

From the Competition Authority:

**COMMUNIQUE ON AGREEMENTS, CONCERTED PRACTICES AND DECISIONS  
AND PRACTICES OF ASSOCIATIONS OF UNDERTAKINGS THAT DO NOT  
SIGNIFICANTLY RESTRICT COMPETITION  
(COMMUNIQUE NO: 2021/3)**

**SECTION ONE**

**Purpose, Scope, Grounds and Definitions**

**Purpose**

**ARTICLE 1** - (1) The purpose of this Communiqué is to set out the procedures and principles regarding the criteria to be used to identify agreements, concerted practices and decisions and practices of associations of undertakings which do not significantly restrict competition in the market, so that they can be excluded from an investigation in accordance with Article 41.2 of the Act no 4054 on the Protection of Competition, dated 7/12/1994, with the exception of naked and hardcore violations.

**Scope**

**ARTICLE 2** - (1) This Communiqué covers the agreements, concerted practices and decisions and practices of associations of undertakings, with the exception of naked and hardcore violations, about which the Competition Board may choose not to initiate an investigation since they do not significantly restrict competition in the market.

**Basis**

**ARTICLE 3** - (1) This Communiqué is prepared based on Articles 27 and 41 of the Act no 4054.

**Definitions**

**ARTICLE 4-** (1) In the application of this Communiqué, the following definitions shall apply

a) Naked and hardcore violation: agreements and/or concerted practices as well as decisions and practices of associations of undertakings on the following subjects, the goal of which is to directly or indirectly prevent, distort or restrict competition in the market for a good or service, or which have led or may lead to such effects:

1) Price fixing among competing undertakings, allocation of customers, suppliers, regions or trade channels, restriction of supply amounts or imposing quotas, collusive bidding in tenders, sharing competitively sensitive information including future prices, output or sales amounts;

2) fixing flat or minimum sales rates of the buyer in a relationship between undertakings operating at different levels of a production or distribution chain,

b) Agreement: agreements or concerted practices between undertakings,

c) Decision: decisions and practices of associations of undertakings,

ç) Board: the Competition Board,

d) Competing undertakings: actual competitors operating in the same relevant market, as well as the potential competitors in this market.

**SECTION TWO**

**General Principles**

**Agreements and decisions that do not significantly restrict competition**

**ARTICLE 5** - (1) With the exception of naked and hardcore violations,

a) For agreements signed between competing undertakings, if the total market share of the parties to the agreement does not exceed 10% in any of the relevant markets affected by the agreement, and

b) For agreements signed between non-competing undertakings, if the market share of each of the parties does not exceed 15% in any of the relevant markets affected by the agreement,

the relevant agreements do not significantly restrict competition in the market.

(2) Where the agreement cannot be classified as between competing undertakings or between non-competing undertakings, sub-paragraph (a) of the first paragraph is implemented.

(3) With the exception of naked and hardcore violations, if the total share of the members of an association of undertakings does not exceed 10% in any of the relevant markets affected by the decision, the decisions in question do not significantly restrict competition in the market.

(4) If parallel networks created by similar vertical restrictions cover more than 50% of the relevant market, the thresholds set out in this Article are applied as 5%, for agreements between competing and non-competing undertakings as well as for decisions.

(5) If, during the duration of the agreement or decision, the parties to the agreement or members of the association of undertakings have a market share exceeding the thresholds set out in this Article in the relevant market affected by the agreement or the decision for two consecutive calendar years but by no more than two percentage points, then the agreement or decision concerned does not significantly restrict competition in the market.

(6) If the market shares of the parties to the agreement or the members of the association of undertakings within the relevant market affected by the agreement or the decision exceed the thresholds specified in this Article, this does not directly mean that the agreement or decision concerned restricts or significantly restricts competition in the market.

### **Excluding those agreements and decisions which do not significantly restrict competition from investigations**

**ARTICLE 6** - (1) Agreements and decisions which do not significantly restrict competition in the market in accordance with Article 5 may be excluded by the Board from an investigation.

(2) If an investigation is initiated on the grounds that the market shares of the parties to the agreement or the members of the association of undertakings within the relevant market affected by the agreement or decision cannot be accurately determined, then the Board may terminate the investigation if, during the investigation process, it is found that the market shares of the undertakings or associations of undertakings being investigated do not exceed the thresholds specified in Article 5.

### **Calculation and application of market share**

**ARTICLE 7** - (1) Market share is calculated based on the sales value in the market, or based on the purchase value where appropriate. If sales or purchase value data is not available, estimates based on other reliable market data, including output, may be used to calculate market shares of the parties to the agreement or the members of the association of undertakings in the relevant market affected by the agreement or the decision.

(2) In the application of the thresholds specified in Article 5, for each calendar year during the duration of the agreement or decision, market shares calculated using the previous year's data will be taken into consideration.

(3) For the purposes of the application of Article 5, the total market share of the economic units as listed in Article 8.1 of the Communiqué Concerning the Mergers and

Acquisitions Calling for the Authorization of the Competition Board (Communiqué No:2010/4), published in the Official Gazette dated 7/10/2010 and numbered 27722, will be taken as the basis for the calculation of the market shares of the undertakings parties to the agreement or members of the association of undertakings.

**SECTION THREE**  
**Temporary and Final Provisions**

**Ongoing preliminary inquiries and investigations**

**TEMPORARY ARTICLE 1 -** (1) The provisions of this Communiqué shall be applied to the preliminary inquiries and investigations which are ongoing as of the date of its entry into force.

**Entry into Force**

**ARTICLE 8-** (1) This Communiqué shall enter into force on the date of its publication.

**Execution**

**ARTICLE 9-** (1) The President of the Competition Authority shall execute the provisions of this Communiqué.