

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures
Competition Council of the Republic of Moldova**

The following template is submitted by **Competition Council of the Republic of Moldova** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Competition Council is an autonomous public authority liable towards the Parliament, which ensures the observance of the enforcement of the legislation regarding the competition, state aid and advertising in the limits of its competence.

The purpose of the Competition Council activity is the competition law enforcement, through the implementation of the actions in order to prevent the anti-competitive practices, to remove the competitive infringements, to promote and increase the competition culture.

To develop a fair competitive environment is an important mission because only with joint efforts of the business environment, of the state authorities, of the media, of the civil society and of course of the Competition Council it can be maintained.

More information about the Competition Council can be found on the Authority’s web page: www.competition.md

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate. Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

According to the provisions of art. 16 paragraph (2) of the Constitution of the Republic of Moldova (Equality): “All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.” ([Constitution of the Republic of Moldova](#))

The Competition Law does not establish any jurisdiction. This means that the investigation and enforcement policies and the procedural rules are the same for all market players regardless of the legal status they hold and the organizational-legal form and the origin of the capital, thus respecting the principle of non-discrimination.

Additionally, according to art. 2 paragraph (1) lit. a) of the Competition Law: “the provisions of this law apply to deeds - actions and inactions that have or may have as an

object or effect the restriction, prevention or distortion of competition, as well to acts of unfair competition, committed by: a) legal persons, registered in the Republic of Moldova or registered in foreign states and natural persons;” ([Competition Law no.183/2012](#))

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, d).*

The investigations conducted by the Competition Council are in accordance with Chapter VII of the Competition Law. Additionally, at the stage of implementation of the Competition Council Plenum Decisions, it is governed by the provisions of the Competition Law and other normative acts in force, as follow: [The Execution Code no. 443/2004](#), [The Administrative Code no. 116/2018](#) and [The Code of Civil Procedure no. 225/2003](#).

The normative acts applicable to the investigations conducted by the Competition Council and to the procedure for the enforcement of the Competition Council Plenum Decisions are public.

Under the investigations and the procedures for the enforcement of its Decisions, the Competition Council considers the provisions of the normative acts in force, which are public and foreseeable.

The Competition Council investigations and the supervision of the enforcement procedure are carried out in accordance with the procedure provided by the Competition Law and the Regulation on the organization and the functioning of the Competition Council, which are public.

According to the provisions of the art. 33 paragraph (3) and (4) of the Competition Law no 183/2012: *“On an annual basis, the Competition Council prepares a report on its activity. The report of the Competition Council is adopted by the Competition Council’s Plenum, it is presented to the Parliament of the Republic of Moldova annually until 1st of June and it is made public.”*

The activity report shall contain:

- a) annual financial report and the audit report;
- b) the Competition Council’s activities in the accomplishment of the objectives provided for by the present law and the legislation in the state aid domain and advertising;
- c) the priority activity directions of the Competition Council for the following year;
- d) other information set up by the Competition Council

The Competition Law and the Regulations that come in to enforce its provisions are public normative acts, which are published in the Official Journal of the Republic of Moldova, and can also be accessed on the website of the Competition Council: www.competition.md

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The Competition Law contains provisions ensuring that the concerned subjects are informed about the investigations initiated with regard to them and that the rights of defence are guaranteed under the investigations, particularly, by requesting the opinions on the complaint, by granting the possibility to present evidence in order to support its position, by sending the investigation report thus the parties involved have the right to present observations on it, by granting the right of access to the files, by sending the copy of the Competition Council Plenum Decision adopted on the case, by explaining the possibility of contesting it.

The Competition Law has appropriate mechanisms to inform the concerned subjects about the conduct of the investigation.

The Competition Council request the information at issue in written form stating the legal basis and the purpose of the request; specifies the information requested and fixes a reasonable deadline within which the information is to be provided; as well the sanctions provided for in the law for non-provisions of information or supplying incorrect, incomplete or misleading information.

In the case of notified economic concentration operations which raises serious doubts as to the compatibility with the competition environment, that could not be removed at under the evaluation of the operation, the Competition Council Plenum decides on the initiation of an investigation. When the investigation is initiated, the Competition Council informs the notifying parties, as soon as possible of the investigation initiated and of the identified competition problems, in order to allow them to formulate appropriate commitments in the legal terms provided by the legislation (30 working days from the initiation of the investigation). At the request of the involved companies, the Competition Council may extend this term by a maximum of 15 days, provided that the applicants present exceptional circumstances that justify the extension. The extension request must be submitted within 30 days.

According to provisions of the art. 70 paragraph (1) and (2) of the Administrative Code 116/20018: "*Notification of participants*

(1) If it initiates an ex officio administrative procedure, the public authority shall inform the participants in writing within a reasonable time.

(2) If other administrative persons initiate an administrative procedure on request and the procedure participates, the public authority shall inform them in writing, within a reasonable time, about the initiated procedure.”

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

According to the Competition Law, the preliminary examination of the complaint submitted for alleged anticompetitive actions is carried out in a deadline of 30 days from the application date. However, the Law does not expressly provide for a period of carrying out the investigations, it is established depending on the complexity of the case, its nature and actions to be performed on its edge.

The notified economic concentration operations, upon which the initiation of the investigation was ordered, shall be authorized within the term provided by the Competition Law.

Thus, within a time limit of 10 working days from the registration of the notification the Competition Council shall confirm in written to the notifying party/parties or their representatives the conditions for the notification to be deemed valid.

Within a time, limit of 10 working days from the registration of the notification, the Competition Council shall be able to request from the notifying party/parties or their representatives, the fulfilment of the transmitted information and/or the confirmation of its accuracy. The notification shall be deemed effective only after it's filling up.

Within a time limit of 30 days from the moment of receiving the complete concentration notification, the Competition Council: (a) shall inform the notifying parties by a letter on the fact that the economic concentration notified is not covered by the present law; (b) shall adopt in the Plenum a decision where it declares the notified economic concentration as being compatible with the competition environment where it states that, although the notified concentration is covered by the Law.

Except for the cases where the undertakings involved prove to the confidence of the Plenum of the Competition Council that they renounced to the economic concentration, in a time limit of 90 working days from the date of investigation initiation, the Plenum of the Competition Council shall issue a decision to declare the concentration incompatible or compatible with the competition environment.

The provided deadlines shall be extended where the notifying parties apply in this respect in a time limit of at most 15 working days from the initiation of procedure. The notifying parties may submit such type of application once. After the procedure initiation the Plenum of the Competition Council may extend the time limits with the consent of the notifying parties. The total duration of any extent or extents may not exceed 20 working days.

These time limits shall also be extended by 30 working days where the undertakings concerned offer commitments to achieve the compatibility of the economic concentration with the competition environment.

In case the Plenum of the Competition Council does not decide within the set time limit the concentration is deemed to be tacitly authorized.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The Competition Law contains provisions on ensuring the confidentiality of information in the investigation procedures and the publication of the final adopted decisions under investigations. Additionally, in pursuing its activities the Competition Council and its employees also consider the provisions of the [Personal Data Protection Law no. 133/2011](#), the [Law on access to information no. 982/2000](#), the [Civil code no. 1107/2002](#) as far as confidential information is concerned.

According to the Competition Law 183/2012 the parties may request confidentiality for any of the parts of the complaint, by submitting a non-confidential version of the complaint, including the summary of the confidential information.

Additionally, the Competition Law provides that the Competition Council Plenum Members, the employees of the Competition Council and the experts engaged by the Competition Council are obliged to keep the confidentiality of information classified as secrets protected by the law and of other confidential information, to which they have access due to the exerting of their functions provided for by the Law.

Furthermore, the decisions and the prescriptions, published on the web page of the Competition Council, are published taking account of the legitimate interest of the undertakings as to the protection of the commercial secrets and by ensuring confidentiality of the information.

Under the Competition Council procedures each party has the right to request the confidentiality of its data, with the submission of a non-confidential version of the document.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The Competition Law provides that the Competition Council Plenum Members and the employees of the Competition Council shall observe strictly the legal regime of the conflict of interests provided for in the legislation on conflict of interests, as well as the provisions of art. 7 par. (2) of the [Law no. 325 /2013](#) on the assessment of institutional integrity.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

According to the Competition Law no.183/2012, the parties have the right to submit evidence, to request hearings and to challenge the decision of the Competition Council Plenum. Any undertaking alleging the anticompetitive actions or unfair competition, has the right to submit to the Competition Council a complaint, according to the complaint Form approved by the Competition Council Plenum Decision, with the presentation of the evidence in support of the facts on which the complaint is based.

During the investigation procedures, the Competition Council fully grants the rights to defense of the parties concerned by granting the right to express the point of view regarding the conclusions and proposals from the investigation report, by ensuring the access to the case file, and right to hearings.

Thus, after drafting the investigation report, one copy of the non-confidential version of the report shall be transmitted for information to the concerned parties - the author of the complaint and undertakings or associations of the undertaking which make the object of investigation. Upon request, one copy of the non-confidential version of the investigation report shall be transmitted to the persons whose hearing had been ordered under the investigation.

Within 30 days from the date of receiving the investigation report, the parties involved have the right to present observations on it. This deadline may be extended by the Competition Council one time with at most 30 days, upon the substantiated request, to which the evidence proving the necessity of extension is enclosed.

During this deadline, the parties may request the access to the case file, the copy of the documents (excepted the confidential information and internal documents of the Competition Council). The parties have the right to present observations on the investigation report, to annex further evidences, as well to request hearing in order to express under the charges and/or to replay to the further questions of the Competition Council.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

The Competition Law ensures the parties' right to be assisted by lawyers and other representatives entitled pursuant to the law. Additionally, the Competition Law ensures the parties' right to submit evidence including through the lawyer.

The competition law ensures the confidentiality of the communications between lawyer and client made for the purpose and in the interest of exercising the client's right of defense in the procedures provided by law.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

The Competition Council Plenum Decisions are individual administrative acts, which state the infringement of the legal provisions, apply corrective measures, adequate sanctions, solve the notifications on economic concentrations, pursuant to the tasks of the Competition Council stipulated by the present law and other legislative acts.

Additionally, the decision on the application of sanctions shall specify the time limit to pay the sanction. The time limit to pay the sanction shall not be set up earlier than the expiry of 60 working days from the date of communication to the undertaking or the association of undertakings obliged to pay the sanction of the reasoned decision on the application of sanction, including the term and the court where the decision is to be contested.

Decisions shall be issued in written form and shall be referred to the parties concerned within 10 days of their adoption, explaining the possibility and manner of appeal.

The Competition Council Plenum Decisions shall be published on the web page of the Competition Council, taking account of the legitimate interest of the undertakings as to the protection of the commercial secrets.

In order to be considered, the commitments suggested by the undertakings shall meet the following conditions:

1) shall be submitted in written form and signed. Where the implementation and/or monitoring of the commitments involves the participation of third parties, the proposal will be accompanied by the contracts concluded between the undertaking offering the commitments and the third concerned parties;

2) shall be submitted during the investigation procedure until the Competition Council Plenum Decision will be adopted;

3) shall represent a firm, unequivocal, precise, complete, unconditional and irrevocable offer. The proposal must be sufficiently detailed in order to enable the Competition Council to carry out a full evaluation;

4) shall include explanations on how the whole of the commitments and each of them allows removing the situation that led to the initiation of the investigation;

5) shall include details on the monitoring mechanism proposed by the parties, when appropriate;

6) shall be accompanied by a non-confidential version of the commitments, required by the Competition Council, in order to consult the interested third parties, if it contains confidential information.

In the event that the Competition Council Plenum establishes that the proposed commitments are sufficient for the protection of competition and their application leads to the elimination of the problems which led to the initiation of the investigation, the Competition Council Plenum will adopt the decision which gives binding force to the commitments proposed by the companies and will stop the investigation, by stating that there is no reasonable ground for the Competition Council actions.

The decision on acceptance of commitments describes the commitments proposed by the undertakings and explains how the commitments would solve the identified competition problems. These decisions specify the period for which the company is obliged to apply the commitments. The undertaking obligation to respect the commitments expire on reaching the deadlines provided in the decision regarding the acceptance of the commitments.

According to art. 65 paragraph (2) the adopted Competition Council Plenum Decision shall be notified in written to the persons concerned, within 10 days from the date of adoption thereof.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The Competition Law ensures, without exceptions, the right of contestation, within 30 days from the adoption, of the Decisions of the Competition Council, both of those where infringements are detected, sanctions are applied, corrective measures are imposed, investigations are stopped, as well as to which notifications concerning economic concentrations are solved.