

# Executive Summary

JULY 2008

## Law No. 42-08 on the Defense of Competition

### LAW NO. 42-08 ON THE DEFENSE OF COMPETITION

Law No. 42-08 on the Defense of Competition has the primary objective to promote and defend the effective competitiveness of all industries in order to increase the economic efficiency of all markets of goods and services and create benefits and value in favor of consumers within Dominican territory.

This law recognizes the constitutional right of free enterprise, compatible with economic efficiency and commercial good faith. Therefore, this regulation is of general observance and public order in all Dominican territory and applicable to all areas of economic activities and to all economic agents. Its provisions apply to physical persons and companies, private or public entities, with or without the objective of generating profits, national and foreign, performing any economic activity in Dominican territory. Additionally, this law also applies to agreements, acts and activities which may have originated abroad but restrict competition within Dominican territory as well as to acts, contracts and administrative regulations which have the aforementioned effect. The law does not apply to collective labor agreements presently in force pursuant to local labor laws.

#### DEFINITIONS OF THE LAW

- a) **Agreement:** any exchange of wills contained in a contract or agreement, express or implied, written or verbal, which may hinder competitive practices among competing agents;
- b) **Economic Agent:** all persons or group thereof, physical or companies participating in an economic activity;
- c) **Effective competition:** is the competitive participation between economic agents within a market to serve a portion thereof, through the improvement of the quality and price of goods and services offered to the consumer;
- d) **Reasonable consumer:** is an informed consumer, knowledgeable of his rights, who expects to receive in exchange for a price paid, a specific good or service, in accordance to the information and publicity received or to the terms of agreements signed for such purposes;
- e) **Free competition:** the possibility to access the markets to offer goods and services without the existence of artificial barriers created against the penetration of new competitors to a market;
- f) **Relevant market:** a branch of economic activity and the corresponding geographical zone, defined in order to encompass all replaceable goods and services, and all immediate competitors, to which the consumer may go, in the short term, if a restrictive practice or abuse produce a significant increase in prices. In order to determine the relevant market, the following elements need to be considered: (a) the product or service whose relevant market is going to be determined; (b) the corresponding geographical area; (c) the possibility of substituting the relevant good or service for another similar in price, attributes and function; (d) the cost of distribution of the product or service, its most important ingredients, complements and substitutes;

- (e) the substitution of the demand, in particular, the cost or probability that the suppliers of other products and services may easily start to produce and offer products or services that will satisfy consumer demand; and (f) national and international regulatory restrictions which limit the access of consumers to alternative sources of supply or for suppliers to alternative clients.
- g) Dominant position: relevant control of the market enjoyed by an economic agent, by itself or jointly with others, which gives the agent the power to hinder effective competition and enables it to behave within the market independent from its competitors, clients, and consumers. In order to determine if an entity or group of entities posses a dominant position in a relevant market, the following elements need to be considered: (a) the existence of barriers to access the market; (b) the participation in the market and the power to fix prices unilaterally, or to substantially restrict the supply in the relevant market, when other players in the market cannot offset such power; (c) percentage of participation in the market of the other economic agents; (d) possibilities of access of the other players to the supply of ingredients or components; and (e) the competition and performance of other newer participants. The possession of a dominant position in the market or its increase, by itself does not constitute a violation of the law.
- h) Concerted practice: all behavior between competing economic agents voluntarily directed in order to erase competition among them.

### **ANTICOMPETITIVE BEHAVIOR**

**Concerted Practices and Anti-competition Agreements:** All acts, agreements and arrangements among competing economic agents, express or implied, verbal or written, with the objective or effect of imposing unjustified barriers in the market are forbidden. The following activities are considered to be concerted practices and anti-competition agreements:

- a) To agree to impose prices, discounts, extraordinary charges, or other selling conditions as well as to exchange information that would produce the same objective or effect;
- b) To coordinate or agree on offers or the withdrawal on bidding processes, tenders or contests;

- c) To distribute or assign segments or part of a goods or services market assigning specific time or space, providers or clients;
- d) To limit the production, distribution or commercialization of goods or the rendering and/or frequency of services, without regard to their nature;
- e) To eliminate competitors from the market or limit their access, from a position of purchaser or seller of specific goods.

Activities described as concerted practices and anticompetitive behavior are prohibited as long as they are performed or planned among competitors acting together, except for those that may be part or complementary to an integration or association process agreed in order to achieve better efficiency of the productive activity or to promote innovation or productive investment.

An interested party seeking the application of a sanction for anticompetitive behavior shall have to prove the anticompetitive effect of such behavior, while the economic agent being investigated shall have to demonstrate possible effects in favor of competition or economic efficiency.

**Abuse of Dominant Position:** All activities that constitute abuse of dominant position of economic agents in a relevant market which may create unjustified barriers against third parties are prohibited. The following activities are considered to be abuse of dominant position:

- a) To subordinate the decision of a sale to the fact that the purchaser abstains from buying or distributing products or services to other competing entities;
- b) The imposition by the provider, of prices or other sale conditions to its resale agents, without a justified commercial reason;
- c) The sale or any other conditional transaction to acquire or provide other goods or services, different or distinguishable from the principal;
- d) The sale or any other transaction subject to the condition of not contracting services, acquiring, selling or providing goods produced, distributed, or commercialized by a third party;
- e) The refusal to sell or provide, to a determined economic agent, goods and services which are normally available to others, when there are no other

alternative providers available in the relevant market willing to sell under normal conditions. A refusal to negotiate by an economic agent when there is a violation of contractual obligations by the client or potential client, or when the commercial history of the client or potential client demonstrates a high volume of returns or damaged goods, due to default in payments, or another similar commercial reason is exempted from this prohibition;

- f) The application, in commercial relations or rendering of services, of unequal conditions to equivalent situations, which will put some competitors at a disadvantage in front of others, without a justified commercial reason.

In evaluating abuse of dominant position the contribution or reduction of such behavior to economic efficiency shall be examined through an analysis of the net effect of said behavior; that is, if its anti-competitive effects overcome pro-competition effect or not, or increase or decrease of economic efficiency.

Equally, the interested party shall present signs demonstrating the individual or group capacity to create the unjustified barriers against third parties in the market, to which purposes their dominant position in the relevant market has to be confirmed.

Unfair Competition: all practices and behaviors in the commercial field contrary to good faith and commercial ethics having as objective an illegitimate deviation of consumer demand is considered unfair, illicit and prohibited. The application of the corresponding sanctions for unfair competition practices cannot be conditioned upon the existence of a competition relationship among the perpetrator and the perpetrated party.

The following is a non-exclusive list of practices that are considered unfair competition:

- (a) **Deceptive practices:** to use or to spread incorrect or false instructions, deceptive publicity, the omission of true information or any other practice that may cause a mistake in consumers;
- (b) **Confusing practices:** all acts that may create confusion with the activity, products, names, service rendering, establishment or intellectual property rights of third parties;
- (c) **Undue comparison practices:** public comparison of activities, service rendering, products, or establishments of the perpetrator or of others

against third parties when such comparison refers to extremes which may not be objectively comparable or which contain false or incorrect information. Information or expressions which a reasonable consumer will consider subjective or that only express an opinion not subject to verification will not be construed as undue comparison practices;

- (d) **Imitation practices:** Systematic imitation of the service rendering and entrepreneurial initiatives of a competitor when such strategy seeks to hinder its affirmation within the market and exceeds what is considered a normal response of the market;
- (e) **Violation of Commercial Secrets:** the appropriation, disclosure and exploitation, without authorization of its owner, of industrial and commercial secrets;
- (f) **Non-compliance with regulations:** taking advantage within a relevant market of a non-compliance of a legal rule or technical direction relevant to the activity, products, services and establishment of the non-complying party. In these cases, the advantage must be significant and cause harm to competitors;
- (g) **Denigrating practices:** spreading incorrect or untrue news on the activity, product, service rendering, establishment or the commercial relations of a third party, which may diminish its credit within the market;
- (h) **Inducement to contractual violations:** Intentional inducement of workers, providers, clients and other obligated parties to violate their contractual obligations with competitors, when such violation is known and has the objective of divulging and exploiting a commercial secret or is accompanied to circumstances such as deceit, the intention to eliminate a competitor from the market or similar to the aforementioned.

When a case of unfair competition comes up, the interested party may directly turn to the First Instance Court with jurisdiction over the domicile of the perpetrator, without need to exhaust any other administrative procedures first. Nonetheless, if the interested party has already started an administrative process, it will have to wait to request the award of damages before a court of law until after said process is concluded.

## **GOVERNMENTAL AUTHORITIES IN CHARGE OF THE DEFENSE OF COMPETITION**

### **National Commission on the Defense of Competition**

The National Commission on the Defense of Competition (herein the "Commission") is an independent entity with its own legal personality and with capacity to acquire rights and obligations, to dictate its own resolutions as well as to have its own patrimony, which is not be subject to attachment or seizure, and is exempt from all taxes. The Commission has managerial, technical and financial independence, is organizationally related to the State Ministry of Industry and Commerce and subject to financial control by the General Comptroller of the Country.

Its main objective is to promote and guarantee the existence of fair competition in order to increase economic efficiency of the markets, through the execution and application of policies and legislation of competition and the use of its investigative, regulatory and sanctioning powers.

The Commission is composed of (i) a Board of Directors at the decision-making level, and (ii) the Executive Direction at the investigative level.

**The Board of Directors:** The Board of Directors is composed by five (5) members appointed by Congress from a list of ten (10) candidates presented by the Executive Power. The Senate appoints three (3) of those members from a list of five (5) candidates and the other two (2) members are appointed by the House of Representatives from a list of five (5) other candidates. The members appointed by the Senate have an initial period of two (2) years in office and those appointed by the House of Representatives have a first period of five (5) years in office. All further periods shall be of five (5) years for all members. These members, for the period to which they are appointed, cannot be removed from office, except for the cases listed below. When a member is removed, for any of the reasons listed below, the Executive Power will present another list of three (3) candidates, for the corresponding congressional organism to elect the substituting member. The President of the Board is elected by and among its members by vote.

The Law provides that when all members of the Board of Director and the Executive Director are formally appointed, all its provisions will come into effect.

The Board may meet and decide when all members are present, and decisions are adopted by simple majority.

In the absence of consensus, the director dissenting from the majority opinion must present his/her reasons for dissenting.

In order to be eligible to become a member of the Board of Directors of the Commission the following requisites need to be complied with:

- a) They must be Dominican and in full use of their civil and political rights;
- b) Have more than 25 years of age;
- c) Be professional in the areas of the law, economics, administrative or financial sciences, with specialized studies in any of the following: economic regulation, economic analysis of the law, alternative resolution of conflicts or international arbitration;
- d) Have experience of more than five (5) years in any of the areas mentioned above; and,
- e) Not be working in any other job, except as teacher.

The following may not be elected members of the board:

- a) Members of Congress;
- b) Members of the Judicial Power;
- c) Those working for the government except as teachers;
- d) Those biologically related to the President or Vice-president, members of the Supreme Court of Justice or directors of governmental entities regulating the markets;
- e) Those in the military;
- f) People having been declared bankrupt or involved in a process of this nature;
- g) People declared legally or judicially unfit;
- h) People with a conflict of interest with being a member of the Board.

The members of the Board may be removed from office in the following cases:

- a) When they have missed six (6) consecutive meetings a year, without just cause;
- b) When, due to an incapacity, they cannot serve for at least 6 months;
- c) When condemned for a criminal act;

- d) When there has been negligence in the performance of their duties;
  - e) When they become responsible of fraudulent, illegal acts or those that are clearly against the interests of the institution.
- The powers of the Board of Directors are the following:
- a) Disseminate the contents of Law 42-08 and its regulations;
  - b) Assure compliance of Law 42-08, by companies, other public entities and society as a whole;
  - c) Hold hearings, with the right of participation of the plaintiffs, defendants, those harmed by the performance of prohibited practices, as well as witnesses and experts, in debates and formulation of requests;
  - d) Inspect places with the consent of the occupying parties or through a judicial order with the help of the attorney general;
  - e) Propose the use of protective measures which it may judge necessary to assure the compliance of Law 42-08 and authorize the Executive Director to perform searches and investigations to gather proof, in accordance to the Dominican Penal Procedural Code;
  - f) Request a judge to order pertinent protection measures;
  - g) Hear of requests to reverse protection measures executed by the Executive Director, as may be requested by an interested party;
  - h) Require the economic agents and public entities the provision of necessary documentation;
  - i) Decide, in accordance to Law 42-08 and protecting the public interest, all claims and controversies on competition among companies, and between companies and their clients and consumers;
  - j) Issue regulations of general and special application, on matters under its jurisdiction, as well as for the correct administrative functioning of the Commission;
  - k) Impose sanctions for administrative violations and order the suspensions of the violating practices; as well as order the measures needed to correct any market distortion and re-establish fair competition;
  - l) Declare the beginning of the process of public consultation for proposed regulations to Law 42-08;
  - m) Issue non-binding opinions requested by other regulating entities;
  - n) Defend fair competition with other governmental entities, through the issuance of recommendations and promote competition in the process of preparation and drafting of bills of law;
  - o) Propose to the Executive Power the policies on national promotion and defense of fair competition;
  - p) Represent the Dominican Republic in negotiations of international agreements on defense of competition along with the corresponding authority in charge of such negotiations, with prior appointment by the President;
  - q) Recommend the inclusion of the Dominican Republic in international agreements defending competition;
  - r) Recommend or adopt the regulations and measures necessary for the application and compliance in the Dominican republic of international agreements on defense of competition;
  - s) Execute agreements of international cooperation with foreign entities of similar nature;
  - t) Promote cooperation with the objectives of the law, on a national and international level;
  - u) Prepare and submit to the President the list of candidates for Executive Director;
  - v) Design the policies and approve the bylaws, regulations and organizational manuals of the Commission;
  - w) Establish the salaries of the members of the Board, the Executive Director, sub-directors and the technical personnel of the Commission;
  - x) Approve and execute the contract to which the Commission is a party, and which exceed the limits imposed on the Executive Director;
  - y) Appoint and remove the employees and technical personnel of the Commission, prior to receiving the recommendation of the Executive Director;
  - z) Decide of disciplinary corrections, incompatibilities, incapacity and non-compliance of the members of the Board and the Executive Director;

- aa) Create, upon request by the Executive Director, the departments, offices and units of the institution;
- bb) Approve and disseminate the annual financial reports of the institution;
- cc) Approve the annual budget and financial statements of the institution;
- dd) Execute any other power assigned by the law, its regulations or other legislation.
- e) Propose to the Board measures and actions to facilitate the access to the market of new competitors, simplify and modernize de government and improve the performance of the economic agents;
- f) Perform studies and investigations in the economic sectors to analyze the level of competition within them, as well as of the existence of practices that restrict competition and their respective recommendations;

#### **Powers of the President of the Board**

- a) Call and preside the meetings of the Board and determine the agenda of these meetings, as proposed by the Executive Director;
- b) Supervise the correct execution of the resolutions taken by the Board;
- c) Maintain good order and governance of the Commission;
- d) Represent the institution and delegate such representation totally or partially on another person;
- e) Execute agreements required for the development of the activities of the Commission, at the level of approval of the Board;
- f) Exercise supervising powers over the personnel of the Commission;
- g) Resolve issues not presented to the Board;
- h) Any other power delegated by the Board.
- g) Maintain cooperative relationships with other foreign institutions of similar nature;
- h) Request and manage in representation of the Commission the help of the general attorney, in cases where it is needed;
- i) Act as Secretary in the meetings of the Board and prepare the minutes of the meetings;
- j) Issue copies of the minutes of the meetings of the Board with the approval of the President;
- k) Direct, coordinate, and control administrative matters;
- l) Prepare and submit for approval to the Board the working plan, programs and projects as well as the budget of the Commission;
- m) manage the finances of the institution;

The Executive Director is appointed by the Executive Power from a list of three (3) candidates presented by the Board of Directors. Its main objective is to complete and document the files, manage and coordinate the operative functions and to bear witness to the acts of the Commission. The Executive Director will also:

- a) Investigate and act on the cases in which there are indications that there is violation of Law 42-08;
- b) Receive petitions and claims of interested parties;
- c) Present the Board of Directors with public accusations for imposing administrative sanctions;
- d) Perform studies, investigations and other research activities, for the purpose of promoting a culture of free competition among the economic agents in the country;
- n) present to the board written reports on the activities of his office and the development of the programs under way;
- o) Recommend the Board of Directors the appointing and removal of personnel for the institution;
- p) prepare the annual report of the activities and labor of the institution in order to present it before the Board of Directors;
- q) prepare and keep documents of interest for the Commission;
- r) keep records, and guard and conserve all files and documents of the Commission;
- s) Perform any other function appointed by the laws or assigned by regulation.

## ADMINISTRATIVE PROCEDURES

### Starting a Process before the Commission

The National Commission on the Defense of Competition is the institution in charge of deciding on all complaints and controversies which arise from the application of Law 42-08, as well as any other legislation on this matter. The Executive Director may act on his own, or upon request by an interested party, to prevent, control and sanction all practices prohibited by this law, in accordance to the procedures that will be established by its regulations. All complaints and investigations handled by the Executive Director on his own, that is, without the request of a specific party, shall be deemed of public interest.

Any person with a legitimate interest may formulate a motivated request to the Executive Director, who will open a case if rational indications are observed, based on the principles of the law. The petition must be done in writing addressed to the Commission and the denouncing party must point out the alleged perpetrator and describe the prohibited practice and the damage suffered by such violation or that may be caused in the future. The claimant may file all proof before the Executive Director, who will have thirty (30) working days to decide if there are grounds to proceed with opening a case on the matter, in which case the corresponding investigations are ordered. In case the claimant does not possess the appropriate proof, the Executive Director may order the performance of preliminary investigations before deciding whether to formally open a case on the subject or not.

If a case is not opened, the Executive Director will have to issue a decision for such refusal, decision which is notified to all interested parties. In the absence of such a decision within the thirty (30) days mentioned above, the request will be deemed rejected.

If the claim is rejected, or if the Executive Director fails to issue a decision on the case within the term provided, the interested party will be able to file a hierarchical recourse before the Board of Directors of the Commission within ten (10) working days of the notification of the decision or the last day of the 30-day term for the issuance of the decision. The Board of Directors will have thirty (30) working days to issue a decision on whether it has considered that the claimant has brought forth enough indications to warrant the opening of a case and will not give opinion on the prohibited practice itself. This ultimate decision is not subject to any other administrative recourse.

If a decision is made to open a file, a Resolution is issued ordering the beginning of the investigation process, which is notified to the interested parties within three (3) working days with the claim that has been brought forth and any other proof provided to this end.

All claims or investigations that have been started by the Executive Director are published in the Commission's website in order to enable any interested party to participate in the process, within the first ten (10) working days of the publication. However, in cases where commercial secrets are involved, the Executive Director may make a confidentiality based reserve in the website when requested by the owner of such secrets. In such case, the interested party may file a request of this nature to the Executive Director within fifteen (15) working days of the notification of the opening of a file for investigation, and the Executive Director will have another fifteen (15) working days to answer on such petition.

### The Process of documenting a file

As part of the process of documenting a file, the Executive Director may summon the representatives of the entities involved to receive declarations, perform debates and discussions and hold hearings with the participation of all parties involved, as well as experts and witnesses. The Executive Director may also copy books, documents, and accounting registries of the entities under investigation, as well as perform visits and searches of places and establishments owned by such entities, with the appropriate authorizations or search warrants. All proof obtained by the Executive Director during this process are usable as long as they are legally obtained pursuant to the law.

Once the file has been documented, the Executive Director shall send it to the Board of Directors, with a report expressing the practices investigated, the proof that corroborates their existence, causes, authors, effects on the market, and the tipification of such practices and applicable sanctions.

When, after the documentation process, the Executive Director has not found indication that the prohibited practices have been actually performed by the investigated party, a resolution is issued rejecting the claim and notified to the interested parties so that they may respond within ten (10) working days of such notification. This resolution is subject to hierarchical recourse within said term before the Board of Directors. If the Board accepts the recourse,

it will request the Executive Director to issue a Documentation Report.

### The Process of making a decision

The Board of directors must decide whether to accept a petition or claim within thirty (30) working days of its submission. If the Board accepts the petition, it will notify of this to the interested parties who within fifteen (15) working days, may request the celebration of a hearing and put forth the proof they deem necessary to substantiate their claims, which must be new and different from what is already contained in the Documentation Report already prepared and submitted by the Executive Director.

After a process of delivering proofs, arguments, witnesses and experts, closing statements are then given by the party by the closing hearing, after which the Board will decide within forty-five (45) working days on the matter. Resolutions issued by the Board of Directors are executable upon request of the interested party, without regard to any other recourse that may be available, within ten (10) working days following the notification of the specific resolution, although the Board may suspend its execution if it deems that it may cause irreparable harm to the condemned party or if the recourse elevated seeks to completely nullify the decision.

A Reconsideration Recourse is available for these decisions, within thirty (30) working days of their notification. The termination of this period marks the end of the whole administrative process on this matter, and no further administrative recourses are available.

All Resolutions issued by the Board must be duly motivated and those issued to solve a claim or controversy, or to decide on a file opened by the Executive Director, must contain the following:

- a) Summary of the claim or of the investigation, including a statement of the fundamental facts of the case;
- b) Conclusions of the report rendered by the Executive Director;
- c) Description of the arguments of the parties and the legal arguments which are being accepted and rejected in the decision;
- d) Declaration, if appropriate, of the existence or lack of existence of prohibited practices or agreements, or an abuse of dominant position;

- e) Order of cessation of the prohibited practices;
- f) Amount, and criteria for imposing such amount, as fines for the prohibited conduct;
- g) Measures ordered and obligations imposed by the Commission against the sanctioned economic agent;
- h) Order to remove the effects of the prohibited conduct when appropriate;
- i) The conclusions part where the compensation for procedural expenses must be included; and,
- j) The adoption of other decision which the law may require.

Sanctioning resolutions are published in the Commission's website. Non-sanctioning resolutions may or may not be published, as per the decision of the Board.

Recourses before the Superior Administrative Court and the Supreme Court of Justice:

The decisions of the Board of Directors of the Commission are subject to an administrative-contentious recourse before the Superior Administrative Court, which will decide and have the powers in accordance to the law on the administrative-contentious jurisdiction.

Decisions of the Superior Administrative Court are subject to the "Casación" recourse before the Supreme Court of Justice pursuant to Law No. 3276 of December 29, 1953.

### JUDICIAL ACTIONS

Without prejudice to penal actions against prohibited practices, any person harmed from those practices may initiate one or more of the following actions before the First Instance Court with jurisdiction over the domicile of the violating party:

- a) Claim to declare the unfairness of the conduct. The court may additionally order the cessation of the conduct if it subsists;
- b) Claim to rectify false or deceitful information;
- c) Claim for damages caused by the conduct.

Any of the aforementioned actions may be started against the perpetrator of the prohibited practice and against parties that have cooperated with the perpetrator.

### General Procedural rules

Rights to initiate claims provided under Law 42-08 prescribe after one (1) year after the anti-competitive practice as subsided.

An administrative process handled by the Executive Director under Law 42-08 cannot take more than twelve (12) months from the date of its formal beginning until the date of its submittal to the Board. If after this period, the file has not been submitted to the Board or officially rejected, any interested party may request its expiration.

Acts of disobedience to the requests and orders of the Board shall be subject of sanction pursuant to the Dominican Penal Code.

Acts emanated from the Commission are binding and of immediate execution, except when a suspension of its execution has been issued by the Board. If they are not complied by the economic agents involved, the Commission shall use forceful execution of all measures contained in such acts.

### Sanctions and Temporary Measures

**Sanctions:** Without prejudice to the civil and penal actions that may apply, the Commission may apply the following sanctions to the violators of Law 42-08:

- a) For having incurred in concerted practices and anti-competitive practices, minimum fines are equivalent to 30 times minimum wage up to 3000 times minimum wage;
- b) For having incurred in rigging a bidding process by agreeing on an offer or to retire from the bid, minimum fines are equivalent to 200 times minimum wage up to 3000 times minimum wage;
- c) For having incurred in abuse of dominant position, minimum fines are equivalent to 30 times minimum wage up to 3000 times minimum wage; and
- d) For having submitted false information to the Commission, minimum fines are equivalent to 50 times minimum wage up to 200 times minimum wage.

In the aforementioned cases, minimum wage shall be construed as the minimum wage applicable to the industry pertaining to the sanctioned economic agent.

Payment of the fines does not imply legalization of an illegal conduct and, therefore, the violator must stop the violating practice as well.

The amount of the fines imposed may be monthly increased by three percent (3%) of they are not immediately paid by the condemned party. In cases of repeat offenders, double the fines indicated above may be applied.

Accomplices of the aforementioned practices, who act as directors or representatives of the violating entities, shall be subject to sanctions pursuant to the Dominican Penal Code.

Anti-competitive agreement and concerted practices shall not produce legal effects, and the obligations which may emanate from them are null and void.

**Criteria for imposing sanctions:** The Commission, in order to determine the gravity of the violation and impose the corresponding sanctions, will use the following criteria:

- a) Type and scope of the restriction to free competition;
- b) Size of the affected market;
- c) Effect of the restriction of free competition, on other effective or potential competitors, on other parts of the economic process and on consumers and clients;
- d) Premeditation and intent;
- e) Participation of the economic agent in the market and economic situation;
- f) How long the prohibited practice or agreement has been happening; and,
- g) Repetition of the offense and pre-existing situation of the perpetrator.

**Temporary Measures:** The Commission may issue temporary or preliminary measures when it deems that they will not irreparable harm to the interested parties or when applicable by law:

- a) Order the cessation of the practice or conduct that allegedly is causing harm to free competition or to determiner economic agents;
- b) Order the presentation of a bond of any type in order to face the damages that may be caused.

At any time, the Commission may revoke a temporary measure, but in any case they cannot be imposed for more than four (4) months.