determine the procedures to be followed by the Authority to investigate and prove acts that are deemed violation of the provisions of this Law.

Article 12

The Authority shall be managed by a Board of Directors the composition of which shall be formulated by virtue of a decree of the Competent Minister as follows:

(1) A full-time Chairperson with distinguished experience.

(2) A Counselor from the State Council, holding a vice-president rank, to be chosen by the President of the State Council.

(3) Four members representing the concerned ministries to be nominated by the Competent Minister.

(4) Three specialists and expert members.

(5) Six members representing the General Federation of the Chambers of Commerce, the Egyptian Federation of Industries, the Banking Federation,

the General Federation for Civil Associations, the General Federation for Consumer Protection and the Egyptian General Union of Labour. Each Federation/Union shall appoint its own representative.

The Board shall be appointed for four years which may be renewed for another term.

The Decree on the formation of the Board of Directors shall contain the remuneration of the Chairperson and Board Members.

Article 13

The Board shall convene upon an invitation of its Chairperson at least once every month and whenever the necessity so requires. The meetings of the Board shall be valid with a quorum of ten members and the resolutions shall be passed with the majority of votes of its members.

A Board member shall not be eligible to take part in the deliberations or voting with regard to a case under the consideration of the Board, if he/she has an interest in it, or if he/she is a relative to any of the parties up to the fourth degree, or if such member currently represents or has represented any of the parties.

The Board may invite to its meetings specialists it wishes to seek their assistance. Such specialists shall not have a counted vote.

The Executive Regulations shall specify the competences of the Board in accordance with the provisions of this Law and the procedures for the invitation to its meetings and its operational rules.

Article 14

The Authority shall have an independent budget following the model of Public Service Authorities. Any surplus in the budget shall be forwarded from one fiscal year to another. The resources of the Authority consist of the following:

- (1) Appropriations designated to the Authority in the State General Budget.
- (2) Grants, donations and any other resources accepted by the Board and which do not contradict with its goals.
- (3) Revenues from the fees provided for in this Law.

Article 15

The Authority shall have a full-time Executive Director whose appointment, remuneration and competences shall be decreed by the Competent Minister upon the recommendation of the Chairperson of the Authority.

The Executive Director shall represent the Authority before courts and third parties.

The Executive Director shall attend the Board meetings but shall be ineligible to vote.

The Board of Directors of the Authority shall issue regulations concerning the organization of the work in the Authority and setting out the financial and administrative rules pertaining to its employees, without being restricted by the rules and regulations applicable to State employees. Such regulations shall be decreed by the Competent Minister.

Article 16

The employees of the Authority are prohibited to disclose any information, data or the sources thereof, in relation to cases falling under the scope of this law which are submitted or circulated during review, taking actions and issuing decisions in such cases. These information and data as well as their sources shall not be used for any purposes other than those for which they were submitted.

Employees of the Authority are prohibited to work with Persons that were subject to examination or are in the process of examination on, for a period of two years from the end of their employment.

Article 17

The employees of the Authority, who shall be specified by virtue of a decree issued by the Minister of Justice, in agreement with the Competent Minister and upon the recommendation of the Board, shall be granted the status of law enforcement officers in applying the provisions of this Law.

Such employees shall be entitled to review records and documents, as well as to obtain any information or data from any governmental or non-governmental authority for the purpose of examining cases considered by the Authority.

Article 18

The Executive Regulations shall determine the categories of fees payable to the Authority for the services it renders. Such fees shall not exceed ten-thousand Egyptian Pounds per case.

Article 19

Any Person may report to the Authority any breach of the provisions of this Law.

Article 20

Upon establishing a breach of any of the provision of Articles 6, 7 and 8 of this Law, the Authority shall order the violator to readjust his position and to redress the violation forthwith or within a period of time to be specified by the Board; otherwise the agreement or contract in breach of Articles 6 and 7 of this Law will be considered void.

The Board may issue a decision to stop the prohibited practice immediately or after the lapse of the said period of time without readjustment of position or redress for violation.

The above shall apply without prejudice to the liability arising from such breaches.

Article 21

Criminal lawsuits or any procedure taken therein shall not be initiated in relation to acts violating the provisions of this Law, unless a request of the Competent Minister or the person delegated by him is presented.

The Competent Minister or the person delegated by him may settle with regard to any violation, before a final judgment is rendered, in return for the payment of an amount not less than double the minimum fine and not exceeding double its maximum.

The settlement shall be considered a waiver of the criminal lawsuit filing request and shall result in the lapse of the criminal lawsuit relevant to the same case subject of suing.

Article 22

Without prejudice to any more stringent penalty stipulated for in any other Law, the breach of any of the provisions of Articles 6, 7 and 8 of this Law shall be sanctioned by a fine not less than thirty-thousand Egyptian Pounds and not exceeding ten-million Egyptian Pounds.

The Court may, instead of ordering confiscation, order an alternative fine equivalent to the value of the Product subject matter of the breach.

Article 23

Without prejudice to any more stringent penalty stipulated in any other Law, the breach of the provisions of Article 16 of this Law shall be sanctioned by a fine not less than ten-thousands Egyptian Pounds and not exceeding fifty-thousands Egyptian Pounds.

Article 24

Final judgments of conviction regarding the actions stipulated in Article 22 of this Law shall be published in the Official Gazette and in two wide spread daily newspapers, at the convicted person's expenses.

Article 25

The person responsible for the actual management of the juristic person in breach shall be subject to the same penalties stipulated for the acts committed in breach of the provisions of this Law, if it has been established that such person had actual knowledge of such breach and if his default on assuming the duties of his office as the responsible manager has contributed to the breach.

The juristic person shall be jointly liable for the payment of the fines and compensation ruled, if the breach has been committed by one of its employees, acting in the name or on behalf of the juristic person.

Source: World Intellectual Property Organization
<http://www.wipo.int>