

**Law No. 94-63 of 22 August 1994 on prices, competition and economic
litigation EXPLANATORY**

MEMORANDUM This bill is one of the measures taken to implement the recommendations made by the Head of State during consultations with economic operators. Among other things, these consultations highlighted the mismatch between the development of the economic fabric and its legal environment, which needs to be improved. The draft law on competition, prices and economic disputes repeals law no. 65-25 of 4 March 1965 on prices and breaches of economic legislation. It establishes the Commission Nationale de la Concurrence (National Competition Commission) to arbitrate the free play of competition, which is a counterpart of liberalism. In addition to the organisation of competition, the final beneficiary of which is the consumer, rules are laid down to protect consumers and enable the administrative authorities to deal with market failures and fraud. Lastly, the relationship between the agents responsible for enforcing this law and economic operators has been clarified to ensure that the new measures are applied effectively. That is the thrust of this bill, which I submit for your approval. The National Assembly deliberated and adopted the bill at its meeting of Wednesday 3 August 1994 ;

The President of the Republic hereby promulgates the following law:

Article 1 : - The purpose of this law is to define the provisions governing free competition, price freedom and the obligations of producers, traders providing services and all other intermediaries, and to prevent any anti-competitive practices, to ensure fair and regular transactions and in particular price transparency, the fight against restrictive practices and price rises. TITLE ONE : COMPETITION

Art : 2 - The prices of goods, products and services are freely determined by competition.
Chapter I - The Competition Commission.

Art. 3 - A Competition Commission is hereby created, comprising six members appointed for a period of five years by decree. The Competition Commission is composed of :

1. Two members or former members of the Court of Cassation or the Court of Appeal;
2. Two persons who are or have been active in the sectors of production, distribution, crafts, services or the liberal professions.

3. Two persons chosen for their expertise in economic matters or competition and consumer affairs. Three alternates chosen under the same conditions and in the same proportions. A Government Commissioner appointed by the Minister for Trade from among the A-level civil servants in his department represents the Administration. The term of office of the members of the Competition Commission is renewable.

Art. 4 - The Commission is chaired by a magistrate chosen from among the members referred to in the 2nd and 3rd paragraphs of Article 3.

Art. 5 - Any member of the Commission who fails to attend three consecutive meetings without good reason or who fails to fulfil the obligations set out in the two paragraphs below shall be automatically declared to have resigned by the Minister responsible for Trade. All members of the Commission must inform the Chairman of any interests they hold or acquire and of any positions they hold in an economic activity. No member of the Committee may deliberate on a matter in which he has an interest or if he represents or has represented one of the interested parties.

Art. 6 - The Competition Commission meets in plenary session at least once every three months. A quorum of four members is required. However, the Commission may validly meet on the third call if at least three of its members, including the Chairman, are present. In the event of a tie, the Chairman has the casting vote. For each case, the Committee appoints a rapporteur from among its members.

Art. 7 - When the matter to be dealt with involves a technical speciality or concerns a particular product or profession, the committee may call on the services of any competent person or request the opinion of an expert.

Art. 8 - Any member of the Committee other than the Chairman may be recused. The cases of reservation are in particular : - acts likely to compromise the credibility of the Committee; - personal or professional interests in a case. The Committee shall rule in the first and last instance on any challenge.

Art. 9 - The Competition Commission hears all cases relating to anti-competitive practices as defined in this Act. Likewise, it must be consulted by the Government on any draft regulatory text instituting a new system having the direct effect of: 1° subjecting the exercise of a profession or access to a market to restrictions 2° imposing uniform practices in respect of prices or conditions of sale.

Art. 10 - The matter may be referred to the Commission by the Minister responsible for Internal Trade. Consumer organisations approved by the Minister responsible for Trade under the conditions laid down by decree may also refer matters to the Commission of their own motion or, for all matters concerning the interests for which they are responsible. Art. 11 - The Competition Commission examines whether the practices referred to it are prohibited by this law or may be justified by virtue of it. Where appropriate, it shall impose sanctions and injunctions.

Art. 12 - Investigations and proceedings before the Competition Commission shall be adversarial.

Art. 13 - The Competition Commission may order the parties concerned to cease anti-competitive practices within a specified period. It may impose a fine in the event of failure to comply with the injunctions. The amount of the fine is between 100,000 CFA francs and 20,000,000 CFA francs. The Competition Commission may order its decision to be published in the newspapers or publications it designates and posted in the places it indicates. The costs are borne by the interested party.

Art. 14 - The decisions of the Competition Commission referred to in this chapter are notified to the parties involved and to the Minister responsible for Trade, who may, within a period of one month, bring an action for annulment before the Council of State. The Minister responsible for Trade shall ensure that the decisions of the Commission are implemented. Appeals do not have suspensive effect. However, the First President of the Council of State may order a stay of execution of the decisions if they are likely to have manifestly excessive consequences or if new facts of exceptional gravity have arisen subsequent to the notification of the decision.

Art. 15 - Fines are recovered with the same security as tax debts. Their allocation is determined by decree.

Art. 16 - The Competition Commission may, by reasoned decision, declare the referral inadmissible if it considers that the facts invoked do not fall within the scope of its competence or are not supported by sufficient evidence. It may also decide that there are no grounds to continue the proceedings, after the person who referred the matter and the Government Commissioner have been given the opportunity to consult the file and make their observations.

Art. 17 - The Commission notifies the grievances to the parties concerned and to the Government Commissioner, who may consult the file and submit their observations within a

period of one month. The report is then notified to the parties and to the Government Commissioner, who have one month to prepare a statement in response, which may be consulted within the fifteen days preceding the meeting by the persons referred to in the previous paragraph.

Art. 18 - The Chairman of the Commission may not communicate documents involving business secrecy unless communication or consultation of such documents is necessary for the proceedings or for the exercise of the rights of the parties.

Art. 19 - The disclosure by one of the parties of information concerning the other party or a third party of which it could only have become aware as a result of the communications or consultations carried out shall be punishable by the penalties provided for in Article 363 of the Criminal Code.

Art. 20 - Meetings of the Competition Commission are not public. Only the parties and the Government Commissioner may attend. The parties may be represented or assisted. The Commission may hear any person whose testimony it deems likely to contribute to its information. The Government Commissioner attends the deliberations without the right to vote.

Art. 21 - The investigating and adjudicating courts shall provide the Competition Commission, on request, with the minutes or reports of investigations that are directly related to the matters referred to the Commission. The Commission may be consulted by the courts on anti-competitive practices identified in cases brought before them. The Commission's opinion may be published after the case has been dismissed or judged.

Art. 22 - The Competition Commission may not be seized of facts dating back more than three years if no action has been taken to investigate, establish or punish them. The conditions of application of articles 3 to 21 shall be laid down by decree. Chapter II - Anti-competitive practices

Art. 23 - All economic operators are obliged to respect the rules of free competition in order to ensure that competition is healthy and fair. All practices tending to hinder, in various forms, the positive development of the laws of the market are therefore deemed to be infringements. Anti-competitive practices may be of an individual or collective nature, as defined in the following provisions.

Paragraph I. - Collective anti-competitive practices

Art. 24 - Any action, agreement, coalition, express or tacit understanding in any form and for any reason whatsoever, the object of which is or may be to prevent, restrict or distort the free play of competition, is prohibited, subject to specific legislative and regulatory provisions, in particular those which: - hinder the lowering of cost, sale or resale prices; - favour the artificial raising or lowering of prices; - hinder technical progress; - restrict the exercise of free competition.

Art. 25 - Any undertaking or agreement entered into in connection with the practices prohibited by Article 24 is automatically null and void. Such nullity may be invoked by the parties or by third parties, but may not be invoked against third parties by the parties. It may be declared null and void by the ordinary courts, to which the opinion of the committee provided for in article 3 must be communicated.

Paragraph 2. - Individual anti-competitive practices

Art. 26 - It is prohibited for any producer, trader or industrialist, individually or as part of a group: - to refuse to satisfy requests from purchasers of products or requests for the provision of services, where such requests are not of an abnormal nature, where they are made by applicants offering the necessary technical or commercial guarantees or the necessary solvency, and where the sale of products or the provision of services is not prohibited by the laws and regulations in force. Refusal to sell may be established by any means, and in particular by formal notice in the form of a registered letter or by an official report drawn up by any authorised agent required for this purpose. Withdrawal of the complaint by the injured party may not, under any circumstances, prevent the Administration from pursuing the procedure.

Art. 27 - The abusive exploitation by a company or group of companies of: 1 a dominant position on the domestic market or a substantial part thereof; 2 the state of economic dependence in which a client or supplier company finds itself in relation to it, where no equivalent solution is available, is prohibited under the same conditions.

Art. 28 - It is forbidden for any producer or industrial trader, individually or as part of a group, to apply discriminatory conditions of sale which are not justified by differences in the cost price of the supply or service. The non-discriminatory nature of commercial reductions or the provision of services is deemed to be acquired when they are included in the general terms and conditions of sale. Any producer, wholesaler or importer is obliged to provide any reseller who so requests with its price list and general terms and conditions of sale. These include the terms

of payment and any discounts and rebates granted. This information is provided in accordance with the provisions of article 33.

Art. 29 - It is forbidden for any producer, trader or industrialist to confer, maintain or impose a minimum price on products, services or commercial margins, either by means of a tariff or scale, or by virtue of collective or individual practices, whatever their nature or form.

Art. 30 - The resale of any product at a price lower than its cost price, after deduction of any commercial discounts granted by the supplier at the time of purchase, is prohibited.

Art. 31 - The provisions of article 30 do not apply, in particular, to : - to perishable products from the moment when they are threatened with rapid deterioration; - to voluntary sales motivated or forced by the cessation or change of a commercial activity; - to products which no longer meet general demand owing in particular to changes in fashion or the appearance of technical improvements; - to promotional sales authorised by the Minister responsible for Trade.

TITLE II - COMMERCIAL INFORMATION

Art. 32 - In order to guarantee the power of consumers and their freedom of choice between the products and services offered, economic operators are required to behave fairly towards them, in particular by correctly communicating the conditions of sale, but also and above all by providing good information on the prices charged.

Paragraph 1 - Obligations towards consumers

Art. 33 - For the purposes of this law, the rules governing commercial information include price advertising, display, marking, labelling, communication of price lists and general terms and conditions of sale or any other appropriate procedure. Compliance with invoicing rules is also required. The procedures for applying the rules on advertising prices and identifying products and companies are laid down by decree.

Art. 34 - Any breach of the regulatory provisions governing the display, marking, labelling and communication of price lists constitutes an infringement of the rules on price advertising. They are punishable after a formal notice has been served and not acted upon within fifteen days. The fine is between 10,000 and 500,000 francs, with a penalty of 500 francs per product per day.

Art. 35 - False publication of information is defined as the act by any person of : 1 - publish in any manner whatsoever: a) knowingly inaccurate information on the prices of any product or

service that has been the subject of a decision in accordance with the provisions of Article 3 of this Law; b) in bad faith, information of any kind concerning current or future conditions on local or other markets that is likely to disrupt pricing or supply policy;

Art. 36 - The burden of proof of advertising claims, indications or services shall lie with the advertiser or the advertising agency.

Art. 37 - The offences provided for in Article 35 are punishable by a fine of between 50,000 and 5,000,000 francs. Persons prosecuted who have been convicted under this Article shall also be required to put an end to the false advertising, in particular by withdrawing any document or medium used for the advertising, subject to a fine.

Paragraph 2 - Invoicing rules

Art 38 - Any purchase of products intended for sale as is or after processing, or any purchase made on behalf of or for the benefit of an industrialist or trader for the purposes of his business must be the subject of an invoice, the compulsory details of which are laid down by decree. Any service provided by a professional for the needs of a trader or industry must also be invoiced. The seller is obliged to issue an invoice as soon as the sale or the provision of the service has become final: the professional purchaser is obliged to request the said invoice. For certain sectors or branches, the list of which is fixed by order of the Minister responsible for Trade, and at the request of the non-professional purchaser, the seller is obliged to issue an invoice. The delivery note may take the place of the invoice provided that it contains the compulsory information. A decree may exempt certain products from the obligations resulting from the preceding paragraphs or provide for certain special application procedures.

Art. 39 - The originals and copies of invoices bearing the mandatory information must be kept in bundles, in date order, and retained by the trader for a period of three years from the date of the transaction.

Art. 40 - Violation of the provisions of Articles 38 and 39 constitutes an infringement of the invoicing rules. They are punishable by a fine of between 10,000 and 3,000,000 CFA francs. If the offending product is of fraudulent origin, it shall be seized.

Art 41 - Disputes concerning invoicing and advertising follow the rules defined below concerning price regulation.

TITLE III: PRICE REGULATION

Art. 42 - When circumstances so require for economic and social reasons, certain goods, products and services may be subject to price fixing by law or regulation.

Art. 43 - Notwithstanding the provisions of article 42 of the present law, temporary measures against excessive price increases, motivated by a situation of calamity or crisis, by exceptional circumstances or by a manifestly abnormal market situation in a given sector, may be taken by order of the Minister of Commerce and whose duration of application may not exceed 2 months renewable once.

Art. 44 - A decree will set the conditions for the application of articles 42 and 43 of this law.
Paragraph 1. Unlawful pricing practices

Art. 45 - The following shall be deemed to be unlawful prices:

1 - a price which is higher than the ceiling price set by the administrative authority pursuant to articles 42 and 43 of this Act;

2 - a price which is lower than the floor price set under the same conditions as in the first paragraph;

3 - a price which is obtained by providing the administrative authority with false information or by maintaining at their previous level cost price elements which have been subject to a reduction if these elements were used as a basis for approval.

Art. 46 - The following are deemed to be unlawful pricing practices:

- (1) any sale of products, any provision of services or any request for services knowingly contracted at an unlawful price.
- (2) - any purchase or offer to purchase products or any request for the provision of services knowingly contracted at an illegal price. Any purchase accompanied by an invoice containing manifestly inaccurate information is presumed to have been contracted knowingly;
- (3) . any sale or offer to sell, any purchase or offer to purchase involving the delivery of products inferior in quality or quantity to those invoiced or to be invoiced, retained or offered;
- (4) . - the provision of services, offers for the provision of services, requests for the provision of services involving the supply of services that are inferior in size or quality to those retained or proposed for the calculation of the price of these services knowingly accepted under the conditions referred to above.

- (5) - sales or offers to provide services, purchases or offers to purchase, services and requests to provide services involving hidden remuneration in any form whatsoever;
- (6) - retention of stocks or subordination to the sale of other products or services sales or offers to sell and the provision of services.

Art. 47 - The following are deemed to be unlawful pricing practices 1. any seller who carries out retail sales on instalment credit terms or on credit, in any form whatsoever, who fails to provide the beneficiary buyer with an attestation of the terms of the transaction drawn up in the form determined by the competent administrative authority. The duplicate of this certificate, signed by the buyer, must be kept by the seller under the conditions set out in article 40 of this law. The preceding provisions also apply to sellers who carry out the sales referred to above through banks and financial establishments; 2. any producer, trader or industrialist carrying out commercial transactions without being entered in the commercial register.

Paragraph 2 - Ancillary provisions

Art. 48 - The following constitute incidental offences:

- 1) refusal to provide the documents referred to in Art. 75;
- 2) fraud or concealment relating to any document; 3) opposing the action of the agents referred to in Art. 51 and the experts referred to in Art. 81, as well as insults and assaults, invectives against them, in the course of the performance of their duties.

TITLE IV - ESTABLISHMENT, SEIZURE AND ENFORCEMENT OF OFFENCES AGAINST PRICE REGULATION AND FRAUD ENFORCEMENT

Chapter I - Establishment of offences and seizure Section 1- Establishment of offences

Art. 49 - The offences referred to in Articles 34, 35, 40, 46, 47 and 48 shall be established by means of official reports or by judicial enquiry. The reports are signed and dated.

Art. 50 - Seizures of products are recorded in seizure reports.

Art. 51 - Reports of findings and seizures shall be drawn up: 1- by sworn agents of the internal trade services, in possession of their professional card; 2- by other civil servants and State agents authorised and sworn for this purpose.

Art. 52 - As soon as the official report has been drawn up, the State agents referred to in Article 51, paragraph 2, must withdraw from the proceedings and immediately forward the contentious case to the territorially competent Internal Trade Department. Any failure to comply with these obligations is liable to prosecution, without prejudice to criminal penalties.

Art. 53 - Inspection reports are drawn up in triplicate. They shall state the nature, date and place of the observations or checks carried out. The reports shall state that the accused has been informed of the date and place of the report and that he has been summoned to attend. If the accused cannot be identified, the report shall be drawn up against an unknown person. They are exempt from formalities and stamp duty. They are authentic until a forgery is recorded in respect of the material observations that they relate. At the request of the accused, a copy of which is mentioned in the report, is given to him. He or she has a period of time which may not exceed seventy-two hours (72 hours) in which to sign or not to sign the record.

Art. 54 - Seizure reports shall be drawn up in triplicate without delay. They must mention the nature, description and valuation of the goods seized. If the accused cannot be identified, they are drawn up against an unknown person.

Section 2 - Seizure

Art. 55 - Only goods which have been the subject of the offences set out in articles 46 and 47, as well as instruments which have served or been intended for use in committing the offences, may be seized. The list and value of the products seized must appear on the official report of findings and seizure.

Art. 56 - Where the seizure affects the normal and regular operation of a business, the manufacturer or trader is entitled to submit a detailed report to the Director of Internal Trade or the Minister of Trade. If the seizing authority remains silent, the seizure is automatically lifted. In the event of a dispute, the matter shall be referred to the interim relief judge within (8) days of the decision of the administrative authority.

Art. 57 - The seizure is real or fictitious. It is fictitious when the goods referred to in Art. 55 cannot be apprehended, and an estimate is made, the amount of which is equal to the proceeds of the sale.

Art. 58 - When the seizure is real, the seized goods may be left at the disposal of the accused, on the condition that, if he does not represent them in kind, he pays the approximate value in the official report. The granting of this option may be subject to the provision of sufficient guarantees, in particular the deposit of a security.

Art. 59 - Where the seized goods have not been left at the disposal of the accused, the seizure in rem gives rise to guarding in any place designated by the Administrator of Internal Trade. Where the circumstances of the case give reason to fear the disappearance of the products or goods seized where they are perishable or where the

needs of supply so require, the said products or goods shall be sold in accordance with the procedure laid down by decree.

Art. 60 - The officers referred to in Art. 51 may demand to be provided, wherever they may be found, with documents of any kind or certified copies thereof, in particular accounting records, copies of letters, cheque books, drafts and bank statements, which may facilitate the performance of their duties. These documents may only be taken away under the conditions set out in Article 84.

Chapter II - Repression of infringements of price and fraud regulations.

Section 1 - Procedure

Art. 61 - Subject to the provisions of Art. 54, the reports drawn up by the officials referred to in Art. 51 are forwarded within one month to the Director of Internal Trade for further action. Where there is no settlement, the Public Prosecutor to whom the matter has been referred by the Director of Internal Trade must notify the latter of the decision he has taken within two months of the date of receipt of the file.

Art. 62 - Reports drawn up pursuant to Article 54 are forwarded to the Director of Internal Trade immediately after they have been drawn up.

Art. 63 - In the event of flagrante delicto, the Public Prosecutor shall immediately inform the Director of Internal Trade so that the latter may give an opinion on the infringements observed within three days.

Art. 64 - The competent administrative authorities may grant the benefit of a settlement under the conditions laid down by decree. The same decree determines the procedure for carrying out the settlement, as well as the methods of payment. Payment of the settlement must be made within 2 months of notification of the settlement to the interested party, failing which the case will be referred to the public prosecutor. The final settlement extinguishes the public prosecution.

Art. 65 - The Director of Internal Trade, in addition to forwarding the case file to the Public Prosecutor, may also file submissions which are attached to those of the Public Prosecutor and have them developed orally at the hearing by a duly authorised official, if necessary by a lawyer.

Art. 66 - The Public Prosecutor, the Examining Magistrate or the Court may, as long as a decision on the merits of the case, whether in adversarial proceedings or by default, has not become irrevocable, grant the request of the accused or one of them, asking for the benefit of a settlement. In this case, the file is forwarded to the competent administrative authority for settlement. The granting of this facility may be subject to

the fixing of a deposit, the amount of which is determined by the judicial authority. The competent administrative authority has a period of time in which to conclude the settlement, set by the judicial authority to which the matter has been referred. This period, which runs from the day on which the case is referred to the judicial authority, may not be less than one month or more than three months. Once the final settlement has been reached, the case file is returned to the Public Prosecutor, the Examining Magistrate or the Court, which determines that the public prosecution has been extinguished. The settlement is implemented and recovered in accordance with the procedures laid down by ministerial instruction. If the settlement is not reached, the legal proceedings resume. The procedure is followed in accordance with ordinary law. The judge will rule in summary proceedings on disputes and difficulties arising from the application of this article.

Section 2 - Penalties.

Art. 67 - The offences provided for in articles 46 and 47 are punishable by a fine of 25,000 to 50,000,000 francs. In the event of fraudulent manoeuvres, a penalty of 3 months' to 3 years' imprisonment may be imposed. The failure to keep concealed accounts, the preparation of false invoices, the payment or receipt of concealed balances and any other manoeuvres designed to conceal either the transaction in question or its true nature or conditions shall be deemed to be fraudulent manoeuvres.

Art. 68 - The offences provided for in Article 48 shall be punishable by a fine of between 50,000 and 5,000,000 francs. In the event of refusal to disclose or concealment of documents, the offender shall also be ordered to produce the documents under a fine of at least 5,000 francs per day of delay from the date of the judgment if it is an adversarial judgment or from the date of service of the judgment if it was rendered by default. This penalty ceases to apply once it has been established that the documents have been handed over by means of an official report.

Art. 69 - In the event of conviction and in accordance with Article 11 of the Penal Code, the court may order the confiscation for the benefit of the State of all or part of the seized assets referred to in Articles 55 and 57

Art. 70 - The court may temporarily or permanently close the offender's shops, offices or factories in the cases provided for in Article 67, paragraph 2. It may also temporarily or permanently prohibit the offender from exercising his profession. A private legal entity may also be prohibited from practising its profession if the offence was committed on its behalf and its directors were aware of it. Any infringement of the

provisions of the judgment ordering the closure or prohibition is punishable by a fine.

Art. 71 - The competent court may order that its decision be published, in full or in extracts, by any appropriate means, or posted in very conspicuous characters in the places it indicates, all at the expense of the offender.

Art. 72 - The removal, concealment or tearing down, in whole or in part, of posters affixed in accordance with the provisions of article 71, carried out voluntarily, shall result in the imposition of a penalty of 6 to 15 days' imprisonment or a fine, and the provisions relating to posting shall be enforced in full again at the offender's expense.

Art. 73 - If the offender has been prosecuted for less than two years and the proceedings have resulted in either a settlement or a conviction for one of the offences referred to in Article 49, as in the case of a new offence referred to in the same Article, the penalties may be increased to double the sentence incurred.

Art. 74 - The statute of limitations for public prosecution is interrupted in accordance with the rules of ordinary law, including by the drafting of reports drawn up pursuant to Article 49.

TITLE V: POWERS AND OBLIGATIONS OF OFFICERS

Chapter I - Powers of officers and experts

Art. 75 - The agents authorised to carry out investigations relating to the establishment of prices may, upon presentation of their commission and the mission order and in the presence of the representative designated by the undertaking: 1° - request communication from any commercial, industrial or craft undertaking, from any company, cooperative, agricultural holding as well as from any professional body, of the documents or certified copies which they consider necessary for the accomplishment of their mission; 2° - carry out any visits to industrial, commercial, agricultural, cooperative or craft establishments.

Art. 76 - The civil, military and paramilitary authorities are obliged, at the first requisition, to assist the internal trade officers in the accomplishment of their mission.

Art. 77 - Subject to the specific powers of officers of the judicial police in the event of a flagrant offence, an official authorised under article 51, with at least the rank of controller or an equivalent rank, may request the detention of the defendant.

Art. 78 - The officers referred to in article 51, accompanied by a representative appointed by the company, have free access to shops, offices, annexes, warehouses, production, sales, dispatch or storage premises and, in general, to any place whatsoever, subject to the provisions of article 80 concerning residential premises. In the event of

the refusal or voluntary absence of a representative designated by the company to accompany the officers to the premises referred to in the previous paragraph, the officers will record in a report the various obstacles to free access and may disregard them.

Art. 79 - Subject to the provisions of the Code of Criminal Procedure, officers authorised by virtue of Art. 51 may carry out visits to the interior of dwellings with the assistance of a judicial police officer previously requisitioned in accordance with Art. 76 and in possession of a search warrant. Home visits are carried out during the day.

Art. 80 - Civil servants of hierarchy A in the service of the Directorate of Internal Trade and specially authorised for this purpose by the Minister of Justice, on the proposal of the competent administrative authority, may, under the terms of and subject to the provisions of Articles 72, 143 and 144 of the Code of Criminal Procedure, carry out the necessary investigative acts on the basis of a letter rogatory issued by the Examining Magistrate.

Art. 81 - The Minister responsible for Trade or the Director of Internal Trade may appoint any expert to examine any of the documents referred to in Art. 75 and report on his findings. Experts appointed in this way will enjoy the prerogatives set out in Article 78. They are bound by professional secrecy.

Art. 82 - When accompanied by one of the agents referred to in Art. 51, the experts may, with the exception of home visits, exercise the right of inspection as defined in Art. 75. The method of appointing experts, the conduct of expert appraisal operations, the submission of reports and the payment of costs will be the subject of regulations issued by the competent administrative authority.

Chapter II. OBLIGATIONS OF OFFICIALS

Art. 83 - Any official who, for any reason whatsoever, exceeds his powers or uses non-regulatory methods to this end, or attempts to do so, is liable to disciplinary sanctions, without prejudice to legal proceedings. Breaches or obligations resulting from powers to investigate, record and prosecute breaches of economic legislation are subject to disciplinary sanctions, without prejudice to criminal sanctions.

Art. 84 - Officials authorised to carry out investigations relating to the establishment of prices are bound by professional secrecy. The documents of which they have been notified pursuant to Art. 75 must be consulted on the spot and, in such cases, the economic operator concerned must provide them with suitable premises in which to consult the required files. If no suitable premises are available or if it is established that the economic operator is clearly unwilling to cooperate, the officials concerned may

take away the files or certified copies in return for a discharge, following a decision by the higher authority. In all cases, the documents must be consulted within a maximum of 3 weeks. After this period, the documents must be returned to their owner.

However, if it is established that there has been an infringement of economic legislation, an additional period of 3 weeks will be granted by the higher authority to the officers concerned to make their final conclusions.

TITLE VI: MISCELLANEOUS PROVISIONS

Art. 85 - Under penalty of the sanctions referred to in Article 363 of the Criminal Code, the agents referred to in Articles 51 and 81 are bound by professional secrecy, in accordance with the texts in force.

Art. 86 - In the event of multiple offences, the procedure defined by this Act shall apply to the whole of the case, with the exception of those falling within the remit of the tax and forestry administrations.

Art. 87 - All those who, in any capacity whatsoever, are responsible for the management of the administration of any enterprise, company or collective association, have contravened or allowed any person under their authority to contravene the provisions of this law, shall be liable to the penalties and sanctions provided for in this law. The same penalties and sanctions shall also apply to all those who, in any capacity whatsoever, are responsible for the management of the administration of any undertaking, company or collective association, and who, in the course of this involvement, have contravened the provisions of the present law by their own actions or by carrying out orders which they knew to be contrary to the law. The undertaking, establishment, company, association or collective body shall be jointly and severally liable for the amount of confiscations, fines and costs incurred by such offenders.

Art. 88 - Where several persons have been convicted of the same offence, they are jointly and severally liable for the payment of fines and confiscations.

Art. 89 - In the absence of a claim by the owner within 3 months of the day on which the decision is ordered, the non-confiscated part of the part is deemed to be the property of the State.

Art. 90 - A portion of the proceeds from transactions, confiscations, fines and analyses carried out by the laboratory of the Directorate of Internal Trade and the verification of measuring instruments shall be deducted, the allocation of which shall be determined by decree.

Art. 91 - The provisions of Act 65-25 of 4 March 1965 and all other provisions contrary to this Act are repealed. However, until such time as they are amended or repealed, the regulations made pursuant to and for the execution of the said law shall remain in force insofar as they do not conflict with the provisions of the present law, subject to the penalties provided for in the corresponding regulations. This law shall be executed as a law of the State.

Dakar, 22 August 1994. Abdou Diouf. For the President of the Republic. Prime Minister Habib Thiam.