

THE ACT NO. 4054 ON THE PROTECTION OF COMPETITION

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SECTION ONE

Purpose, Scope, Definitions

Purpose

Article 1- The purpose of this Act is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end.

Scope

Article 2- This Act covers all agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Turkey; abuse of dominance by dominant undertakings in the market; any kind of legal transactions and behavior having the nature of mergers and acquisitions which may significantly decrease competition; and transactions concerning the measures, observations, regulations and supervisions aimed at the protection of competition.

Definitions

Article 3- In implementation of this Act, the terms express the following:

Ministry: (Amended phrase: 16.06.2020-7246/Article 14)¹ The Ministry of Trade,

Competition: The contest between undertakings in markets for goods and services, which enables them to take economic decisions freely,

Dominant Position: The power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers,

Undertaking: Natural and legal persons who produce, market and sell goods or services in the market, units which can decide independently and constitute an economic whole,

Association of Undertakings: Any kind of associations with or without a legal personality, which are formed by undertakings to accomplish particular goals,

Goods: Any kind of movable or immovable property which is the subject of trade,

Services: Physical, intellectual or combined activities carried out in return for a cost or interest,

Authority: Competition Authority,

Board: Competition Board.

SECTION TWO

CHAPTER ONE

Prohibited Activities

Agreements, Concerted Practices and Decisions Limiting Competition

Article 4- Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

Such cases are, in particular, as follows:

- a)** Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any condition of purchase or sale,
- b)** Allocation of markets for goods or services, and sharing or controlling all kinds of market resources or elements,
- c)** Controlling the amount of supply or demand for goods or services, or determining them outside the market,
- d)** Complicating and restricting the activities of competing undertakings, or excluding undertakings operating in the market by boycotts or other behavior, or foreclosing the market to potential new entrants,
- e)** Except exclusive dealing, applying different terms to persons with equal status for equal rights, obligations and acts,
- f)** Contrary to the nature of the agreement or commercial practices, requiring the purchase of other goods or services together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or putting forward terms as to the resupply of a good or service supplied.

In cases where the existence of an agreement cannot be proved, a similarity of price changes in the market, or the balance of demand and supply, or the operational regions of undertakings to those markets where competition is prevented, distorted or restricted, constitutes a presumption that the undertakings are engaged in concerted practice.

Each of the parties may relieve itself of the responsibility by proving, on the basis of economic and rational facts that it has not engaged in concerted practices.

Exemption

Article 5- (Amended paragraph: 16.06.2020-7246/Article 1)² Agreements between undertakings, concerted practices and decisions of associations of undertakings are exempt from the application of Article 4 provisions, provided they fulfill all of the requirements below:

- a)** They must ensure new developments or improvements or economic or technical improvement in the production or distribution of goods, and in the provision of services,
- b)** The consumer must benefit from the above-mentioned,
- c)** They must not eliminate competition in a significant part of the relevant market,
- d)** They must not restrict competition more than necessary to achieve the goals set out in sub-paragraphs (a) and (b).

(Additional paragraph: 16.06.2020-7246/Article 1) Relevant undertakings or associations of undertakings may make an application to the Competition Authority in order to have the Board confirm that the agreements, concerted practices or decisions of associations of undertakings falling under Article 4 meet the requirements of the exemption.

(Amended paragraph: 02.07.2005-5388/Article 1)³ Exemption may be granted for a definite period, just as the granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. Exemption decisions are valid as of the date of concluding an agreement or

committing a concerted practice or taking a decision of an association of undertakings, or fulfilling a condition if it has been tied to a condition.

In case the requirements mentioned in the first paragraph are fulfilled, the Board may issue communiqués which ensure block exemptions for the types of agreements in specific subject-matters and which indicate their terms.

Abuse of Dominant Position

Article 6- The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited.

Abusive cases are, in particular, as follows:

- a)** Preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market,
- b)** Making direct or indirect discrimination between purchasers with equal status by offering different terms for the same and equal rights, obligations and acts,
- c)** Purchasing another good or service together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or imposing limitations with regard to the terms of purchase and sale in case of resale, such as not selling a purchased good below a particular price,
- d)** Conduct which aim to distort competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by dominance in a particular market,
- e)** Restricting production, marketing or technical development to the prejudice of consumers.

Mergers or Acquisitions

Article 7-(Amended paragraph: 16.06.2020-7246/Article 2)⁴ It is illegal and prohibited for one or more undertakings to merge, or for an undertaking or a person to acquire – except by inheritance – assets, or all or part of the partnership shares, or instruments conferring executive rights over another undertaking, where these would result in a significant lessening of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position.

The Board shall declare, via communiqués to be issued by it, the types of mergers and acquisitions which have to be notified to the Board and for which permission has to be obtained, in order for them to become legally valid.

CHAPTER TWO Powers of the Board

Negative Clearance

Article 8- Upon the application by the undertaking or associations of undertakings concerned, the Board may, on the basis of information in hand, grant a negative clearance certificate indicating that an agreement, decision, practice or merger and acquisition are not contrary to Articles 4, 6 and 7 of this Act.

The Board may, after issuing such a certificate, revoke its opinion at any time, under the conditions set out in Article 13. However, in this case, criminal sanction is not applied to the parties for the period until the change of opinion by the Board.

Termination of Infringement

Article 9- (Amended paragraph: 16.06.2020-7246/Article 3)⁵ If, in response to a denouncement, a complaint or the request of the Ministry or on its own initiative, the Board determines that there is an infringement of Article 4, 6 or 7 of this Act, then it shall notify in its final decision the behaviors that the relevant undertaking or associations of undertakings must carry out or refrain from in order to re-establish competition, and any structural remedies in the form of undertakings transferring certain businesses, partnership shares or assets. Behavioral and structural remedies must be proportionate to the infringement and necessary to bring the infringement effectively to an end. Structural remedies shall only apply where previous behavioral remedies imposed have been ineffective. In case the final decision finds that behavioral remedies have been unsuccessful, relevant undertaking or associations of undertakings shall be given at least 6 months to comply with the structural remedy.

Natural and legal persons who have a legitimate interest are entitled to file a complaint.

The Board, prior to taking a decision pursuant to the first paragraph, shall inform in writing the undertaking or associations of undertakings concerned of its opinions concerning how to terminate the infringement.

Where the occurrence of serious and irreparable damages is likely until the final decision is taken, the Board may take interim measures in order to maintain the situation before the infringement, without exceeding the scope of the final decision.

(...)⁶ Notification of Mergers and Acquisitions to the Board

Article 10- (Repealed paragraph one: 02.07.2005-5388/Article 2)⁷

As of the date the Board is notified of merger or acquisition agreements falling under Article 7, the Board is obliged to perform a preliminary examination within fifteen days and either authorize the merger or acquisition, or, if it decides to take the transaction under final examination, to duly notify, with its preliminary objection letter, those concerned of the fact that the merger or acquisition is suspended and cannot be put into effect until the final decision, together with any other measures deemed necessary. In this case, the provisions of Articles 40 to 59 of this Act shall be applicable.

Where the Board does not respond to or take any action concerning the application for a merger or acquisition within due time, merger or acquisition agreements shall take effect and become legally valid after 30 days as of the date of the notification.

Failure to Notify Mergers and Acquisitions to the Board

Article 11- Where a merger and acquisition transaction whose notification to the Board is compulsory is not notified to the Board, the Board shall take the merger or acquisition under examination on its own initiative, when it is made aware of the transaction in any way. As a result of the examination;

a) It allows the merger or acquisition in case it decides that the merger or acquisition does not fall under the first paragraph of Article 7, but imposes fines on those concerned due to their failure to notify.

b) In case it finds that the merger or acquisition falls under the first paragraph of Article 7, it decides that fines be imposed; the merger or acquisition transaction must be terminated; that all de facto situations committed contrary to the law must be eliminated; that any shares or assets acquired must

be returned, if possible, to their former owners, within those terms and duration as determined by the Board, or if not possible, these must be assigned and transferred to third parties; that the acquiring persons may by no means participate in the management of undertakings acquired until these are assigned to their former owners or third parties, and that other measures deemed necessary by it must be taken.

Notification

Article 12- Notification fully and completely includes information required by the Notification Forms to be prepared by the Board. Either of the parties may submit the notification. The notifying party is obliged to inform the other party concerned of the situation. Relevant documents are enclosed with the notification, and the notification shall be considered to have been submitted on the date it is entered in the records of the Board.

Revocation of Exemption and Negative Clearance Decisions

Article 13- Exemption and negative clearance decisions may be revoked, or particular behavior of the parties may be prohibited in the following cases:

- a) Change in any event constituting the basis of the decision,
- b) Failure to fulfill the terms or obligations resolved,
- c) Having taken the decision on the basis of incorrect or incomplete information concerning the agreement in question.

Revocation decision shall be effective as of the date of the change for sub-paragraph (a), and the date of taking the exemption or negative clearance decision for the other cases.

In case the incorrect and incomplete information mentioned in sub-paragraph (c) is received as a result of fraud or intent of the undertaking concerned, the decision shall be deemed not to have been taken at all.

Request for Information

Article 14- In carrying out the duties assigned to it by this Act, the Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings.

These authorities, officials of undertakings and associations of undertakings are obliged to provide the requested information within the period to be determined by the Board.

On-site Inspection

Article 15- In carrying out the duties assigned to it by this Act, the Board may perform examinations at undertakings and associations of undertakings in cases it deems necessary. To this end, it is entitled to:

- a) **(Amended sub-paragraph: 16.06.2020-7246/Article 4)⁸** Examine the books, all types of data and documents of undertakings and associations of undertakings kept on physical or electronic media and in information systems, and take copies and physical samples thereof,
- b) Request written or oral statement on particular issues,
- c) Perform on-site examination of any assets of undertakings.

Examination is performed by experts employed at the disposal of the Board. While going for an examination, experts carry with them an authorization certificate showing the subject-matter and

purpose of the examination, and that an administrative fine shall be imposed should incorrect information be provided.

(Additional paragraph: 01.08.2003-4971/Article 25): Those concerned are obliged to provide the copies of information, documents, books and other instruments requested. In case an on-site inspection is hindered or likely to be hindered, the on-site inspection is performed with the decision of a criminal magistrate.

CHAPTER THREE Administrative Fines

Administrative Fine

Article 16- (Amended article: 23.01.2008-5728/Article 472)⁹ In those cases where

a) False or misleading information or document is provided in exemption and negative clearance applications and in authorization applications for mergers and acquisitions,

b) Mergers and acquisitions that are subject to authorization are realized without the authorization of the Board,

c) In implementation of Articles 14 and 15 of the Act, incomplete, false or misleading information or document is provided, or information or document is not provided within the determined duration or at all,

d) on-site inspection is hindered or complicated,

the Board shall impose on natural and legal persons having the nature of an undertaking and on associations of undertakings or members of such associations, an administrative fine by one in thousand of annual gross revenues of undertakings and associations of undertakings or members of such associations which generate by the end of the financial year preceding the decision, or which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board for those mentioned in sub-paragraphs (a), (b) and (c), and by five in thousand of their gross revenues to be calculated in the same manner for those mentioned in sub-paragraph (d). However, the penalty to be determined pursuant to this principle cannot be less than ten thousand Turkish Liras. Pursuant to sub-paragraph (b) of this paragraph, administrative fine is imposed to each of the parties in merger transactions and only to the acquirer in acquisition transactions.

The realization of on-site inspection with a court decision shall not hinder the application of an administrative fine provided for in this Act in relation to the hindrance and complication of on-site inspection.

To those who commit behavior prohibited in Articles 4, 6 and 7 of this Act, an administrative fine shall be imposed up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations to be imposed a penalty, generated by the end of the financial year preceding the decision, or generated by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board.

In case administrative fines mentioned in paragraph three are imposed on undertakings or associations of undertakings, an administrative fine up to five percent of the penalty imposed on the undertaking or association of undertakings shall be imposed on managers or employees of the undertaking or association of undertakings who are determined to have a decisive influence in the infringement.

When deciding on an administrative fine pursuant to paragraph three, the Board shall take into consideration issues such as the repetition of infringement, its duration, market power of undertakings or associations of undertakings, their decisive influence in the realization of infringement, whether they comply with the commitments given, whether they assist with the examination, and the severity of damage that takes place or is likely to take place, within the context of Article 17 paragraph two of the Law of Misdemeanors dated 30/3/2005 and numbered 5326.

To those undertakings or associations of undertakings or their managers and employees making an active cooperation with the Authority for purposes of revealing violations of the Act, penalties mentioned in paragraphs three and four may not be imposed or reductions may be made in penalties to be imposed pursuant to such paragraphs taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly.

Issues taken into consideration in setting administrative fines to be imposed pursuant to this Article, terms for immunity from or reduction of fines in case of cooperation, and procedures and principles in relation to cooperation shall be determined by regulations to be issued by the Board.

Proportional Administrative Fine

Article 17- (Amended article: 23.01.2008-5728/Article 473)¹⁰ Without prejudice to the penalties mentioned in Article 16, paragraph one, the Board shall, for each day, impose on undertakings and associations of undertakings an administrative fine by five in ten thousand of annual gross revenues of the relevant undertakings and associations of undertakings and/or members of such associations generated by the end of the financial year preceding the decision, or generated by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board in the following cases:

- a)** Obligations introduced or commitments made by a final decision or interim measure decision are not complied with,
- b)** On-site inspection is hindered or complicated,
- c)** In implementation of Articles 14 and 15 of the Act, information or document requested is not provided within the duration determined.

Pursuant to paragraph one, sub-paragraphs (a) and (c), administrative fines can be imposed as of the expiration of the duration determined for complying with the obligations in the decisions mentioned in these sub-paragraphs. The administrative fine related to the act in sub-paragraph (a) can be imposed from the day following the notice of this decision if no duration has been determined in the decision introducing the obligation. The administrative fine related to the acts in sub-paragraph (b) can be imposed from the day following the day when the act has been realized.

Nature and Application of Fines Imposed According to This Act

Article 18- (Repealed article: 23.01.2008-5728/Article 578)¹¹

Prescription in Fines and Periodic Fines

Article 19- (Repealed article: 23.01.2008-5728/Article 578)¹²

SECTION THREE

Organization

Competition Authority

Article 20- The Competition Authority having a public legal personality, and an administrative and financial autonomy is established in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment, to observe the implementation of this Act, and to fulfill the duties assigned to it by the Act.

The Ministry to which the Authority relates is **(Amended phrase: 16.06.2020-7246/Article 14)**¹³ the Ministry of Trade.

The Authority is independent in fulfilling its duties. No organ, authority and person may give commands and instructions to influence the final decision of the Authority.

The headquarters of the Authority is based in Ankara.

Organization of the Competition Authority

Article 21- The organization of the Authority consists of the

- a) Competition Board,
- b) Presidency,
- c) Service Units.

CHAPTER ONE

Competition Board

Organization of the Board

Article 22- (Amended article: 02.07.2018-Statutory Decree-703/Article 167)¹⁴ The Competition Board is the decision making body of the Authority and is composed of a total of seven members appointed by the President of the Republic, including a Chairman and a Deputy Chairman.

Qualifications for Appointment

Article 23- (Amended article: 02.07.2018-Statutory Decree-703/Article 167)¹⁵ The members of the Board shall be appointed from among those who had a four-year higher education and who bear the qualifications specified in Article 48, paragraph (A), sub-paragraphs 1, 4, 5, 6 and 7 of the Civil Servants Act No. 657.

Terms of Office

Article 24- (Repealed sentences one through four: 02.07.2018-Statutory Decree -703/Article 167)¹⁶ (...) Should the Chairmanship and memberships are vacated before the expiration of the term of office, due to any reason other than renewal, selection and appointment are carried out within one month for the vacated seats. In this case, the appointee completes the term of the person he replaces.

The offices of the Chairman and Board members cannot be terminated due to any reason prior to the completion of their term. However, the offices of the Chairman and members of the Board shall be terminated where, by the decision of the Board, they are found to have lost the qualifications required for their appointment or their position is found to be contrary to Article 25 of this Act, or where their offence with regard to the duty vested in them by the Act is proven by a court decision.

Prohibitions

Article 25- The Chairman and members of the Board may not undertake any official or private mission, engage in commerce, be shareholders in partnerships, unless it is based on a special Act.

The Chairman and members of the Board are, prior to assuming office, obliged to dispose of all kinds of securities in their possession within the meaning of the capital market legislation, apart from securities issued by the Treasury in connection with borrowing, by means of selling or transferring them to persons other than their kin by blood up to the third degree and their kin by marriage up to the second degree. Those members who do not act in conformity with this provision within 30 days shall be deemed to have resigned from membership.

Positions in associations and foundations which aim at social assistance and education, and partnership in non-profit cooperatives fall outside this provision.

The members and staff of the Board may not disclose and use in their own or others' interests the confidential information related to the Authority, and trade secrets of undertakings and associations of undertakings that they learned during the implementation of this Act, even if they have left their office.

(Additional paragraph: 18.07.2021-7333/Article 12) The Chairman and members of the Board, for a period of two years by the expiry of their membership, cannot be assigned in legal persons operating in the sectors on the investigations carried out within the scope of this Act, within the two years before the date of their leaving the office and cannot represent such natural and legal persons before the Authority in administrative processes related to the enforcement of this Act.

(Additional paragraph: 18.07.2021-7333/Article 12) Professional staff who were assigned as rapporteurs in the investigation within the two years prior to their leaving the office, within this period the head of the department responsible for the supervision of the mentioned staff in accordance with Article 43, the relevant deputy head of department and the Vice-President, for a period of two years following their leaving the Authority, cannot be assigned in legal persons operating in the sectors on the relevant investigations and cannot represent such natural and legal persons before the Authority in administrative processes related to the enforcement of this Act .

(Additional paragraph: 18.07.2021-7333/Article 12) Those who act contrary to the fifth and the sixth paragraphs are imposed the penalty specified in Article 4 of the Act on The Prohibited Activities of Former Public Servants No. 2531 dated 2/10/1981

Oath

Article 26- Before the First Presidential Court of the Court of Cassation, the members of the Board take an oath that during their term of office, they shall carry out the tasks of the Board with full attention and honesty, and they shall not act or allow others to act contrary to the provisions of the Act.

The application made for the oath is deemed to be among the urgent business by the Court of Cassation. The Chairman and members of the Board may not assume office before taking an oath.

Duties and Powers of the Board

Article 27- The duties and powers of the Board are as follows:

a) To carry out, upon application or on its own initiative, examination, inquiry and investigation about the activities and legal transactions prohibited in this Act; to take the necessary measures for

terminating infringements upon establishing that the provisions provided in this Act are infringed, and to impose administrative fines on those responsible for them,

b) To evaluate the requests of those concerned for exemption and negative clearance, and to grant an exemption and negative clearance certificate to the appropriate agreements,

c) To constantly follow up the markets to which exemption decisions and negative clearance certificates are related, and to re-evaluate the applications of those concerned in case changes are established in these markets or in the positions of the parties,

d) To authorize mergers and acquisitions,

e) (Amended sub-paragraph: 24.10.2011- Statutory Decree-661/Article 55)¹⁷ To appoint the Vice Presidents and the Chief Legal Advisor upon the proposal of the President,

f) To issue communiqués and make the necessary regulations as to the implementation of this Act,

g) To opine, directly or upon the request of the Ministry, concerning the amendments to be made to the legislation with regard to the competition law,

h) To monitor legislations, practices, policies and measures of the other countries, concerning agreements and decisions limiting competition,

i) To determine and observe the implementation of the personnel policies of the Authority, to perform the appointment transactions of the personnel, to approve the annual budget, final account of revenues and expenses, and annual work schedules of the Authority, which are prepared by the Presidency, and to decide for transfers among the accounts in the budget if needed,

j) (Repealed sub-paragraph: 24.10.2011-Statutory Decree-661/Article 55)¹⁸

k) To issue an annual report on its works, and the situation and developments in its fields of duty,

l) To negotiate and resolve the suggestions about purchases such as the procurement of movable and real property and fixtures, and about sales and leasings, and to make the necessary regulations therein,

m) To decide on any kind of transactions about credits, rights and obligations of the Authority concerning third parties,

n) To fulfill the other duties assigned by the Act.

Functioning Principles of the Board

Article 28- The Board is chaired and represented by the Chairman, and by the Deputy Chairman in cases of leave, sickness, traveling and in other cases where the Chairman is not present.

Meetings are chaired by the Chairman of the Board, or by the Deputy Chairman in his absence, and prior to the meeting, he determines the agenda to be resolved, and advises it to the members of the Board.

The members of the Board may not take part in deliberations and votes in cases concerning themselves, and their kin by blood up to the third degree and their kin by marriage up to the second degree.

CHAPTER TWO

Presidency

Article 29- The Presidency is composed of the Chairman of the Board, the Deputy Chairman and the Vice-Chairmen of the Board.

The Chairman of the Board is the highest ranking chief of the Authority, and is responsible for the overall management and representation of the Authority.

This responsibility encompasses the duties and powers as to the regulation, supervision, evaluation of the works of the Authority within a general framework, and their announcement to the public when necessary.

Duties and Powers of the Presidency

Article 30- The duties and powers of the Presidency are as follows:

- a)** To ensure the organization and coordination at the highest level that the Competition Board, which is the decisive body of the Authority, and the service units work in harmony, efficiently, in a disciplined and orderly manner, and to solve the problems likely to occur between the service units of the Authority with respect to duties and powers,
- b)** To determine the agenda, date and time of the Board meetings, and to run the meetings,
- c)** To ensure the fulfillment of what is required by the Board decisions, and to monitor the implementation of these decisions,
- d)** To finalize and submit to the Board suggestions received from the service units,
- e)** To prepare and submit to the Board the annual budget, final account of revenues and expenses, and annual work reports of the Authority, and to ensure the implementation of the budget of the Authority, the collection of revenues and the carrying out of expenses,
- f)** To express opinion about decisions to be taken as to the competition policy, and the relevant legislation,
- g)** To arrange and maintain the relations of the Authority with the Ministry and other organizations,
- h)** To represent the Authority before public and private organizations,
- i)** To ensure that final decisions of the Board, and communiqués and regulations to be prepared by the Authority are published,
- j)** To determine the scope of duty and power of the personnel authorized to sign on behalf of the Chairman of the Board.
- k) (Additional sub-paragraph: 24.10.2011-Statutory Decree-661/Article 56)** To appoint the personnel of the Authority, except the Vice Presidents and the Chief Legal Advisor.

Vice-Presidents

Article 31- (Amended phrase: 16.06.2020-7246/Article 5)¹⁹ Three Vice-Presidents may be commissioned for purposes of assisting the President in conducting the Presidential services. Vice-Presidents are obliged to fulfill duties and carry out instructions given by the President, and to ensure harmony and cooperation between the levels of the organization and the service units concerned.

Service Units

Article 32- The service units of the Competition Authority are composed of the main service units, organized as departments, advisory units and auxiliary service units.

Supervision

Article 33- Accounts of the Authority are subject to the supervision of the Turkish Court of Accounts.

CHAPTER THREE

Status of the Personnel of the Authority

Article 34- (Amended first sentence: 16.06.2020-7246/Article 6)²⁰ Positions of the personnel carrying out the fundamental and permanent tasks required for the provision of the Authority services is shown

in the attached Table no (I). Adequate number of expert professional staff and specialized non-career personnel may be employed at the disposal of the Authority.

The personnel of the Authority is subject to the Civil Servants Act No. 657, apart from the salary and financial rights. **(Repealed the second and third sentences: the decision of the Constitutional Court dated 06.06.2013 and numbered E.: 2013/47, K.: 2013/72)²¹**

(Additional paragraph: 16.06.2020-7246/Article 6) Within the limits of the current position titles or the position titles included in the tables attached to the Presidential Decree dated 10/7/2018 and numbered 2 on General Positions and Procedures, the Board is authorized to establish the rules and procedures for changing the service classes, positions, titles and degrees as well as for utilizing these positions, provided that the number does not exceed the total number of positions in the attached Table no (I).

The Presidency shall determine temporary services or services requiring a particular expertise. Proxy or exceptional job contract provisions are applicable to personnel to be employed in such tasks. For those to be employed pursuant to this paragraph, salaries they receive from social security organizations shall not be cut off.

Foreign experts may also be employed pursuant to the principles of the regulation which shall be prepared by the Presidency and which shall take effect upon the approval of the Board.

Appointment as Assistant Competition Expert

Article 35- The following qualifications are sought for an appointment as assistant competition experts:

- a) (Amended sub-paragraph: 02.07.2005-5388/Article 4)²²** To be a graduate of at least four-year higher education from faculties of law, economics, political sciences, management, economic and administrative sciences, or from management engineering or industrial engineering departments, or of higher education institutions abroad which are deemed equivalent to the above,
- b) (Amended sub-paragraph: 02.07.2005-5388/Article 4)²³** To succeed in the examination to be held jointly or separately for the branches listed in the sub-paragraph above,
- c)** To succeed in the foreign language examination to be held in English, French or German languages,
- d)** Not to be over thirty years of age as of the first day of January of the examination year.

Other necessary requirements are determined in the examination regulations to be issued by the Board.

Competition Experts

Article 36- (Repealed first paragraph: 16.06.2020-7246/Article 7)²⁴

(Additional phrase: 16.06.2020-7246/Article 7)²⁵ Senior competition experts, competition experts and assistant competition experts bear the title and possess the power of professional staff.

(Additional paragraph: 16.06.2020-7246/Article 7) For their appointment to competition expert positions, assistant competition experts shall benefit from an advancement in their degree in accordance with paragraph (A), sub-paragraph (11) of the "Common Provisions" section of Article 36 of the Civil Servant Law dated 14/7/1965 and number 657, under the same procedures and principles

Salary and Other Financial Rights

Article 37- Monthly salaries of the Chairman and members of the Board are determined by the **(Amended phrase: 02.07.2018-Statutory Decree-703/Article 167)²⁶** President of the Republic, not

exceeding twice the salary of the highest ranking civil servant, including all payments. Those which are not subject to the income tax among the payments made to the highest ranking civil servant shall also not be subject to the income tax pursuant to this Act.

Salaries and other financial rights of the Authority personnel are determined by the Board upon the proposal of the Presidency, under the principles in the first paragraph with regard to salaries and making amendments thereto.

Evaluation of Retirement and Service Periods

Article 38- The Chairman and members of the Board, and other personnel are subject to the Pension Funds Act. Those subject to the Civil Servants Act No. 657 appointed as the Chairman or as a Board member or assigned to the Authority return to their position as a civil servant and are appointed to an office compatible with their status when their term of office expires. In such a case, the periods they served at the Authority are taken into consideration in their services pursuant to the provisions of the Act they are subject to.

These provisions are also applicable to the Chairman and members as well as to experts or other personnel who come from universities, without prejudice to the necessary requirements for receiving academic titles.

With regard to retirement, the Chairman of the Board , the members of the Board and the Heads of Departments are considered to be at the same level with the **(Amended phrase: 02.07.2018-Statutory Decree-703/Article 167)**²⁷ Head of the Presidential Strategy and Budget Directorate, **(Amended phrase: 02.07.2018-Statutory Decree-703/Article 167)**²⁸ Ministry General Directors and Ministry General Directors, respectively. The status of other personnel with regards to retirement shall be indicated in the regulation to be prepared by the Presidency and which shall be put into force upon the approval of the Board.

Revenues of the Authority

Article 39- Revenues of the Authority set up the budget of the Authority, and they are made up of the following items of revenues:

- a) The subsidy to be allocated in the budget of the Ministry,
- b) **(Repealed sub-paragraph: 01.08.2003-4971/Article 25)**²⁹
- c) **(Additional sub-paragraph: 17.09.2004-5234/Article 29)**³⁰ Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the increase portion in case of capital increase,
- d) Publication and other revenues.

Revenues belonging to the Authority are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank. **(Repealed last sentence: 01.08.2003-4971/Article 25)**³¹

SECTION FOUR

Procedure in Examinations and Inquiries of the Board

Preliminary Inquiry

Article 40- On its own initiative or upon the applications filed with it, the Board decides to open a direct investigation, or to conduct a preliminary inquiry for determining whether or not it is necessary to

open an investigation. Should it be decided to conduct a preliminary inquiry, the Chairman of the Board assigns one or more of the experts among the professional staff as rapporteurs.

The rapporteur who is entrusted with the task of conducting a preliminary inquiry notifies the Board in writing within 30 days of the information and any evidence obtained by him, and his comments about the issue.

Conclusion of Preliminary Inquiry

Article 41- Within 10 days following the submission of the preliminary inquiry report to the Board, the Board convenes in order to evaluate the information obtained and make a decision, and decides on whether or not to open an investigation.

(Additional paragraph: 16.06.2020-7246/Article 8) Based on criteria such as market share and turnover, the Board may decide not to initiate an investigation concerning those agreements, concerted practices and decisions and actions of associations of undertakings which do not significantly restrict competition in the market, with the exception of naked and hard-core infringements such as price fixing between competitors, region and customer allocation, and supply restriction. The rules and procedures concerning the application of this paragraph shall be established with a communiqué issued by the Board.

Notification to Applicants

Article 42- In case the Board deems that the claims put forward in denouncement or complaint applications are serious and sufficient, informers or complainants are notified in writing that the claims have been deemed serious and that an inquiry has been initiated.

In cases where the Board either expressly rejects applications, or is deemed to have rejected them by means of not notifying within due period, anyone who documents to have a direct or indirect interest may resort to jurisdiction against the rejection decision of the Board.

Initiating an Investigation, Commitments and Settlements³²

Article 43- (Amended first sentence: 02.07.2005-5388/Article 5)³³ If the Board decides that an investigation shall be conducted, it designates the rapporteur or rapporteurs who shall conduct the investigation under the supervision of the head of department concerned. The investigation shall be concluded within 6 months at the latest. In cases where it is deemed necessary, an additional period of up to 6 months may be granted by the Board on a one-time only basis.

The Board notifies the parties concerned of the investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation, and requests that the parties submit their first written pleas within 30 days. In order to initiate the first written reply period granted to the parties, it is required that the Board should send to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims.

(Amended paragraph 16.06.2020-7246/Article 9)³⁴ Relevant undertakings or associations of undertakings may offer commitments in order to eliminate the competition problems under Article 4 or 6 which may arise during an ongoing preliminary inquiry or investigation process. If the Board decides that the proposed commitments can resolve the competition problems, it may render these commitments binding for the relevant undertakings or associations of undertakings, and decide not to initiate an investigation or to terminate an ongoing investigation. Commitments shall not be accepted for naked and hard-core infringements such as price fixing between competitors, region and customer

allocation, or supply restriction. The rules and procedures concerning the application of this paragraph shall be established with a communiqué issued by the Board.

(Additional paragraph: 16.06.2020-7246/Article 9) After a decision under paragraph 3 is taken, the Board may re-launch an investigation in case:

- a) There is a substantial alteration in any of the factors on which the decision was based,
- b) The relevant undertakings or associations of undertakings act in violation of the commitments given,
- c) The decision was based on missing, false or misleading information presented by the parties.

(Additional paragraph: 16.06.2020-7246/Article 9) After initiating an investigation the Board may, on the request of the parties concerned or on its own initiative, start the settlement procedure, taking into account the procedural benefits that may arise from a rapid resolution of the investigation process and the differences in opinion concerning the existence and scope of the infringement. Before the notification of the investigation report, the Board may come to a settlement with the undertakings and associations of undertakings under investigation which acknowledge the existence and scope of the infringement.

(Additional paragraph: 16.06.2020-7246/Article 9) In this framework, the Board shall grant a definite period of time to the parties under investigation to present a settlement text wherein they accept the existence and scope of the infringement. Notifications made after the expiry of the granted period will not be taken into account. The investigation is concluded with a final decision which includes an establishment of the infringement and the administrative fine imposed.

(Additional paragraph: 16.06.2020-7246/Article 9) As a result of the settlement procedure, a discount of up to twenty five per cent may be applied to the administrative fine. Application of a discount in administrative fines under this article does not prevent the application of a discount under article 17.6 of the Law on Misdemeanor no 5326.

(Additional paragraph: 16.06.2020-7246/Article 9) In case the process is concluded with a settlement, the parties to the settlement may not take the administrative fine and the provisions of the settlement text to court.

(Additional paragraph: 16.06.2020-7246/Article 9) Other rules and procedures concerning settlements shall be set out with a Regulation issued by the Board.

Collecting Evidence and Informing the Parties

Article 44- A delegation acting on behalf of the Board and composed of **(Repealed phrase: 02.07.2005-5388/Article 5)** ³⁵ (...) rapporteurs designated and commissioned by the Board may, during the investigation stage, exercise the powers to request information and carry out an on-site inspection as provided in Articles 14 and 15 of this Act respectively. Within this period determined, it may request the provision of any documents and information it deems necessary from the parties and other places concerned. During the investigation stage of the Board, the person or persons claimed to have infringed this Act may, at all times, submit to the Board any information and evidence likely to influence the decision.

Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any documents drawn up within the Authority concerning them, and if possible, a copy of any evidence obtained.

The Board may not base its decisions on issues about which the parties have not been informed and granted the right to defense.

Notice and Reply

Article 45- The report prepared at the end of the investigation stage is notified to all members of the Board and the parties concerned.

Those found to have infringed this Act are notified that they should submit their written pleas to the Board within 30 days. Those charged with conducting the investigation submit an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Board and the parties concerned. The parties may reply to such opinion within 30 days. **(Amended last sentence 16.06.2020-7246/Article 10)**³⁶ In case justifiable grounds are provided, these periods may be extended only once and by one fold at the most.

The pleas of the parties not submitted within due period shall not be taken into account.

Hearing

Article 46- Hearing is held upon the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defense. Furthermore, the Board may decide on its own initiative to hold a hearing.

Hearing is held within at least 30 days and at most 60 days from the end of the investigation stage. Invitations for the hearing are forwarded to the parties at least 30 days before the date of the hearing.

Principles Concerning the Hearing

Article 47- Hearings are held publicly. The Board may decide to hold the hearing in camera on grounds of protecting the general morals and trade secrets.

Hearings are chaired by the Chairman of the Board, or by the Deputy Chairman of the Board in his absence. The meeting is held with the participation of the Chairman of the Board or the Deputy Chairman, and at least **(Amended phrase: 02.07.2005-5388/Article 5)**³⁷ four members of the Board.

Hearings are completed in no longer than 5 consecutive sessions, and various meetings held within the same day are deemed as one session.

The parties are obliged to notify, seven days before the hearing at the latest, the Board of the means of proof they shall use in the hearing. The parties may not use the means of proof not notified within due period.

During the hearing, the parties concerned may use any evidence and means of proof provided in the Part Two Chapter Eight of the Code of Civil Procedure. The parties claimed to have infringed this Act, or their representatives, and those who prove to the Board prior to the session that they have direct or indirect interests, or their representatives may participate in sessions.

Final Decision

Article 48- The decision is made on the same day after the hearing, or if not possible, within 15 days, together with its grounds.

In cases where a hearing is not requested by the parties, and the Board does not decide to hold a hearing on its own initiative, the final decision is made within 30 days following the end of the investigation stage, pursuant to the examination to be performed on the file.

In case the parties concerned fail to attend the hearing despite the decision to hold a hearing, the decision is made within one week following the date of the meeting determined, pursuant to the examination to be performed on the file.

Confidentiality of Meetings

Article 49- Decisions of the Board are taken as a result of confidential meetings and are communicated publicly. No member of the Board may cast an abstention vote. Except for the ones having an excuse, members who have been present at the hearing are obliged to participate in meetings.

Procedure in Meetings

Article 50- The meeting is chaired by the Chairman of the Board, or in his absence, by the Deputy Chairman, and he determines matters to be resolved. After such matters are discussed freely, the Chairman collects the votes and casts his own vote finally.

Meeting and Decision Quorum

Article 51- In its final decisions, the Board convenes with the participation of at least a total of **(Amended phrase: 02.07.2005-5388/Article 5)³⁸** five members including the Chairman or the Deputy Chairman, and it decides via the parallel votes of at least **(Amended phrase: 02.07.2005-5388/Article 5)³⁹** four members.

Where the necessary quorum for the decision cannot be attained in the first meeting, the Chairman ensures that all members participate in the second meeting. However, if not possible, the decision is made via the absolute majority of the participants in the meeting. In this case, the quorum for the meeting may also not be less than the one mentioned in the first paragraph. In case of a tie vote in the second meeting, the vote of the side of the Chairman is deemed preponderant.

For decisions except the final decision, and particularly for decisions and transactions having the nature of measures and recommendations, it is required that at least one third of the members of the Board convenes and that the absolute majority of the participants in the meeting make a decision.

Points Required in Decisions

Article 52- Decisions involve the following points:

- a)** Names and surnames of the members of the Board who made the decision,
- b)** Names and surnames of those who carried out the examination and inquiry,
- c)** Names, titles, residences and distinguishing characteristics of the parties,
- d)** Summary of the claims of the parties,
- e)** Summary of the examination and of the economic and legal issues discussed,
- f)** Opinion of the rapporteur,
- g)** Evaluation of all evidences and pleas submitted,
- h)** Grounds, and the legal basis of the decision,
- i)** Conclusion,
- k)** If any, writings about the dissenting votes.

Duties imposed on and rights granted to the parties with the decision made have to be written explicitly such that they do not cause doubts and hesitations.

Taking the Decisions to Writing

Article 53- The decision is written by the Chairman of the Board or a member to be commissioned by him. Decisions are signed by the members participating in the meeting. Those members against the

decision may take to writing dissenting votes individually or jointly. The original of the decision is kept in the archives of the Board. A copy of it is submitted to the parties in return for signature. Another copy is forwarded to the Publication Department of the Competition Authority for publication purposes.

(Repealed phrase: 01.08.2003-4971/Article 25) (...)⁴⁰ Decisions of the Board are published **(Amended phrase: 17.09.2004-5234/Article 29)**⁴¹ on the website of the Authority in such a way not to disclose the trade secrets of the parties.

Commencement Date of Periods

Article 54- In decisions of the Competition Board, periods commence as of the date the reasoned decision is communicated to the parties.

Judicial Review against Decisions of the Board

Article 55- (Amended Article: 23.01.2008-5728/Article 474)⁴² **(Amended first paragraph: 05.07.2012-6352/Article 63)**⁴³ Suits shall be filed against administrative sanctions before the competent administrative courts. All types of suits filed against Board decisions shall be deemed a priority matter.

Judicial review against decisions of the Board shall not cease the implementation of decisions, and the follow up and collection of administrative fines.

SECTION FIVE

Consequences of Limiting Competition in Private Law

Legal Nature of Agreements and Decisions Contrary to This Act

Article 56- Any agreements, and decisions of associations of undertakings, contrary to Article 4 of this Act are invalid. The performance of acts arising out of such agreements and decisions may not be requested. In case a request is made for reclamation due to the invalidity of the previous acts fulfilled, parties' duty of restitution is subject to Articles 63 and 64 of the Code of Obligations. The provision of Article 65 of the Code of Obligations is not applicable to disputes arising out of this Act.

Right to Compensation

Article 57- Anyone who prevents, distorts or restricts competition via practices, decisions, contracts or agreements contrary to this Act, or abuses his dominant position in a particular market for goods or services, is obliged to compensate for any damages of the injured. If the damage has resulted from the behavior of more than one people, they are responsible for the damage jointly.

Compensation of Damages

Article 58- Those who suffer as a result of the prevention, distortion or restriction of competition, may claim as a damage the difference between the cost they paid and the cost they would have paid if competition had not been limited. Competing undertakings affected by the limitation of competition may request that all of their damages are compensated by the undertaking or undertakings which limited competition. In determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well.

If the damage arises from an agreement or decision or gross negligence of the parties, the judge may, upon the request of the injured, award compensation by three fold of the material damage incurred or of the profits gained or likely to be gained by those who caused the damage.

Burden of Proof

Article 59- Should the injured submit to judicial bodies proofs such as, particularly, the actual allocation of markets, stability observed in the market price for quite a long time, price increases within close intervals by undertakings operating in the market, which give the impression of the existence of an agreement, or the distortion of competition in the market, then the burden of proof is on the defendants that the undertakings are not engaged in concerted practice.

The existence of agreements, decisions and practices limiting competition may be proved by any kind of evidence.

SECTION SIX Final Provisions

Offences Committed on the Funds, Documents and Properties of the Authority

Article 60- (Amended article: 16.06.2020-7246/Article 11)⁴⁴ The funds, documents and any properties of the Authority shall have the force of state property. The Chairman and members of the Board, as well as the Authority personnel shall be deemed public officers in respect of the crimes they commit or those committed against them during the performance of their duties. Article 104 of the Banking Law dated 19/10/2005 and numbered 5411 shall be applied by analogy with respect to the criminal and civil liabilities of the Chairman and the members of the Board, as well as the Authority personnel.

Notice

Article 61- Notifications to be made to the parties concerned in accordance with this Act are performed pursuant to the provisions of the Notice Act No. 7201.

Regulations

Article 62- Apart from those specified in this Act, the exercise of the powers by the Authority, management and working principles, procedures and principles to be applied in the collection of its revenues, carrying out its expenses and supervision of these transactions, principles for the changes to be made to monthly salaries, principles as to the employment of foreign experts, regulations concerning the provision and tender procedures for the movables and immovables to be purchased by the Authority, and provisions concerning the accounting system of the Authority are provided in the Regulations to be prepared by the Board and put into force by **(Amended phrase: 02.07.2018-Statutory Decree-703/Article 167.)⁴⁵** the Office of the President of the Republic.

Regulations to be issued pursuant to this Act shall be issued within one year from the date of publication of this Act.

Inapplicable Provisions⁴⁶

Article 63- The Authority is not subject to the General Accounting Act No. 1050, the State Tender Act No. 2886, the Allowances Act No. 6245, and to their annexes and amendments.

Revenues of the Authority are exempt from the Corporation Tax, and from the Inheritance and Transfer Tax due to donations and aids to be granted; interests to accrue in favor of the Authority due

to any transactions to be performed are exempt from the Banking and Insurance Transactions Tax; revenues of the Authority and all transactions concerning these revenues are exempt from any kind of taxes, duties and charges in the purchase and sale of immovable goods; vehicles to be purchased for the Authority are exempt from the Vehicle Purchase Tax and Stamp Duty.

Temporary Article 1- The first appointment to the Competition Board is made pursuant to the principles of Article 22. It is such that the provisions as to the candidates to be nominated by the Competition Board are not applicable.

In the first appointment, the Prime Minister and the Minister of Industry and Trade each nominate two candidates for membership, instead of the Board.

The members of the Board to be renewed by the end of the second and fourth years are determined by drawing names in the last meetings of the Board within such period. For the first term, the Chairman of the Board is appointed by the Council of Ministers from among the two candidates to be nominated by the Minister of Industry and Trade, and the Chairman and the Deputy Chairman of the Board complete their terms within six years without participating in the lot.

Temporary Article 2- The Competition Board to be appointed under the principles mentioned in the Temporary Article 1 announces that situation with a communiqué after the completion of the organization of the Competition Authority. Any agreements and decisions existing on the date of announcement are notified to the Board within 6 months from this date.

Temporary Article 3- Within one year from the date when this Act enters into force this Act, the Competition Board may appoint sufficient number of experts from public and private organizations to work in the Authority, without seeking the qualifications in Articles 35 and 36 of the Act, provided that it is for once.

It is such that those to be appointed as experts are required to possess the qualifications listed in subparagraphs (a) and (c) of the first paragraph of Article 35, have at least a five-year professional experience, and be under forty-one years of age. For those who shall be appointed as experts from public organizations, the requirement of having taken up their profession by a competitive and proficiency exam is sought as well.

Until the organization of the Competition Authority is completed, the personnel of the related Ministry may be temporarily commissioned in the fulfillment of the tasks of the Authority.

Temporary Article 4- (Additional article: 02.07.2005-5388/Article 6) Selection and appointment shall not be made for the memberships vacated until the number of Board members is reduced to seven.

Temporary Article 5- (Additional article: 01.07.2006-5538/Article 13) The Board can convene and take a decision with a maximum of seven members. In case the number of members of the Board is more than seven, the Chairman shall determine which member would be made not participate in a meeting in turn.

Temporary Article 6 – (Additional article 16.06.2020-7246/Article 12) As of the date of entry into force of this article, those personnel in the examination expert positions in the Authority shall be appointed to competition expert positions, those in the senior coordinator and professional coordinator positions shall be appointed to senior competition expert positions; those in the Authority advisor, advisor to the President, administrative coordinator, director, research expert, press consultant, system analyst, data communications expert, programmer, administrative services officer and administrative services expert positions shall be appointed to researcher positions, those in the

transportation manager positions shall be appointed to driver positions, with no change in their position degrees and with no further action necessary. For those appointed in this manner, if the net amount of the sum of all payments made in the last month under the scope of financial benefits with the exception of payments for actual service (this amount to be considered a fixed value) is higher than the net amount of the sum of all payments to be made under the scope of financial benefits with the exception of payments for actual service, then the difference shall be paid separately as compensation without any taxes or deductions, until the difference is made up. Compensation payments for the difference shall be terminated for those who change their position titles voluntarily or who are appointed to other agencies at their own request. Those appointed to the researcher position shall be assigned to tasks as required by the Authority.

Those who serve under administrative employment contracts on the effective date of this Article in Authority positions other than the ones listed in paragraph 1 shall be considered to have been appointed to the positions with the same titles and degrees listed in Table no (I) attached to the Act creating this Article, with no further action necessary.

The previous positions of those appointed under paragraphs 1 and 2 shall be deemed to be canceled without further action.

Of the personnel serving under administrative employment contracts in Authority positions on the effective date of this Article, those whose positions are not included in the Table no (I) attached to the Act creating this article with respect to title and/or degree shall retain their current positions tied to their persons. If these positions are vacated for any reason, they shall be considered canceled with no further action necessary.

Among the personnel falling under the scope of this Article, all personnel serving in an Authority position as of 15/1/2012 shall continue to have the provisions of the legislation that was in force before that date applied, taking into account the provisions of the Provisional Article 10 of the Statutory Decree dated 27/6/1989 and numbered 375.

Temporary Article 7 – (Additional article 16.06.2020-7246/Article 13) Those who have been working as professional staff in the Authority as of the effective date of this article but who did not benefit from an increase in degree during their promotion from assistant competition expert to competition expert positions shall advance one degree with no further requirements.

Entry into Force

Article 64- Articles 16 and 17 of this Act concerning administrative fines shall enter into force one year after its publication, while the other articles on the date of its publication.

Execution

Article 65- The provisions of this Act shall be executed by the Council of Ministers.

¹ Former version of the amended phrase: “**(Amended Definition: 24.10.2011-Statutory Decree-661/Article 53)** The Ministry of Customs and Trade”

² Former version of the amended paragraph: “The Board, in case all the terms listed below exist, may decide **(Repealed phrase: 02.07.2005-5388/Article 1)** (...) to exempt agreements, concerted practices between undertakings, and decisions of associations of undertakings from the application of the provisions of Article 4:

- a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,
- b) Benefitting the consumer from the abovementioned,
- c) Not eliminating competition in a significant part of the relevant market,

d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b)."

³ Former version of the amended paragraph: "Exemption decisions may be granted for a maximum of five years. Granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. If the terms of exemption still continue when the exemption period granted by the Board has expired, the exemption decision may be renewed upon the application of the parties concerned."

⁴ Former version of the amended paragraph: "Merger by one or more undertakings, or acquisition by any undertaking or person from another undertaking-except by way of inheritance-of its assets or all or a part of its partnership shares, or of means which confer thereon the power to hold a managerial right, with a view to creating a dominant position or strengthening its/ their dominant position, which would result in significant lessening of competition in a market for goods or services within the whole or a part of the country, is illegal and prohibited."

⁵ Former version of the amended paragraph: "If the Board, upon denouncement, complaint or the request of the Ministry or on its own initiative, establishes that Articles 4, 6 and 7 of this Act are infringed, it notifies the undertaking or associations of undertakings concerned a decision encompassing those behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement, in accordance with the provisions mentioned in section Four of this Act."

⁶ Article 2 of the Act dated 02.07.2005 and numbered 5388 removed the phrase "Agreements" here from the title of the Article.

⁷ Repealed paragraph: "Those agreements, concerted practices and decisions falling under Article 4 shall be notified to the Board within one month of their conclusion. Exemption provisions are not applicable to agreements not notified. In case exemption is granted to notifications not made on time, the exemption shall be valid as of the date of the notification."

⁸ Former version of the amended sub-paragraph: "Examine the books, any paperwork and documents and take their copies if needed"

⁹ Former version of the amended article:

"Fines

Article 16- The Board may impose on natural and legal persons with the nature of undertakings and on associations of undertakings and/or the members of such associations the following fines:

a) one hundred million liras in case misleading or incorrect information is provided in applications for exemption, negative clearance and permission as to mergers or acquisitions, and in notifications and applications in relation to agreements concluded before the entry into force of this Act,

b) one hundred million liras in case (**Additional phrase: 02.07.2005- 5388/Article 2**) no information is provided at all or incomplete, incorrect or misleading information is provided in response to a request for information or an on-site inspection decision taken by the Board,

c) fifty million liras in case (**Amended phrase: 02.07.2005- 5388/ Article 2**) merger or acquisition transactions subject to authorization are concluded without the authorization of the Competition Board,

d) sixty million liras in case the obligations in the exemption decisions taken by the Board in accordance with Article 5, paragraph three of this Act are not fulfilled.

Provided that it is not less than two hundred million liras for those established, by the Board decision, to have committed behavior prohibited in Articles 4 and 6 of this Act, and for those who commit behavior listed in Article 11, sub-paragraph (b) of this Act, fines are imposed up to ten percent of the annual gross revenue of natural and legal persons having the nature of undertakings, and of associations of undertakings and/or the members of such associations, generated by the end of the preceding financial year as determined by the Board. In case undertakings and associations of undertakings having legal personality are subjected to fines mentioned in paragraph one, natural persons employed in managerial bodies of this legal personality are also fined personally up to ten percent of the fine imposed.

When setting the fines, the Board shall take into account factors such as the existence of intent, the severity of fault, the market power of the undertaking or undertakings upon which a penalty is imposed, and the severity of potential damage.

Fines are not applicable to agreements and decisions notified within due time for the time period until the final decision is taken by the Board, provided they do not expressly violate the provisions of this Act."

¹⁰ Former version of the amended article:

"Periodic Fines

Article 17- The Board may impose on undertakings and associations of undertakings the following periodic fines per day, which shall commence from the date to be specified in the decision:

-
- a) fifty million liras for failure to comply with the decision taken pursuant to Article 9, concerning the termination of infringement, and other measures,
 - b) twenty-five million liras for failure to fulfill the decisions and measures of the Board provided for in Article 11 sub-paragraph (b),
 - c) twenty-five million liras for the behavior prohibited pursuant to Article 13, paragraph one,
 - d) twenty million liras for prevention of on-the-spot inspection by experts of the Board in accordance with Article 15.”

¹¹ Repealed article:

“Any fines provided in this Act are of an administrative nature. Fines or periodic fines are separately applied to each party acting contrary to this Act.

In case a decision imposing a periodic fine is appealed before the courts, the periodic fine is not applicable as of the date of the appeal if a decision for the suspension of execution is issued concerning the periodic fine.”

¹² Repealed article:

“The power of the Board to impose fines and periodic fines is subject to the following periods of prescription:

- a) three years for the infringement of provisions related to the application or notification of undertakings or associations of undertakings, provision of information, or on-site inspection,
- b) five years in other cases.

The period commences from the day of occurrence of the infringement. If continuous or repeated infringements are in question, it commences from the day the infringement ends or is repeated last.

Any action to be taken by the Board with regard to this infringement for purposes of examination or inquiry interrupts the prescription as of the notification of this action to one of the parties concerned.

An appeal made against the decision interrupts the period of prescription.”

¹³ Former version of the amended phrase: “**(Amended phrase: 24.10.2011- Statutory Decree-661/Article 53)** The Ministry to which the Authority relates is the Ministry of Customs and Trade.”

¹⁴ Former version of the amended article:

“**(Amended article: 24.10.2011- Statutory Decree-661/Article 54)** “The Competition Board is the decision making body of the Authority and is composed of a total of 7 members, one being the Chairman and the other being the Deputy Chairman.

The Council of Ministers appoints the members from among the two candidates apiece, to be nominated from inside or outside the following institutions for each vacant membership: three members from the Ministry, one member from the Ministry of Development, one member from Turkish Union of Chambers and Commodity Exchanges, and one member from among the two candidates apiece, to be nominated from inside the Supreme Court of Appeals and Council of State. One of the members to be recruited from the quota of the Ministry of Customs and Trade is appointed from among the personnel of the Authority.

The Council of Ministers appoints the Chairman and the Deputy Chairman from among the members of the Board.”

¹⁵ Former version of the amended article:

“The members of the Board shall be appointed from among those who had a four-year higher education in law, economics, engineering, management or finance branches in domestic or foreign institutions, who has adequate knowledge and experience relevant to their profession, who has worked in public or private sector for at least 10 years in relation to their profession and who bear the qualifications specified in Article 48, paragraph (A), sub-paragraphs 1, 4, 5, 6 and 7 of the Civil Servants Act No. 657.”

¹⁶ Repealed sentences: “The term of office of the Chairman, Deputy Chairman and members of the Board is six years. The member whose term has expired is eligible for re-selection. One third of the members of the Board is renewed every two years. During renewal, numbers and ratios in the provisions concerning the organization of the Board are taken into account.”

¹⁷ Former version of the amended sub-paragraph: “e) To elect the Deputy Chairman of the Board”

¹⁸ Repealed sub-paragraph: “j) To determine the candidates to be nominated by the Authority for the vacated Board memberships,”

¹⁹ The expression “two” in this paragraph is amended and the amendment is made in the text.

²⁰ Former version of the amended sentence: “ The essential and permanent duties required by the services of the Authority are conducted by the personnel employed on a contractual basis with an administrative service contract.”

²¹ Repealed sentences: “The Board is free in arranging the statuses of organization and staff in compliance with the needs. The Board may annul existing posts or create new posts.”

²² Former version of the amended sub-paragraph: “To be a graduate of Law, Economics, Political Sciences, Management and economics departments of faculties Economic and Administrative Sciences, or industrial engineering or management engineering departments of faculties of Engineering, or higher education institutions abroad which are deemed equivalent to them”

²³ Former version of the amended sub-paragraph “To succeed in the competitive examination to be held,”

²⁴ Repealed paragraph: “Those appointed as assistant competition experts pursuant to Article 35 are awarded the title of “Competition Expert” in case their expertise thesis which they shall prepare or have already prepared concerning their topics is approved by the Board, provided that they have worked for three years and received a positive record.”

²⁵ “Senior competition expert” is added to the wording of the paragraph.

²⁶ Former version of the amended phrase: “by the Council of Ministers upon the proposal of the Ministry”

²⁷ Former version of the amended phrase: “Undersecretary of the Ministry”

²⁸ Former version of the amended phrase: “Deputy Undersecretaries of the Ministry”

²⁹ Repealed sub-paragraph: “Twenty-five per cent of the fines imposed by the Board under Articles 16 and 17 of this Act,”

³⁰ Article 29 of the Act no 5234, dated 17.09.2004, added the sub-paragraph (c) to this Article, and the existing sub-paragraph (c) was maintained as sub-paragraph (d).

³¹ Repealed sentence: “revenues specified in sub-paragraph (b) are deposited into the relevant account of the Authority following the finalization of the fines, in the course of depositing the fine to the cashier’s office of the Treasury.”

³² According to article 9 of the Act no 7246 dated 16.06.2020, the formal title of the article “Initiation of Investigation by the Board” was amended to “Initiating an Investigation, Commitments and Settlements”

³³ Former version of the amended sentence: “If an investigation is decided to be performed, the Board designates the rapporteur or rapporteurs, together with the Board member or members who will conduct the investigation.”

³⁴ Former version of the amended paragraph: “The decision of the Board to initiate an investigation is final.”

³⁵ The phrase “Board member and” here was removed from the text.

³⁶ Former version of the amended sentence “In case the parties provide justifiable grounds, these periods may be extended only once and by one fold at the most.”

³⁷ The phrase “7” in this paragraph was amended and the amendment was committed to the text.

³⁸ The phrase “8” in this paragraph was amended and the amendment was committed to the text.

³⁹ The phrase “6” in this paragraph was amended and the amendment was committed to the text.

⁴⁰ Repealed phrase “after finalization”

⁴¹ The phrase “in the Official Gazette” in this paragraph was amended and the amendment was committed to the text.

⁴² Former version of the amended article:

“Appeal may be made to the Council of State within due period against the final decisions, measure decisions, fines and periodic fines of the Board, as of communicating the decision to the parties. **(Amended sentence: 01.08.2003-4971/Article 25)** Appealing against decisions of the Board does not cease the implementation of decisions, and the follow-up and collection of fines.

(Amended sentence: 01.08.2003-4971/Article 25) Fines are paid **(Amended phrase: 17.09.2004-5234/Article 29)** within three months as of the date of communicating the final decision of the Board to the one concerned. The enforcement of the decision of the Board imposing fines or periodic fines is subject to the provisions of the Act on the Procedure of Collection of Public Credits No. 6183.”

⁴³ Former version of the amended paragraph: “Nullity suits brought against the final decisions, injunctions and administrative fines of the Board are tried before the Council of State as the first instance court.”

⁴⁴ Former version of the amended article:

(Amended: 23.1.2008-5728/Article 475) “The funds, documents and any properties of the Authority have the force of state property. The Chairman and members of the Board, and its personnel who commit offences about their offices shall be deemed public officers in respect of criminal liability. Those offences committed against the Chairman and members of the Board and its personnel by virtue of their offices shall be deemed to have been committed against a public officer.

Against such persons, the provisions of the Act dated 2/12/1999 and numbered 4483 shall not be applicable due to offences they committed in association with their offices.”

⁴⁵ Former version of the amended phrase: “via the resolution of the Council of Ministers.”

⁴⁶ Concerning the application of this Article, see Article 81 of the Act no 5018, dated 10.12.2003 and Article 37 of the 2005 Budget Act, dated 28.12.2004 and numbered 5277.