



# ASSESSMENT OF THE COMPETITION LAW OF **BELARUS**

*Law No. 94-3 dated December 12, 2013 “on the counteraction to monopolistic activities and promotion of competition”*



UNITED NATIONS  
UNCTAD



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## NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to competition law and policy. UNCTAD promotes the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly Resolution 35/63 on 5 December 1980. The work of UNCTAD is carried out through intergovernmental deliberations, technical cooperation activities, policy advice, and research and analysis on the interface between competition law and policy and development, as well as for consumer protection law and policy.

UNCTAD assists developing countries and countries with economies in transition in adopting or revising competition and consumer protection legislation and policies, to align with international best practices, as well as supports the establishment of regional frameworks in these areas.

UNCTAD has considerable expertise in competition and consumer protection policies and has been working in the field of competition since the 1980s. Competition and consumer policies are crucial for inclusive and sustainable development and for the achievement of the Sustainable Development Goals.

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## INTRODUCTION

In 2018, the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (MART) requested the UNCTAD Secretariat to undertake a legal assessment of Belarus' competition law dated 12 December 2013 (*i.e.* comments of its law provision-by-provision) based on the UNCTAD Model Law on Competition and international best practices on competition law and policy from jurisdictions of developed countries and advanced economies.

## OBJECTIVE AND SCOPE

Bearing in mind the above, the objective of this assessment is to comment on the existing provisions of the Competition Law in Belarus, that is to say, Law No. 94-3 dated December 12, 2013 entitled "on the counteraction to monopolistic activities and promotion of competition" of the Republic of Belarus, and, if possible, to contribute to its improvement. As such, the current assessment has the following parts: (1) Objective and scope; (2) Presentation of the Competition Law in Belarus; (3) Analysis of the key provisions of the law; (4) Conclusions; and (5) Recommendations.

## PRESENTATION OF THE COMPETITION LAW IN BELARUS

According to previous UNCTAD research, the design of competition policy and law and the institutional framework in countries with economies in transition, such as the case of Belarus, should be adjusted to the distinctive features of their economic, social and cultural environment.<sup>1</sup> For instance, during the 90s and based on the specific structure of Belarussian markets, the country undertook several "demonopolization programmes"<sup>2</sup> that resulted in the restructuring of its largest enterprises and in the promotion of competition. These efforts have been critical for the successful implementation of competition rules in the Republic of Belarus.

UNCTAD research<sup>3</sup> suggests that there are critical issues in this area for most developing countries and countries with economies in transition. These issues are as follows:<sup>4</sup>

### **Legal framework:**

- i) Judicial review of competition cases
- ii) Exemptions and authorizations
- iii) Public interest and competition law issues

### **Policy issues:**

- i) Competition advocacy
- ii) Privatization, concessions and competition law
- iii) Informal sectors
- iv) Regional organizations' competition rules

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<sup>1</sup> UNCTAD, *The Role of Competition Policy in Promoting Economic Development: The Appropriate Design and Effectiveness of Competition Law and Policy*, TD/RBP/CONF.7/3 (2010), available at [http://unctad.org/en/Docs/tdrbpconf7d3\\_en.pdf](http://unctad.org/en/Docs/tdrbpconf7d3_en.pdf), at P. 4.

<sup>2</sup> Natalya Yacheistova (UNCTAD Consultant), *Competition Policy in Countries in Transition - Legal Basis and Practical Experience*, UNCTAD/ITCD/CLP/Misc.16 (2000) 53, available at <https://unctad.org/en/Docs/poitcdclpm16.en.pdf> (last visited 11 March 2019), at 37.

<sup>3</sup> See Natalya Yacheistova (UNCTAD Consultant), *supra* note 2.

<sup>4</sup> UNCTAD, *supra* note 1.

### **Institutional framework:**

- v) Independence of the competition authority
- vi) Staffing and financial resources of the competition authority
- vii) Relationship with sector regulators

The Republic of Belarus adopted its first competition law in 1992 which was amended in 2000, 2003 and 2010.<sup>5</sup> Under this law, the following Government entities oversaw the implementation of competition rules:<sup>6</sup>

- 1991 - Antimonopoly Policy Committee at the Council of Ministers of the Republic of Belarus;
- 1992–1996 - State Committee on Antimonopoly Policy of the Republic of Belarus;
- 1996 - Ministry of Antimonopoly Policy of the Republic of Belarus;
- 1997–2001 - Ministry of Entrepreneurship and Investments of the Republic of Belarus (had no departments in its composition);
- 2001–2016 - Department on Antimonopoly and Pricing Policy of the Ministry of Economy of the Republic of Belarus, the authority in charge of competition before the creation of MART in 2016.

But it was not until 3 August 2018 that the new Competition law of the Republic of Belarus No. 94-3 of 12.12.2013 (hereinafter – the “Law”) came into force as part of a comprehensive change in the Belarusian legal sphere.

The Law encompasses a more extensive set of rules than previous legislation (51 articles as opposed of 27 articles) and has the following chapters:

Chapter I: “General provisions”

Chapter II: “Anti-monopoly body”

Chapter III: “Monopolistic activity”

Chapter IV: “Unfair competition”

Chapter V: “Requirements to economic concentration, reorganization of economic entities that hold a dominant position”

Chapter VI: “Procedure for establishing the existence (absence) of a violation of anti-monopoly legislation.

Chapter VII: “Responsibility for violation of anti-monopoly legislation, obligation on implementation of the anti-monopoly body requirements”.

The Law defines the institutional and legal frameworks for the prevention, restriction and suppression of monopolistic activity and unfair competition in order to ensure the necessary conditions for the establishment and effective functioning of domestic markets, the promotion and development of fair competition, protection of the rights and legitimate interests of consumers in line with the structure of most competition laws across the world.<sup>7</sup>

The law includes the following substantive concepts:

- The definition of a dominant position of economic entities;
- The rules of State antimonopoly control over transactions of economic entities.

In addition, the law covers several procedural norms in detail:

- The procedure of formation and maintenance of the State register of economic entities,
- The procedure of coordination of conditions;
- The procedure to inspect compliance of dominant economic entities;
- The procedure to identify and prevent anticompetitive prices agreements (concerted actions);
- The procedure to identify monopoly prices;

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<sup>5</sup> *Law of the Republic of Belarus No. 2034-XII of December 10, 1992: On Counteraction to Monopolistic Activities and Promotion of Competition, 1992*, available at <https://www.wipo.int/edocs/lexdocs/laws/en/by/by021en.pdf> (last visited 11 March 2019).

<sup>6</sup> Natalya Yacheistova (UNCTAD Consultant), *supra* note 2, at P. 8.

<sup>7</sup> MART Website, *State Antimonopoly Policy in the Republic of Belarus | Ministry of Economy of the Republic of Belarus*, available at <https://www.economy.gov.by/en/national-competition-policy-in-the-rb-en/> (last visited 6 June 2019).

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- The procedure of requests (applications), consideration of establishing the appropriate provisions of the agreements, restricting competition;
- The procedure of applications (appeals) consideration on violation of antimonopoly legislation in terms of unfair competition;
- The procedure of taking measures, aimed at the elimination of violations of antitrust laws.<sup>8</sup>

An important feature in terms of comparison with preceding laws is that the Law incorporates a clear *per se* prohibition of cartels. In fact, a detailed chapter on anticompetitive agreements and concerted actions (hard-core cartels) was adopted whereby agreements (with or without impact on competition) leading to four consequences specified in part 1 of article 20 of the Law, are prohibited *per se*.<sup>9</sup>

## ANALYSIS OF THE KEY PROVISIONS OF THE LAW

The following section includes specific comments on each provision of the Law by chapter.

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<sup>8</sup> *Ibid.*

<sup>9</sup> P. & Partners, *CEE Legal Matters - New Law on Competition: What Has Changed for Foreign Companies in the Belarusian Market?*, 22 November 2018, CEE Legal Matters, available at <https://ceelegalmatters.com/belarus/9649-new-law-on-competition-what-has-changed-for-foreign-companies-in-the-belarusian-market> (last visited 11 March 2019).

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# CHAPTER I

## "GENERAL PROVISIONS"

### Comments on Article 1 related to basic terms used in this law and their definitions

#### **Article 1**

#### **Basic terms used in this Law and their definitions**

*The following basic terms and their definitions are used for the purposes of this Law:*

*vertical agreement – an agreement between economic entities, one of which acquires a good or intends to acquire it, and the other provides the good or is its potential seller;*

*purchase of goods – acquisition of goods on a competitive basis, when two or more participants take part or can take part, including purchase of goods in the course of public procurement (with the exception of the procurement procedure from a single source), purchases from own funds (with the exception of the procurement procedure from one source), procurement during construction;*

*competitors – economic entities which sell and (or) purchase goods in the same commodity market;*

*agreement – an agreement in writing or in electronic form, contained in a document or several documents, as well as oral agreement;*

## INTRODUCTION

Belarus is a member State of the Eurasian Economic Union. The Eurasian Treaty encompasses competition rules (articles 74 to 77). Article 75 of the Eurasian Treaty sets out a framework for harmonizing national competition laws with reference to substantive law that all national competition laws in the EAEU area must observe.

Annex 19 related to Competition of the Eurasian Treaty provides more details on the matter of harmonization through the cooperation between member States at the horizontal level - Section V<sup>10</sup> "Cooperation between authorized authorities of the member States" - and under Section VI - "Cooperation between the Commission and the Authorized Authorities of the Member States for Monitoring Compliance with the General Rules of Competition"<sup>11</sup>. In fact, the latter framework would be most suitable to address this issue and address harmonizing procedural efforts and implementing guidelines as the section in question deals with the investigation process that the EEC undertakes with the assistance of the NCAs. However, if the harmonization of rules on substantive issues or common substantive rules have been adopted by regional economic organizations<sup>12</sup>, the harmonization

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