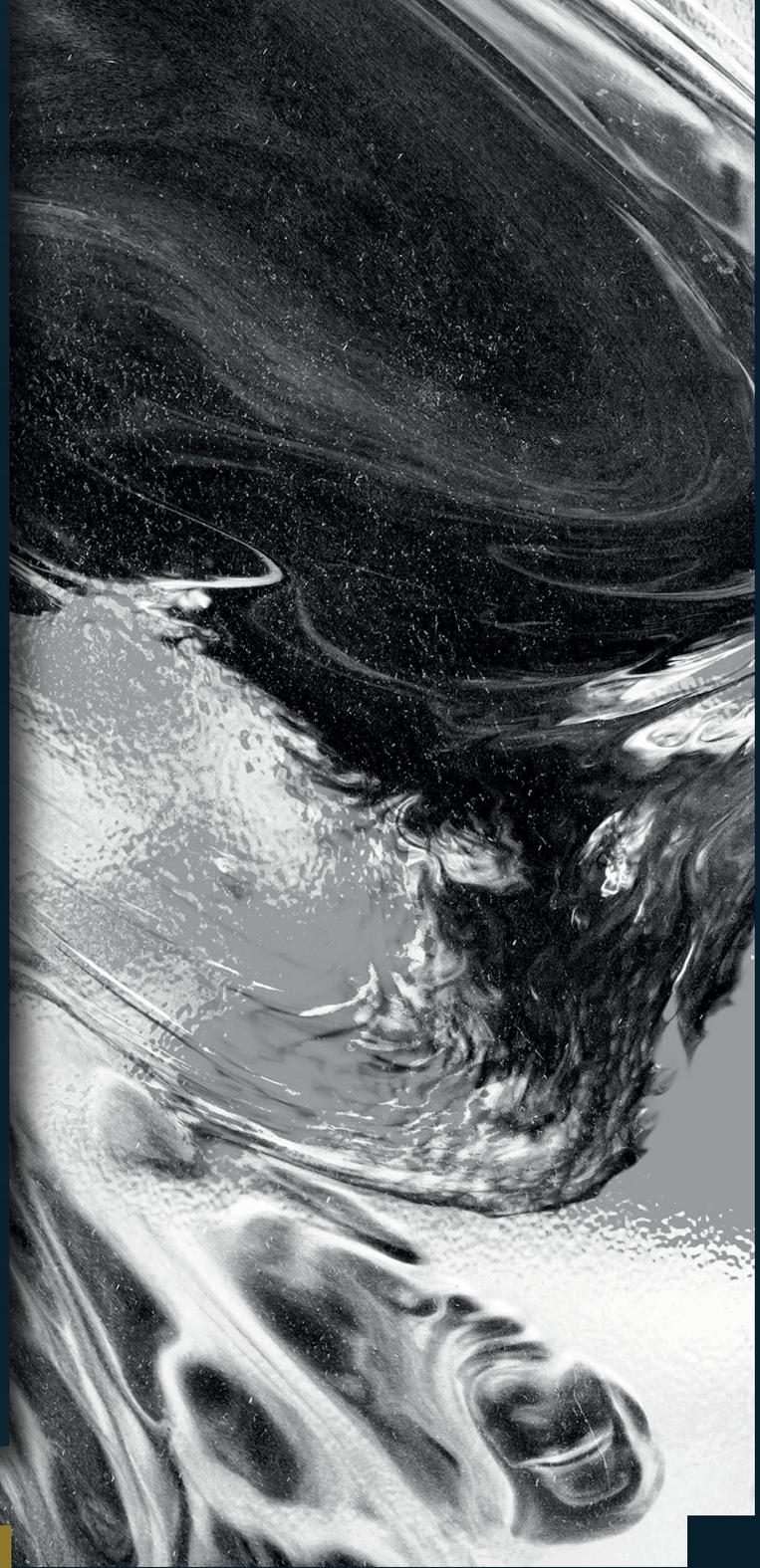


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COMPETITION ACT

Editor:
Juan Pablo Gramajo Castro

DECREE NUMBER 32-2024¹

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

The Political Constitution of the Republic recognizes and protects private property, free association, freedom of industry, commerce and labor.

WHEREAS:

Article 130 of the Political Constitution of the Republic of Guatemala prohibits monopolies and privileges, and imposes obligations on the State to limit the operation of undertakings that absorb or tend to absorb, to the detriment of the national economy, production in one or more industrial sectors or in the same commercial or agricultural activity; to protect the market economy; and to prevent associations that tend to restrict market freedom or harm consumers.

WHEREAS:

Article 119 of the Constitution of the Republic of Guatemala, in its subsection h), establishes a fundamental obligation of the State of Guatemala to prevent the operation of excessive practices that lead to the concentration of goods and means of production to the detriment of the community.

¹ Editor's note: This is an unofficial private translation, produced by Guatemalan law firm Mayora & Mayora for the benefit of our English-speaking clients, friends and public. It has no legal effect and does not govern the application and construction of the official Spanish text. It does not substitute or preclude legal advice for specific cases, offered by our firm or by any other legal practitioner. It is based on translation on the DeepL software, as reviewed, edited and improved upon by Guatemalan attorney Juan Pablo Gramajo Castro. For such purposes, reference was made, among other sources, to a courtesy translation of the *Federal Economic Competition Law* (Mexico) published in 2015 by the Federal Economic Competition Commission (COFECE), and to a *Competition Glossary* published in 2016 by the United Nations Conference on Trade and Development (UNCTAD).

WHEREAS:

It is necessary to incorporate into current legislation comprehensive regulations that provide for the promotion and defense of free competition, that promote increased economic efficiency, aimed at improving the welfare of consumers, society, and the national economy, and that develop the constitutional mandate, for which reason it is necessary to enact a law regulating this matter.

THEREFORE:

In exercise of the powers conferred upon it by Article 171, subsection a) of the Political Constitution of the Republic of Guatemala,

DECREES:

The following

COMPETITION ACT

TITLE I GENERAL PROVISIONS, PROMOTION AND DEFENSE OF COMPETITION

CHAPTER I GENERAL PROVISIONS

Article 1. Purpose. The purpose of this Act is to promote and defend competition to strengthen economic efficiency in the pursuit of the welfare of domestic consumers, as well as to prevent, investigate, combat, prosecute, and punish anti-competitive practices and other restrictions on the efficient functioning of markets, for the benefit of domestic consumers.

Article 2. Scope of application. This Act is of general application throughout the Republic and shall apply to all economic agents. It constitutes the specific law on competition.

This Act shall apply supplementarily to economic agents that are subject to their own sectoral laws, containing competition rules, and are controlled and supervised by a regulatory authority, with the special provisions prevailing.²

Article 3. Definitions. For the purposes of this Act, the following definitions apply:

- 1) Economic activity:** Any form of production and/or commercialization of goods and/or provision of services aimed at obtaining economic benefits.
- 2) Economic agent:** Any individual or legal entity, economic group, private or public entity, domestic or foreign, for-profit or non-profit, that engages in an economic activity.
- 3) Economic group:** A grouping of two or more economic agents that coordinate their activities through common shareholding or administrative control.

² Editor's note: See Article 39, subsections 11, 16, and 20; Article 55, subsections 5, 17, 18, 19, 21, and 22; Article 84, subsections 7 and 8.

- 4) **Free competition:** A structural characteristic of a market that lacks elements or factors that significantly impede the entry or exit of competitors, or that limit their ability to compete in economic activities in a relevant market, or that restrict the economic freedom of that market.
- 5) **Dominant position:** A situation where an undertaking³ has a significant presence in a relevant market, given the volume of purchases or sales it makes compared to its competitors, which gives it the ability to hinder or prevent competition in that market, as well as to set conditions independently of other economic agents and end consumers.
- 6) **Relevant market:** Comprises all goods or services that are interchangeable or substitutable due to their characteristics, price, or intended use, which can be considered reasonable alternatives by a significant number of customers, consumers, and/or users in a given geographical area and which are economically and socially reasonable and relevant.

CHAPTER II DEFENSE OF FREE COMPETITION

Article 4. Anti-competitive practices. Any absolute or relative practice, as the case may be, that is prohibited and penalized by this Act is considered an anti-competitive practice.

Article 5. Absolute practices. Absolute practices are any agreement, contract, covenant, decision, or concerted practice between two or more competing economic agents that has any of the following effects:

³ Editor's note: We have translated "*empresas*" as "undertakings" throughout this edition, following the language of the Treaty on the Functioning of the European Union and the United Kingdom Competition Act 1998, including their respective provisions on abuse of dominant position (Articles 102 and 18, respectively). However, under EU Competition Law, "the concept of an undertaking encompasses every entity engaged in an economic activity regardless of the legal status of the entity and the way in which it is financed" (*Höfner and Elser v Macrotron GmbH*), including natural persons (individuals). Thus, although officially translated as "*empresa*" in EU legislation, it is closer in meaning to the Guatemalan Act's "*agente económico*", while under the Guatemalan Commercial Code an *empresa* is not a subject but an object of law (a moveable good, for legal purposes). Elsewhere, we have translated "*sociedad*" as "company", referring specifically to a commercial entity. See: Whish, Richard; Bailey, David, *Competition Law*, 9th ed., Oxford University Press, 2018; Dirección General de Competencia, *Glosario de términos utilizados en el ámbito de la política de competencia de la Unión Europea. Normas de defensa de la competencia y control de las concentraciones*, Comisión Europea, Bruselas, 2002.

- 1) Agreeing, arranging, fixing, or manipulating prices, charges, discounts, professional fees, royalties, rates, or fees, directly or indirectly, in the sale or purchase of goods or services;
- 2) Dividing, distributing, allocating, or imposing portions or segments of an actual or potential market for goods or services, whether by territory, by volume of sales or purchases, by type of products or services, by specific or determinable times or spaces, by customers or sellers, by distribution of sources of inputs, or by any other means;
- 3) Fixing, limiting, or restricting the production, demand, distribution, or marketing of goods or services, whether by quantity, volume, or frequency; or,
- 4) Arranging or coordinating bids in national or international public procurement processes, such as tenders, quotations, competitions, or auctions. Bids submitted jointly by two or more economic agents, which are clearly identified as a joint bid or consortium in the document submitted by the bidders, are exempt from this prohibition.

Article 6. Prohibition of absolute monopolistic practices. Economic agents who engage in absolute practices shall be subject to the penalties established in this Act.

Agreements, decisions, and recommendations that fall under any of the categories of absolute practices must be fully proven. The burden of proof lies with the administrative authority responsible for enforcing this Act. The economic agent who engages in a practice, agreement, contract, or arrangement covered by this article has the right to a defense on the grounds of efficiency, in accordance with the provisions of this Act.

Article 7. Relative practices. The following are considered relative practices: those agreements, contracts, arrangements, or practices carried out by one or more economic agents who, individually or jointly, have a dominant position in the same relevant market in which the practice is carried out, whose effect on the relevant market is to displace other economic agents in an anti-competitive manner, substantially impede their access, or establish exclusive anti-competitive advantages in favor of one or more economic agents.

The following are considered relative practices:

- 1) The imposition of the price, margin, or marketing percentage that a buyer, distributor, or supplier must observe when marketing, distributing, or providing goods or services.

- 2) The sale, purchase, transaction, or any contract subject to the condition of not acquiring, selling, marketing, distributing, retransmitting, providing, or using the goods or services produced, processed, distributed, or marketed by a third party.
- 3) Selling below average variable cost or selling below total average cost but above average variable cost, if there are elements to presume that it will allow the economic agent to recover its losses through future price increases.
- 4) The action of one or more economic agents whose direct effect is to increase costs or hinder the production process of another or other economic agents.
- 5) The unjustified establishment of different prices or conditions of sale, purchase, or any type of contract for different buyers or sellers in equivalent conditions.
- 6) The denial or restriction of access to an essential input⁴ by one or more economic agents, or access under discriminatory terms and conditions.
- 7) Collusion between several economic agents or inviting them to exert pressure against an economic agent or to refuse to sell, market, or purchase goods or services from that economic agent, with the purpose of dissuading them from a certain decision, retaliating, or forcing them to act in a certain way.
- 8) Unjustifiably denying an economic agent access or membership to a trade association, professional association, or business chamber that is essential for effective participation in a market.
- 9) Preventing or hindering the entry or continued presence of economic agents in all or part of the market.

Economic agents that engage in relative practices shall be penalized in accordance with this Act.

Article 8. Verification. For relative monopolistic practices to be considered violations of this Act, all of the following conditions must be verified:

⁴ Editor's note: "Essential facilities" is more commonly used in English regulations and literature. "Essential inputs" is also used, albeit less frequently. We adopt the latter, as a more faithful translation of "*insumos*".

- 1) They are carried out by one or more economic agents that have a dominant position in the same relevant market in which the practice is carried out;
- 2) They are carried out with respect to goods or services corresponding to or related to the relevant market in question; and,
- 3) They have the effect of unduly displacing other economic agents, substantially impeding their access, or establishing exclusive advantages in favor of one or more economic agents.

Such practices are considered anti-competitive if the administrative authority responsible for enforcing this Act finds that they cause a detriment to market efficiency or adversely affect the competitive process and result in harm to the welfare of domestic consumers, market supply, and product availability.

The burden of proof lies with the administrative authority responsible for enforcing this Act.

The economic agent who engages in a practice, agreement, contract, covenant, or decision contemplated in this article has the right to a defense on the grounds of efficiency, in accordance with the provisions of this Act.

Article 9. Permitted practices. Agreements or acts that are permitted, and exempt from the application of this Act, are those that:

- 1) Seek cooperation in research and development of new technology or the exchange of scientific, technical, or technological information that benefits domestic consumers and the economy.
- 2) Consist of acts of authority derived from international treaties, agreements, or conventions, duly approved by the Congress of the Republic.
- 3) Consist of temporary measures for compliance with public policy, environmental emergencies, and protection of vulnerable groups. The Superintendency, within the scope of its competence, may approve such practices based on technical and legal criteria.
- 4) Are intended to finance and/or insure specific investments and projects, whether granted by one or more national or international financial institutions, including, but not limited to, syndicated loans and/or insurance in which several economic agents share the risk.

- 5) Consist of the application of intellectual property rules and laws that are in force and recognized nationally and internationally.
- 6) Set prices or other conditions exclusively for the export or sale of their products outside the country to compete in international markets, including aspects of promotion, production, logistics, distribution, and marketing, among others, aimed at those markets.
- 7) Are entered into by agricultural cooperatives.
- 8) Are intended for logistical cooperation, including the use of common facilities for the distribution, marketing, or export of products or services.
- 9) Promote and encourage bancarization⁵ and the use of digital means of payment.

Article 10. Efficiency defenses. The practices listed in Article 7 shall not be penalized, even when the circumstances provided for in Article 8 concur, if the Superintendency verifies or the economic agent demonstrates that they generate efficiency gains that favorably affect the process of free competition, outweighing their possible anti-competitive effects, and result in an improvement in consumer welfare.

The following are considered efficiency gains:

1. The use of residual lots, defective, or perishable products.
2. The introduction of new goods or services.
3. Cost reductions resulting from the creation of new production techniques and methods, the integration of assets, increases in the scale of production, and the

⁵ Editor's note: The term "*bancarización*" has been used in Guatemalan Law at least since Congressional Decree 20-2006 and other legislation related to tax administration, such as Decree 7-2019. It is translated as "bancarization" in various English-language documents related to Latin American. We adopt this practice for this edition. Regarding its scope: "The concept of bancarization is usually related to the access of economic agents to credit. Nevertheless, it is a wider concept that refers to all the available financial services" (Tafur Saiden, Claudia, 'Bancarización: Una aproximación al caso colombiano a la luz de América Latina', *Estudios gerenciales*, vol. 25, no. 110, enero-marzo 2009, p. 14); "This concept (...) can be understood as the use and access of financial services offered exclusively by commercial banks. However, the widely accepted definition considers bancarization as 'the establishment of stable and broad relationships between financial institutions and their users as regards a range of available services' (...). In this way it encompasses not only commercial banks, but also financial institutions" (Roa, María José, *Financial Inclusion in Latin America and the Caribbean: Access, Usage and Quality*, Center for Latin American Monetary Studies, 2015, p. 6).

production of different goods or services with the same production factors that benefit consumers.

4. The introduction of technological advances that produce new or improved goods or services.
5. Improvements in quality, investments and their recovery, timing, and service that favorably impact the distribution chain.
6. The combination of productive assets or investments and their recovery that: improve the quality or expand the attributes of goods or services; or improve the price at the domestic level; or generate improvements or efficiencies in the process of exporting goods.
7. New products or services and in the case of products that have a seasonal or stationary demand and supply.
8. Exclusivity agreed upon in an agency, distribution, representation, or franchise agreement, provided that all the conditions referred to in Article 8 of this Act do not occur.
9. Others that demonstrate that the net contributions to consumer welfare derived from such practices outweigh their anti-competitive effects.

If the administrative authority responsible for enforcing this Act considers that the efficiency defense justifies the anti-competitive practice, it shall not be penalized. The efficiency defense justifies the anti-competitive practice if it is fully demonstrated that it produces a benefit for consumers and economic agents and does not cause harm to the national economy. The burden of proof for the efficiency defense lies with the economic agent under complaint.

If the efficiency defense is applied to an anti-competitive practice, this does not imply exemption from liability for other anti-competitive practices other than those proven in the efficiency defense.

The competent authorities in this area, as well as the administrative authority responsible for enforcing this Act, have no obligation to investigate anti-competitive practices that are not capable of significantly affecting the functioning of markets, competition in those markets, or domestic consumers. In such cases, the administrative authority responsible for enforcing this Act may dismiss the corresponding complaints

and close the respective files, without the need to conclude the investigation procedure provided for in this Act.

A market is considered contested, also known as a contestable market, when at least one of the following characteristics exists:

- a) There is competition, either through local production or imports, in the event of a significant price increase.
- b) There is no brand loyalty on the part of consumers that significantly limits the movement of consumers from one brand to another in the event of significant price changes.
- c) There are no relevant regulatory barriers to the entry of competitors.

Notwithstanding the provisions of Articles 5 and 6 of this Act, the Superintendency shall not penalize economic agents who engage in the cases referred to in Article 5 if they prove, by sufficient evidence, that: (1) any agreement or category of agreements between economic agents, (2) any decision or category of decisions by associations of economic agents, or (3) any concerted practice or category of concerted practices, contributes to improving the production or distribution of products or to promoting technical or economic progress, and at the same time reserves for consumers a share of the resulting benefit, and without:

- i) imposing, on the undertakings concerned, restrictions which are not indispensable to the attainment of such objectives;
- ii) the practice in question eliminating competition in a significant part of the market.

Article 11. Dominant position. To determine whether one or more economic agents individually or jointly hold a dominant position in the relevant market, the following must be considered:

- 1) Their share of the relevant market and the possibility of unilaterally setting prices or restricting supply in that market without competing economic agents being able, either actually or potentially, to counteract that power;
- 2) The existence of barriers to entry and factors that could foreseeably alter both those barriers and the supply of other competing economic agents;

- 3) The existence and power of their competing economic agents;
- 4) The possibilities of access by the economic agent or agents and their competitors to sources of supply; and,
- 5) The recent behavior of the economic agent or agents participating in that market.

Article 12. Relevant market. The relevant market comprises goods or services that are interchangeable or substitutable due to their characteristics, price, or intended use, and that can be considered reasonable alternatives by a significant number of customers and consumers within a specific geographical area and time frame. The following criteria shall be considered in determining the relevant market:

- 1) The possibilities of substituting the goods or services in question for others, both domestic and foreign, considering technological possibilities, the extent to which consumers have substitutes, and the time required for such a situation.
- 2) The costs of distributing the good itself, its relevant inputs, its complements, and its substitutes within the national territory or from abroad, considering freight, insurance, tariffs, and non-tariff restrictions, restrictions imposed by economic agents or their associations, and the time required to supply the relevant market.
- 3) The costs and probabilities for users or consumers to turn to other markets.
- 4) National, local, or international regulatory restrictions limiting the access of users or consumers to alternative sources of supply, or the access of suppliers to alternative customers.

Article 13. Determination of essential inputs⁶. To determine the existence of an essential input, the following must be considered:

- 1) Whether the input is controlled by one or more economic agents in a dominant position.
- 2) Whether the construction, reproduction, or acquisition of the input by another economic agent is not feasible from a technical or legal standpoint.

⁶ See editor's note to Article 7.6.

- 3) Whether the input is indispensable for the provision of goods or services in one or more markets and cannot be substituted or acquired due to anti-competitive practices.

CHAPTER III ECONOMIC CONCENTRATIONS

Article 14. Economic concentration. For the purposes of this Act, economic concentration is considered to be the integration of two or more economic agents, previously independent of each other, through any act, contract, or agreement resulting in the transfer of control from one economic agent to another or others, or the creation of a new economic agent under the individual or joint control of the others.

Article 15. Economic control. Economic control is the ability of an economic agent to exercise decisive influence over another or other economic agents through:

- 1) The exercise of shareholder rights or holdings, or agreements, contracts, or arrangements that allow decisive influence over the composition, voting, or decisions of their governing bodies or over their activities; or,
- 2) The exercise of property rights or rights of use, enjoyment, and benefit of their assets.

Article 16. Authorization of economic concentrations. Economic agents are required to request prior authorization from the Superintendency to carry out concentrations in any of the following cases:

- 1) When the combination of total assets in the national territory of at least two of the economic agents involved exceeds the threshold of seven million times the current minimum daily wage for non-agricultural activities, as reflected in the financial statements for the last fiscal year or annual tax period; or,
- 2) When the combination of total annual turnover in the national territory of at least two of the economic agents involved exceeds the threshold of nine million times the current minimum daily wage for non-agricultural activities; for the purposes of determining the amount of total annual turnover, all income of the economic agents involved shall be added together, excluding sales

discounts obtained by them, in accordance with the financial statements corresponding to the last fiscal year or annual tax period.

The request for authorization of economic concentration must be made before the legal act is completed, the de facto or de jure control of another economic agent is acquired or exercised directly or indirectly, the merger⁷ agreement is formalized, the act of pronouncement by an authority occurs, or, in the case of a foreign transaction, before the transaction takes legal or material effect in the national territory.

Economic agents in the financial sector may proceed with the completion of the legal act when the reason for the concentration is to avoid systemic risks arising from the risk of insolvency or bankruptcy of one or more economic agents. In this context, systemic risk is understood to be the risk of interruption of the flow of financial services that: 1) is caused by the deterioration of all or part of the financial system; and 2) has the potential to cause serious damage to the real economy.

No request for authorization of concentrations is required in the following cases⁸:

- a) When the transaction involves a corporate restructuring in which the economic agents belong to the same economic interest group and no third party participates in the concentration;
- b) When the holder of shares, partnership interests, or participation units increases their relative participation in the capital stock of a company in which they have control, since its incorporation or start of operations, or when the Superintendency of Competition has authorized the acquisition of such control and they subsequently increase their relative participation in the company's capital;
- c) When the acquirer is an investment company and the purpose of the transaction is to acquire shares, bonds, securities, titles, or documents with funds from the placement of shares representing the capital stock of the investment company among the investing public, unless, as a result of or in connection with the transactions, the investment company may have a significant influence on the decisions of the concentrated economic agent;

⁷ Editor's note: Throughout this edition, we have used "economic concentration" for "*concentración económica*", whose meaning is much broader than "merger" ("*fusión*"), following the use in, for example, European Council Regulation No. 139/2004. However, in this paragraph, "*convenio de fusión*" specifically denotes a merger as one specific form of economic concentration.

⁸ Editor's note: First sentence of the fourth paragraph as amended by Article 1 of Decree 8-2025.

- d) In the acquisition of shares, securities, titles, or documents representing the capital stock of companies listed on stock exchanges in Guatemala or abroad, when the act or series of acts does not allow the purchaser to hold ten percent (10%) or more of such shares, bonds convertible into shares, securities, titles, or documents;
- e) When the acquisition of shares, partnership interests, participation units, or trusts is carried out by one or more investment funds for the purpose of obtaining capital gains through the purchase and sale of shares, and they do not have investments in companies or assets that participate or are employed in the same relevant market as the concentrated economic agent; or,
- f) When the concentration takes place in a contested or contestable market in accordance with Article 10 of this Act and it, evidently, will not directly modify the structure of that market.

Article 17. Evaluation criteria. To determine whether the concentration should be authorized, denied, or made conditional, the Superintendency must consider the following elements:

- 1) The relevant market as defined in this Act;
- 2) The identification of the main economic agents supplying the market in question, the analysis of their power in the relevant market, and the degree of concentration of that market;
- 3) The possible effects of the concentration on the relevant market with respect to other competitors and consumers of the good or service, as well as on other related markets and economic agents;
- 4) The participation of those involved in the concentration in other economic agents and the participation of other economic agents in those involved in the concentration, provided that such economic agents participate directly or indirectly in the relevant market or in related markets. When it is not possible to identify such participation, this circumstance must be fully justified; and,
- 5) The greater market efficiency that would result from the concentration and have a favorable impact on consumer welfare.

Article 18. Denial of concentrations. If the concentration has any of the following characteristics:

- 1) It confers or may confer on the economic agent a dominant position within the terms of this Act, or it increases or may increase said dominant position, thereby enabling it, in both cases, to hinder, diminish, damage, or impede free competition;
- 2) It has or may have the object or effect of establishing barriers to entry, preventing third parties from accessing the relevant market, related markets, or essential inputs⁹, or displacing other economic agents; or,
- 3) It has the object or effect of substantially facilitating the economic agents involved in said concentration to engage in anti-competitive practices prohibited by this Act.

The Superintendency may: a) authorize it, if it is proven that the provisions of subsection 5 of Article 17 of this Act are met; b) authorize it conditionally, in accordance with the terms of Article 19 of this Act; or, c) deny it.

Article 19. Conditional authorization. The Superintendency may subject the authorization of a concentration to the following conditions:

- 1) To carry out a specific action or refrain from doing so;
- 2) To dispose of certain assets, rights, corporate interests, or shares to third parties;
- 3) To modify or eliminate terms or conditions of the acts that the economic agents involved in the concentration intend to enter into;
- 4) To carry out acts aimed at promoting the participation of competitors in the market, as well as giving them access or selling goods or services to them; or,
- 5) Any other conditions aimed at preventing the concentration from hindering, diminishing, damaging, or impeding free competition.

The Superintendency may only accept or impose conditions that are directly related to the correction of the anti-competitive effects of the concentration. The conditions accepted or imposed must be proportionate to the intended correction. These conditions are mandatory for the economic agents involved in the concentration; failure

⁹ See editor's note to Article 7.6.

to comply will result in cancelling the concentration's authorization with the corresponding legal consequences.

Article 20. Formalization and registration. Acts relating to a concentration may not be formalized in a public instrument or private document, nor recorded in corporate books or registered in the corresponding registries, until favorable or conditional authorization is obtained from the Superintendency.

Article 21. Administrative silence. If the Superintendency does not decide on the concentration application within a maximum period of thirty (30) days from the date on which the application was received, it shall be understood that the Superintendency has no objection to the concentration and the economic agents involved may proceed with it. In this case, the Superintendent shall issue a certificate of non-objection for the purposes of Article 20 of this Act, within a period not exceeding ten (10) business days. An action for constitutional protection¹⁰ may be brought against the Superintendent's failure to act.

Article 22. Irregular concentrations. Concentrations are considered irregular if they:

- 1) Exceed the thresholds set forth in this Act and have not been previously authorized by the Superintendency;
- 2) Have been previously authorized by the Superintendency based on false information provided by the economic agents involved; and,
- 3) Have been previously authorized by the Superintendency subject to conditions, and those conditions have not been met within the established period.

Economic agents that carry out irregular concentrations shall be penalized in accordance with this Act.

Article 23. Defense based on efficiency in concentrations. Economic agents may exercise the efficiency defense within the administrative procedure in cases where the concentration is denied or conditioned. In such cases, economic agents must fully demonstrate that such concentrations benefit consumers, do not cause harm to other

¹⁰ Editor's note: There is no direct translation for "*amparo*", an action created by the Guatemalan Constitution (Article 265) which may be brought against public or private authorities when their acts or decisions entail a threat, restriction or violation against a person's rights. Among specific cases in which such action may be initiated, Decree 1-86 of the Constitutional Assembly lists whenever petitions and procedures before administrative authorities are not answered within the applicable term or not accepted for processing. This seeks to guarantee observance of the general constitutional right to petition.

economic agents, and increase economic efficiency. The burden of proof lies with the economic agents.

CHAPTER IV PROMOTION OF FREE COMPETITION

Article 24. Promotion of free competition. The Superintendency of Competition shall take all actions necessary to promote a greater degree of competition in the markets, either through its relations with other public authorities, international organizations or foreign competition authorities, or by fostering a culture of competition that increases public awareness of its benefits. The regulation of this Act shall develop the promotional actions provided for herein.

Article 25. Functions of promoting competition. The functions of promoting competition consist of:

- 1) Issuing advisory opinions on new regulations or actions by the State that may affect free competition, as well as making proposals for regulations.
- 2) Advising the Executive Branch on competition policy.
- 3) Conducting or commissioning studies, research, and sectoral reports related to the defense and promotion of free competition.
- 4) Coordinating with public sector institutions on matters related to competition.
- 5) Cooperating with counterpart entities and national and international entities engaged in the defense and promotion of free competition.
- 6) Promote and disseminate free competition.
- 7) Issue an annual report to be presented to the Plenary Session of Congress on amendments to laws, new laws, amendments to regulations, new regulations, or any other rules or policies necessary to eliminate barriers to competition and to promote competition.
- 8) Any other functions established by the regulation.

Article 26. Publication of studies and opinions. The studies and opinions conducted or commissioned by the Superintendency under the provisions of this Act shall be published in any written or digital media.

TITLE II SUPERINTENDENCY OF COMPETITION

CHAPTER I CREATION AND FUNCTIONING

Article 27. Creation. The Superintendency of Competition, hereinafter referred to as the Superintendency, is hereby created as an autonomous and decentralized state entity with its own legal personality, responsible for the defense and promotion of free competition, prevention, investigation, and penalization of anti-competitive practices, with powers throughout the national territory. The Superintendency shall carry out administrative investigations, impose fines and penalties, and adopt other administrative decisions for infringement of competition provisions in accordance with this Act. To achieve this objective, the government entities responsible for the regulation, control, and supervision of all economic sectors and activities shall provide the technical support required by the Superintendency for cases falling within its scope of application.

Article 28. Higher authorities. The higher authorities of the Superintendency are:

- 1) The Directorate; and,
- 2) The Superintendent.

Article 29. Obligation to cooperate. The Superintendency shall establish permanent mechanisms for coordination with public institutions, particularly those responsible for the supervision or oversight of economic agents subject to specific regulation.

CHAPTER II DIRECTORATE

SECTION I GENERAL PROVISIONS

Article 30. Composition. The Directorate is the highest decision-making, resolution, and penalizing body of the Superintendency, which shall be composed of three members, appointed as follows:

- 1) One full director and one alternate¹¹, appointed by the President of the Republic in the Council of Ministers¹²;
- 2) One full director and one alternate, appointed by the Plenary Session of the Congress of the Republic, from a list of six candidates proposed by the Committee on the Economy and Foreign Trade of said body; and,
- 3) One full director and one alternate, appointed by the Monetary Board¹³.

The following provisions shall apply to the nomination process:

- a) For the purposes of the appointment, the nominating entities shall:
 - i. Conduct a public call for applications at least ninety (90) days prior to the date set for the nomination or election, clearly establishing the profile that the candidate for appointment as director must meet. The call for applications shall be published in the Official Bulletin and two (2) media outlets with the widest circulation.

¹¹ Editor's note: We have translated "*titular*" and "*suplente*" as "full" and "alternate", respectively, following the use in official documents of the European Union. Among various examples, see: Council Decision of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work; Commission Decision (EU) 2025/46 of 14 January 2025 on the appointment of members of the Committee of Senior Labour Inspectors.

¹² Editor's note: The Council of Ministers is a full cabinet meeting of the Executive Branch, comprised of the President, Vice President and all (currently fourteen) Ministers of State (Constitution, Article 195).

¹³ Editor's note: The Monetary Board is the governing body of the Central Banking System, comprised of a Chairperson appointed by the President of the Republic; three Ministers: those of Public Finance, of Economy, and of Agriculture, Livestock and Food; one member elected by Congress (Legislative Branch); one member elected by the business associations representing commerce, industry, and agriculture; one member elected by the chairpersons of the boards of directors or executive committees of private national banks; and one member elected by the Governing Council of the University of San Carlos of Guatemala (Sole State University).

- ii. Candidates must take a competitive examination, formulated by a higher education institution of recognized international prestige in the field of competition, which shall be selected by the nominating entity. The nominating entities shall ensure that candidates comply with the requirements contained in this Act. The competitive examination shall be paid for by each nominating entity through the exception established in subsection c) of Article 44 of the State Procurement Act, Decree Number 57-92 of the Congress of the Republic.
- iii. At least ten (10) days before the date on which the appointees are to take office, each of the nominators shall verify compliance with the requirements, the absence of impediments, and the results of the competitive examination process, and shall draw up a list of applicants in descending order according to the scores obtained by the various candidates and shall proceed to make the nomination from among the six highest-scoring candidates, appointing a full director and an alternate director to fill the position.
- iv. The list of applicants who meet the requirements and the lists of the six (6) candidates shall be published in the Official Bulletin and two (2) media outlets with the highest circulation.
- v. All documents relating to the competitive examination process, such as exams, scores, resumes, and work plans, must be uploaded to the official website of each of the nominating bodies within a maximum period of fifteen (15) calendar days following the date of nomination. Failure to comply with the provisions of this paragraph shall prevent the directors proposed by the nominating body from assuming the position for which they were appointed or shall ipso facto suspend their functions if they have already assumed the position.
- vi. In the case of the Congress of the Republic, the call for applications and qualification process described above shall be carried out by the Committee on the Economy and Foreign Trade of that body, which shall present the six candidates with the highest scores to the Plenary Session of Congress for the election of a full member and an alternate.
- vii. The President of the Republic and the Monetary Board shall be responsible for the call for applications and qualification process described above, in accordance with their own provisions, and the selection shall be made from among the six candidates with the highest scores.

- b) The evaluation and appointment procedure shall observe the principles of transparency, publicity, and maximum concurrence of applicants. The grading of applicants shall be based on academic background, knowledge of the subject matter of competition, ethical considerations, and the results of the competitive examination.

In all cases, the appointment process shall be initiated in each of the nominating entities six months before the change in the members of the Directorate is required, through a call for nominations by the Directorate whose term is about to expire. In the event of a vacancy, the Directorate shall immediately inform the nominating entity.

Alternate directors shall attend all Directorate meetings, with voice but no vote.

The regulation of the Superintendency shall establish the procedures for the functioning of the Directorate. In no case shall the chair of the Directorate have a double vote or additional benefits other than those of his peers.¹⁴

Article 31. Qualifications. To be a director, the following requirements must be met:

- a) Be Guatemalan;
- b) Be of recognized integrity and professional ability;
- c) Be in full enjoyment of civil and political rights;
- d) Be a professional and an active member of a professional association;
- e) Satisfactorily demonstrate the knowledge necessary to perform the duties of the position, as required by the nominating entity; and,
- f) Those established in Decree 89-2002 of the Congress of the Republic, Act on Probity and Responsibilities of Public Officials and Employees.

Article 32. Term of office. Each of the full directors and their alternates shall serve for a term of six years and may be reelected only once. They may not be removed from office except in the special cases provided for in this Act.

¹⁴ Editor's note: Final paragraph as amended by Article 2 of Decree 8-2025.

Article 33. Vacancy of a full director. In the event of a vacancy due to death, resignation, incapacity, removal, or other permanent inability to perform the duties of a full member of the Directorate of the Superintendency, the Directorate shall appoint the corresponding alternate director to complete the term of the vacancy within a period not exceeding thirty days from the notification of the vacancy of the position of full director.

Article 34. Vacancy of an alternate director. In the event of a vacancy due to appointment as a full director, death, resignation, incapacity, removal, or other permanent inability to perform the duties of an alternate member of the Directorate of the Superintendency, the corresponding authority shall appoint the alternate director to complete the respective term within a period not exceeding thirty days from notification of the vacancy of the alternate director position. If there are no longer any candidates who can be selected from the respective list, at the request of the Directorate of the Superintendency, the corresponding entity shall proceed with the nomination process described in Article 30 of this Act.

Article 35. Substitution of full directors. In the absence of a full director, the respective alternate director shall assume the position temporarily.

Article 36. Impediments. The following are impediments to eligibility for the position of director:

- 1) Holding any elected office;
- 2) Being a member of the governing body of any political organization, trade union, professional association, or business chamber;
- 3) Having held, in the last three years, any job, position, or management role in economic agents that have been subject to any of the procedures provided for in this Act;
- 4) Having been a minister of State, prosecutor general of the Republic, attorney general of the Nation, comptroller general of Accounts, representative to the Congress of the Republic, representative to the Central American Parliament, political party leader, mayor, justice, or judge during the three years prior to their appointment;
- 5) Being a minister of any religion or denomination;

- 6) Being a relative within the fourth degree by blood or second degree by marriage of the President or Vice President of the Republic, ministers, deputy ministers, representatives, justices of the Supreme Court of Justice and the Constitutional Court, members of the Directorate, or the superintendent;
- 7) Not having fiscal solvency issued by the Superintendency of Tax Administration; or,
- 8) Having been declared insolvent or bankrupt, unless rehabilitated.

Article 37. Grounds for excuse or recusal. Full or alternate directors must immediately excuse themselves, or may be recused, from hearing matters in which there are circumstances that reasonably prevent them from resolving such matters with complete impartiality, independence, objectivity, professionalism, and transparency. The following are grounds for excuse or recusal:

- 1) Being related by blood up to the fourth degree or by marriage up to the second degree to any of the parties involved in a proceeding regulated by this Act or their representatives;
- 2) Having a personal, family, or business interest in a matter before the Directorate, including those that may result in a benefit for themselves, their spouse, or their relatives within the legal degrees;
- 3) The director, their spouse, or any of their relatives having accepted an inheritance, bequest, or donation from any of the interested parties or their representatives;
- 4) Being a partner or participating in any way in the business of any of the interested parties or their representatives, within the proceedings regulated by this Act;
- 5) Having been, or having a relative who has been, a lawyer, advisor, representative, witness, expert, or specialist in the matter in question; and,
- 6) Having publicly stated how they will vote before the Directorate decides on the matter.

Only the grounds listed in this article may be invoked as grounds for excuse or recusal in matters brought before the Superintendency.

The Directorate, without the participation of the director concerned, shall hear and decide on the excuses and recusals presented against the directors.

The regulation of this Act shall develop specific procedures for the excuse or recusal of directors.

Article 38. Grounds for removal. The following are grounds for the removal of a director:

- 1) The performance of any other public or private position, employment, or commission, other than their position as director, except for teaching activities if there is compatibility in schedules;
- 2) Participating in proselytizing activities of political organizations or being a candidate for elected office;
- 3) Discussing matters related to their role as director with persons representing the interests of economic agents outside the cases provided for in this Act;
- 4) Providing false or altered information to the Directorate;
- 5) Using, for their own benefit or that of third parties, confidential or restricted information available to them by virtue of their position, as well as disclosing such information in violation of the law;
- 6) Failing to recuse themselves from hearing and voting on matters in which they have a direct or indirect interest;
- 7) Repeatedly failing, without just cause, to resolve matters within their competence within the time limits provided for in this Act;
- 8) Failing to comply with the decisions of the Directorate; or,
- 9) Being convicted of an intentional crime in a final judgment.

The regulation of this Act shall establish the specific procedures for the removal of directors who incur any of the causes for removal set forth in this article. The Directorate shall request, with justification, the entity that appointed them to remove them from office.

Article 39. Powers. The Directorate shall have the following specific powers:

- 1) To decide on matters submitted for its consideration, with full respect for the constitutional and legal guarantees of those under investigation, especially due process and the right to defense;
- 2) To approve the regulations necessary for the proper application of this Act and those required for the functioning of the Superintendency of Competition, including those regulating strategic aspects of the institution's functioning, its organizational and functional structure, its labor and remuneration regime, and the operation of all its administrative units.¹⁵
- 3) Approve the internal rules of the Superintendency, including its internal organization and labor relations, in which an administrative career regime will be implemented to guarantee the stability of public service and managed based on merit and the achievement of results;
- 4) Approve policies and work plans focused on promoting competition and preventing anti-competitive practices;
- 5) Authorize, condition, or deny economic concentrations when appropriate;
- 6) Approve the fees corresponding to the processes of authorization of concentrations, the provision of services, and its publications;
- 7) Request the support of the corresponding authorities for the effective performance of the powers referred to in this Act;
- 8) Issue opinions, rulings, and collegial considerations on matters related to the defense and promotion of competition;
- 9) Resolve matters within its jurisdiction, anti-competitive practices, and irregular concentrations, as well as the conditions of competition referred to in this or other laws and regulations;
- 10) Impose the corresponding fines and penalties in accordance with this Act;

¹⁵ Editor's note: Subsection 2) as amended by Article 3 of Decree 8-2025.

- 11) Approve coordination mechanisms with public institutions in matters of competition for compliance with the other provisions of this Act or other applicable provisions;
- 12) Propose policies and actions to public institutions to eliminate barriers to market entry and exit, as well as other restrictions on the efficient functioning of markets;
- 13) Approve, modify, and adjust the Superintendency's draft budget of income and expenditure, at the proposal of the superintendent, as well as monitor and approve its execution and settlement, for subsequent transfer in accordance with the provisions of the Political Constitution of the Republic of Guatemala and the Organic Act on the Budget;
- 14) Dispose of the assets and resources of the Superintendency, in accordance with the law;
- 15) Submit to the Executive Branch and the Congress of the Republic the annual report on its activities, the annual work program, and any specific reports that may be required;
- 16) Request, for the exercise of its powers, the information it deems necessary from public institutions and economic agents;
- 17) Analyze and evaluate the applicability of this Act in accordance with changes in the economic conditions of the country and the international environment, to formulate, if necessary, proposals for its amendment;
- 18) Resolve efficiency defense procedures that are submitted for its consideration;
- 19) Include as permitted practices those that the State of Guatemala, through a government agreement endorsed by the Council of Ministers, establishes as having the purpose of stabilizing a sector of the national economy, being for its benefit and producing pro-competitive effects in the market, generating consumer welfare;
- 20) In the event of disciplinary proceedings being initiated by the Superintendency of Competition for acts contrary to this Act and in which an entity supervised or regulated by a regulatory body has participated, the opinion of said supervisory or technical body shall be sought; and,

21) All others established in this Act.

Article 40. Responsibility. The members of the Directorate shall perform their functions with absolute impartiality, independence, objectivity, professionalism, and transparency; their actions are subject to the civil and criminal liabilities applicable to the exercise of their office, as well as the corresponding damages caused to economic agents by the undue performance of their functions.

Article 41. Incompatibility. The positions of director, full or alternate, and superintendent are incompatible with the exercise of any other public or private position, whether remunerated or honorary, except for teaching positions or those derived from legal mandates or regulations and other applicable provisions issued by the Directorate.

Article 42. Impediment after concluding the position. Once their term of office has ended for any reason, directors, for a period of two years, may not serve as administrators, advisors, directors, managers, executives, agents, representatives, or proxies of an economic agent that has been subject to any of the procedures provided for in this Act during the performance of their duties.

Article 43. Chairpersonship. The chairpersonship of the Directorate shall rotate among the directors for a period of two years, beginning with the director referred to in subsection 1) and ending with the director referred to in subsection 3) of Article 30 of this Act. The chair of the Directorate may not be re-elected during the same term of office. In the event of a conflict, the descending alphabetical order of surnames or another order defined by the regulation may be followed.¹⁶

Article 44. Powers of the Chair. The Chair of the Directorate shall have the following powers:

- 1) To convene, chair, and conduct the meetings of the Directorate.
- 2) To submit to the Directorate for consideration matters within its competence, presented by the Superintendent.
- 3) To coordinate the activities of the Directorate.

¹⁶ Editor's note: Article as amended by Article 4 of Decree 8-2025.

- 4) To ensure the proper implementation of the policies approved by the Directorate.
- 5) To enforce the internal rules and policies of the Superintendency.
- 6) To ensure fulfillment of the Directorate's functions.
- 7) Any other powers conferred upon the chair by law.

SECTION II MEETING AND DECISIONS

Article 45. Meetings. The Directorate of the Superintendency of Competition shall determine the frequency of its regular meetings, which shall be held at least twice a month. In addition, it may hold extraordinary meetings as often as it deems appropriate.

The meetings shall be convened by the chair of the Directorate of the Superintendency of Competition, who shall preside over the meetings.

The superintendent shall participate in the meetings of the Directorate of the Superintendency of Competition, with voice but without vote.

The Directorate may invite any expert it deems necessary to address specific issues.

Article 46. Publicity of meetings. Directorate meetings are public, except for those items dealing with confidential or restricted information or whose investigation is still in progress and therefore is in a phase restricted to the public. The economic agent under investigation, the complainants involved, their legitimate representatives, and their attorneys have the right to know the progress made in the case file. The Directorate shall substantiate and justify its decision to hold a meeting in private. The Superintendency shall publish the minutes of the Directorate's meetings, agreements, and decisions on its website or electronic portal, and in other written or digital media, preserving confidential and restricted information in all cases.

Article 47. Deliberation and decision. The Directorate shall deliberate collegially and decide by a majority of its members, with a quorum of three full directors or their

alternates being required for deliberation and voting. Each director has the right to explain their concurring or dissenting vote.¹⁷

Alternate directors shall attend the Directorate with voice but without vote, except when acting in substitution for the full directors.

SECTION III INTERVIEWS

Article 48. Suitability of interviews. Outside of the hearings provided for in the procedures established by this Act, directors may discuss matters within their competence with persons representing the interests of economic agents, solely by means of interviews.

The foregoing is without prejudice to the possibility of directors participating in public forums and events.

For conducting interviews, their agenda shall be made public, stating the economic agent in question, as well as the details of the time of the interview; for which all directors shall be summoned, but the interview may be held in the presence of only one of them, if the others do not attend. Interviews shall be conducted at the offices of the Superintendency. Minutes shall be taken of each interview, which shall be made public.

Article 49. Recording and storage. Interviews shall be recorded and stored on electronic, optical, or any other technological media and shall be confidential, except for the economic agent being interviewed.

CHAPTER III SUPERINTENDENT

Article 50. Superintendent. The Superintendent is the highest administrative authority and the highest-ranking executive officer of the Superintendency. He or she is responsible for the administration and general management of the Superintendency, without prejudice to the powers and duties of the Directorate. The Superintendent shall enjoy technical and managerial independence. The Superintendent shall be

¹⁷ Editor's note: First paragraph as amended by Article 5 of Decree 8-2025.

appointed by the Directorate through a procedure to be established by the Directorate itself. The Superintendent must have the same qualifications and meet the requirements set forth in this Act to be appointed as a director, as well as be free of any impediments applicable to directors.

Article 51. Term of office. The Superintendent shall serve for six years, without option for reelection.

Article 52. Temporary absence or impediment. In the event of the Superintendent's temporary absence or impediment, the Directorate shall appoint one of the Intendants to temporarily fill the position.

Article 53. Legal representation. The superintendent shall act as the legal representative of the Superintendency of Competition.

Article 54. Qualifications. To be appointed Superintendent or Intendant, the same requirements and disqualifications as for directors must be met.

Article 55. Powers. The Superintendent shall have the following specific powers:

- 1) To create the administrative departments and units necessary for the professional, efficient, and effective performance of their duties, in accordance with the authorized budget.
- 2) To prevent anti-competitive practices.
- 3) To investigate, upon complaint or ex officio, anti-competitive practices and irregular concentrations, with full powers and by the legal, technical, and analytical means and procedures deemed appropriate, under the terms of this Act.
- 4) To submit a request to the Directorate to initiate administrative proceedings when the results of the investigation provide sufficient grounds for such.
- 5) To ensure the application and enforcement of this Act and its regulation.
- 6) To act as the legal representative of the Superintendency.
- 7) To plan, direct, supervise, coordinate, and control the proper functioning and institutional management of the Superintendency.
- 8) To enter any contracts necessary for the operation of the Superintendency.

- 9) To appoint and remove officials and employees of the Superintendency, in accordance with the entity's administrative career system.
- 10) To provide any information requested by the Directorate, except in the case of ongoing investigations.
- 11) To propose to the Directorate for its approval the necessary regulatory provisions, internal regulations, other administrative regulations, as well as the manuals and procedural protocols of the Superintendency.
- 12) To submit to the Directorate for its approval the execution and settlement of the Superintendency's income and expenditure budget that has been approved by the Directorate.
- 13) To submit to the Directorate for its approval the fees for the authorization of concentrations, other services, and charges made by the Superintendency.
- 14) To submit to the Directorate for its approval the Superintendency's annual report, annual work program, quadrimestral progress report, and any specific reports required by the Directorate.
- 15) To promote policies and programs for the promotion, training, education, and dissemination of free competition.
- 16) To promote the study, research, dissemination, and application of competition, as well as participate in national and international forums for that purpose.
- 17) To exchange information with other national or foreign supervisory entities to fulfill his functions.
- 18) To request or require, for the exercise of his powers, any information deemed necessary.
- 19) To verify compliance with the law by economic agents in the field of competition.
- 20) To manage the human, material, and financial resources in accordance with this Act and its administrative regulations.

- 21) To request the support of law enforcement or any public authority for the effective performance of the powers referred to in this Act.
- 22) To propose coordination mechanisms with public institutions in the field of competition for compliance with the other provisions of this Act or other applicable provisions.
- 23) To propose measures to public institutions to eliminate barriers to market entry and exit, as well as other restrictions on the efficient functioning of markets.
- 24) Any other powers established in this Act and its regulation.

Article 56. Incompatibility. The position of Superintendent is incompatible with the exercise of any other public or private position, whether remunerated or honorary, except for teaching positions or those derived from legal mandates or regulations and other applicable provisions issued by the Directorate.

Article 57. Delegation. The Superintendent may delegate his or her representation to the staff of the Superintendency's intendances, dependencies, or units, in accordance with internal regulations.

Article 58. Responsibility. The Superintendent shall perform his or her duties with absolute impartiality, independence, objectivity, professionalism, transparency, and under his or her full responsibility in accordance with the law.

Article 59. Impediment after concluding. Upon termination of his or her position for any reason, the Superintendent, for a period of two years, may not serve as an administrator, advisor, director, manager, executive, agent, representative, or proxy of an economic agent that has been subject to any of the procedures provided for in this Act during the performance of his or her duties.

Article 60. Grounds for removal. If the Superintendent incurs any of the grounds for impediment applied to directors and indicated in this Act, the Directorate shall hold a hearing with the Superintendent so that he or she may argue the case, before deciding on whether to remove him or her. The Directorate's decision must be duly justified.

Article 61. Excuse or recusal. The Superintendent shall immediately excuse himself, or may be recused, from hearing matters in which there are one or more circumstances that reasonably prevent him from hearing such matters with full impartiality, independence, objectivity, professionalism, and transparency. The grounds for excuse

or recusal are the same as those that apply to directors, except in cases where the grounds for excuse or recusal do not fall within his functions.

CHAPTER IV INTERNAL ORGANIZATION AND LABOR RELATIONS

Article 62. Internal organization. The internal regulation of the Superintendency shall establish and develop its internal organization, creating the intendencies, dependencies, administrative units, especially the Internal Affairs Unit, as well as the technical units necessary for the fulfillment of its powers and its proper functioning. The Superintendency shall observe principles of economic rationality and responsible budget management in the establishment of its administrative units.

Article 63. Internal Affairs Unit. This Unit shall be responsible for verifying that all Superintendency personnel are performing their duties and functions within the framework established by law, as well as preventing and combating acts of corruption, administrative offenses and infractions, and any other act that contravenes institutional interests, for which it shall have specialized personnel.

Article 64. Labor relations. Labor relations between the Superintendency and its employees shall be governed by the internal regulation that will govern the administrative career regime, which shall be issued by the Directorate at the proposal of the Superintendent and, supplementarily, by the provisions contained in the Labor Code.

Article 65. Training and technical preparation of personnel. The Superintendency of Competition shall promote the training and preparation of technical personnel qualified in legal and economic matters, particularly in relation to the defense and promotion of competition.

Article 66. Rules of contact. The Directorate, through internal regulations, shall regulate the rules of contact between officials, employees, advisors, national and international consultants, individuals and companies that provide services, advice, and consulting to the Superintendency, with economic agents to preserve the independence, objectivity, and confidentiality of the institution's information.

Article 67. Statement of assets, liabilities and net worth. In addition to complying with the obligations stipulated in the Act on Probity and Responsibilities of Public Officials and Employees, all Superintendency personnel, including directors and the Superintendent, must submit to the Internal Affairs Unit, prior to taking office and no later than January thirty-first of each year, a sworn statement of assets, liabilities and

net worth¹⁸, stating the origin of any changes in their assets and liabilities. The Superintendency's labor regulations shall establish the rules and characteristics of this statement.

All officials and employees of the Superintendency shall also be required to submit, prior to taking office and no later than January 31 of each year in which they hold office, a comparative sworn statement of assets of their spouse and children, stating the origin of changes in their assets, liabilities and net worth.

In addition to submitting this declaration, officials and employees of the Superintendency shall provide the unit in charge of internal investigations with authorization to request access from banks in the system to banking information that validates or supports the declaration submitted.

The unit in charge of internal affairs shall verify the information contained in the sworn statements submitted by its staff and is required to verify those of all officials and, selectively, those of the rest of personnel.

Verification of changes in assets, liabilities and net worth and their origin shall be mandatory in all cases of reports or suspicions of illicit enrichment and other related crimes.

The sworn statement of assets of the superintendent, the intendants, and the members of the Directorate shall be public and shall be published on the Superintendency's website no later than February 15 of each year.

Article 68. Sworn statement of interest. Applicants for any position within the Superintendency must submit a sworn statement of interest that allows the appointing authority to evaluate and anticipate the likely presence of conflicts of interest that could affect their impartiality in the exercise of their duties, if appointed.

In the sworn statement, each candidate must specify:

- a) Public functions performed.

¹⁸ Editor's note: We have translated "*declaración patrimonial*" as "statement of assets, liabilities and net worth", following the use in countries such as the Philippines, because "*patrimonio*" has no direct translation to English ("estate" or "patrimony" are used with a specific meaning in Inheritance Law) and, in Guatemalan Law, it refers to both active and passive rights (including real estate) and obligations. See, for example, Article 23 of the Act on Probity and Responsibilities of Public Officials and Employees, and Articles 490 and 558 of the Code of Civil and Commercial Procedure.

- b) Positions held, whether remunerated or not, as director, manager, administrator, consultant, representative, or employee of any undertaking or commercial entity and in non-profit institutions.
- c) Professional, guild, or charitable activities, whether remunerated or not, that they carry out or in which they have participated.
- d) Any rights or shares, of any nature, that the declarant has in undertakings or commercial entities incorporated in Guatemala or abroad.

The unit in charge of internal affairs shall verify the information contained in the declarations of interest submitted by its staff and is required to verify those of all officials and, selectively, those of the rest of personnel.

CHAPTER V BUDGET AND ASSETS

Article 69. Budget. The Superintendency shall have its own budget of income and expenditure, in accordance with the relevant laws.

Article 70. Assets and resources. The following constitute the Superintendency's assets and resources:

- 1) The allocation approved annually by the Congress of the Republic in the General Budget of State Income and Expenditure;
- 2) The surplus of income over expenditure resulting from the execution of the budget, which shall become part of the cash balance;
- 3) The income generated by the services it provides, in accordance with the rates approved by the Directorate;
- 4) Revenue from the sale of its publications;
- 5) Donations and other sources of funding from international cooperation, previously accepted and allocated to the Superintendency, in accordance with the law;
- 6) Contributions, donations, bequests, products, and transfers received for the fulfillment of its purpose, of public origin;

- 7) Fixed assets acquired for its operation; and,
- 8) Any other income received in accordance with specific laws or international and inter-institutional agreements.

CHAPTER VI TRANSPARENCY AND ACCOUNTABILITY

Article 71. Accountability. The superintendent shall submit an annual report to the Congress of the Republic, to account for the management of the Superintendency, no later than January 31 of each year.

Article 72. Annual Report and Annual Work Program. The Superintendency shall make public its annual report and annual work plan, which shall be published on its website.

TITLE III ADMINISTRATIVE PROCEDURE

CHAPTER I GENERAL PROVISIONS

Article 73. Principles. In administrative proceedings conducted under this Act, the principles of presumption of innocence, respect for the guarantees of the right to defense and due process, confidentiality, fairness, equality before the law, publicity, probity, and celerity shall be observed. The burden of proof for any anti-competitive practice or irregular concentration shall always fall on the Superintendency of Competition.

Article 74. Access to the file. Only the economic agents or complainants involved, their legitimate representatives, and their attorneys shall have access to the file at any time during the proceedings.

Article 75. Registry. The Superintendency shall maintain an updated registry, to which only the parties involved shall have access, where the following shall be recorded:

- 1) The administrative proceedings being processed, ensuring the confidentiality of the information contained therein.
- 2) The measures taken in each case and the provisions established to ensure compliance.
- 3) The penalties imposed.
- 4) The inquiries made.
- 5) Cases of recidivism by previously penalized economic agents.

Article 76. Confidentiality reservations and guarantees. The members of the Directorate, the superintendent, other officials and employees of the Superintendency, as well as professional advisors, consultants, or experts hired are prohibited from disclosing or facilitating the existence of the processing of any proceeding in accordance with this Act, in general; and, in particular, of any information of which they are aware.

All confidential information and information reserved to which the Superintendency, its officials, and public employees have access by virtue of an administrative procedure shall be strictly safeguarded under their responsibility.

Violation of these prohibitions shall be considered a serious offense and shall result in the immediate removal of those who commit it, without prejudice to administrative, civil, and criminal liabilities.

Article 77. Statute of limitations. Liability for infringement and the penalties established in this Act shall expire after a period of four years from the date on which the infringement was committed; and for continuing or permanent infringements, from the day on which the continuation or permanence of the act ceased. Notification of the decision issued by the Directorate, referred to in Article 85 of this Act, interrupts the term of limitation.

CHAPTER II ADMINISTRATIVE AND JUDICIAL PROCEDURE

SECTION I ADMINISTRATIVE PROCEDURE

Article 78. Commencement of the preliminary investigation procedure. The preliminary investigation procedure in competition matters shall be initiated upon request by a party, complaint, or ex officio by the Superintendency. Any person who has knowledge of an anti-competitive practice may bring it to the Superintendency's knowledge.

Once the proceedings have been initiated in any of these ways, the Superintendent shall order the initiation of the preliminary investigation within a period not exceeding fifteen days.

The purpose of the preliminary investigation proceedings shall be to establish preliminarily whether there are anti-competitive practices or any other act that constitutes an infringement under this Act, through technical investigation and the proceedings established in this Act.

Article 79. Content of the complaint. The complaint shall contain a detailed account of the facts, indicating the participants, witnesses, and evidence to prove the economic damage. In addition to those elements that the complainant considers relevant to the investigation of the anti-competitive practice or irregular concentration. The absence of any of the above requirements must be remedied prior to the acceptance of the complaint.

Article 80. Preliminary investigation. The Superintendency, through the Investigation Intendancy, shall carry out all relevant and useful proceedings, as well as all necessary means of evidence, to determine the existence of the act, with all circumstances of importance, and may also carry out any verification visits it deems necessary. It shall also establish who the participants are, seeking to identify them and ascertain the personal circumstances that serve to assess their responsibility.

The Superintendency may, through its officials, attend without limitation any acts related to the investigation under its responsibility, as well as any proceedings of any nature that tend to ascertain the truth, and all economic agents, as well as all public officials or employees, have the obligation to facilitate the performance of their duties.

Once the investigation has begun, the Investigation Intendancy must provide its results to the Superintendent within six months of the start of the investigation. Upon a reasoned request from the Investigation Intendancy, the Superintendent may extend the investigation period once, for up to three additional months beyond the initial period, when justified by the complexity of the case.

No investigative proceedings may be conducted until the investigation has been formally initiated through a decision issued by the Superintendent.

Article 81. Verification and monitoring. The Superintendency shall verify the operations of economic agents. For verification and monitoring purposes, the parties subject to this Act shall provide all information legally required by the Superintendency for the proper performance of its function, provided that the information required:

- 1) Contributes to the investigation of the anti-competitive practice in question; and,
- 2) Is related to its mandate and functions and respects the limits and guarantees established in the Political Constitution of the Republic of Guatemala and other applicable laws.

Such information shall be requested for the purpose of supporting an ongoing investigation of anti-competitive practices, under the guarantees of confidentiality established in this Act.

Within the framework of the investigation, the Superintendency may carry out any verification visits it deems necessary to economic agents, with the purpose of obtaining information, documents, conducting interviews, or any other element related to the investigation of anti-competitive practices and irregular concentrations, which shall be subject to the following rules:

- 1) The Superintendent shall request the verification visit, with prior authorization from the Directorate by means of a reasoned decision;
- 2) Based on said decision, the Superintendent, the Intendant of Investigation, or the official designated through a power of attorney¹⁹ shall file a request before a competent trial judge, to authorize or deny the visit and to request the immediate assistance of law enforcement. The request shall contain at least:

¹⁹ Editor's note: We have translated "*mandato judicial*" as "power of attorney". In Guatemala, a *mandato judicial* is a specific type of POA to represent an individual or entity before courts of law, regulated by the Judiciary Act, as opposed to the POA regulated under the Civil Code for any other kinds of purposes.

- a) The purpose, scope, and duration to which the proceedings shall be limited, which may not exceed two (2) days, and be duly justified in the judge's view;
 - b) the name of the individual or legal entity visited, who shall be fully identified;
 - c) the location of the address or addresses to be visited; and,
 - d) the name or names of the authorized personnel who will carry it out;
- 3) Once the requirements have been met, the competent judge shall grant the economic agent a hearing for a period of two (2) days to make a statement, and, with or without the evacuation thereof, the corresponding decision shall be issued within a period not exceeding three (3) days.

Any unjustified action or omission that hinders or prevents the Superintendency from performing its supervisory function constitutes resistance to the verification visit, and such resistance shall be punished with a fine of up to five thousand (5,000) non-agricultural minimum daily wages. To impose this fine, the elements that led to the imposition of the penalty shall be considered to determine the seriousness of the infringement.

Article 82. Request for information. For the effective performance of the functions assigned to the Superintendency by this Act, the latter shall issue, with prior authorization from the Directorate by means of a reasoned decision, a request for the information it deems necessary, provided that the information requested:

- 1) Contributes to determining the existence of the anti-competitive practices in question; and,
- 2) Is related to its mandate and functions and respects the limits and guarantees established in the Political Constitution of the Republic of Guatemala and other applicable laws.

If the economic agent refuses to cooperate, the Superintendent shall, within five days of the refusal, request a decision from the competent trial judge requiring the economic agent to provide the requested information.

The requested economic agents will have up to thirty (30) days to respond to the request for information, a period that may be extended, at the request of the party, for a term not exceeding thirty (30) days.

If the economic agent refuses to cooperate, the superintendent may file an incident²⁰ before the trial judge to corroborate this situation and the reason for the refusal. Once the corresponding procedure has been exhausted, the respective judge shall issue his decision.

If the judge sets a deadline for the delivery of the information and the economic agent's refusal persists, the Superintendency may apply the respective penalties.

Similarly, the Superintendency may, within the framework of the investigation, conduct any interviews it deems necessary for the performance of its functions.

Article 83. Result of the preliminary investigation. When the investigation yields sufficient evidence to preliminarily suggest that an anti-competitive practice exists or has existed, the Superintendent shall, within a period not exceeding fifteen days from the conclusion of the investigation, submit a request to the Directorate to initiate administrative proceedings. If sufficient evidence is not found within the same period and in the interests of legal certainty, the Superintendent shall order the case to be closed, giving reasons.

Article 84. Administrative proceedings. Before the end of the period provided for in Article 80 for the Superintendency to carry out the preliminary investigation stage, the Superintendent may request authorization from the Directorate to initiate administrative proceedings.

In the request, the Superintendent shall indicate to the Directorate, with precision and clarity, the following:

- a) Names of the economic agent or agents subject to the administrative proceedings.
- b) The rules allegedly violated.
- c) The facts that are the subject of the administrative proceedings.

²⁰ Editor's note: In Guatemalan Procedural Law, an incident (*incidente*) is a specific procedure for deciding any question that is accessory to another matter. It includes an opportunity for hearing the other party and may also include a period for producing evidence.

- d) The relevant evidence supporting the allegations.
- e) Proof of the absence of administrative proceedings against the economic agent for the same facts, issued by the Superintendent.

Upon receiving the request to initiate administrative proceedings from the Superintendent, the Directorate shall, within ten (10) business days, issue a decision authorizing or denying the initiation of the respective proceedings. Failure by the Directorate to issue a decision within the established period shall imply denial of the opening of the respective proceedings. In this circumstance, the Superintendent may not again request the Directorate to authorize the opening of administrative proceedings against those economic agents, unless when infringement of other rules is alleged or the request is based on different facts and evidence.

The decision issued by the Directorate authorizing the initiation of the respective proceedings must indicate, with precision and clarity, the facts and evidence supporting the charges, the economic agent or agents under investigation, the rules allegedly violated, and the penalties or measures that would be appropriate if the infringement of the rules is verified.

Once the opening of the administrative proceeding has been authorized, the Superintendency must notify the economic agents subject to the administrative proceeding of the authorization decision issued by the Directorate within three (3) business days. Such notification must include a certified copy of the entire administrative file. The administrative proceedings shall be conducted in accordance with the following:

- 1) Once notified, each economic agent under investigation shall have access to the file and a non-extendable period of sixty (60) business days to respond in writing to the charges brought against them, present their defense arguments, attach any documentary evidence in their possession, and offer and request the production of any other evidence they deem relevant. All evidence applicable to civil and criminal proceedings shall be admissible.
- 2) If an administrative proceeding is brought against two (2) or more economic agents under investigation, the sixty (60) day period to respond in writing to the charges brought shall be counted independently for each person under investigation.
- 3) The economic agent must refer to each of the facts stated in the request for initiation. Any facts on which no statement is made shall be deemed to have

been accepted. The same shall apply if no response is submitted within the period specified in subsection 1) of this article.

- 4) Within the period indicated in subsection 1) of this article, the economic agent may express in writing its willingness to avail itself of the benefit of exemption or reduction of penalties, in which case the special procedure established in this Act shall be followed.
- 5) Once the response has been received from the economic agent or agents, the Directorate shall have a maximum period of fifteen (15) business days to order the admission and decree of the evidence offered and/or requested, setting the place, date, and time for its processing.
- 6) By means of a decision, the Directorate shall rule on the admission or rejection of the evidence. An appeal for reconsideration may be lodged against any decision rejecting the examination of any of the evidence requested by the economic agents under investigation, which must be submitted in writing within ten (10) business days following notification of the decision rejecting the evidence. If one of the economic agents under investigation files an appeal for reconsideration, the evidence will not be taken until that appeal has been resolved.
- 7) Within ten (10) business days after the completion of the evidence requested by the economic agents under investigation, the Directorate may order the taking of other evidence to better resolve the matter. In the case of restrictive practices by economic agents carrying out activities in a sector subject to regulations contained in special provisions, the Directorate may request the non-binding opinion of the regulatory authority of that sector on those points that the Directorate considers necessary to better resolve the matter.
- 8) In its request, the Directorate shall specify to the regulatory authority the time limit within which it must answer and the specific issue on which it must issue its opinion.
- 9) Once the evidence period or the gathering of other evidence to better resolve the matter has concluded, the Directorate shall issue a decision setting the date and time of the oral hearing at which the economic agents under investigation, the Superintendent, and the intervening third party, if any, shall orally present their final arguments. This decision shall be notified within three (3) days of being issued.

- 10) The oral hearing may only be held in the presence of all the Directors. The directors may ask clarifying questions during each of the interventions of the economic agents under investigation, the Superintendent, and the intervening third party, if any. The procedure for the oral hearing shall be set forth in the regulations of this Act. The Superintendent shall be the first to speak, followed by the economic agents under investigation and, finally, if any, the intervening third party.
- 11) Once the oral hearing has been held, the file shall be assigned to one of the directors, in accordance with the procedure established in the regulations, who shall be required to submit a proposal for final decision to the Directorate for approval or modification. In the event of modification, the proposing director shall incorporate into the proposal the modifications or corrections suggested by the Directorate and approved by the majority of its members.
- 12) The Directorate shall evaluate the evidence in accordance with the rules of sound judicial discretion²¹, assessing jointly the direct, indirect, and circumstantial evidence that appears in the proceedings.

Article 85. Administrative decision. The Directorate shall, within a period not exceeding thirty (30) days from the date of the oral hearing, issue its final decision, which must be notified within three (3) days of its issuance.

In the final decision, the Directorate shall clearly and precisely indicate the existence or non-existence of the fact, the means of evidence that allow it to be proven, and the responsibility of the economic agent or agents subject to the administrative proceeding. If a penalty is imposed, the Directorate shall indicate in the final decision the parameters on which the amount of the financial penalty imposed is based.

An appeal for reconsideration may be filed against the final decision, which must be submitted in writing within ten (10) business days of its notification.

SECTION II BENEFIT OF EXEMPTION OR REDUCTION OF PENALTIES

²¹ Editor's note: We have translated "*sana crítica razonada*" as "sound judicial discretion" following Álvaro Paúl, who explains: "*Sana crítica* is a system for evaluating the weight of evidence whereby a court or tribunal is not constrained by the evidentiary rules of legal proof, but must judge in accordance with the rules of logic and experience, and state the grounds for its evaluation", considering that "This translation of the concept *sana crítica* illustrates best the content of this notion" (*Sana crítica: The System for Weighing Evidence Utilized by the Inter-American Court of Human Rights*, *Buffalo Human Rights Law Review*, Vol. 18, 2012, p. 193, 194, footnote 4).

Article 86. Early termination of administrative proceedings. An economic agent subject to an investigation procedure for relative anti-competitive practices and irregular concentrations may, before the decision corresponding to the previous article is issued, avail itself of the benefit of exemption or reduction of penalties established in this Act. The decision to avail oneself of the benefit of exemption or reduction of penalties does not imply acceptance of liability on the part of the agent under investigation.

An economic agent who wishes to avail itself of the benefit of exemption or reduction of penalties in accordance with the provisions of this chapter may request such benefit by means of a written application to the Superintendency in which:

1. It undertakes to suspend, suppress, or correct the corresponding practice to restore the process of free competition; and,
2. Proves, in the opinion of the Superintendency, that the proposed measures are legally and economically viable and suitable for preventing or, where appropriate, eliminating the anti-competitive practice under investigation, indicating the deadlines and terms for verification.

The regulations shall establish the deadlines and procedures for processing this request, as well as for any hearings that may be necessary if the economic agent subject to the investigation submits the corresponding clarifications.

Article 87. Scope of benefits. In the case of anti-competitive practices and irregular concentrations, the Directorate may, at its discretion and depending on the circumstances of the case, grant the following benefits of exemption or reduction of penalties:

- 1) Total or partial exemption from the penalties that would otherwise apply to the economic agent; or,
- 2) Reduction of the fine that would otherwise apply to the economic agent, between a minimum of fifty percent (50%) and a maximum of seventy-five percent (75%) of said fine.

Article 88. Acceptance. The economic agent who has been granted the benefit of exemption or reduction of penalties must expressly accept the final decision and pay the reduced fine within the time limits established in the regulations.

If the economic agent in question does not expressly accept the final decision or pay the reduced fine within the indicated period, the suspended proceedings shall be resumed ex officio by the Superintendent within a period established by the regulations.

Article 89. Limit on the benefit. The economic agent subject to an investigation procedure may request to avail itself of the benefit of exemption or reduction of penalties when there is no recidivism in the commission of anti-competitive practices or irregular concentrations. The declaration to avail oneself of the benefit of exemption or reduction of penalties does not imply acceptance of responsibility on the part of the agent under investigation.

Article 90. Falsehood. The economic agent or individual who seeks to avail themselves of the benefits of exemption or reduction of penalties based on false evidence shall be liable in accordance with the provisions of the Criminal Code and shall also be liable for any damages caused.

Article 91. Reduction of fines for consenting decisions. If the economic agent accepts the final decision imposing penalties and measures and expressly waives the right to file a specialized administrative judicial review against said decision, the Superintendency shall grant a reduction of thirty-five percent (35%) of the fine imposed. The economic agent interested in obtaining the benefit of a reduction in the fine must, within a maximum period of ten business days after being notified of the final decision, request said benefit in writing, expressly stating the acceptance and waiver referred to in this article. If the request complies with the conditions and requirements established in this Act, the Directorate shall issue a decision granting the reduction benefit provided for in this article and setting a period of five business days for the economic agent to make the corresponding payment. If the economic agent does not make the payment within the established period, the benefit shall be revoked as of right without the need for a further decision by the Directorate.

SECTION III MEANS FOR CHALLENGING DECISIONS

Article 92. Appeals for reconsideration and revocation. Appeals for reconsideration and revocation may be filed against decisions issued by the Superintendency authorities, as applicable, under the conditions and within the time limits set forth in Decree Number 119-96 of the Congress of the Republic, Administrative Litigation Act.

Article 93. Court of Administrative Litigation. The Court of Administrative Litigation in matters of competition shall have exclusive jurisdiction over such matters. The filing

of a contentious proceeding in matters of competition shall have suspensive effect, to prevent irreparable damage to the market, consumers, the parties, or the country's economy.

Such proceedings shall be conducted under the conditions and within the time limits set forth in Decree Number 119-96 of the Congress of the Republic, Administrative Litigation Act.

Article 94. Specialization. The Court of Administrative Litigation specializing in competition matters shall be composed of the number of chambers²² that the Supreme Court of Justice deems appropriate, in view of the specialization in the subject matter of this Act. To this end, the Judiciary Branch, through the Supreme Court of Justice, shall create specialized chambers on competition law and economic law.

The justices who make up the Administrative Litigation Chambers referred to in this article shall have specialization or experience in matters of competition and economic law.

TITLE IV INFRINGEMENTS, PENALTIES, MEASURES, AND STATUTE OF LIMITATIONS

CHAPTER I INFRINGEMENTS AND PENALTIES

Article 95. Infringements. The following constitute infringements of this Act:

- 1) Engaging in or committing anti-competitive practices.
- 2) Engaging in or committing an irregular concentration.
- 3) Failing to request authorization for concentrations carried out when they exceed the established thresholds.

²² Editor's note: The Court of Administrative Litigation (*Tribunal de lo Contencioso Administrativo*) is a specialized court created by the Guatemalan Constitution, as part of the Judiciary Branch, to review administrative acts and decisions. It is divided (by ordinary legislation and as designated by the Supreme Court) into different chambers, some focusing on specific areas under Administrative Law, such as taxation. Thus, the Competition Act does not properly create a specialized Court of Administrative Litigation (as it cannot amend the Constitution) but orders the creation of specialized chambers within the already-existing Court. Although the Act's language is constitutionally inaccurate, we have translated it as it appears.

- 4) Failing to comply with the conditions established in a concentration authorization.
- 5) Authorizing acts or documents, within or outside the Republic, that formalize a concentration, when it has not been previously authorized by the Superintendency in accordance with this Act.
- 6) Refusal to cooperate in visits or to provide the information and documentation required by the Superintendency in accordance with this Act.
- 7) Failure to comply with the measures imposed in the final resolution.
- 8) Failure to comply with the obligation to report an anti-competitive practice or a concentration, as established in this Act.

Article 96. Penalties. The penalties for infringements of this Act consist of:

- 1) Fines; and,
- 2) Publication of the final decision imposing the penalties and measures.

Article 97. Fines. A fine of up to two hundred thousand (200,000) non-agricultural minimum daily wages shall be imposed on any economic agent who engages in absolute anti-competitive practices.

A fine of up to one hundred thousand (100,000) non-agricultural minimum daily wages shall be imposed on any economic agent who engages in relative anti-competitive practices.

The economic agent subject to penalties shall have the obligation to pay the fine as soon as the final judgment with the authority of res judicata is pronounced by the relevant court.

Complainants whose petitions or complaints are declared inadmissible because they are manifestly false or notoriously frivolous shall also be punished with a fine of up to two hundred thousand (200,000) non-agricultural minimum daily wages.

In imposing fines and penalties, the elements for determining the seriousness of the infringement contemplated in this Act shall be considered, and it shall be taken into account that the fine and penalty imposed do not end up reducing competition in the

relevant market by compromising the economic viability of the penalized economic agent, in accordance with the principle of ability to pay. To assess the ability to pay, the Superintendency of Tax Administration shall provide the Superintendency with information on the economic agent.

Failure to pay the fine or payment made after the deadline established for that purpose shall give rise to the obligation to pay interest calculated based on the weighted average of the lending rates of the banks in the system, according to publications by the Bank of Guatemala.

CHAPTER II ENFORCEMENT MEASURES

Article 98. Enforcement measures. For the effective performance of the functions assigned to it by this Act, the Superintendency shall issue a request for information it deems necessary to determine the existence of anti-competitive practices. In the event of a refusal to cooperate in accordance with the provisions of this Act, the Superintendency shall request a competent judge to issue a warning to the person required to the economic agent²³.

Article 99. Definitive measures. When appropriate, the Directorate of the Superintendency shall instruct the Superintendent to request a civil trial judge to take the following measures:

- 1) The correction or cessation of anti-competitive practices within a specified period; and,
- 2) The partial or total deconcentration of an irregular concentration, through the termination of control, as defined in this Act, within a specified period.

To comply with said measures, a reasonable period shall be set, considering:

- 1) The nature of the economic agent's business;
- 2) Not undermining the efficiency of the productive activity or marketing of the product or service in question; and,

²³ Editor's note: The original reads "*la Superintendencia solicitará a un juez competente que aperciba a la persona requerida al agente económico*". This unusual wording may have been an error. We have translated it as it appears.

- 3) Not causing detriment to the benefit of the consumer, the user, or the national economy.

CHAPTER III SUBJECTS AND CRITERIA

Article 100. Subjects of penalties and measures. The following shall be subject to the penalties, measures, and infringements imposed by the Directorate of the Superintendency:

- 1) Economic agents who engage in, contribute to, induce, or promote anti-competitive practices.
- 2) Economic agents who engage in an irregular concentration in accordance with this Act.
- 3) Economic agents who refuse to cooperate on visits or to provide the information and documentation required by the Superintendency in accordance with this Act.

Article 101. Criteria. When imposing penalties and measures, the following elements shall be considered in determining the seriousness of the infringement:

- 1) The damage caused.
- 2) The effect on third parties.
- 3) Evidence of intent.
- 4) The duration of the anti-competitive practice.
- 5) The size of the market or markets affected.
- 6) The offender's share of the market or markets affected.
- 7) The economic capacity of the offender for the purpose of avoiding the imposition of confiscatory fines.

8) Recidivism.

Article 102. Recidivism. An economic agent or individual is considered a repeat offender when:

- 1) Having committed an infringement that has been previously penalized, they carry out another action of the same nature that is prohibited by this Act.
- 2) At the beginning of the second or subsequent proceedings, there is a final and binding decision.
- 3) No more than four years have elapsed between the final and binding decision referred to in subsection 1 of this article and the commencement of proceedings for another action of the same nature.

CHAPTER IV PAYMENT OF FINES AND INTEREST

Article 103. Payment of fines. Fines imposed by the Superintendency in accordance with this Act must be paid within a maximum period of ten business days from the date on which the final decision of the Directorate becomes final.

Article 104. Default interest. Fines that have not been paid within the time limits established in this Act shall accrue default interest at the rate of interest in favor of the Treasury, which for tax purposes is determined in accordance with the Tax Code and the Organic Act of the Superintendency of Tax Administration, calculated from the date on which payment was due until the date on which it is made.

Article 105. Allocation of fines and interest. The proceeds from fines imposed by the Superintendency, as well as default interest, are considered non-tax revenue of the State and shall be allocated to the Common Fund-Single National Account.

Article 106. Payment agreements. The Superintendency may grant facilities to economic agents for the payment of fines, for up to a maximum of eighteen months, if they so request.

The amount of the fines and other surcharges generated must be guaranteed in the payment agreement signed between the economic agent or its legal representative and the Superintendency, in which there is a risk, and it shall constitute sufficient enforceable title for the judicial collection of the outstanding debt.

Risk exists in cases where the economic agent has failed to comply, during the previous four years, with another payment agreement signed with the Superintendency or when there is a coercive economic procedure²⁴ against them.

Article 107. Transfer of funds. For the purposes of the previous article, the Superintendency shall transfer to the specific accounts indicated by the Ministry of Public Finance, within the first five days of each month, the funds it has received in fines and default interest during the immediately preceding calendar month.

TITLE V AMENDMENTS AND REPEALS

Article 108. The heading of Title II of Book III of the Commercial Code of Guatemala, contained in Decree Number 2-70 of the Congress of the Republic and its amendments, is amended to read as follows:

“TITLE II UNFAIR COMPETITION”

Article 109. Subsection c) is added to section 3 of Article 363 of Decree Number 2-70 of the Congress of the Republic and its amendments, Commercial Code, to read as follows:

- “c) Providing goods or services without the rights granted by the holder of the right, without prejudice to the corresponding civil and criminal actions.”

Article 110. Consumer and User Protection Act. Subsection f) of Article 16 of the Consumer and User Protection Act, contained in Decree Number 06-2003 of the Congress of the Republic, is amended to read as follows:

- “f) Hoarding, speculation, or shortage of essential or basic products for the purpose of causing their prices to rise. Such conduct shall

²⁴ Editor’s note: A coercive economic procedure (“*procedimiento económico coactivo*”) is a judicial action to collect unpaid taxes or other debts to the State, municipalities or public entities, carried out before specialized courts through specific legal procedures. It does not refer to any private action seeking payment, such as civil foreclosure.

be punished in accordance with the Criminal Code and other applicable laws.”

Article 111. State Procurement Act. Article 25 of the State Procurement Act, Decree Number 57-92 of the Congress of the Republic, is amended to read as follows:

“**Article 25. Submission of a single bid per person.** Each individual or legal entity, national or foreign, may submit only one bid. Under no circumstances shall a participant be allowed to represent more than one bidder. Anyone acting on their own behalf may not participate on behalf of a third party. If collusion between bidders is determined to exist, the bids involved shall be rejected, without prejudice to the adoption of measures determined by law in matters of competition.”

Article 112. Executive Branch Act. Subsection a) of Article 32 of the Executive Branch Act, Decree Number 114-97 of the Congress of the Republic, is amended to read as follows:

“a) Formulate and execute, within the current legal framework, policies for consumer protection and legal repression of unfair competition;”

Article 113. Act Regulating the Use and Reception of Satellite Signals and their Distribution by Cable. Subsection “j” of Article 9 of Decree Number 41-92 of the Congress of the Republic is amended to read as follows:

“j) The operation of the cable system shall not interfere in any way with the reception of television signals broadcast in the same service area.

Signals from open channels that are in use or administered by State institutions and agencies shall be distributed in their entirety, at no cost, without mutilation or cuts of any kind.

UHF and VHF channels belonging to State agencies or institutions shall be retransmitted on the same channel number that identifies them.”

Article 114. Express repeal. The following are repealed:

- 1) Article 361 of the Commercial Code of Guatemala, Decree Number 2-70 of the Congress of the Republic and its amendments;

- 2) Articles 340 and 341 of the Criminal Code, Decree Number 17-73 of the Congress of the Republic and its amendments; and,
- 3) Article 25 Bis of the State Procurement Act, Decree Number 57-92 of the Congress of the Republic, added by Article 14 of Decree Number 9-2015 of the Congress of the Republic.

TITLE VI FINAL AND TRANSITIONAL PROVISIONS

Article 115. First Directorate and first Superintendent. For the appointment of the first Directorate, the appointing authorities referred to in Article 30 shall have a maximum period of one hundred and twenty (120) days from the effective date of this article. The persons appointed shall take office immediately.

For the first Directorate, the directors appointed by the Monetary Board shall terminate their functions at the end of their second year in office; those appointed by the President of the Republic shall terminate their functions at the end of their fourth year in office; those appointed by the Congress of the Republic shall terminate their functions at the end of their sixth year in office. All may be reelected for one additional term.

The first Superintendent shall be appointed by the Directorate within a period not exceeding one hundred twenty (120) days from the date of the Directorate's formation. The first Superintendent shall be selected from the lists of the six best-qualified candidates nominated by the entities described in subsections 1 to 3 of Article 30 of this Act. The Directorate shall define how it will proceed to elect the first Superintendent.

Article 116. Organization of the Superintendency of Competition. Within one year from taking office, the Superintendent shall organize, evaluate, establish, and implement the procedures and systems necessary for operation, as well as dissemination, education, and training for the application of this Act.

Article 117. Regulation. The regulation for the implementation of this Act shall enter into force no later than one year after the effective date of this article. The Directorate of the Superintendency shall be responsible for drafting the regulation for this Act.

Article 118. Budget. While the Superintendency approves its first income and expenditure budget in accordance with this Act, the Ministry of Public Finance shall allocate a one-time amount of Twenty Million Quetzals (Q.20,000,000.00) to the Superintendency, within the regular income and expenditure budget for the fiscal year from January to December 2025, which shall be used for the Superintendency's organizational and operating expenses.

These funds shall be transferred to the Superintendency's specific account at its request.

For subsequent fiscal periods, an annual contribution to the Superintendency is established, which may not be less than four percent (4%) of the Administration Expenditure Budget allocated annually to the Ministry of Economy.

The financial balances presented at the end of each fiscal year shall form part of the Superintendency's exclusive capital, and their use and execution shall remain unchanged.

Article 119. Simplification and digitization. The Superintendency is subject to the obligations arising from Decree Number 5-2021 of the Congress of the Republic, Act for the Simplification of Administrative Requirements and Procedures. For the Superintendency, the deadlines established in Articles 40 and 41 of said Act shall be counted from the effective date of this Act.

Article 120. Report on existing competition regulations. The Superintendency shall prepare a report indicating, in its opinion, the reforms or repeals of laws, resolutions, regulations, ministerial agreements, governmental agreements, and municipal agreements necessary to comply with the provisions of the Competition Act, which shall be submitted to the Executive Branch and the Legislative Branch, as well as to decentralized and autonomous entities, the competent authorities of the different institutions, within a period not exceeding two years from the date of its preparation.

The Superintendency shall recommend to the Executive Branch a proposed bill to amend all laws contrary to the provisions contained in this Act, within a period not exceeding two years from the date of inauguration of the first Superintendent.

Article 121. Effective date. This Decree was declared a matter of national urgency, approved in a single debate and in its entirety with the favorable vote of two-thirds of the total number of representatives that make up the Congress of the Republic, in accordance with Article 134 of the Political Constitution of the Republic of Guatemala; it shall enter into force as follows:

- a) As of January 1, 2025, Chapter I (General Provisions) and Chapter IV (Promotion of Free Competition) of Title I (General Provisions, Promotion and Defense of Competition); as well as all the Chapters that make up Titles II (Superintendency of Competition), V (Amendments and Repeals) and VI (Final and Transitional Provisions).
- b) Two years after its publication in the Official Bulletin²⁵, Chapter II (Defense of Free Competition) and Chapter III (Economic Concentrations) of Title I (General Provisions, Promotion and Defense of Competition); Title III (Administrative Procedure) and Title IV (Infringements, Penalties, Measures, and Statute of Limitations).
- c) All articles of this Decree shall comply with the provisions of Article 15 of the Political Constitution of the Republic of Guatemala²⁶.

²⁵ Editor's note: The Competition Act was published in the Official Bulletin (*Diario de Centro América*) on December 9th, 2024.

²⁶ Editor's note: This article states: "The law does not have retroactive effect, except in criminal matters when it favors the defendant."

**FORWARD TO THE EXECUTIVE BRANCH FOR ITS SANCTION, PROMULGATION
AND PUBLICATION.**

ISSUED IN THE PALACE OF THE LEGISLATIVE BRANCH, IN GUATEMALA CITY, ON
NOVEMBER TWENTIETH OF TWO THOUSAND TWENTY-FOUR.

**DARWIN ALBERTO LUCAS PAZ
ACTING SPEAKER**

**RAÚL ANTONIO SOLÓRZANO QUEVEDO
SECRETARY**

**SONIA MARINA GUTIÉRREZ RAGUAY
SECRETARY**

NATIONAL PALACE: Guatemala, December fifth of the year two thousand twenty-four.

PUBLISH AND COMPLY

ARÉVALO DE LEÓN

**Adriana Gabriela García Pacheco
Minister of Economy**

**Lic. Juan Gerardo Guerrero Garnica
SECRETARY-GENERAL
OF THE PRESIDENCY OF THE REPUBLIC**