

Law on the Protection of Competition

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Section One Object, Scope, Definitions

Object

Article 1. The object of this Law is to prohibit agreements, decisions and practices, preventing, distorting or restricting competition in the markets of goods and services and the abuse of undertakings of their dominant positions in the market and to ensure the protection of competition by enacting the required regulations and controls.

Scope

Article 2. The agreements, decisions and practices which are preventing, distorting or restricting competition between all kinds of undertakings operating in or influencing the markets of goods and services within the boundaries of the Republic of Turkey and the abuse of undertakings of their dominant position in the market and all kinds of legal transactions and practices in the form of mergers and acquisitions which will decrease competition considerably, actions regarding the measures, determinations, regulations and controls aiming to protect competition are within the scope of this Law.

Definitions

Article 3. For the implementation of this Law, the definitions below mean as follows;

Ministry	: The Ministry of Industry and Trade
Competition	: The race between the undertakings in the market of goods and services enabling them to take economic decisions freely
Dominant Position	: The power of one or more undertaking(s) in a certain market to determine economic parameters like

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	price, supply, production and the amount of distribution by acting regardless of their competitors and customers
Undertaking	: Natural and legal persons who produce, promote and sell goods and services in the market and entities which constitute an economic totality
Association of Undertakings	: All kinds of associations either having or not having legal entity, which are established by undertakings in order to accomplish certain goals
Goods	: All kinds of movable and immovable property subject to trade
Services	: Physical, intellectual or combined activities carried out for a price or profit.
Institute	: Competition Institute
Committee	: Competition Committee

Section Two

Chapter One

Prohibited Activities

Agreements, Concerted Practices and Decisions Restricting Competition

- Article 4.** The agreements between undertakings, concerted practices and decisions and actions by associations of undertakings which have as their object or effect the prevention, distortion or restriction of competition are illegal and prohibited.
- Such situations consist of in particular;
- a) Fixing the purchase or sale price of goods or services, the elements determining price such as cost and profit and all kinds of trading conditions,
 - b) Sharing markets and sharing or controlling all kinds of sources of supply and market elements,
 - c) Controlling the amount of supply or demand of goods and services or determining them outside the market,
 - d) Making it harder for other firms to compete, restricting competition, excluding firms operating in the market by boycotting or by

- other actions preventing entry into the market.
- e) Applying dissimilar conditions to equivalent transactions with equally ranked parties, excluding exclusive distribution agreements
 - f) Making the conclusion of contracts subject to conditions of purchasing other goods and services together with the purchase of a good or service or of displaying other goods and services by intermediary undertakings together with the selling of a good or a service or of resupplying a good or a service, contrary to the context of the contract or commercial usage.

It is assumed that undertakings are in concerted practice when changes of the price in the market or the supply and demand ratio or the operation region of the undertakings are similar to the markets where competition is prevented, distorted or restricted in cases where the existence of such an agreement can not be proved.

Each of the parties may relieve themselves of liability by proving that they are not in concerted practice provided that their claim is supported by economic and rational facts.

Exemption

Article 5.

Provided that all the conditions listed below are present, the Committee may grant exemption from the implementation of the provision of Article 4 to agreements between undertakings, concerted practices and decisions of associations of undertakings upon the application of the concerned parties.

- a) Provision of either new developments and innovations in the production or distribution of goods or economic or technical developments,
- b) Benefit of the consumer from such provision,
- c) Maintenance of competition in a substantial portion of the relevant market,
- d) Restriction of competition no more than required for the realization of the goals mentioned in paragraphs (a) and (b).

Exemption may be granted for a maximum period of five years. Granting of exemption may be subject to the fulfillment of certain conditions and/or liabilities. In the case that the conditions for exemption are maintained at the time that the exemption period has expired, the exemption may be renewed upon the application of the concerned parties.

The Committee may issue communiques which provide block exemptions to agreements on certain subjects and stipulate their terms and conditions provided that the conditions mentioned in the first paragraph are fulfilled.

Abuse of dominant position

- Article 6. Any abuse of a dominant position within the whole territory of the country or in a part of it, by one or more undertakings either on their own or by agreements concluded with other parties or by concerted practices, is illegal and prohibited. Abusive actions are especially as follows:
- a) Prevention of other undertakings from entering the commercial activity area either directly or indirectly or committing actions aiming to hinder the activities of competitors in the market.
 - b) Applying dissimilar conditions to equivalent buyers for equivalent rights, obligations and actions, and thereby discriminating either directly or indirectly
 - c) Bringing limitations to conditions of trade such as the requirement of selling other goods and services together with a good or a service or of displaying of another good or a service by the buyer together with a good or a service demanded by buyers acting as intermediary undertakings or fixing the minimum price of a good in case of resale.
 - d) Actions aiming to distort competition in a separate goods or services market by exploiting the financial, technological and commercial advantages gained from dominance in a certain market.
 - e) Restriction of production, marketing or technical development to the detriment of the customer,

Merger or Acquisition

- Article 7. Any mergers by one or more undertakings aiming to gain a dominant position or to strengthen their dominant position, causing a substantial restriction of competition in any of the goods or services market in the whole territory of the country or a portion of it, or the acquisition of the whole or a part of the assets or shares or securities which grant managerial rights of an undertaking by any undertaking or person, excluding inherited rights, are illegal and prohibited. The Committee announces the type of mergers and

acquisitions which are required to be notified to and for which permission should be granted by the Committee for their legal validity, by issuing communiques.

Chapter Two Authorities of the Committee

Negative Clearance

Article 8. Upon application by the undertakings or associations of undertakings concerned, the Committee may grant a negative clearance certificate on the basis of the facts in its possession, stating that an agreement, practice or merger or acquisition does not breach Articles 4, 6 and 7 of this Law.

The Committee may change its opinion at any time after the granting of the certificate pursuant to the provisions of Article 13.

Termination of Infringement

Article 9. In the case that the Committee finds upon denunciation, application or notification of the Ministry or by its own initiative that Article 4, 6 and or 7 of this Law are infringed, notifies the related undertakings or associations of undertakings of its decision pursuant to the provisions of chapter 4, stating the measures to be taken for the establishment of competition and the protection of the situation before the infringement.

Natural or legal persons who a legitimate interest are entitled to file an application.

The Committee, before taking a decision under paragraph 1, addresses to the undertakings or associations of undertakings concerned, its written opinions on how they will terminate the infringements.

In cases when there is the possibility of the occurrence of a serious and irreparable damage until the final decision, the Committee may take interim measures not exceeding the scope of the final decision in order to sustain the pre-infringement situation.

Notification of Agreements, Mergers and Acquisition

Article 10. The agreements, concerted practices and decisions within the scope of Article 4 must be notified to the Committee within one month of their conclusion. Exemption provisions may not be applied to

non-notified agreements. Exemptions granted to notifications not made on time are valid after the date of notification.

The Committee, after the date on which it is notified of a merger or acquisition within the scope of Article 7 is obliged either to permit the merger or the acquisition to take place after the pre-examination within fifteen days or, to notify the concerned parties that the merger or acquisition transaction is suspended until the final decision and that the transaction may not be implemented along with its preliminary objection and other measures it deems necessary. If it decides to conduct a final examination of this transaction.

In this case, the provisions of Articles 40 to 59 of this Law are applied

In cases where the Committee does not respond to the application regarding the merger or acquisition within the set period or when it refrains from taking action, the merger or acquisition agreements, obtain legal validity by entering into force 30 days after the date of notification.

Non-notification of the Merger and Acquisition to the Committee

Article 11. In cases where a merger and acquisition transaction whose notifications are compulsory are not notified to the Committee, the Committee commences the examination procedure on its own initiative when it is informed of such transactions in some way. Upon examination;

- a) It allows the merger or acquisition in cases where it decides that the merger or acquisition does not fall under the scope of paragraph 1 of Article 7; however, it imposes a fine on the parties concerned because of refraining from notification.
- b) If it decides that the merger or acquisition falls under the scope of paragraph 1 of Article 7, it orders, along with other measures it deems necessary, that the merger or acquisition transaction should be terminated, all faits accomplis realized against the law should be annulled, all shares or property should be returned, if possible, to their previous owners, if not, the abovementioned should be assigned and transferred to third parties and that the persons acquiring the undertakings should be withheld from managing those undertakings in any way

until the abovementioned is assigned to its previous owners or third parties.

Notification

Article 12. The notification includes the complete and accurate information required in the Notification Forms prepared by the Committee. Any one of the parties may notify. The notifying party is obliged to inform the other concerned party of the notification. Relevant documents are attached to the notification and the notification is assumed to be made on the date of its registration into the records of the Committee.

Revocation of Decisions of Exemption and Negative Clearance

Article 13. Exemption and negative clearance decisions may be revoked or certain actions of parties may be prohibited under the following circumstances.

- a) A change in the terms of any event causing the taking of the decision,
- b) Non-fulfillment of conditions or liabilities which have been decided upon,
- c) Taking of the decision pursuant to incorrect or incomplete information regarding the agreement concerned.

The revocation decision becomes valid as of the date of occurrence of change in paragraph (a) and as of the dates of exemption and negative clearance decisions in other circumstances.

It is assumed that no decision has been taken if the incorrect or incomplete information mentioned in paragraph (c) is supplied on purpose by the undertaking concerned.

Requests for Information

Article 14. In carrying out the duties assigned to it by this Law, the Committee may request all necessary information from all public institutes and institutions, undertakings and associations of undertakings. These authorities, the representatives of undertakings and associations of undertakings are required to provide the requested information within the period designated by the Committee.

Investigation on the Spot

Article 15. In carrying out the duties assigned to it by this Law, the Commission may undertake investigations into undertakings and associations of undertakings in cases it deems necessary.

To that end, the Committee is empowered;

- a) to examine the books and all kinds of business records and documents and to take copies if necessary.
- b) to ask for written or oral explanations on specific issues,
- c) to carry out investigations on the spot regarding all kinds of assets of the undertakings.

The investigation is carried out by the officials working under the command of the Committee. The officials, when carrying out the investigation, have along with them, an authorization specifying the subject matter and purpose of the investigation and stating that administrative penalty payments will be imposed in cases where incorrect information is submitted.

Chapter Three Administrative Penalty Payments

Fines

Article 16.

The Commission may, by decision impose on the natural and legal persons in the form of undertakings, on the associations of undertakings and/or members of these associations, fines of;

- a) hundred million liras if they supply misleading or incorrect information in applications for exemption, negative clearance and permission for mergers and acquisitions and in notifications and applications regarding agreements concluded before the date of entry into force of this Law,
- b) hundred million liras if they supply incomplete, incorrect or misleading information in response to a request of information by the decision of the Committee or during an investigation on the spot,
- c) fifty million liras if they fail to notify a merger or an acquisition or agreements, concerted practices and decisions falling under the scope of Article 4 within the fixed period,
- d) Sixty million liras if they fail to comply with the obligations imposed in the exemption decisions taken by the Committee pursuant to paragraph 3 of Article 5.

The Committee may by decision impose fines not exceeding 10% of the aggregate turnover of the

preceding financial year of the natural and legal persons in the form of undertakings and associations of undertakings and/or members of these associations, on the persons who are determined to have committed the actions prohibited in Articles 4 and 6 of this Law by the decision of the Committee and who commit the actions mentioned in paragraph (b) of Article 11 of this Law, provided that such amount is not less than 200 million liras. In cases where undertakings and associations of undertakings which have a legal entity are imposed to fines stipulated in the first paragraph, the natural persons employed in the management of this entity are, in person, imposed to fines up to ten percent of the imposed fine.

In setting the amount of a fine, the existence of intent, the gravity of the infringement, the power of the undertaking or undertakings on whom fines are imposed in the market and the gravity of the probable damage is taken into consideration by the Committee. No fines shall be imposed to the agreements and decisions notified in time for the period until the date of final decision, as long as they are not explicitly infringing the provisions of this Law.

Periodic Penalty Payments

Article 17. The Committee may by decision impose on the undertakings and associations of undertakings for each day of delay calculated from the date set in the decision, periodic penalty payments of;

- a) fifty million liras if they fail to comply with the decision taken pursuant to Article 9 regarding the termination of infringement and other measures
- b) twentyfive million liras if they fail to apply the decisions and measures of the Committee taken pursuant to paragraph (b) of Article 11
- c) twentyfive million liras if they commit the actions prohibited by the first paragraph of Article 13
- d) twenty million liras if they prevent the officials of the Committee to carry out investigation on the spot

The Nature and Imposing of the Penalty Payments Pursuant to this Law

Article 18. All kinds of penalty payments stipulated in this Law are administrative in nature. Fines or periodic penalty payments are imposed individually on each party acting contrary to this Law.

In the case that the decision regarding the imposing of a periodic penalty payment is appealed, the decision will not be applied as of the date of appeal if an injunction of relief is ordered by the court regarding the periodic penalty payment.

Expiration of Fines and Periodic Penalty Payments:

Article 19.

The authority of the Committee to impose fines and periodic penalty payments is subject to the belowmentioned expiration periods:

- a) three years in cases of infringement of provisions concerning application or notification of undertakings or associations of undertakings, supplying information or submitting to investigations,
- b) five years in other cases

The period begins as of the date of infringement.

If the infringement is continuous or repeated, the period begins as of the date of termination of the infringement or the date of the last repetition of the infringement.

Any action taken by the Committee in order to carry out an examination or research regarding this infringement suspends the expiration period. Appealing against the decision suspends the expiration period.

Section Three

Organization

The Competition Institute

Article 20.

The Competition Institute, having public legal entity and administrative and financial autonomy is established in order to ensure the formation and development of the goods and services market in a free and healthy competitive environment, the implementation of this Law and to carry out the duties given by the Law.

The Ministry which the Institute is in related to is the Ministry of Industry and Trade.

The Institute is independent in carrying out its duties. No entity, authority or person may give orders or commands in order to influence its final decision.

The center of the Institute is in Ankara.

Organization of the Competition Institute

Article 21.

The organization of the Institute consists of;

- a) the Competition Committee
- b) the Presidency, and
- c) the Service Units

Chapter One The Competition Committee

Organization of the Committee

Article 22. The Committee comprises of a total of eleven members, one of which is the Chairman and one, the Second Chairman.

The Council of Ministers elects and appoints the members from among the two candidates to be nominated for each vacant seat by the Competition Committee for four members, the Ministry of Industry and Trade for two members, the State Ministry to which the Undersecretariat of the State Planning Organization is attached for one member, and the Supreme Court of Appeals, the State Council, the Inter-University and the Union of Chambers and Commodity Exchanges of Turkey for one member each, from within or outside of the abovementioned insitutions.

It is compulsory that a minimum of half of the candidates nominated by the Competition Institute should be elected from among the professional personnel who have acquired the title of the "expert of the Institute".

The Council of Ministers appoints a Chairman from among the three candidates nominated by the Committee. The Members of the Institute elect the Second Chairman from among themselves.

Qualifications for Appointment

Article 23. The Chairman and members of the Committee are appointed from among persons who have pursued the country or abroad, a university education of at least four years in the fields of law, economics, engineering, business administration or finance, possess adequate professional knowledge and experience and have served in their own professional field for a minimum of ten years in the public or private sectors. The members should also fulfill the conditions set forth in Article 48 (A) (1, 4, 5, 6 and 7) of the Law on State Officials.

Term of Office**Article 24.**

The term of office of the Chairman, the Second Chairman and members of the Committee is six years. Members whose term has expired are eligible for reelection. One third of the Committee members are renewed every two years. The figures and proportions in the provisions pertaining to the formation of the Committee are taken into consideration during renewal. Should the Chairman's office or a membership be vacated before the expiry of the term of office, for any reason other than renewal, an election and appointment for the vacant position is carried out within one month. In such a case, the new appointee completes the term of the person he/she replaces.

The Chairman and members of the Committee may not be dismissed on any grounds before the expiration of their term. However, the terms of office of the Chairman and members of the Committee are terminated if it is ascertained by a Committee decision that they have lost the qualifications required for their appointment or that their position is in breach of Article 25 of this Law, or it is determined by a court decision that they have committed a crime related to the duties assigned to them by this Law.

Prohibitions**Article 25.**

Unless supported by a special law, Chairman and members of the Committee may not assume any official or private duty, engage in commerce, or have shares on partnerships.

The Chairman and members of the Committee are obliged to dispose of all kinds of securities in their possession as defined under the capital market legislation prior to assuming office, excluding those bonds issued by the Treasury in connection with public borrowing, by means of selling or transferring them to persons other than to their kin by blood up to the third degree, and kin by marriage up to the second degree. Members who do not act in conformity with this provision within 30 days are considered as having resigned from membership.

Duties in associations and foundations whose aim is social assistance and educational services, and partnership in a non-profit cooperative are excluded from this provision.

Members and personnel of the Committee may not disclose or exploit in their own or in others' interests

the confidential information connected with the Institute or the trade secrets of undertakings or associations of undertakings which have come to their knowledge during the implementation of this Law, even if they are no longer in office.

Oath

Article 26. Members of the Committee of Competition take on oath, in the presence of the First Presidium of the Supreme Court of Appeals, that they will carry out the business of the Institute with full diligence and honesty during their term of office, and that they will not act or allow others to act contrary to the provisions of this Law.

The application concerning the oath will be considered as urgent business by the Supreme Court of Appeals. The Chairman and members of the Committee may not commence their duties until they take an oath.

Duties and Powers of the Committee

Article 27. The duties and powers of the Committee are as follows:

- a) to carry out, upon application or on its own initiative, examinations, investigations and inspections with respect to activities and legal transactions prohibited by this Law; should it be ascertained that the provisions regulated by this Law have been infringed, to take the necessary measures for terminating infringements and to impose administrative penalty payments on those responsible for the infringement;
- b) to evaluate the applications of the concerned parties for exemption or negative clearance and to issue exemption or negative clearance certificates to admissible agreements;
- c) to constantly monitor the markets related to exemption decisions and the negative clearance certificates that were issued, and to reassess the applications of those concerned when any changes are observed in those markets or in the conditions the parties are in;
- d) to permit mergers or acquisitions;
- e) to elect the Second Chairman of the Committee;
- f) to issue communiques and to make the necessary regulations with respect to the implementation of this Law;
- g) to declare opinions regarding the amendments

which are required to be made in the legislation pertaining to competition law, either on its own initiative or upon the request of the Ministry;

- h) to follow up the legislation, applications, policies and measures of other countries concerning agreements and decisions restricting competition;
- i) to determine the personnel policy of the Institute, to follow its implementation, to carry out recruitment of staff, to approve the Institute's annual budget, final income and expenditures statement and the annual activity program to be prepared by the Presidency, to decide on transfers between budget accounts when deemed necessary;
- j) to determine the candidates to be nominated by the Institute for vacant Committee memberships,
- k) to publish an annual report on its activities and the situation and developments in its area of function;
- l) to negotiate and to decide on proposals regarding purchases, such as procurement of movable and immovable property and fixtures, and sales and leases, to make the necessary regulations thereof;
- m) to decide on all transactions pertaining to the receivables, rights and obligations of the Committee against third parties;
- n) to perform other duties stipulated by this Law.

Functioning Principles of the Committee

Article 28. The Committee is administered and represented by the Chairman and by the Second Chairman in case of absence of the Chairman due to leave, sickness, vacation and other reasons.

Meetings are chaired by the Chairman, or by the Second Chairman in his absence, who prior to the meeting draws up and forwards to the Committee members, the agenda to be discussed.

Committee members may not take part in the discussions and votes on matters that concern themselves or their kin by blood up to the third degree or their kin by marriage up to the third degree or their kin by marriage up to the second degree.

Chapter Two

The Presidency

Article 29. The Presidency comprises the Chairman, the Second Chairman and the Vice Chairman of the Committee. The Chairman of the Committee is the chief officer of the Institute and he is responsible for the general administration and representation of the Institute. This responsibility covers the duties and powers pertaining to the regulation of the general framework, supervision, assessment and the publicizing of the activities of the Institute when deemed necessary.

Duties and Powers of the Presidency

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

- a) to maintain the organization and the coordination of the harmonized, efficient, disciplined and proper functioning of the service units and the Committee which is the judicial organ of the Institute, on top level, to resolve any problems that may arise between the service units of the Institute with respect to duties and authorities;
- b) to determine the agenda, date and hour of the Committee meetings and to chair the meetings,
- c) to ensure the execution of the Committee decisions and to follow up the implementation of these decisions,
- d) to modify the proposals received from service units to final form and to present them to the Committee;
- e) to prepare and to present to the Committee the annual budget, final income and expenditures statement and annual activity reports of the Institute, to ensure the implementation of the budget of the Institute and the collection of its incomes and the effecting of its expenditures;
- f) to present opinions on the decisions to be adopted in connection with competition policies and the relevant legislation;
- g) to regulate and to conduct the relations of the Institute with the Ministry and other institutions;
- h) to represent the Institute before governmental and private institutions;
- i) to provide for the publication of final decisions of the Committee and the communiques and rules to be drawn up by the Institute;
- j) to determine the duties and the extent of the

powers of the personnel authorized to sign on behalf of the Chairman of the Committee

Vice Chairman

Article 31. Two Vice Chairmen may be appointed in order to assist the Chairman in carrying out the duties of the Presidency. The Vice Chairmen are responsible for performing the duties assigned and the instructions given to them by the Chairman, and for maintaining harmony and cooperation between the organizational ranks and the service units concerned.

The Service Units

Article 32. The service units of the Competition Institute comprises the main service units organized in the form of departments, consultation units and assistant service units.

Auditing

Article 33. The accounts of the Institute are subject to auditing by the State Audit Court.

Chapter Three

Status of the Personnel of the Committee

Article 34. The main and permanent duties entailed by the services of the Institute are performed by the personnel employed on a contractual basis by an administrative employment contract. The Institute may employ an adequate number of professional experts and non-career experts. The Institute personnel is subject to Law No. 657 on State Officials, excluding wages and financial rights. The Committee is free in adjusting the status of the organizations and staff according to the needs. The cancellation and setting up of positions are carried out by the Committee. The services which are of a temporary nature or which require a specific expertise are determined by the Presidency. The provisions pertaining to vicarious or employment contracts are applied to issues related to personnel to be employed for such services. The salaries which those employed under this paragraph receive from social security institutions will not be annulled. Foreign experts may also be employed in accordance

with the principles of the regulations which will be prepared by the Presidency and put into effect with the approval of the Committee.

Appointment to the Position of Assistant Competition Expert

Article 35. The following qualifications are required for appointment as an assistant competition expert:

- a) an economics or business administration degree from faculties of law, economics, political science, business administration or economic and managerial sciences or an industrial engineer or business engineer degree from engineering faculties or a degree from foreign higher educational institutions that are accepted as equivalent to the aforesaid schools
- b) to be successful in the competitive examination to be held;
- c) to be successful in the foreign language examination to be held in one of the English, French or German languages
- d) not to have completed the age of thirty as of the first day of January of the year which the examination is held.

The other required qualifications will be specified in the examination rules to be issued by the Committee.

Competition Expert

Article 36. Those who are appointed as assistant competition expert pursuant to Article 35 receive the title of "Competition Expert" if the thesis which they will or already have prepared on their own subjects are accepted by the Committee on the condition that they have already been employed for at least three years and possess a favorable record.

Competition experts and assistants bear the title and the powers of professional staff.

Wages and Other Financial Rights

Article 37. The monthly salaries of the Chairman and members of the Committee will be determined by the Council of Ministers upon the proposal of the Ministry of Industry and Trade, provided that they don't exceed twice the monthly income of the highest state official including all fringe benefits of the highest ranking state official. Those benefits that are paid to the highest state official and which are not subject to income tax are also exempted from income tax under

this Law.

The wages and other financial rights of the personnel of the Institute are determined by the Committee upon the proposal of the Presidency, within the framework of the principles stipulated in the first paragraph regarding salaries and the changes to be made in the salaries.

Pension Schemes and Assessment of Service Periods

Article 38.

The Chairman and members of the Committee and the other staff are subject to the Law on Pension Funds. When their term of office expires, persons who are subject to Law no. 657 on State Officials and who are appointed as the Chairman or members of the Committee or who are employed by the Institute, recover their status as government officials and are appointed to a position which complies with their status. In such a case the term they have served at the Institute is taken into account in their service period pursuant to the provisions of the law they are subject to.

These provisions also apply to the Chairman and members, experts or other personnel who come from universities, without prejudice to the conditions required for acquiring academic titles. With respect to pension schemes, the Chairman of the Committee, members of the Committee and Department Managers are considered to be at the same level as the Undersecretary of the Ministry, the Assistant Undersecretaries of the Ministry and General Managers of the Ministry, respectively. The status of the remaining staff with respect to retirement will be specified in the regulations which the Presidency will prepare and put into effect after the approval of the Committee.

Revenues of the Institute

Article 39.

The revenues of the Institute form the budget of the Institute and consist of the following income items:

- a) The amount to be allocated in the Ministerial budget,
- b) Twenty-five percent of the fines to be imposed by the Committee under Articles 16 and 17 of this Law, and
- c) Publications and other revenues.

The revenues of the Institute are collected at an account to be opened in the Central Bank of the Republic of Turkey or a state bank. The revenues

stated in paragraph (b) will be deposited at the relevant account of the Institute at the time when the fines become final and are paid to the Treasury.

Section Four

Procedure for the Inspections and Examinations of the Committee

Preliminary Examinations

Article 40. The Committee decides either on its own initiative or as the result of a received application, to directly initiate an investigation or to conduct a preliminary examination in order to determine whether there is call for an inspection.

In the case that it is decided to conduct a preliminary examination, the Chairman of the Committee assigns one or more of the professional experts as reporters. The reporter who is assigned the task of conducting a preliminary examination submits to the Committee in writing all the information and all kinds of evidence he has obtained and his opinions on the matter within 30 days.

Conclusion of Preliminary Examinations

Article 41. Within 10 days from the submission of the preliminary examination report to the Committee, the Committee meets in order to adopt a decision by assessing the obtained information and decides whether investigations will be initiated or not.

Notification of Applicants

Article 42. In the case that the Committee renders the allegations set forth in applications of either denunciation or complaint adequate and well-founded, those making the denunciation or complaint are informed in writing that the allegations set forth are rendered well-founded and that examinations have been initiated.

In the case that the Committee explicitly rejects applications or when it is considered as having rejected it by failing to give notice within the prescribed period, anyone who can substantiate that the matter involves his interests directly or indirectly may appeal against the decision of dismissal by the Committee.

Initiation of Investigation by the Committee

Article 43. In the case that it is decided to carry out an investigation, the Committee also designates the Committee member or members to conduct the investigation together with the assigned reporter or reporters. The investigation is completed within 6 months at the latest. If it is deemed necessary, the Committee may grant an additional period of 6 months for only once.

The Committee gives notice of the investigations it launches to the parties concerned within 15 days from the date of adoption of a decision to initiate an investigation and requests the parties to submit their first written defence within 30 days. The term granted to the parties for the first written reply commences only after the Committee has forwarded to the parties sufficient information with respect to the type and nature of the allegations together with the letter of notification.

The decision of the Committee to initiate investigations is final.

Gathering of Evidence and Informing of the Parties

Article 44. A board acting on behalf of the Committee and composed of the Committee members and reporters designated and appointed by the Committee may exercise the powers for requesting information and carrying out on the spot investigations as regulated by Articles 14 and 15, respectively, of this Law, during the investigation stage. It may request the parties and other relevant entities to submit the documents it requires and any information whatsoever during the specified period of time. During the stage of investigation by the Committee the person or persons who are alleged to have infringed this Law may submit to the Committee at any time, any information or evidence that may have an impact on the decision.

Parties who are notified that they are the subject of an investigation may, until their request to use their right to an oral defence, demand that a copy of all the documents drawn up by the Institute in connection with themselves and all evidence that has been collected be forwarded to them if deemed appropriate.

The Committee may not base its decisions on matters which it did not notify to the parties or on which it did not grant them the right of defence.

Notification and Reply

Article 45. The report drawn up at the end of the investigation stage is submitted to all members of the Committee and to the parties concerned.

Those who are determined to have infringed this Law are given notice to send their written defence to the Committee within 30 days. The officials assigned with the task of conducting the investigation, submit a supplementary written opinion on the defence to be forwarded by the parties within 15 days, and this is also notified to all members of the Committee and the parties concerned. The parties may submit their replies to this opinion within 30 days. In the case that the parties provide justifiable grounds, these periods may be prolonged for one time only and for a maximum of the same amount of time.

Any defence by the parties that is not delivered on time will not be taken into consideration.

Hearing of the Parties

Article 46. The hearing is held upon the notification of the parties of their will to exercise their right of oral defence within their petition of reply or defence. The Committee may also decide at its own discretion to have a hearing.

The hearing is held at least within 30 days and at most 60 days starting from the conclusion of the investigation stage. Invitations for the hearing are sent to the parties at least 30 days prior to the date of the hearing.

Principles Regarding Hearings

Article 47. The hearings shall be held openly. The Committee may decide to hold hearings in camera on grounds of protecting the rules of general ethics and trade secrets.

The hearings shall be presided by the Chairman of the Committee or by the Second Chairman in his absence. The meeting may convene with the participation of the Chairman of the Committee or the Second Chairman and at least 7 Committee members. The hearings shall be concluded after a maximum number of five consecutive sessions, and separate meetings held within the same day are considered as one single session.

The parties are obliged to submit to the Committee the means of proof they will make use of during the

hearing at least 7 days prior to the hearing. The parties may not make use of any means of proof which they have not submitted within the prescribed period.

During the hearing, the parties concerned may make use of any evidence or proof as regulated in Section Eight of the Second Part of the Turkish Civil Proceedings Law.

The parties who are alleged to have infringed this Law or their representatives and the ones who verify before the committee that they either have direct or indirect interests or their representatives may take part in the hearings.

Final Decision

Article 48.

A decision is given on the same day that the oral hearing is held, or, if this is not possible, within 15 days following the meeting, together with its justification.

In the event that a hearing has not been requested by the parties and the Committee has not decided *ex officio* to hold a hearing, the final decision shall be given within 30 days following the completion of the investigation stage on the basis of an examination to be carried out on the case file.

If the parties concerned do not take part in the hearing even though an oral defense meeting has been decided upon, then the final decision shall be given provisionally within one week following the designated date of such meeting, on the basis of an examination to be carried out on the case file.

Confidentiality of Sessions

Article 49.

The decisions of the Committee are taken following the sessions held in camera and explicitly pronounced. No member of the Committee may abstain from voting. Unless they have an acceptable excuse, all Committee members who were present in the hearing are obliged to participate in the sessions.

Session Procedure

Article 50.

The sessions are presided by the Chairman of the Committee or, in his absence, by the Second Chairman, who determines the items to be decided upon. After the items are freely discussed the Chairman collects the votes of the members, and finally casts his own vote.

Quorum For Meeting and Taking Decisions

Article 51. For taking its final decisions, the Committee convenes with the participation of at least 8 members including the Chairman or the Second Chairman, and takes a decision by the affirmative votes of at least 6 members.

In cases where the required quorum for taking a decision can not be attained in the first meeting, the Chairman ensures the participation of all members for the second meeting; however, if this cannot be accomplished, a decision shall be taken by the absolute majority of those attending the meeting. Even in that case, the required quorum for meeting cannot be less than the number stated in the first paragraph.

In the case of a tie in the second meeting, prepondance shall be given to the votes of the side including the Chairman.

For decisions other than a final decision, particularly for decisions and transactions involving a precautionary measure or a recommendation, a meeting with the participation of at least one third of the Committee members and a decision taken by absolute majority of the attending members is required.

Items Required to be Included in Decisions

Article 52. The decisions include the following items:

- a) Name and surnames of Committee members who have taken the decision
- b) Name and surnames of persons who have carried out the examination and the investigation
- c) Names and titles of the parties and their residences and differentiating characteristics
- d) Summary of the claims of the parties
- e) Summary of the economic and legal issues reviewed and discussed
- f) Opinion of the reporter
- g) Evaluation of all submitted evidences and all forwarded defences
- h) Leading motives and legal grounds of the decision taken
- j) Conclusion
- k) Dissenting opinions, if any.

The liabilities incurred on the parties and the rights granted by the decision should be clearly stated as to avoid any doubts and hesitations.

Drawing up of Decisions

Article 53. The decision is drawn up by Chairman of the Committee or by a person assigned by him. The decision is signed by all members attending the meeting. The members representing the dissenting votes may furnish a dissenting opinion either individually or jointly. The original copy of the decision is kept in the archives of the Committee. One copy is furnished to each of the parties against signature and one copy is forwarded to the Publication Department of the Competition Institute. After their finalization, the Committee decisions are published in the Official Gazette in such a way as to avoid disclosing of any trade secrets of the concerned parties.

Commencement of Prescribed Terms

Article 54. The terms prescribed in decisions taken by the Competition Committee commence on the date of notification to the parties concerned of the decisions including leading motives.

Right of Appeal Against Decisions of the Committee

Article 55. An appeal may be submitted to the Council of State against the final decisions, interim measure decisions, fines and periodic penalty payments of the Committee within the prescribed period, following the notification of any such decision to the parties. If no such appeal is submitted within the prescribed period, the decision shall become final. The penalty payments imposed by the Committee may not be collected before the finalization of the Committee decision. The enforcement of a Committee decision imposing a fine or a periodic penalty payment shall be subject to the provisions of Law No. 6183 Concerning Procedures for the Collection of Public Claims.

Section Five**Effect of the Restriction of Competition In the Field of Private Law****Legal Status of Agreements and Decisions Contrary to this Law**

Article 56. Any and all agreements and the decisions of associations of undertakings which are contrary to Article 4 of this Law are invalid. No one may be held liable to perform any obligation arising from such

agreements and decisions. In cases where a request is made for recovery on grounds of invalidity of any obligation performed previously, the reimbursements to be made by the parties shall be subject to Article 63 and 64 of the Law on Obligations.

Article 65 of the Law on Obligations shall not apply to any disputes arising as a result of this Law.

Right to Indemnity

Article 57. Any person who prevents, distorts or restricts competition through practices, decisions, contracts or agreements contrary to this Law or abuses his/her dominant position in a specific goods or services market, is obliged to compensate all kinds of damages of the injured parties. If the damage has been caused as a result of acts of more than one person, such persons shall be jointly responsible for damages involved.

Indemnification of Damages

Article 58. Persons suffering a damage as result of prevention, distortion or restriction of competition shall be entitled to demand the difference between the price they paid and the price they would have paid if competition were not restricted, as compensation. The competing undertakings affected by the restriction of competition shall have the right to demand indemnification for all their losses and damages from the undertaking or undertakings responsible for restriction of competition. In determining the damages involved, the total profit expected to be gained by the suffering undertakings shall also be calculated by taking into consideration the balance sheets pertaining to previous years.

If the outcoming damage is caused by an agreement, decision or gross negligence of the parties involved, the Judge may, upon request of the injured parties, order an indemnity payment amounting to three times the material damages incurred, or the profit obtained or expected to be obtained by the parties responsible for the damages.

Burden of Proof

Article 59. If the suffering parties submit to the judicial authorities any evidences giving the impression of the existence of an agreement or the distortion of competition in the market, particularly with respect to an actual market sharing, stability in market prices for

relatively long periods or price increases effected in closely coinciding intervals by the undertakings operating in the market, then the burden of proving that the undertakings concerned have not been acting in concerted practice shall pass on the defendants. The existence of agreements decision or applications restricting competition may be proved by any kind of evidence.

Section Six **Final Provisions**

Offenses Committed Regarding the Institute's Funds, Documents and Properties

Article 60. The funds, documents and all properties of the Institute are deemed as State Property. The Chairman and members of the Committee committing an offense in connection with their duties shall be punished in the same way as State officials. Offenses committed against the members and personnel of the Committee shall be deemed as committed against State officials.

Prosecutions with respect to such offenses shall be carried out in accordance with the general provisions.

Notifications

Article 61. Notifications to be made to the parties concerned pursuant to this Law shall be subject to the Notifications Law no. 7201.

Regulations

Article 62. Except those specified in the present Law, the principles regarding the exercise of powers of the Institute, its administration and functioning principles, procedures and principles applicable to the collection of its revenues, rendering of its expenditures and supervision of the abovementioned transactions, principles concerning changes to be made in monthly salaries, principals concerning employment of foreign experts, arrangements concerning the procedures of purchasing and bidding relating to movables and immovable to be purchased by the Institute and the provisions concerning the accounting system of the Institute shall be set forth through regulations to be prepared by the Committee and put into force by a resolution of the Council of Ministers.

The Regulations to be issued pursuant to this Law shall be issued within one year following the date of the promulgation of this Law.

Non-applicable Provisions

Article 63. The Institute shall not be subject to the General Accounting Law no. 1050, State Tender Law no. 2886 and Travelling Expenses Law No. 6245 and to their supplements and amendments.

The revenues of the Institute shall be exempt from the Corporation Tax Law, the donations and grants from the Inheritance and Succession Tax, the interest to be calculated in favor of the Institute as a result of executed transactions from the Banking and Insurance Transactions Tax, the revenues of the Institute and all transactions relevant to such revenues as well as to purchases and sales of immovable from all taxes, duties and fees, and the vehicles to be purchased for the Institute from the Vehicle Purchasing Tax and Stamp Duty.

Interim

Article 1.

First appointment of officers to the Competition Committee shall be carried out pursuant to the principles stated in Article 22; however, the provisions relating to the candidates to be nominated by the Competition Committee shall not be applicable.

In the preliminary appointment the Prime Minister and the Minister of the Industry and Trade nominate two candidates each, instead of the Committee. The members of the Committee to be replaced at the end of the second and fourth years shall be determined by drawing of names at the last meetings of the Committee within the said period. For the first period, the Chairman of the Committee shall be appointed from among the two candidates to be nominated by the Ministry of Industry and Trade. The Chairman and the Second Chairman of the Committee shall then serve for a period of six years to complete their term of office without participating in the drawing of names.

Interim

Article 2.

The Competition Committee to be appointed pursuant to the principles set up in Interim Article 1

shall establish the organization of the Competition Institute and shall then announce it by means of a Communiqué. All agreements and decisions existing on the date of said announcement shall be notified to the Committee within six months from that date.

Interim

Article 3.

The Competition Committee may appoint for only once, a sufficient number of experts from public or private undertakings for employment in the Institute without taking into consideration the requirements stated in Articles 35 and 36 of this Law within one year from the date of entry into force of this Law.

Nevertheless, the persons to be appointed as experts are required to meet the qualification stated in Subparagraphs (a) and (c) of First paragraph of Article 35, to have at least five years of experience in their profession and be under forty-one years of age. Those to be appointed as experts from public undertakings shall also be required to have started working in their professions after having passed a competitive assessment examination.

Until the establishment of the required organization for the Competition Institute, the personnel of the related Ministry may be temporarily employed in the execution of the activities of the Institute.

Entry Into Force

Article 64.

Articles 16 and 17 of this Law, which concern the administrative penalty payments shall enter into force one year after publication of this Law while other Articles, on the date of its publication.

Execution

Article 65.

The provisions of this Law shall be executed by the Council of Ministers.

Gesetz gegen den unlauteren Wettbewerb

Vom 7. Dezember 1994

ABl. Nr. 22140 vom 13. Dezember 1994

Nr. 4054

Übersetzerin: Veliye Yanlı*

Erster Abschnitt

Zweck, Anwendungsbereich, Definitionen

Zweck

Art. 1- Zweck dieses Gesetzes ist es, den Vereinbarungen, Beschlüssen und Verhaltensweisen, die den Wettbewerb auf dem Waren- oder Arbeitsmarkt verhindern, beeinträchtigen oder einschränken, und dem Mißbrauch der marktbeherrschenden Stellung von Unternehmen vorzubeugen und den Wettbewerb durch hierfür erforderliche Regulierung und Überwachung des Marktes zu schützen.

Anwendungsbereich

Art. 2- Den Wettbewerb verhindernde, beeinträchtigende oder einschränkende Vereinbarungen, Beschlüsse und Verhaltensweisen zwischen Unternehmen, die sich innerhalb der Grenzen der Republik Türkei auf dem Waren- oder Arbeitsmarkt betätigen oder den Waren- oder Arbeitsmarkt beeinflussen, der Mißbrauch der marktbeherrschenden Stellung von Unternehmen und andere den Wettbewerb in erheblichem Maße vermindernde Tätigkeiten und rechtliche Handlungen, insbesondere die Fusion oder Übernahme liegen im Anwendungsbereich dieses Gesetzes, wie auch jede Maßnahme, Feststellung und Regulierung zum Schutz des Wettbewerbs und entsprechende Überwachungshandlungen.

Definitionen

Art. 3- Bei Anwendung dieses Gesetzes gelten die folgenden Begriffsbestimmungen:

Ministerium: Industrie- und Handelsministerium.

Wettbewerb: Konkurrenz, die den Unternehmen auf dem Waren- oder Arbeitsmarkt ermöglicht, wirtschaftliche Beschlüsse selbständig zu fassen.

Beherrschende Stellung: Die Macht eines oder mehrerer Unternehmen auf einem bestimmten Markt, unabhängig von ihren Konkurrenten und Kunden, die wirtschaftlichen Parameter, insbesondere Preis, Angebots-, Produktions- und Verteilungsmenge, zu bestimmen.

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Unternehmen: Natürliche und juristische Personen, die Waren oder Arbeit erzeugen, auf den Markt bringen oder verkaufen, und wirtschaftliche Einheiten, die Beschlüsse selbständig fassen können.

Unternehmensvereinigung: Jede von Unternehmen zu einem bestimmten Zweck gegründete Vereinigung, auch wenn sie nicht eine juristische Person ist.

Ware: Auf dem Markt gehandelte bewegliche und unbewegliche Güter.

Arbeit: Gegen Entgelt oder einen sonstigen Vorteil ausgeübte Tätigkeit, die geistiger oder körperlicher Natur sein kann.

Gesellschaft: Wettbewerbsgesellschaft.

Ausschuß: Wettbewerbsausschuß.

Zweiter Abschnitt Erster Teil Verbotene Handlungen

Wettbewerbsbeschränkende Vereinbarungen, aufeinander abgestimmte Verhaltensweisen und Beschlüsse

Art. 4- Vereinbarungen, aufeinander abgestimmte Verhaltensweisen zwischen Unternehmen, Beschlüsse und Handlungen von Unternehmensvereinigungen sind rechtswidrig und verboten, wenn sie auf einem bestimmten Waren- oder Arbeitsmarkt unmittelbar oder mittelbar den Wettbewerb verhindern, beeinträchtigen oder einschränken oder dies bezwecken oder dazu geeignet sind,

insbesondere

a) die Festsetzung der An- oder Verkaufspreise, der den Preis bestimmenden Faktoren, insbesondere von Kosten oder Gewinn, oder sonstiger Geschäftsbedingungen,

b) die Aufteilung der Waren- oder Arbeitsmärkte oder die Verteilung oder Kontrolle aller Versorgungsquellen oder Faktoren,

c) die Kontrolle der Höhe des Waren- oder Arbeitsangebotes oder der Waren- oder Arbeitsnachfrage oder ihre Bestimmung außerhalb des Marktes,

d) die Erschwerung oder Einschränkung der Tätigkeit von Konkurrenten oder der Ausschluß von Unternehmen aus dem Markt durch Boykott oder durch andere Handlungen oder die Verhinderung des Eintritts anderer Unternehmen in den Markt,

e) -ausgenommen der Monopolartige Verkäufer- die Anwendung unterschiedlicher Bedingungen bei gleichwertigen Rechten, Verpflichtungen oder Leistungen gegenüber einander gleichstehenden Personen,

f) die nicht in Beziehung zum Vertragsgegenstand, aber im Widerspruch zu den Handelssitten stehende Verpflichtung, eine Ware oder Arbeit zusammen mit einer anderen Ware oder Arbeit anzunehmen, oder