

**COMMUNIQUÉ**

From the Competition Authority:

COMMUNIQUÉ ON THE PROCEDURES AND PRINCIPLES TO BE PURSUED IN PRE-NOTIFICATIONS AND AUTHORIZATION APPLICATIONS TO BE FILED WITH THE COMPETITION AUTHORITY IN ORDER FOR ACQUISITIONS VIA PRIVATIZATION TO BECOME LEGALLY VALID  
(COMMUNIQUÉ NO: 2013/2)

**Purpose**

**ARTICLE 1 – (1)** The purpose of this Communiqué is to establish and announce the procedures and principles to be pursued in pre-notifications and authorization applications to be filed with the Competition Authority in order for acquisitions realized by the Privatization Administration or by other public institutions and organizations to become legally valid, in accordance with article 7 as well as article 27, paragraph 1, subparagraph f of the Act on the Protection of Competition dated 7.12.1994 and numbered 4054.

**Scope**

**ARTICLE 2 – (1)** With the exclusion of the cases listed below, all types of acquisition of all or part of the partnership interests or other rights and instruments of an undertaking in such a way as to change control over the undertaking or to affect its decision bodies, or all types of acquisition via privatization of units intended for the production of goods and services shall be subject to the provisions of this Communiqué.

(2) The cases which fall out of the scope of this Communiqué are as follows:

- a) Transfers to public institutions and organizations including local governments and to education institutions with the nature of public entities.
- b) The acquisition of immovables which are not intended for goods and services production.
- c) Sales in foreign capital markets,
- c) Public offerings,
- d) Block sales which include delayed public offerings with a duration of no more than 3 years, without prejudice to the provisions of the legislation on capital markets,
- e) Acquisition by employees,
- f) Sales in stock markets by normal orders as well as by special orders which do not lead to a change in the control of the undertaking,
- g) Sales to securities investment funds and/or securities investment trusts,

ğ) Acquisition of shares which do not lead to a change in the control of the undertaking.

(3) In the application of this Communiqué, any acquisition by joint ventures and other organizations clearly controlled by the employees and/or retired personnel of the undertaking to be privatized that is realized through the implementation of one or more of the methods of sale, lease, grant of operating rights, establishment of incorporeal rights on property, revenue partnership and any other legal transactions in compliance with the relevant requirements shall be deemed as acquisition by employees.

#### **Acquisitions via privatization subject to pre-notification**

**ARTICLE 3 –** (1) In the acquisition via privatization transactions within the scope of this Communiqué; in case the turnover of the undertaking or unit intended for production of goods or services to be privatized exceeds 30 million Turkish liras, it is mandatory to file a pre-notification with the Competition Authority before the public announcement of tender specifications in order to receive the opinion of the Competition Board which will include, with a competitive approach, an assessment of the general factors to emerge in the market as a result of the privatization in addition to the specific elements concerning the problems that may arise within the framework of article 7 of the Act no 4054, and which will serve as the basis for the preparation of the tender specifications. In the calculation of the turnover, sales by the undertaking or unit intended for production of goods or services to be privatized to public institutions and organizations including local governments made on the basis of a legislative provision shall not be taken into account.

(2) The opinion of the Competition Board shall be valid for 3 years, unless otherwise specified within the relevant opinion. It is mandatory to request a new Competition Board opinion in relation to tenders to be initiated after the end of this period, within the framework of the principles listed above.

#### **The procedure to be pursued in pre-notifications**

**ARTICLE 4 –** (1) Within the scope of this Communiqué and for acquisition via privatization transactions subject to pre-notification, before the tender specifications for the privatization of the undertaking or unit intended for production of goods or services are announced to the public, the Privatization Administration shall file a pre-notification with the Competition Authority in order to receive the opinion of the Competition Board. Pre-notification shall include the contact information of the unit to be privatized, its area of operations, and any available information and documents concerning this area of operations.

(2) Competition Board shall prepare and submit its opinion to the Privatization Administration within 40 business days following the entry of the pre-notification into Competition Authority records.

(3) After taking into account the opinion of the relevant professional department, which shall be prepared within 24 business days, as well as the opinion of the Privatization Administration submitted in response to this opinion, which shall be prepared within 6 business days, Competition Board shall prepare its opinion within a period of 10 business days. These periods may be extended by half at most, with a Competition Board Decision for the 24 and 10

business day periods, and on the discretion of the Privatization Administration for the 6 business day period, depending on the characteristics of the undertaking or unit intended for production of goods or services to be privatized or of the relevant product market. In such a case, the 40 business day period total specified in paragraph 2 shall be deemed to be extended by the additional period or periods.

(4) If the method of privatization for the acquisition transaction is changed before the Competition Board opinion is notified to the Privatization Administration, the pre-notification application shall be deemed to be renewed. In case this change is realized after the Competition Board opinion is notified to the Privatization Administration, the above-mentioned periods shall be reduced by half. If the change in the privatization method is of a nature that can take the acquisition transaction out of the scope of this Communiqué, Competition Authority shall be informed of this situation as soon as possible.

(5) The Board may decide, without operating the procedure in paragraph three, that the notification made was not subject to pre-notification under this Communiqué.

#### **Acquisitions via privatization subject to authorization application**

**ARTICLE 5 –** (1) In accordance with this Communiqué, in order for acquisitions via privatization requiring pre-notification to the Competition Authority to become legally valid, it is mandatory to get authorization from the Competition Board.

#### **Procedure to be pursued in authorization applications**

**ARTICLE 6 –** (1) Authorization application to the Competition Board is made after the conclusion of the tender process but before the High Board of Privatization's decision on the final acquisition transaction of the undertaking or unit intended for production of goods or services to be privatized, in the form of individual files for each bidder to be included in the High Board of Privatization draft decision to be submitted to the High Board of Privatization by the Privatization Administration .

(2) In order to ensure that the examination concerning the authorization is completed in a swift and sound manner, Privatization Administration shall deliver the information and documents it receives concerning all bidding undertakings or associations of undertakings without waiting for the conclusion of the tender.

#### **Other provisions**

**ARTICLE 7 –** (1) Those provisions of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (Communique No: 2010/4), issued based on article 7 of the Act no 4054 on the Protection of Competition and published in the Official Gazette dated 7.10.2010 and numbered 27722, which are not contrary to this Communiqué shall continue to be applicable to acquisition via privatization transactions.

(2) The provisions of this Communiqué shall be applicable for those acquisitions via privatization transactions which are realized by public institution and organizations other than Privatization Administration. In that case, those obligations placed on the Privatization Administration by the

Communiqué herein shall be fulfilled by the public institution or organization which will carry out the acquisition concerned.

### **Abolished communiqué**

**ARTICLE 8** – (1) Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid (Communiqué No: 1998/4), which was published in the Official Gazette dated 12.9.1998 and numbered 23461, has been abolished.

### **Entry into Force**

**ARTICLE 9** – (1) This Communiqué shall enter into force on the date of its publication.

### **Execution**

**ARTICLE 10** – (1) The President of the Competition Authority shall execute the provisions of this Communiqué.