

LAW ON THE PROTECTION OF COMPETITION

(LAW NO. 4054)

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PART I

Purpose, Scope, Definitions

Purpose

Article 1- The purpose of this Law is to provide the protection of competition by ensuring necessary regulation, supervision and the prevention of abuse of dominant position by those enterprises which are dominant in the market and the agreements, decisions and practices which prevent, restrict or distort competition within the markets for goods and services.

Scope

Article 2- Agreements, decisions and practices which prevent, distort or restrict competition between the enterprises which operate in or affect the goods and services markets in the territory of Republic of Turkey and the abuse of dominant position by those enterprises which are dominant in the market and all kinds of operations and practices which are considered to be a merger or an acquisition by which competition in the market is significantly impeded and all operations concerning the measures, decisions, regulation and supervision for the protection of competition are within the scope of this Law.

Definitions

Article 3- For the purposes of this Law:

Ministry : shall mean the Ministry of Trade and Industry;

Competition : shall mean the contest among the enterprises in the markets for goods and services, which enables them to take their economic decisions independently;

Dominant Position : shall mean any position enjoyed in a certain market by one or more enterprises by virtue of which, those enterprises have the power to act independently of their competitors and purchasers in determining economic parameters such as the amount of production or distribution, price and supply;

Enterprise : shall mean any natural or legal person who produces, markets or sells goods and services and who forms an economic whole, capable of acting independently in the market;

Association of Enterprises : shall mean any association whether with or without a legal personality, which is formed by enterprises to carry out certain objectives;

Goods : shall mean any kind of movable or immovable property which may be subject of trade;

Services : shall mean any kind of intellectual or physical or both intellectual and physical activity which is carried out in return of a price or an interest;

Authority : shall mean the Competition Authority;

Board : shall mean the Competition Board.

PART II

CHAPTER ONE

Prohibited Practices

Agreements, Concerted Practices and Decisions Restricting Competition

Article 4- Agreements and concerted practices of the enterprises and decisions and practices of the associations of enterprises the object or effect or the possible impact of which is, directly or indirectly, to prevent, distort or restrict competition in a certain market for goods and services, are unlawful and prohibited.

Such practices are, in particular, as follows:

- a. To fix purchase or sales prices or the factors such as cost or profit which form the price or all other trading conditions concerning purchase and sales of goods and services;
- b. To share the markets for goods and services or to share or control the market sources and components;
- c. To control or to determine the quantities of supply or demand in the markets for goods and services outside the market conditions;
- d. To impede or restrict the activities of the competitors or to eliminate other enterprises operating in the market by boycotts or by other practices or to prevent the newcomers in the market;
- e. Except exclusive dealing agreements, to apply dissimilar conditions to persons which have equivalent transactions with equal rights and obligations;
- f. Contrary to the nature of the agreement or to the commercial customary rules, to make the conclusion of contracts subject to the

purchase of other goods and services or acceptance by the intermediary purchasers to display of other goods and services or acceptance of resale conditions for the goods or services concerned.

In cases where the existence of an agreement cannot be proved, if the price changes or the balance of supply and demand or the areas of activity in the markets of the enterprises concerned are similar to those of the markets where competition is prevented, distorted or restricted, this constitutes a presumption that the enterprises concerned are engaged in a concerted practice. Each such party thereto, may avoid liability if the contrary is proven on economic and rational grounds.

Exemption

Article 5- The Board, in the existence of all the conditions stated below and upon the application of the parties concerned, may declare the provisions of Article 4 inapplicable to any agreement or concerted practice between enterprises or decision by associations of enterprises which :

- a. Contributes to new developments and progress or technical or economic improvement in production or distribution of goods and in providing services;
- b. Allows consumers to get a share from the resulting benefit; and which does not :
- c. Eliminate competition in a substantial part of the relevant market;
- d. Induce a restraint on competition that is more than essential for the attainment of the objectives set out in paragraphs (a) and (b);

A decision for exemption shall be issued for a specified period of not more than five years. Certain conditions and/or obligations may be attached to an exemption decision. Upon the termination of the specified period of exemption, the decision for exemption may, upon the application of the parties concerned, be renewed if the requirements for exemption continue to be satisfied.

In cases where the requirements stated in the first paragraph are satisfied, the Board may issue communiqués by which certain categories of agreements shall be exempted as a group and the conditions attached thereto are shown.

Abuse of Dominant Position

Article 6- Any abuse, by one or more enterprises acting alone or by means of agreements or practices, of a dominant position in a market for goods and services within the whole or part of the territory of the State, is unlawful and prohibited.

Abusive practices are, in particular, as follows :

- a. To prevent, directly or indirectly, other enterprises in its area of commercial activities or practices which aim to impede the activities of the competitors in the market;
- b. To make discrimination, directly or indirectly, by way of imposing dissimilar conditions for equivalent and same rights and obligations to the purchasers who have equivalent position;
- c. To make the conclusion of contracts subject to the acceptance of restrictions concerning resale conditions such as the purchase of other goods and services or acceptance by the intermediary purchasers to display other goods and services or maintenance of a minimum resale price;
- d. Practices which aim to distort competition in a market for goods and services by means of taking financial, technological and commercial advantages created by the dominant position in another market;
- e. To restrict production, marketing or technical development thereby causing a disadvantage for the consumers.

Mergers and Acquisitions

Article 7- Merger of two or more enterprises and acquisition, except acquisition by way of inheritance, by an enterprise or by a person, of another enterprise, either by acquisition of all or part of its assets or securities or other means by which that person or enterprise acquires a controlling power in that enterprise concerned, which creates or strengthens the dominant position of one or more enterprises as a result of which, competition is significantly impeded in the market for goods and services in the whole or part of the territory of the State, is unlawful and prohibited.

The Board, shall issue communiqués to announce the categories of mergers and acquisitions which, to be considered as legally valid, require a permission by prior notification to the Board.

CHAPTER TWO Powers of the Board

Negative Clearance

Article 8- Upon application by an enterprise or associations of enterprises concerned, the Board, on the basis of the facts in its possession, may certify by a negative clearance certificate that the agreement, decision, practice or the merger or acquisition, is not contrary to the Articles 4, 6 and 7 of this Law.

The Board, after issuing a negative clearance certificate, may revoke its decision at any time, within the framework of the conditions set out in Article 13. However, in such a case, no punitive sanctions shall be applied to the parties concerned, for the period until the revocation decision of the Board.

Termination of Infringement

Article 9- Where the Board, either upon a denunciation or a complaint or the application of the Ministry or upon its own initiative, finds that there is an infringement of Articles 4, 6 or 7 of this Law; it informs the enterprise or associations of enterprises concerned by a decision comprising of the conduct to be performed or avoided in accordance with the rules set out in Chapter Four of this Law, for the maintenance of competition and restitution of the situation before the infringement.

Natural or legal persons who claim a legitimate interest can bring a complaint. The Board, before taking a decision in accordance with paragraph 1, informs the enterprises and associations of enterprises concerned in writing of its opinions and on how they shall terminate the infringement.

Where there may arise serious and irreparable damages until the final decision, the Board may take interim measures which in nature shall be protective of the circumstances before the infringement had occurred and which shall not exceed the scope of the final decision.

Notification of Agreements, Mergers or Acquisitions to the Board

Article 10- Any agreement, decision or concerted practice which is within the scope of Article 4, shall be notified to the Board within a month after their conclusion. No exemption provision shall be applied to the agreements which are not notified. The exemption granted to an agreement for which notification has not been made within the specified time, shall be effective from the date of its notification.

After making a preliminary investigation within fifteen days following the notification of the merger or acquisition agreements which are within the scope of Article 7, the Board has to permit the operation concerning the merger or acquisition; or if the Board decides to initiate a final investigation, it has to inform the parties in accordance with the procedural rules, of its preliminary objection and of the other necessary measures together with the fact that the merger or acquisition concerned shall not be put into effect until the date of the final decision. In such cases, Articles 40-59 of this Law shall be applicable.

Where the Board, having received an application concerning a merger or acquisition, does not reply to this application or does not take any action within the specified time period, the agreement concerning the merger or acquisition shall be legally effective after 30 days following the notification.

Failure to Notify Mergers or Acquisitions to the Board

Article 11- In cases where a merger or acquisition for which notification to the Board is compulsory, has not been notified to the Board and if the Board is informed by any means of the operation concerned, it investigates the merger

or acquisition upon its own initiative. Upon conclusion of the investigation if the Board :

- a. Finds that the merger or acquisition concerned is not within the scope of Article 7 paragraph 1, it gives permission to the merger or acquisition. However, the Board imposes fines on the parties concerned for their failure to notify.
- b. Decides that the merger or acquisition concerned is within the scope of Article 7 paragraph 1, together with the fines, the Board shall also decide on the termination of the operation concerning the merger or acquisition; the restoration of all actual circumstances which unlawfully occurred; and in accordance with the conditions and timetable to be defined by the Board, the return of all shares and assets, if possible, to the ex-owners and where this is not possible, the transfer or assignment to third parties, and until these are transferred to the ex-owners or to third parties, the acquiring persons shall not be entitled to participate in the management of the acquired enterprise and the Board also decide on all other measures which are considered to be appropriate.

Notification

Article 12- Notification shall consist of the information requested in the Notification Forms prepared by the Board, correct and complete. Either of the parties may submit the notification. The party who submits the notification shall inform the other party concerned. Any relevant documents shall be attached to the notification and the notification shall be considered to have been submitted on the date when notification is entered in the Board's records.

Revocation of Exemption or Negative Clearance Decisions

Article 13- Exemption or negative clearance decisions may be revoked or certain practices of the parties may be prohibited in cases when:

- a. There is a change in any of the circumstances which constitute the basis of the decision;
- b. The parties fail to comply with the obligations or conditions attached to the decision;
- c. The decision is given on the basis of incorrect or incomplete information concerning the agreement.

The decision for revocation shall be effective from the date of the change in the circumstances in paragraph (a) and from the date of the decision on exemption or negative clearance in other cases.

The exemption or negative clearance decision shall be considered as not to have been granted at all in cases where the incorrect or incomplete information in sub-paragraph (c) is provided intentionally or obtained as a result of the fraud of the enterprise concerned.

Request For Information

Article 14- The Board, in carrying out the duties set forth in this Law, may request all necessary information from all public authorities and entities, enterprises and associations of enterprises.

The authorized personnel of these authorities, entities and enterprises and the associations of enterprises shall provide the requested information within the time period specified by the Board.

On the Spot Investigation

Article 15- The Board, when carrying out the duties set forth in this Law, may carry out all necessary investigations in the premises of the enterprises and of the associations of enterprises. To this end, the Board is empowered:

- a. To examine the books, all types of documents and other records of the enterprises or of the associations of enterprises and where necessary take copies of those documents,
- b. To request for written or oral explanations on certain issues,
- c. To carry out on the spot investigations in the premises concerning the assets of the enterprises.

Investigations shall be carried out by the experts working under the authority of the Board. The experts shall carry an authorization document which displays the subject-matter and the purpose of the investigation and of the fact that administrative penalty payments shall be imposed if incorrect information is provided.

CHAPTER THREE Administrative Penalty Payments

Fines

Article 16- The Board may impose on natural persons or legal entities which have the status of an enterprise and associations of enterprises and/or to the members of these associations :

- a. One hundred million Turkish Liras in cases where incorrect or misleading information is provided by the enterprises or associations of enterprises in a notification made for exemption or negative clearance or for permission for a merger and acquisition and in notifications and applications concerning agreements made before this Law became effective,
- b. One hundred million Turkish Liras in cases where incorrect or misleading information is provided upon the decision of the Board on a request for information or on the spot investigation,
- c. Fifty million Turkish Liras for failure to notify a merger or acquisition or an agreement, concerted practice or decision which is within the scope of Article 4, within the specified time period,

- d. Sixty million Turkish Liras for the infringement of any obligations imposed pursuant to Article 5 paragraph 3 of this Law concerning the conditions attached to an exemption decision of the Board.

The enterprises and associations of enterprises against which a Board decision is given on the infringement of Articles 4 and 6 of this Law and those who infringed Article 11 paragraph (b) of this Law shall be imposed of fines, not less than two hundred million Turkish Liras, and those individuals or legal entities which have the status of an enterprise and those associations of enterprises and/or the members of those associations shall be imposed of a fine up to 10 % of the gross income occurred in the previous financial year, which is to be calculated by the Board.

In cases where the fines stated in the first paragraph are imposed on the legal entity enterprises and associations of enterprises, a fine up to ten percent of that fine shall be imposed also on the individuals personally who are in the management organs of these legal entities. When imposing fines, the Board shall take certain factors into consideration such as the existence of intention, the degree of fault, the power within the market of the enterprise or enterprises concerned and the gravity of probable damages.

Where there is not an explicit infringement of the provisions of this Law, no fine shall be imposed for the period until the date of the final decision of the Board on the agreements or decisions which are notified within the specified time period.

Periodic Penalty Payments

Article 17- The Board may impose on the enterprises and the associations of enterprises the following periodic penalty payments per day, commencing from the date specified in the decision:

- a. Fifty million Turkish Liras per day for failure to comply with the decision given pursuant to Article 9 on the termination of infringement and for failure to comply with other measures;
- b. Twenty five million Turkish Liras per day for failure to comply with the Board decisions and other measures envisaged in Article 11 paragraph (b);
- c. Twenty five million Turkish Liras per day for the performance of the practices prohibited pursuant to Article 13 paragraph one;
- d. Twenty million Turkish Liras per day for preventing the Board experts from carrying out on the spot investigation in the premises.

Nature and Enforcement of Fines Imposed Pursuant to This Law

Article 18- All fines regulated in this Law are fines that have an administrative nature. Fines and periodic penalty payments are imposed to each party engaged in the infringement of this Law, separately.

Where an application is made to the judicial organ against a decision on periodic penalty payments and an injunction decision is given concerning the periodic penalty payment, the periodic penalty payment shall not be applied commencing from the date of application to the judicial organ.

Time Limitations For Fines and Periodic Penalty Payments

Article 19- The power of the Board to impose fines and periodic penalty payments is subject to the following time limitations:

- a. Three years in the case of an infringement of provisions concerning notification or application of enterprises or association of enterprises and of the provisions concerning on the spot investigations or providing information,
- b. Five years in the case of all other infringements.

Time shall begin to run on the day of the infringement. In the case of continuous or repeated infringements however, time shall begin to run on the day on which the infringement ceases or on the last day of the repeated infringement. Any action taken by the Board for the purposes of investigation or examination concerning an infringement shall interrupt the proceeding limitation period, being effective from the date on which that action is notified to any of the parties concerned. Application to the judicial organs against the decision interrupts the proceeding time.

PART III

Organization

Competition Authority

Article 20- A Competition Authority which bears a public legal personality and enjoys administrative and financial autonomy is established for the purposes of providing the formation and improvement of markets for goods and services within a free and sound competitive environment and the supervision of enforcement of this Law and to exercise all other duties assigned to it by the Law.

The Ministry of Trade and Industry shall be the related ministry with the Authority. In carrying out its duties, the Authority shall be independent. No organ, authority, entity or person can give orders or directives to affect the final decision of the Authority. The central office of the Authority shall be located in Ankara.

Organization of the Competition Authority

Article 21- The organization of the Authority shall be composed of the following organs:

- a. Competition Board,
- b. Office of the President,

c. Service Departments.

CHAPTER ONE

Competition Board

Composition of the Board

Article 22- Including a Chairman and a Deputy Chairman, the Competition Board shall be comprised of 11 members. The Council of Ministers shall appoint the members of the Board from among the two candidates that will be nominated for each vacant post by the following institutions either from inside or outside these institutions: four members among the nominees of the Competition Board; two members among the nominees of the Ministry of Trade and Industry; one member among the nominees of the Ministry of State to which the Under-secretariat of State Planning Organization is affiliated; one member each from among the nominees of the Court of Appeals, Council of State, the Board of Inter-Universities and the Turkish Union of Chambers and Exchanges who shall nominate two candidates for each vacancy, to be appointed for the remaining four memberships of the Board.

At least half of the candidates to be nominated by the Competition Board have to be among the experts of the Competition Authority. The Council of Ministers shall appoint one of the candidates among the three candidates nominated by the Board as the President and the Chairman of the Board. The Deputy Chairman shall be appointed by the Board.

Conditions for Appointment

Article 23- The Chairman and the members of the Board shall be appointed among those who has a university degree in law, economics, engineering, business administration or in finance, obtained either in Turkey or abroad, a sufficient degree of professional knowledge and experience and a work experience of at least ten years in public or private sector related to their professions. The members shall also meet the requirements set forth in Article 48, paragraph (A), sub-paragraphs 1, 4, 5, 6 and 7 of the Public Officers Law No. 657.

Duration of Appointment

Article 24- The term of office for the Chairman, the Deputy Chairman and the members of the Board shall be a period of six years. A member shall be eligible for re-appointment at the end of this six-year period. Every two years, one third of the Board members shall be renewed. During renewal, the numbers and ratios stated in the provisions concerning the composition of the Board shall be taken into account. In cases where the post of the Chairman or of any of the Board members becomes vacant before their term of office terminates, for any reason except renewal, election and appointment for the vacant posts shall be made within one month. In such a case, the appointed

member shall hold office up to the end of the term of that member in place of whom he is appointed.

The Chairman and the members of the Board cannot be removed of their posts on any ground before their office term terminates. However, the term of office terminates by a Board decision where the Chairman or the members of the Board are no longer eligible for appointment or where there arises an infringement of Article 25 of this Law or when it is declared by a court judgment that an offence related to their posts has been committed by the Chairman or by any of the Board members.

Prohibitions

Article 25- Unless based on a special law, the Chairman and the members of the Board cannot undertake any official or private posts, be engaged in trade or hold shares in the companies. Prior to holding offices, the Chairman and the Board members shall, except the Treasury Bonds, give away, either by way of transfer or sales, all their securities within the scope of the capital market legislation, to persons other than their blood relatives up to a third degree and their in-law relatives up to a second degree. Any Board Member who fails to comply with this provision within 30 days, shall be considered to have resigned.

Membership in societies and foundations the purpose of which is social aid or education and membership in non-profit making cooperatives are excluded from the above-mentioned provisions.

The members and other personnel of the Board, even after they leave those posts, cannot disclose or use for their own or others' interests, the confidential information and the trade secrets of the enterprises and the associations of enterprises which they learnt in the course of enforcement of this Law.

Oath Article 26- The members of the Competition Board take an oath before the Office of the First President of the Court of Appeals that during their term of office they shall carry out the tasks of the Board with absolute diligence and honesty and that they shall not infringe and not let others infringe the provisions of the Law.

The application to the Court of Appeals for an oath shall be considered with priority. The Chairman and the members of the Board cannot start carrying out their tasks unless and until they take an oath.

Powers and Duties of the Board

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

- a. On its own initiative or upon application to carry out investigation and research concerning the operations prohibited by this Law; and upon determination of any infringement, to take the necessary measures for the termination of the infringement concerned and to impose

- administrative penalty payments to those who are liable for such infringement,
- b. To grant exemption or negative clearance certificates to the appropriate agreements thereby assessing the exemption and negative clearance applications of the parties concerned,
 - c. To re-assess the applications of the relevant parties where there occurs a change in the circumstances of the parties or in the markets thereby carrying out continuous inquiries in those markets related with the exemption decision or negative clearance certificate concerned,
 - d. To give permission to mergers and acquisitions,
 - e. To appoint the Deputy Chairman of the Board,
 - f. To issue communiqués and make necessary regulations for the enforcement of this Law;
 - g. To opine, directly or upon the application of the Ministry, on the necessary amendments to be made in the competition legislation,
 - h. To follow the legislation, practices, policies and measures of other countries on restrictive agreements and decisions,
 - i. To set and supervise the implementation of the personnel policy of the Authority, to carry out staff appointments, to approve the annual budget, final accounts of income expenditures and the annual work programme of the Authority to be prepared by the Office of the Chairman and where necessary, to decide on the transfer of accounts in the budget,
 - j. To determine the candidates to be nominated by the Authority for the vacancies in the Board,
 - k. To publish an annual report on its activities, status and development in the field of its activities,
 - l. To debate and decide on the proposals concerning the purchase, rental and sales of movable and immovable property and other assets of the Authority and make the necessary regulations therein,
 - m. To decide on all kinds of rights, credits and duties operations of the Authority towards third persons,
 - n. To carry out all other duties specified in the Law.

Principles for the Proceedings of the Board

Article 28- The Board shall be presided and represented by the Chairman and in his absence by any reason such as sickness, travel or being on leave, by the Deputy Chairman. The Chairman of the Board, and in his absence, the Deputy Chairman, shall preside the meetings and inform the members of the Board of the issues on the agenda. The Board members cannot participate to the discussions and to voting for the issues concerning themselves and their blood relatives up to a third degree and concerning their in-law relatives up to a second degree.

CHAPTER TWO

Office of the President

Article 29- The Office of the President shall be composed of the Chairman, the Deputy Chairman and the Vice-Presidents. The President and Chairman is the highest ranking executive of the Authority and is responsible for the general administration and the representation of the Authority. This responsibility comprises of the powers and functions for the purposes of general regulation, supervision, assessment of the activities of the Authority and when necessary the information of the public.

Powers and Duties of the Office of the President

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

- a. To provide for the organization and coordination of the Competition Board and other service departments within a harmonized, productive, well disciplined and organized way and to settle the disputes on the duties and powers which may arise between the service departments of the Authority,
- b. To set the agenda, date and time of the Board meetings and to organize these meetings,
- c. To ensure the compliance with the Board decisions and to supervise the enforcement therein,
- d. To finalize the proposals prepared by the service departments and to present them to the Board,
- e. To prepare and present to the Board the annual budget and the final accounts of income and expenditures and annual activities reports of the Board and provide the implementation of the budget, collection of the income and the making of the expenses,
- f. To opine on the legislation and decisions concerning the competition policy,
- g. To regulate the relations of the Authority with the Ministry and with other institutions,
- h. To represent the Authority before the official and private institutions,
- i. To ensure the publication of the final decisions, communiqués and the by-laws to be issued by the Board,
- j. To set the limits of the powers and duties of the staff who shall be entitled to sign documents on behalf of the Chairman.

Vice Presidents

Article 31- Two Vice Presidents may be appointed for the purposes of providing assistance to the President and Chairman in the course of carrying out his duties. The Vice Presidents have the duties to carry out the tasks and directives given by the President and Chairman and to ensure the harmonization and cooperation among the service departments and among different levels of the Authority.

Service Units

Article 32- The service units of the Authority shall be comprised of main service units, advisory units and auxiliary service units organized as Heads of Departments.

Supervision

Article 33- The accounts of the Authority shall be subject to the supervision of the Court of Accounts.

CHAPTER THREE

The Status of Personnel

Article 34- The primary and continuous tasks required by the Authority shall be carried out by the personnel who are employed under administrative service contracts. A sufficient number of professional experts and specialized off-career personnel may be employed by the Authority. Except for salaries and other financial rights, the personnel of the Authority shall be subject to Public Officers Law No. 657. The Board is free to regulate the composition and the status of the posts in accordance with the need. The formation and cancellation of the posts are made by the Board. Temporary tasks and services which require a certain expertise are determined by the Office of the Chairman. For the posts as such, proxy or job contract provisions shall be applicable. The monthly payments obtained from the social security institutions of those who shall be employed in accordance with the provisions of this paragraph shall not deducted. Foreign experts may also be employed in accordance with the principles of the by-laws to be prepared by the Office of the Chairman and become effective upon the approval of the Board.

Appointment as an Assistant Expert

Article 35- The following qualifications shall be required for appointment as an assistant expert:

- a. To hold a university degree in law, economics, political sciences, business administration, industrial engineering or in management engineering or to hold any equivalent degrees obtained abroad,
- b. To be successful in the examination that shall be made,
- c. To be successful in the language examination which shall be made in English, French or German,
- d. Not to be above thirty years of age as of the thirtieth day of January of the year that the examination shall be made.

Other requirements shall be set forth in the examination by-laws to be issued by the Board.

Expertise in Competition

Article 36- Those who have been appointed as assistant experts according to Article 35, subject to the condition that they have worked for at least three years and acquired positive records and conditional upon the acceptance by the Board of a thesis which shall be, or has already been, prepared on their related topics, shall be granted the title of Competition Expert. The competition experts and assistant experts have the status and powers of professional officials.

Payments and Other Financial Rights

Article 37- Monthly salaries of the Chairman and Members of the Board shall be determined by the Council Ministers upon the proposal of the Ministry of Trade and Industry the amount which, including all the payments, shall not be more than twice the salaries of the public officers at the highest rank. Those paid to the officers at the highest rank which are exempt from the income tax shall also be exempted from Income Tax under this Law. Salaries and other financial rights of the of personnel of the Authority shall be determined by the Board upon a proposal of the Office of the Chairman in accordance with the principles stated in the first paragraph concerning the salaries and the adjustment thereof.

Assessment of the Service and Retirement Periods

Article 38- The Chairman and the members of the Board shall be subject to the Retirement Fund Law. Those who are subject to Public Officers Law No. 657 and have been appointed as the Chairman or as a member of the Board and those who have worked for the Authority, when their term of office terminates may return to public service and be appointed to an appropriate post. In such cases, the periods that they have worked in the Authority is accounted in accordance with the provisions of the law they are subject to. The above stated provisions shall also be applicable for the Chairman, the members of the Board, experts and all the other members of the staff who come from the universities, without prejudice to the provisions for the acquisition of academic titles. For the purposes of retirement, the Chairman of the Board shall be considered to have an equivalent status as the Undersecretary of the Ministry and the members of the Board shall be considered to have an equivalent status as the Deputy Undersecretaries of the Ministry and the Head of Departments shall be considered to have an equivalent status as the General Directors at the Ministry. The retirement status of the other personnel of the Authority shall be regulated by the by-laws issued by the Office of the Chairman and become effective upon the approval of the Board.

Income of the Authority

Article 39- The income of the Authority forms the budget of the Authority and it is composed of the following items :

- a. An appropriation reserved in the budget of the Ministry,
- b. Twenty five percent of the fines imposed by the Board, in accordance with Articles 16 and 17 of this Law,
- c. Income arising from publication and others.

The income of the Authority shall be kept in an account in the Central Bank or in a state bank. The fees stated in the paragraph (b) shall be transferred to the relevant account of the Authority when the fine is deposited to the Treasury accounts after it becomes final.

PART IV

Inquiry and Investigation Procedures of the Board

Preliminary Inquiry

Article 40- Upon an application or on its own initiative, the Board may decide to initiate an investigation directly or to initiate a preliminary inquiry in order to decide whether or not it is necessary to initiate an investigation. Where a preliminary inquiry is decided to be initiated, the Chairman of the Board shall appoint one or more experts among the professional experts as a rapporteur. The rapporteur who is appointed to carry out the preliminary inquiry informs the Board in writing within thirty days of all the information and evidence that is obtained together with his own views on the matter concerned.

Conclusion of Preliminary Inquiry

Article 41- Within 10 days following the submission of the preliminary inquiry report, the Board shall convene to decide on whether or not it is necessary to initiate an investigation thereby assessing the information provided.

Notification to the Applicants

Article 42- Having received an application of a denunciation or a complaint if the Board, on the basis of the information in its possession, considers that the allegation is serious and sufficient, it shall inform the applicants in writing of its decision that the allegation is considered serious and an inquiry has been initiated. In cases where the Board, either explicitly or implicitly by way of not notifying the parties within the specified time period, rejects an application, anyone who proves to have a direct or indirect interest may bring an action in the judiciary organ against the rejection decision of the Board.

Initiation of the Investigation by the Board

Article 43- Upon the decision on initiating an investigation, the Board shall determine a Board member or members together with a rapporteur or rapporteurs that shall be authorized to carry out the investigation. The investigation shall be completed within no longer than six months. Where it is deemed to be necessary, this period may be extended by the Board only once, up to an additional six months.

The Board, shall inform the parties concerned, of the investigation initiated within fifteen days following the date of the decision on initiating the investigation and request from the parties to submit their first defense arguments in writing within thirty days. In order for the time period for the first written defense arguments to commence, the Board shall, together with the notification, also send sufficient information to the parties on the type and the nature of the allegations.

The decision of the Board on the initiation of investigation is final.

Collection of Evidence and Information of Parties

Article 44- A Committee, composed of the Board member and the rapporteurs authorized to act on behalf of the Board and carry out the investigation may, during the course of investigation, exercise the powers of requesting information stated in Article 14 and the powers of on the spot investigation stated in Article 15 of this Law. Within this period, the Committee may also request from the parties and other related authorities to submit all necessary documents and information. During the investigation stage of the Board, any person or persons who are alleged to have infringed this Law may at any time, submit to the Board any information and evidence that may affect the decision. The parties who are informed that an investigation has started against them, may, from the date of initiation of the investigation up to the date of request for a hearing, request a copy of all documents issued in the Authority and if possible, all types of evidence obtained.

The Board cannot base its decision on any issue about which the parties are not informed or not given the right to defense.

Notification and Reply

Article 45- The report prepared at the end of the investigation stage shall be notified to all the Board members and to the parties concerned. Those who are decided to have infringed this Law, are notified to submit their defense in writing to the Board within 30 days. Upon the defense arguments, the experts authorized to carry out the investigation shall submit their additional views in writing within 15 days and this shall also be notified to all the Board members and to the parties concerned. The parties may reply to these views within 30 days. In cases where the parties have justified reasons, this time period may be extended for only once to another thirty days. Reply of the parties not made within the specified time period shall not be taken into consideration.

Hearing

Article 46- A hearing shall be held if the parties concerned have requested a hearing in their defense or reply petitions. The Board may also decide on a hearing on its own initiative.

The hearing shall be held within at least thirty days and no longer than within sixty days following the end of the investigation stage. The invitations for the

hearing shall be sent to the related parties within at least thirty days before the date of the hearing.

Principles Concerning the Hearing

Article 47- Hearings shall be held in public. The Board may, on the grounds of protection of public morality or of trade secrets, decide that the hearing shall be held in camera. Hearings shall be presided by the Chairman and in his absence by the Deputy Chairman. A hearing shall be held with the attendance of the Chairman or the Deputy Chairman and at least seven members of the Board.

Hearings shall be concluded within no longer than five consequent sessions and several meetings held on the same day shall be considered as one session.

The parties shall inform the Board of the means of proof which they shall use in the hearing at least seven days before the date of the hearing. Any means of proof which have not been informed within the specified time limit cannot be relied on by the parties. The parties may refer to all kinds of evidence and means of proof set forth in Chapter Eight Part Two of the Civil Litigation Procedures Law. The parties who are alleged to have infringed this Law or their representatives and those who prove to the Board before the session that they have a direct or indirect interest or their representatives may attend the hearings.

Final Decision

Article 48- The final decision shall be made on the same date and if this is not possible, together with its reasoning within fifteen days following the hearing. In cases where a hearing is neither requested by the parties nor decided by the Board on its own initiative, the final decision shall be given within 30 days following the end of the investigation stage. In cases where the parties despite a decision on a hearing fail to attend, the decision shall be made within one week following the specified date of the hearing in accordance with the examination to be made on the file.

Confidentiality of the Meetings

Article 49- Board decisions shall be taken upon meeting in camera and announced in public. Members of the Board cannot abstain from voting. Except those who have an excuse, the members who have attended the hearing have to attend the meetings.

Procedure of the Meeting

Article 50- The Chairman and in his absence the Deputy Chairman shall preside the meeting and specify the issues to be decided. The Chairman collects the votes after a free debate on those issues and states his vote at the end.

Meeting and Decision Quorum

Article 51- For its final decisions, the Board shall convene by at least eight of its members including the Chairman or the Deputy Chairman and the decision shall be taken by at least six affirmative votes of those attending members. If the sufficient number of votes may not be obtained in the first meeting, the Chairman shall ensure the attendance of all the members to the next meeting. In cases where this is not possible, the decision shall be taken by a simple majority of the attending members. In such a case, however, the meeting quorum cannot be less than the quorum stated in the first paragraph.. In the case of an equality of votes in the second meeting, the vote of the Chairman shall be a weighted vote. Decisions other than the final decisions and in particular, interim measure decisions and recommendation decisions shall be taken by the attendance of at least one third of the members and by a simple majority voting of those who have attended.

Items to be Stated in a Decision

Article 52- Decisions shall comprise of the following items:

- a. Names and surnames of the Board members who have taken the decision,
- b. Names and surnames of the persons who have carried out the investigation and the inquiry,
- c. Names, trade names, domiciles and the other descriptive particulars of the parties,
- d. Summary of the allegation of the parties,
- e. Summary of the inquiry and the legal and economic subjects discussed,
- f. Opinion of the rapporteur,
- g. Assessment of all the evidence and the defense,
- h. The reasoning and the legal ground of the decision,
- i. Conclusion,
- j. Dissenting opinions, if there are any.

The decision and the obligations imposed and the rights conferred on the parties shall be written in an explicit manner in order not to cause any doubts or hesitation.

Writing of Decisions

Article 53- The decision shall be written by the Chairman or by a member of the Board to be designated by the Chairman. The decision shall be signed by all the members who have attended to the meeting. Those members who have dissenting votes may write their opinions, jointly or separately. The original copy of the decision shall be kept in the archives of the Board. Copies of the decision shall be given to the parties in return of their signature. A copy of the decision shall be sent to the Publication Department of the Competition Authority for publication. After the decision of the Board becomes final, it shall

be published in the Official Gazette without disclosing the trade secrets of the parties.

Commencement of Time Limits

Article 54- Time limitations concerning the decisions of the Competition Board commence as of the date of notification of the decision with its reasoning to the parties.

Judicial Action Against Board Decisions

Article 55- Final decisions of the Board, decisions on interim measures and on fines and periodic penalty payments can be subjected to a judicial review before Council of State within the specified time period following the notification of the decision to the parties. The decision shall become final if no action is taken before the judicial organ within this time period. Fines cannot be collected before the decision of the Board becomes final. The enforcement of the Board decisions on fines and periodic penalty payments is subject to the provisions of Law No. 6183 on the Procedure of Collection of Public Credits.

PART V

Private Law Consequences of Restriction of Competition

Legal Nature of the Decisions and Agreements Contrary to the Law

Article 56- All agreements and decisions of the associations of enterprises which are contrary to Article 4 of this Law are void. Performance of obligations arising from such agreements or decisions cannot be requested. In the case of requesting the return of such an obligation arising from a decision or an agreement which has already been performed, on the basis of its ineffectiveness, the obligation of the parties concerning the return shall be subject to Articles 63 and 64 of the Code of Obligations. Article 65 of the Code of Obligations shall not apply to the disputes arising from this Law.

Right to Compensation

Article 57- Anyone who by a decision, an agreement or a practice contrary to this Law, prevents, distorts or limits competition or abuses dominant position in the market for goods and services, shall recover all kinds of damages of the persons who have damages as a result of those practices. If damages occur as a result of the practices of more than one person, those shall be jointly and severally liable for the damages.

Compensation of Damages

Article 58- Those who have damages as a result of the limitation, distortion or prevention of competition may request the difference as their damages, between the amount what they paid and the amount what they, if competition

were not limited, would have paid. Competitor enterprises who are affected from the distortion of competition may request for all their damages from the enterprise or enterprises who distorted competition. In calculating damages, all profits that the enterprises who have damages might have gained shall be taken into account thereby also taking into account the balance sheets of the previous years.

In cases where damages arise from an agreement, or a decision or from the heavy negligence of the parties, the judge may, upon the request of the parties who have damages, decide on a compensation three times of the actual damages or three times of the profit gained or likely to be gained by the parties who caused damages.

Burden of Proof

Article 59- In cases where those who have damages, submit evidences to the judicial authorities concerning the existence of an agreement or any indication that the competition in the market is distorted, in particular on market sharing, stabilization of the market price for a considerably long time period, price increases by the enterprises in the market at close time intervals, the burden of proof for proving that the enterprises are not engaged in a concerted practice shall be shifted to the defendants.

Existence of restrictive agreements, decisions or practices can be proved by any type of evidence.

PART VI

Final Provisions

Offenses Committed On the Money, Documents and Properties of the Authority

Article 60- The money, property and documents of the Authority shall have the status of State Property. The Chairman and the members of the Board and all other personnel who commit a crime concerning their duties shall be charged like the public officers. Offenses committed against Board members or other personnel of the Authority shall be deemed to have been committed against a public officer. Prosecutions concerning such offenses shall be carried out in accordance with the general provisions.

Notification

Article 61- Any notification which will be made to the parties pursuant to this Law, shall be pursued in compliance with the Notification Law No. 7201.

By-laws

Article 62- Issues other than those stated in this Law concerning the provisions on the methods of the Authority in exercising its powers, the administration and working principles, collection of income, expenses and the principles and procedure applied in the supervision of these activities, the principles in the adjustment of salaries, the principles for the appointment of foreign experts, regulations concerning bidding and purchasing of movable and immovable property and the accounting system of the Authority shall be regulated in the by-laws to be issued by the Board and put into effect by the Council of Ministers. By-laws to be made pursuant to this Law, shall be issued within one year following the publication of the Law.

Inapplicable Provisions

Article 63- The Authority is not be subject to General Accounting Law No. 1050, State Procurement Law No. 2886, Allowances Law No. 6245 and the annexes and amendments therein. The income of the Authority shall be exempt from Institutions Tax; by reason of the grants and aids from Succession and Transfer Tax, by reason of the interests which may arise on behalf of the Authority as a result of the transactions from Banking and Insurance Transactions Tax and by reason of the sales of immovable property from all kinds of taxes and other financial obligations and by reason of the vehicles to be purchased for the Authority. from the Vehicle Purchases Tax and Stamp Tax.

Temporary Article 1- The first appointment to the Competition Board shall be made pursuant to the principles set forth in Article 22. However, the provisions concerning the candidates to be nominated by the Competition Board shall not be applicable. In the first appointment, the Prime Minister and the Minister of Trade and Industry shall, on behalf of the Board, nominate two candidates each. The members of the Board to be renewed at the end of the second and fourth years shall be determined by drawing lots at the last meetings of the Board in those periods. The Chairman of the Board shall be appointed by the Council of Ministers among the two candidates nominated by the Minister of Trade and Industry. The Chairman and the Deputy Chairman shall continue their terms of offices until the end of the sixth year without participating in the drawing lots.

Temporary Article 2- The Competition Board to be appointed in accordance with the principles stated in Transitional Article 1 shall, following the completion of the organization of the Competition Authority, announce this by a communiqué. All agreements and decisions existent at the date of this announcement shall be notified to the Board within six months following this announcement.

Temporary Article 3- The Board, within one year following the entry into force of this Law, may, for only once, appoint experts from public or private institutions without seeking the qualifications stated in Articles 35 and 36.

However, those who shall be appointed as experts shall meet the requirements stated Article 35, first paragraph, sub-paragraphs (a) and (c) and shall have an experience of at least five years in their profession and shall not have completed their forty one years of age. Those who shall be appointed from the public institutions, should also have entered their profession by succeeding in the sufficiency examinations. Until the formation of the Competition Authority, the related personnel of the Ministry may temporarily be appointed for carrying out the tasks of the Authority.

Effectiveness

Article 64- Articles 16 and 17 on administrative fines shall become effective one year after and all other articles of this Law shall become effective at the date of the publication of the Law.

Enforcement

Article 65- The provisions of this Law shall be enforced by the Council of Ministers.