

MINISTERIAL ORDER N° 8/DC/04 OF 07/06/2004 ON ADDITIONAL AND SPECIFIC TYPES OF AGREEMENTS, DECISIONS, PRACTICES AND CODES OF CONDUCT CONSIDERED TO BE ANTI-COMPETITIVE OR AN ABUSE OF A DOMINANT POSITION

The Minister of Infrastructure,

Given the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, especially in its Articles 120 paragraph one and 121 paragraph one-2° ;

Given Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities, especially in its Article 43 ;

Upon the proposal by the Regulatory Board ;

After consideration and approval by the Cabinet, meeting in its session of 28 January 2004 ;

ORDERS :

CHAPTER ONE : GENERAL PROVISIONS

Article one : Definitions

In this Order, the terms referred to below shall have the following meanings :

Board	The Board of Directors of the Rwanda Utilities Regulatory Agency established by Law n° 39/2001
Official Gazette Law n° 39/2001	The Official Gazette of the Republic of Rwanda Law n° 39/2001 of 13 September 2001 establishing an Agency for the regulation of certain public utilities
Minister	Minister appointed by the President of the Republic
Dominant Organisation	A natural person or organization which has been designated as a dominant organization by the Board pursuant to Article 49 of Law n° 39/2001
Republic	The Republic of Rwanda

In respect of other terms, and except where provided otherwise hereinafter, the definitions set forth in the Agency Law 2001 shall, where applicable, apply to this Order.

Article 2 : Scope

With reference to article 43 of the number 39/2001, this order specifies the types of agreements, decisions, practices and codes of conduct which not being listed among the practices enumerated in the articles 41 and 42 of the Law N° 39, 2001 are however deemed anti-competitive or liable to cause abuse due to the dominant position.

CHAPTER II : ANTI-COMPETITIVE PRACTICES

Article 3 : Supplementary examples of anti-competitive practices

The following shall constitute agreements, decisions, practices or codes of conduct which, for the purposes of Article 41 of Law n° 39/2001, are anti-competitive :

- (i) refusal to make available to other authorised operators, within a reasonable period of time, technical information on essential installations and any relevant commercial information which they need to supply of the required office supplies ;
- (ii) use of information obtained from competitors for unfair competition purposes;

- (iii) agreement between two or more parties on conditions for submitting a competitive bid with a view of sharing the market at the detriment of other competitors ;
- (iv) measures which may harm the quality of services offered by competing operators ;
- (v) cross-subsidies of an anti-competitive nature ;
- (vi) Putting together operations whose effect is among others :
 - to noticeably restrain the possibilities for choice of suppliers and/or consumers ;
 - to limit access to supply sources or to market opportunities ; or
 - to create entry barriers by forbidding distributors in particular, from engaging in parallel importing.

CHAPTER III : ABUSE OF A DOMINANT POSITION

Article 4: The following constitute cases of abuse of the dominant position

When engaged is by one or more, pursuant to article 42 of Law N°39/2001, the following organisation shall constitute abuse of dominant position:

- (i) Setting unreasonably or abnormally high prices ;
- (ii) conditioning the conclusion of contracts on the acceptance, by the other party(ies), of minimum services, or of additional services which, by their nature or in terms of usual business practices, are not related to the purpose of such contracts ;
- (iii) refusing to sell, or to avail required requested access, without reasonable justification, as well as withholding product stocks held on the business premises or in any other place whether declared or not ;
- (iv) terminating a business relationship on the sole grounds that the other party refuses to submit to unjustified commercial terms ;
- (v) to impose an obligation on a minimum resale price ;
- (vi) to require a supplier or client not to have dealings with a competitor ;
- (vii) to sell a product or service at a price lower than its cost price, where such practice has had, is having or may have, the effect of restricting competition in a market.

CHAPTER IV : FINAL PROVISIONS

Article 5 : Modification of lists

Upon proposal by the Board, the Minister shall have the authority to modify, in the lists set out in present Order, the cases of agreements, decisions, practices and codes of conduct.

In such an event, a modification notice shall be made and only become enforceable at the end of a two (2) month notice following its publication in the Official Gazette of the Republic.

Article 6 : Abrogation of previous contrary provisions

All prior provisions contrary to this Order are hereby repealed.

Article 7 : Entry into force

The present order shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Done at Kigali, on 07/06/2004

The Minister of Infrastructure
Dr NTAWUKULIRYAYO Jean Damascène
(sé)

Seen and sealed with the Seal of the Republic :

The Minister of Justice
MUKABAGWIZA Edda
(sé)