

# UEMOA

## Regulation on anti-competitive business practices Regulation No. 02/2002/CM/UEMOA of 23 May 2002

### Art.1 - Definitions

For the purposes of these regulations, the following definitions shall apply :

- UEMOA: the West African Economic and Monetary Union,
- Union: the West African Economic and Monetary Union,
- Council: the Council of Ministers of the UEMOA,
- Commission: the commission of the UEMOA,
- Member State: any State party to the Treaty of the West African Economic and Monetary Union

### Art. 2 - Prohibition and scope of application

Pursuant to the provisions of article 88 of the WAEMU Treaty, the practices referred to in articles 3, 4, 5 and 6 below constitute anti-competitive practices. These practices are prohibited, without the need for any prior decision, when they have been implemented at least one year after the entry into force of the the entry into force of the WAEMU Treaty.

Agreements or decisions prohibited pursuant to the preceding paragraph are declared null and void.

### Art.3 - Anti-competitive agreements

All agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings, the object or effect of which is to restrict or distort competition within the Union, and in particular those which consist of :

- (a) agreements restricting market access or the free competition by other undertakings;
- b) agreements directly or indirectly to fix prices, and generally to hinder the free determination of prices in the market place by artificially favouring their increase or decrease ; in particular agreements between undertakings at different levels of production or distribution aimed at fixing the resale price
- c) sharing of markets or sources of supply, in particular agreements between production or distribution

undertakings relating to absolute territorial protection ;

- d) restrictions or controls on production, outlets, technical development or investment ;
- e) discrimination between trading partners by means of unequal conditions for equivalent services ;
- f) making the conclusion of contracts subject to acceptance by the partners of supplementary services which, by their nature or according to commercial usage, have no connection with the have no connection with the subject of such contracts.

#### **Art. 4 - Abuse of a dominant position**

1) The abuse by one or more undertakings of a dominant position in the common market or in a significant part thereof shall be prohibited as incompatible with the common market. The same prohibition shall apply to practices similar to the abuse of a dominant position by one or more undertakings. Concentrations which create or strengthen a dominant position, held by one or more undertakings, as a result of which effective competition within the common market is significantly impeded, shall constitute a practice tantamount to abuse of a dominant position.

2) Abusive practices may consist in particular in:

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b) limiting production, markets or technical development to the prejudice of consumers ;
- c) to apply dissimilar conditions to equivalent transactions with other trading parties, there by placing them at a competitive disadvantage ;
- d) to make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

3) The following constitute a concentration within the meaning of Article 4.1 paragraph 2 of these Regulations

- a) a merger between two or more previously independent undertakings ;
- b) an operation where by one or more persons already controlling at least one undertaking, or one or more undertakings, acquire directly or indirectly, whether by
- acquisition of a holding in the capital or purchase of assets,

contract or any other means, control of the whole or parts of one or more other undertakings;

- c) the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

#### **Art.- 5 - State aid**

Pursuant to the provisions of Article 88(c) of the WAEMU treaty, aid granted by States or through State resources in any form whatsoever which distorts or is likely to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the Common Market and prohibited the provisions of this article shall be specified by means of a regulation of the Council of ministers.

#### **Art.6- Anti-competitive practices attributable to Member States**

1) Pursuant to the provisions of Articles 4(a), 7 and 76(c) of the WAEMU Treaty, member States shall refrain from any measures likely to impede the application of these Regulations and subsequent texts. In particular, they shall refrain from enacting or maintaining, with regard to public undertakings and undertakings to which they grant special and exclusive rights, any measure contrary to the rules and principles laid down in article 88 paragraphs (a) and (b) of the Union Treaty.

Furthermore, member States shall refrain from enacting measures enabling private companies to evade the constraints imposed by article 88 paragraphs (a) and (b) of the WAEMU Treaty.

2) Undertakings entrusted with the management of services of general economic interest or having the character of a fiscal monopoly are subject to the rules of the Treaty relating to competition. However, in the event that the application of these rules prevents the fulfilment, in law or in fact, of the particular mission entrusted to them, the Commission, in accordance with Article 89 paragraph 3 of the WAEMU Treaty, may grant exemptions from the application of Article 88 (a) and, where applicable, article 88 (b) of the treaty.

In order to benefit from the exemptions provided for in the previous paragraph, the interested parties and/or the Member States to which they belong must notify the practice to the Commission under the conditions laid down, by way of Regulation, by the Council of Ministers.

3) The Commission shall ensure that the provisions of this Article are applied. It shall address opinions and recommendations to the Member States, the WAEMU Council of ministers and the other institutions of the Union on all draft national or Community legislation likely to affect competition

within the Union, proposing appropriate amendments.

4) If the member State concerned does not comply with a decision, the Commission may refer the matter to the WAEMU Court of Justice, in accordance with Articles 5 and 6 of Additional Protocol No. 1 to the Treaty.

#### **Art. 7 - Individual and category exemptions**

Pursuant to Article 89(3) of the WAEMU Treaty, the Commission may declare articles 88(a) of the WAEMU Treaty and 3 of these Rules inapplicable,

- to any agreement or category of agreements
- to any decision or category of decisions of associations of undertakings,
- to any concerted practice or category of concerted practices,

which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and without

- (a) imposing on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives ;
- (b) affording such undertakings the possibility of eliminating competition in respect of a

substantial part of the products in question.

#### **Art.8 - Final provisions**

Final provisions these Rules, which come into force on 1st January 2003, will be published in the Union's Official Bulletin.