

## **Law of the Republic of Belarus**

No. 2034-XII of December 10, 1992

*[Amended as of December 2, 2002]*

### **On Counteraction to Monopolistic Activities and Promotion of Competition**

The present Law shall establish the organizational and legal framework to prevent, restrict and suppress monopolistic activity and provide conditions for development of fair competition, efficient commodity markets and protection of consumers' rights.

#### **Chapter 1. General Provisions**

##### **Article 1. Basic Terms and Definitions**

Unless otherwise stipulated by the present Law, the following basic terms and their definitions applies as:

commodity market – sphere of circulation of a commodity having no substitutes or substitutional commodities on the territory of the Republic of Belarus or its part subject to economic potential of a buyer to purchase a commodity on a certain territory or absence of this potential outside the territory;

economic entities – legal persons or individuals or any other subjects of civil law engaged in business or having a right to do business;

dominating position on commodity market (domination position) – exclusive position of an economic entity or several economic entities on a market of commodity having no substitutes, or substitutional commodities (hereinafter – market of a certain commodity), allowing it (them) an opportunity to influence general conditions of commodity circulation on a certain market or hamper access to the commodity market for other economic entities. An economic entity is considered as having dominating position in the following cases:

1) its share on a certain commodity market exceeds the limit fixed by an authorized republican governmental body, excluding cases of public or natural monopoly;

2) its share on a certain commodity market does not exceed the set limit, if an authorized republican governmental body concludes that position of the economic entity is dominating (on the basis of stability of the economic entity's share on the commodity market with the respect to the amount of other economic entities' (hereinafter – competitors) shares on the market, possibility for new competitors to enter the market or any other criteria characterizing the commodity market);

monopolistic activity – any actions (inactions) of economic entities and state bodies contradicting to the present Law and directed at barring, restraining or eliminating competition, also harmful to the rights, freedoms and legitimate interests of consumers;

competition – contest between economic entities wherein their independent activities effectively restrict each entity's possibility to unilaterally influence circulation of goods on a certain commodity market;

state monopoly – a system of public relations wherein the state in the person of certain state bodies or other specially assigned legal bodies has an exclusive right to perform certain types of activities (including entrepreneurship);

natural monopoly – a system of state-authorized public relations wherein satisfaction of demand on a commodity market is more efficient in the absence of competition due to technological reasons (considerable reduction of production costs per commodity piece when output increases), particular commodities may not be substituted by other commodities and the demand on the given market is less dependant on price changes than demand for other commodities;

extreme monopoly – a system of public relations on a commodity market designed for production, sale and consumption of commodities authorized by the state for a certain period of time;

lawful monopoly – state, natural or extreme monopoly;

standard terms of contracts – any preliminary terms designed for multiple use, fixed by one contracting party (outbidding party) for the other contracting party, and not detailed by the parties of the contract independent of the fact that these terms have been stipulated in the independent part of the contract or basic context of the contract, also of their quantity and form of the contract itself (written form or confirmed by notary public), or its relative terms;

consumer – any legal subject intending to order or purchase a commodity, or presently ordering, buying or using a commodity including components of other commodities (provided the later is subject of legal transactions closed or being closed);

price – price or tariff as stipulated by Article 3 of the Law of the Republic of Belarus "On Price Formation", also any discounts, additions (extras), margins;

commodity – any objects of civil rights that may be subjects of purchase and sale transactions or exchange, also works and services non-prohibited by law which are, or may be, performed or offered to consumers on chargeable basis.

## **Article 2. Anti-Monopolistic Law**

Anti-monopolistic law of the Republic of Belarus consists of the present Law and other acts of legislation, as well as international agreements wherein the Republic of Belarus as a party.

### **Article 3. Application of the present Law**

1. The present Law is valid for the whole territory of the Republic of Belarus and applies to relations of economic entities, state bodies and their appointed persons acting on commodity markets. The present Law applies to the legal relations of economic entities, state bodies and authorized persons who may restrict competition on commodity markets as a result of transactions with shares, acquisition of property rights in co-operatives (shares) or shares in authorized funds of economic entities.

2. The present Law is not apply to the relations regarding protection of inventions, production prototypes, IC topologies, secret information, trademarks and copyrights, excluding cases when such rights are used by their owners to restrict competition, as well as relations concerning goods withdrawn from circulation in the Republic of Belarus.

3. Relations connected with monopolistic activity on commodity markets and unfair competition on securities and financial markets, excluding cases when relations on these markets affect competition on commodity markets and governed by other laws.

Regulations of the present Law applies to the relations associated with monopolistic activities on commodity markets wherein goods have limited turnover capacity only because otherwise is not stipulated by legislative acts containing legal norms on turnover of these goods, also unless otherwise determined by proper international standards.

4. Unless otherwise established by norms of international and law, provisions of the present Law also applies in cases when legal subjects mentioned in clause 1 of the present Article perform (or do not perform) acts outside the territory of the Republic of Belarus, which have lead or are leading to restriction of competition, or any other unfavorable conditions on commodity markets.

In according with international standards, legislative acts may set exemptions with regard to attribution of foreign states, international organizations, individuals and legal persons, citizens without citizenship and other legal subjects to consumers.

Activity of economic entities of the Republic of Belarus dominating on commodity markets of other states (groups of states, international institutions), also economic entities of other states participating in monopolistic activities on commodity markets or with respect to consumers and economic entities of the Republic of Belarus, must be governed by intrastate legal norms, as well as norms of international agreements and other international standards.

Dominating position of economic entities of the Republic of Belarus on commodity markets of other states (groups of states, international organizations), and economic

entities of other states on commodity markets of the Republic of Belarus, is determined in compliance with international agreements valid in the Republic of Belarus or any other standards of international law.

#### **Article 4. Anti-Monopoly Bodies**

1. Major part of functions to realize state-governed measures on provision of conditions for setting and effective performance of commodity markets, promotion and development of fair competition, protection of consumers' rights, including prevention, restriction or suppressing of monopolistic activity or taking of other measures to ensure execution of anti-monopoly laws, including formation and keeping State register of economic entities dominating on commodity markets, is performed by authorized republican body of state control (hereinafter – anti-monopoly body), unless otherwise established by law.

2. Anti-monopoly body, including its subordinate bodies, sets up, reorganize and close in accordance with Constitution of the Republic of Belarus or other legislative acts.

In according with Constitution of the Republic of Belarus and other legislative acts, several legal subjects may be authorized, or partially authorized, to act as competent anti-monopoly bodies.

### **Chapter 2. Major Types of Monopolistic Activity**

#### **Article 5. Abuse of Dominant Position on a Commodity Market**

1. Any activity (or inactivity) of an economic entity who occupies a dominant position on a commodity market, including co-operative activity with other economic entities, directed to limit competition or damage rights, freedoms and lawful interests or other economic entities or consumers, must be prohibited and considered illegal, if performed for:

hindering other economic entities from access to, or escape from, of commodity market, or limiting freedom of their competition;

withdrawal of commodities from circulation, restriction or production, aimed at development or maintenance of deficit on a commodity market, unreasonable or intended increase (decrease) of process, also other measures taken to artificially raise or reduce prices;

fixing or maintaining prices (underpinning the market) for deriving monopolistic high profit or removal of competitors;

conclusion and/or execution of a contract subject to counterpart's assumption of obligations having no relation to the subject of the contract or unprofitable for the given counterpart under fair execution of the contract, also any other imposition upon or waiver

of concluding agreements as a result of waiver of accepting by a counterpart of the above terms;

conclusion of agreements which curtail freedom of the parties of these agreements to fix prices and/or terms of supply (delivery) of goods in contracts with third persons, also imposition upon or waiver of concluding agreements as a result of waiver of accepting by a counterpart of the above terms;

conclusion of agreements resulting in limitation of, or control over, production, sales markets and technological progress;

unfair approach to economic partners under equal conditions, thus creating unfair conditions for competition, including discriminating terms in agreements which put a counterpart in unequal position in comparison to other economic entities;

consent to conclude an agreement with only subject to introduction of provisions concerning commodities of no interest to the counterpart (consumer);

other purposes leading to the above results.

2. In extreme cases, an activity of an economic entity (clause 1 of the present Article) may be considered lawful by anti-monopoly body as determined by the President of the Republic of Belarus or, by his order, by other state body and/or court, if the economic entity proves that the above activity is required for execution of legal acts approved (issued) in accord with Constitution of the Republic of Belarus, and limitation of competition is inevitable or necessary for strict and meticulous execution of legislative acts.

## **Article 6. Agreements and Actions of Economic Entities Obstructing Competition**

1. Any agreements between economic entities (conclusion and performance of the above in any way), or any coordinated actions agreed or performed by such economic entities, as well as setting up or existence of such entities, is prohibited and, by law, considered invalid, provided that the above are aimed at, or are (or may be) resulted at the following:

market sharing by territorial principle; by type and amount of transactions; by type and volume of commodities and their prices; by consumers.

exclusion or limitation of access to commodity market for other economic entities;

unreasonable (artificial) raising, reduction or maintenance of prices, including auctions and tenders;

unjustified (artificial) restriction of production of commodities, as well as control over sale of goods on commodity market;

operations with securities, credit resources, including foreign currency, aimed at achieving, maintaining and strengthening of dominant position on commodity markets;

refuse to conclude agreements with certain sellers or buyers (customers);

other circumstances which eliminate or may restrict competition, hinder its establishment and development (may facilitate elimination, restriction of competition, or impede its development and progress).

2. Any agreements (coordinated actions) between economic entities wherein one of them is holding a dominant position on a commodity market, and the other is its counteragent, provide such agreements (coordinated actions) will, or may result in elimination, restriction of competition or block its establishment and development, is prohibited and, by law, considered invalid fully or partially.

3. In exceptional cases, agreements (coordinated actions) between economic entities as stipulated by the present Article, excluding those listed in clause 1 of the present Article, may be considered legally valid by anti-monopoly body in compliance with the procedure sets up by the President of the Republic of Belarus, or by any other state body or court authorized by the President, provided the economic entities prove that economic effect of their actions, including social and economic sectors, will exceed negative consequences for the given commodity market or the Republic of Belarus as a whole, and competition must only be restricted to the extent wherein the above restrictions are inevitable for the achievement of the given economic effect, or directly stipulated by legislative acts adopted (issued) in according with the Constitution of the Republic of Belarus.

4. Economic entities intending to conclude agreements which fall within provisions of clauses 1 and 2 of the present Article, are entitled to address anti-monopoly body with a request to examine compliance of these agreements with anti-monopoly legislation.

In according with the law, such request (application) is accompanied by information required for preparation of a proper decision. In compliance with legislation and on the basis of results obtained, an anti-monopoly body will issue a resolution approving or denying compliance of the agreements with anti-monopoly legislation.

Decisions and resolutions of anti-monopoly body may be appealed against, or cancelled, and the related deals considered invalid in order stipulated by legislative acts, including cases wherein economic entities committed actions stipulated by clauses 1-2 of the present Article.

Anti-monopoly body approves a procedure of examination of the requests (applications) regarding compliance of the agreements with anti-monopoly law, as well as the requirements for the content of information and forms of its submission.

5. Any monopolization of production or sale of products, exercise of powers which may directly lead to unlawful restriction of competition, including establishment (existence) of holdings, unions, amalgamations and other associations of economic entities, aimed at monopolization of production or sale of goods, or other restriction of competition, is prohibited. The above rules are not apply to the state or any other legal monopoly set up in the Republic of Belarus in according with the legislation.

#### **Article 7. Standard Terms of Transactions**

1. The use of standard terms of transactions may be fully or partially prohibited in according with the legislation. The law can also place a ban or set restrictions regarding classification of certain terms as standard ones.

2. Terms of transaction directly sets up by the parties by the agreement or detailed and coordinated by the parties and contained in the agreements having standard terms are obligatory for the parties, unless otherwise stipulated by law or the agreement.

### **Chapter 3. Prevention, Restriction and Suppression of Monopolistic Activity**

#### **Article 8. Basic Measures of State Anti-Monopoly Control**

The state in the person of authorized bodies takes measures to prevent, restrict and suppress monopolistic activity of economic entities and state bodies, and to ensure financial, informational and other support for development of competition and commodity markets through:

state control over activities of economic entities holding dominant positions on commodity markets;

taking of authorized measures to re-organize and liquidate economic entities dominating on commodity markets;

state control over re-organization and liquidation of economic entities;

state control over stock transactions, property contributions to co-operatives (shares), shares of economic entities' authorized funds;

promotion of public control over observance of anti-monopoly legislation;

other measures.

#### **Article 9. State Control over Activities of Economic Entities Taking Dominant Position on Commodity Markets**

State control over execution of anti-monopoly legislation is exercised by anti-monopoly body or other authorized bodies within the limits of their competence. If

position on a commodity market of any economic entity or several economic entities is proved to be dominant, the government establishes a special public control over production output and quality of goods, prices and tariffs and other indicators of the given entity (entities) activities in order to determine the fact of abuse of such position.

#### **Article 10. Measures to Reorganize Economic Entities Dominating on Commodity Markets**

1. Measures to reorganize economic entities, dominating on commodity markets, including privatization, are taken subject of the following conditions:

possibility of organizational and/or territorial isolation of enterprises and their structural units;

absence of close technological ties between enterprise, structural divisions and units;

separation of activities of enterprises, structural divisions and units within the framework of their subject specialization;

impossibility to attract other counteragents on the relative commodity markets due to economic and political situation.

2. In order to develop and to promote competition, an anti-monopoly body is entitled to make an authorized decision on forced reorganization of economic entity dominating on commodity market.

3. If dominant position on commodity market has been a result of limited commodity output, and quality of this commodity exceeds quality of analogous commodities, an anti-monopoly body may take a decision to force reorganization not earlier than one year after appearance of the given commodity on the market, unless otherwise is established by laws or acts of the President of the Republic of Belarus.

#### **Article 11. State Control over Establishment, Re-organization and Liquidation of Economic Entities**

1. In order to prevent establishment or strengthening of dominant positions on commodity markets of the Republic of Belarus, an anti-monopoly body or other state bodies within their competence exercise state control over establishment, re-organization and liquidation of economic entities, including affiliates, subordinate associations, holdings, unions, amalgamations and other associations of economic entities, also over transformation of state bodies and economic entities into associations, its providing leads to establishment or strengthening of dominant position on commodity markets.

2. State registration of holding companies, unions, amalgamations and other associations of economic entities shall be carried out by an authorized body only subject to duly issued consent of anti-monopoly body.

State bodies authorized to register legal persons (enterprises) with foreign investments, banks and other financial institutions, insurance and reinsurance organizations, also municipal executive committees of regional (Oblast) centers authorized to register economic entities mainly dealing with production activities, coordinate registration of the above economic entities with relative Oblast executive committees (and Minsk City Executive Committee).

3. In order to receive approval for establishment or reorganization of holding companies, unions, amalgamations and other associations of economic entities, the founders of the above must submit to the anti-monopoly body an application for approval, as well as information on basic types of activity, their share on the relative commodity market, including documents confirming consent of the founders to enter the association, and any other documents (the list of the documents is fixed by an anti-monopoly body).

4. After examination of the application supplied in according with clauses 3 and 5 of the present Article, an anti-monopoly body has a right to:

establish, reorganize of holding companies, unions, amalgamations and other associations of economic entities, provide it never leads to establishment or strengthening of dominant position on commodity market and/or restriction of competition;

take a motivated decision to refuse establishment, reorganization of holding companies, unions, amalgamations and other associations of economic entities provided such actions may result into the establishment or strengthening of dominant position on commodity market and/or restriction of competition. The same also applies if while examining the submitted documents the body reveals that information is doubtful.

5. Founders of (participants to) the economic entities or bodies authorized by them to take decision on reorganization of economic entities or setting up of holding companies, unions, amalgamations or other associations of economic entities, within 30 days after submission of the relative application to an anti-monopoly body receive its consent or motivated refusal.

If necessary an anti-monopoly body may prolong the term indicated in part one of the present Article, but not more than by 15 days with notification of applicants.

6. Provisions of the present Article are not apply when economic entities are liquidated upon court decision legally by force.

## **Article 12. State Control over Transactions with Shares, Property Contributions (Shares) to Co-operatives, Share of Authorized funds of Economic Entities**

1. Anti-monopoly body exercises control over transaction with shares held and/or issued by economic entities, property contributions (shares) to co-operatives, shares of

authorized funds of economic entities in order to prevent establishment or strengthening of dominant position of economic entities on commodity markets.

2. Consent of the anti-monopoly body is required in the following cases:

acquisition by an economic entity possessing more than 30% of a certain commodity market, property contributions (shares) to co-operatives or shares in authorized fund of any other economic entity selling/buying the same commodity on the same commodity market;

conclusion by an economic entity having more than 30% of a certain commodity market of contracts with shares of any other economic entity selling/buying the same commodity on the same market;

acquisition by any legal person or individual, foreign state, international organization or their bodies of more than 25% of property shares in co-operatives or shares in authorized fund of an economic entity, as well as any other transactions wherein the above legal subjects may actually influence making a decision of any economic entity with dominant position on commodity market;

conclusion by any legal persons or individual, foreign state, international organization or their bodies of transactions with more than 25% of shares or any other contracts wherein the above legal subjects may raise a possibility to actually influence decision making of any economic entity with dominant position on commodity market;

acquisition by any legal person or individual, foreign state, international organization or their bodies of shares allowing actual control over activities of an economic entity, performance of functions of statutory (management) body.

3. To conclude transactions mentioned in clause 2 of the present Article, any legal person or individual must apply to the anti-monopoly body for their consent to make the bargain and submit information required for final decision.

Requirements regarding the character and form of information, as well as procedure of processing applications is determined by an anti-monopoly body.

4. Anti-monopoly body have a right to make a motivated decision to:

reject application submitted as per clause 3 of the present Article, if its approval can lead to establishment or strengthening of dominant position of economic entity on commodity market and/or restriction of competition;

comply with application submitted as per clause 3 of the present Article, if requirements for ensuring competition are satisfied. Decision on consent to conclude transactions as per clause 2 of the present Article mustl contains all necessary requirements for ensuring competition and terms of their execution.

5. If any individual is a member (elected or appointed member) of statutory (management) bodies of two or more economic entities entered in the State register of economic entities taking dominant position on commodity markets for the same group of commodities, or a group of commodities on various stages of the same production/ sale process, he must apply to the anti-monopoly within 15 days after he become a member (election, appointment) of the above bodies of the economic entity. In applying, the above person must submit to the anti-monopoly body information required for making a decision.

Anti-monopoly body is obliged within 30 days upon receipt of the application to make a decision if an individual may or may not become a member of statutory (management) bodies of two or more economic entities, and send the applicant written notification.

For the purposes of the present Clause, individuals are entitled to address to the anti-monopoly body with a request for its preliminary consent. The letter shall consider the applications within 30 days from the day of receipt and notify the applicant in written form about the decision made.

6. Transactions made with violation of the procedure which sets up by the present Article and leads to establishment or strengthening of dominant position on commodity market and/or restriction of competition may be considered invalid by court when claimed by anti-monopoly body or other persons concerned.

### **Article 13. Promotion of Commodity Markets Development and Competition**

In order to promote development of commodity markets and competition, an anti-monopoly body can submit to the relevant state bodies, economic entities and other legal subjects its proposals regarding:

change of free or controlled prices applied, including establishment of price limits or ceiling profitability rates for commodities produced or sold by economic entities abusing its dominant positions on commodity markets;

development of parallel structures in production and trading sectors, including at the cost of state investments;

attraction of foreign investments;

financial support for expanding manufacture of scarce commodities in order to eliminate dominant positions of certain economic entities and other measures of economic protection;

licensing of export/import operations;

amendments in the list of activities which are subject to licensing;

other measures within its competence promoting development of commodity markets and competition.

#### **Article 14. Public (Social) Control over Observance of Anti-Monopolistic Legislation**

1. Social action organizations (amalgamations) of consumers, other social action organizations which statutes are aimed at the protection of consumers' rights from abuse of economic entities taking dominant positions on commodity markets may exercise public control over observance of anti-monopolistic legislation.

2. Social action organizations exercising public control over observance of anti-monopolistic legislation have a right to:

apply to anti-monopoly body regarding of the facts of violation of anti-monopoly law and to give proposals on elimination of such facts;

apply to courts with claims to protect rights, freedoms and lawful interests of its members and other persons against violation of anti-monopolistic legislation;

make its own examination of decisions made on establishment, reorganization and liquidation of economic entities, and their compliance with provisions of anti-monopolistic legislation and inform public about the obtained results;

take any other actions which are not contradicting legislation.

#### **Chapter 4. Special Restriction on Activities of State Bodies and Their Authorized Persons**

#### **Article 15. Agreements (Coordinated Actions), Other Actions of State Bodies Restricting Competition**

1. Any agreements (coordinated actions) fully or partially concluded between the state body and other state body or economic entity that may result in limitation of competition and/or damage rights, freedoms and lawful interests of economic entities and citizens, including agreements aimed at:

market sharing by territorial principle; by type and amount of transactions; by type and volume of commodities and their prices; by consumers.

exclusion or limitation of access to commodity market for other economic entities;

unreasonable (artificial) raising, reduction or maintenance of prices, including auctions and tenders, must be prohibited and considered invalid in compliance with the legislation.

2. Unless otherwise stipulated by laws and/or acts of the President of the Republic of Belarus issued in accordance with the Constitution of the Republic of Belarus, state bodies are not allowed to adopt (issue) any acts, conclusions, agreements, take any other actions which limit self-sufficiency of economic entities, discriminate activities of certain economic entities, if such acts and actions are resulted, or may result in limitation of competition and/or damage rights, freedoms and lawful interests of economic entities and citizens, including:

groundless obstruction of establishment of new economic entities in any field of activity;

obstruction or prohibition of certain types of activities, including production of certain goods, except cases stipulated by the legislation;

unlawful limitation of rights of economic entities to conclude contracts;

instruction of economic entities regarding priority supply of commodities to certain consumers (customers) or priority conclusion of agreements in contradiction to the law;

groundless tax reliefs and other privileges for certain economic entities that put these entities in privileged position with respect to the other entities on the same commodity market.

Unless otherwise stipulated by legislation, any decisions of the state bodies regarding tax reliefs for an individual economic entity or for several economic entities must be coordinated with anti-monopoly body.

## **Chapter 5. Certain Measures of State Bodies to Prevent and Eliminate Violations of the Present Law**

### **Article 16. General Conditions of Executing by Anti-Monopoly Body Measures aimed to Elimination of Unlawful Acts Violating Requirements of the Present Law**

1. If economic entities, state bodies or their authorized persons perform unlawful actions contradicting with the present Law, an anti-monopoly body:

issues orders to cease unlawful activity and eliminate harmful consequences incurred as a result of such activity;

imposes administrative fines and penalties;

takes any other measures within its competence.

2. Orders of anti-monopoly body must be executed during time, fixed by it.

3. Revenue which unlawfully obtained by economic entity on the commodity market as a result of violation of articles 5 and 6 of the present Law, is enforced by action of the court and directed to the republican (local) budget.

4. Damages to economic entities, consumers or citizens as a result of violation of articles 5 and 6 of the present Law is settled according to legislation.

#### **Article 17. Lawful Receipt, Storage and Distribution of Information while Executing by Anti-Monopoly Body Its Rights and Duties**

1. Economic entities, state bodies and their authorized persons which doesn't submit by the request of the anti-monopoly body information (documents, written and oral explanations etc.) required to perform functions stipulated by the present Law, also hindering activities of anti-monopoly body and not fulfilling its lawful orders, became liable in the compliance with the present Law and other legal acts.

Authorized persons of anti-monopoly body while fulfilling their official duties, have a right of accessing to the state bodies and economic entities for examination, within the limits of their competence, of all document required to fulfill its official duties, as well as receipt of free copies of the above documents.

2. Antimonopoly body must in according with the legislation keep confidentiality of the received data (state secrets, other information protected by law, including commercial or official secret of economic entity).

#### **Article 18. Responsibility for Violation of Anti-Monopoly Legislation. Appealing Against Decisions of Anti-Monopoly Body and of the Court on Imposing of Administrative Penalties**

1. Refusal to execute or untimely execution of the lawful decisions (orders) of anti-monopoly body, by decision of the court, guilty economic entities shall incur a penalty to the amount of 10% of annual income preceding infringement of the law.

2. State bodies, economic entities, their official representatives are liable for the violation of the present Law and other acts of legislation according with the legislation.

3. Appealing against decisions (orders, opinions) of anti-monopoly body is executed in legal form and through procedure stipulated by legislation.

Full or partial appeal against decisions (orders) of anti-monopoly body or decision in legal form regarding penalties can suspend its execution during appeal until final decision of the court is effected.

(Available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwebbru.htm>)