

From the Competition Authority:

**COMMUNIQUÉ ON THE COMMITMENTS TO BE OFFERED IN PRELIMINARY
INQUIRIES AND INVESTIGATIONS CONCERNING AGREEMENTS, CONCERTED
PRACTICES AND DECISIONS RESTRICTING COMPETITION, AND ABUSE OF
DOMINANT POSITION
(COMMUNIQUÉ NO: 2021/2)**

**SECTION ONE
Purpose, Scope, Basis and Definitions**

Purpose

ARTICLE 1- (1) The purpose of this Communiqué is to set the principles and procedures regarding the submission of commitments by undertakings or associations of undertakings concerned in order to eliminate the competition problems which may arise during an ongoing preliminary inquiry or investigation process under the scope of Article 4 or 6 of the Act dated 7/12/1994 and numbered 4054 on the Protection of Competition; rendering those commitments binding for the undertakings and associations of undertakings concerned and monitoring the commitments.

Scope

ARTICLE 2 - (1) This Communiqué shall cover the commitments submitted by undertakings or associations of undertakings concerned in order to eliminate the competition problems which arise under the scope of Article 4 or 6 of the Act, except naked and hard-core cartels.

Basis

ARTICLE 3- (1) This Communiqué is prepared on the basis of Articles 27 and 43 of the Act no 4054.

Definitions

ARTICLE 4- (1) For the purposes of implementing this Communiqué, the following definitions shall apply:

a) Naked and hard-core cartels: agreements and concerted practices as well as decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services, made for the following purposes:

1) Price fixing, sharing customers, suppliers, territories or trade channels, restriction of supply or imposing quotas, bid rigging, sharing competitively sensitive information such as price, production or sales volumes planned for the future between competitors,

2) In the relationship between undertakings operating at different levels of the production or distribution chain, determining the fixed or minimum price for the buyer

b) Behavioral commitment: Commitments for regulating market behavior of the party concerned without changing the structure of the market

c) Examination: preliminary inquiry and investigation,

ç) The Act: the Act no 4054,

d) The Board: the Competition Board

e) The Authority: the Competition Authority

f) Party: Undertakings or associations of undertakings against whom an investigation is conducted,

- g) Third party: Those other than the party which offer the commitments,
- ğ) Structural commitment: commitments that lead to a change in the market structure and impose obligations on the party concerned such as transferring certain activities or partnership shares or assets.

SECTION TWO

Commitment Procedure, Nature and Assessment of the Commitment

Commencing the commitment procedure

ARTICLE 5 - (1) Parties who want to end an investigation conducted about them by means of a commitment may request to offer commitments during preliminary inquiry or investigation process. Requests to offer commitments during the investigation process shall be submitted to the Authority within three months after the notification of the investigation has been sent under the scope of paragraph two, article 43 of the Act. Requests to offer commitments submitted to the Authority after the said period has expired shall not be taken into account.

(2) The parties shall commence the commitment procedure by submitting their request to offer commitments to the Authority in written form.

Commitment discussions

ARTICLE 6 - (1) After the parties submit their request to offer commitments to the Authority, the Board shall decide to initiate commitment discussions or reject the request to offer commitments and discontinue the commitment procedure, considering whether the agreement, decision or practice in question constitutes a naked and hard-core infringement and other issues it deems necessary.

(2) In case competition problems that are the subject matter of the examination are not sufficiently clear at the time when the parties submit their request to offer commitments and further analysis is required, the Board may postpone the decision which it takes according to paragraph one. The said decision may be taken during the investigation process in case such situation arises during the preliminary inquiry.

(3) During the commitment discussions, except for trade secrets and confidential information belonging to other undertakings, associations of undertakings and persons, the competition problems examined shall be disclosed to the parties that offer the commitments and information and documents that form the basis of the examination shall be submitted to the parties. In case a notification of investigation is sent to the parties within the scope of Article 43, paragraph two of the Act, information and documents that form the basis of determining the problems may not be submitted to the parties again.

(4) The discussions may be made in oral or written form. Oral discussions shall be recorded in minutes agreed by the parties present in the discussions.

Submission of a commitment

ARTICLE 7 - (1) the parties shall send the commitment text, a copy of the commitment text free from trade secrets and confidential information and a summary thereof to the Authority within the period given.

(2) The period given for the submission of a commitment shall be determined by the Authority during the commitment discussions depending on the stage of the examination and the scope of the commitment.

Commitment text

ARTICLE 8 - (1) The commitment text shall clearly cover the commitment submitted. The commitment text cannot include alternative commitments.

The commitment text shall indicate the following issues: competition problems to be solved by the commitment, when the commitment starts to be implemented, for how long and in which way the commitment will be implemented, time periods to be complied with for implementation, under what conditions such periods can be expanded, the effect of the commitment to the market, how the commitment will solve the competition problem, how compliance with the commitment can be monitored and other issues deemed necessary. In case a structural commitment is offered, the commitment text shall include the details about the divestiture process.

(3) In cases where the implementation of the commitment requires an agreement with third parties, documents showing that an agreement can be made with third parties shall be submitted to the Authority together with the commitment text.

(4) Statement by the parties that they agree that the commitment they offer can solve the competitive problems and they shall implement the commitment under the conditions specified in the commitment text shall be written at the end of the commitment text. The commitment text shall be signed by authorized representatives of the party submitting the commitment.

The type of the commitment

ARTICLE 9 - (1) Depending on the nature of competition problems, behavioral or structural commitments can be offered individually or jointly.

(2) The commitment must be proportional to the competition problems, able to solve those, quickly realizable and efficiently applicable. General statements by the parties that they will comply with the Act shall not constitute a commitment.

(3) Commitments concerning third party conduct cannot be offered.

Assessment of the commitment

ARTICLE 10 - (1) The Board shall assess whether the commitment eliminates the competition problems as well as other issues deemed necessary, taking into account the facts stated in article 8 and 9.

(2) In case the Board finds the commitment appropriate as a result of the assessment it made according to paragraph one, it shall render the commitment binding for the party concerned and shall decide not to initiate an investigation or discontinue the ongoing investigation, or to request opinion from third parties.

(3) In case the Board does not find the commitment appropriate as a result of the assessment it made according to paragraph one, it shall decide that parties can make amendments to the commitment at this stage and only for one time within the framework of its assessments and a time period it sets or it shall decide to discontinue the commitment procedure.

Taking the views of third parties and assessment thereof

ARTICLE 11 - (1) Should the Board decide that views of third parties be taken, it shall announce, within ten days following the Board decision, by sending or posting on the website, the summary of the competition problems and the summary of the commitment text submitted by the parties, free from the trade secrets and confidential information, that the concerned can submit their views in written form within the period set by the Board.

(2) Third parties presenting their views about the commitment shall send their views, a version free of trade secrets and confidential information and confidentiality request, if any, to the Authority.

(3) The Board shall review its assessment about the elimination of competition problems by the commitment after taking the views of third parties. In case the Board finds the commitment appropriate, it shall render the commitment binding for the party concerned and decide not to initiate an investigation or discontinue the ongoing investigation. In case the Board does not find the commitment appropriate, it shall decide that parties can make amendments to the commitment at this stage and only for one time within the framework of its assessments and a certain time period it sets, or it shall decide to discontinue the commitment procedure.

Amendments to the Commitment

ARTICLE 12 - (1) Should the parties want to make amendments to the commitment according to article 10, paragraph three or article 11, paragraph three, commitment discussions shall continue. In those discussions, the Board's assessments concerning the commitment shall be disclosed to the parties and if taken, a version of the view of third parties free of trade secrets and confidential information shall be submitted to the parties.

(2) Parties that want to make amendments to the commitment following the commitment discussions, shall send the amended commitment text, a version of the amended commitment text free of trade secrets and confidential information and a summary thereof to the Authority within the time period set by the Board.

(3) In case the Board finds the amended commitment text appropriate, it shall render the commitment binding for the party concerned and decide not to initiate an investigation or discontinue the ongoing investigation or to request opinion from third parties.

(4) In case the Board does not find the amended commitment text appropriate, it shall decide to discontinue the commitment procedure.

Termination of the commitment procedure

ARTICLE 13 - (1) If the commitment text or the amended commitment text is not submitted within the period set by the Authority or the Board, or the commitment text or the amended commitment text duly submitted is withdrawn, the commitment procedure shall be deemed to be terminated.

(2) In case the commitment procedure is terminated within the scope of article 6, paragraph one; article 10, paragraph three, article 11, paragraph three; article 12, paragraph four; article 13, paragraph one, parties cannot request to offer commitments again.

(3) The reasons for the decision taken by the Board to discontinue the commitment procedure shall be included in the final decision.

SECTION THREE

Rendering the Commitments Binding and Monitoring

Rendering the commitments binding

ARTICLE 14 - (1) In case the Board concludes that competition problems can be eliminated by means of the commitments offered, it may decide not to initiate an investigation or discontinue the ongoing investigation by rendering the commitments binding for the undertakings concerned at any stage of the commitment procedure. This decision of the Board does not include a determination whether the agreement, decision or practice that arises competition problems constitutes a violation.

(2) The Board decision rendering the commitment binding shall cover the following issues, insofar as appropriate, in addition to those laid down in article 52 of the Act:

- a) Parties offering the commitment.
- b) Competition problems.

- c) The content of the commitment.
- ç) When the commitment starts to be implemented.
- d) Validity period of the commitment.
- e) Implementation period of the commitment.
- f) How the commitment will solve the competition problems.
- g) Detailed procedure regarding the monitoring of the commitment.
- ğ) Under what conditions the commitment will be invalid.
- h) The sanctions to be imposed in case of non-compliance with the commitment.

Monitoring and implementation of the commitment

ARTICLE 15 - (1) The compliance by the parties with the commitment can be monitored through regular reports prepared by the parties, assignment of third parties for supervisory purposes, or cooperation with professional associations or relevant public authorities and institutions. In case it is required that third parties be assigned for supervisory purposes, the Board must approve that the third party offered by the parties is appropriate.

(2) Concerning the monitoring of the commitment, the right of the Board to make an examination ex officio is reserved.

(3) When the parties entirely fulfill the commitments, they shall document this to the Authority. Thereupon, the Board shall take a decision establishing that the commitments have been fulfilled.

SECTION FOUR

Temporary and Final Provisions

Ongoing Investigations

TEMPORARY ARTICLE 1- (1) This communiqué shall be applied to examinations which are still ongoing at the time it enters into force.

(2) Regarding investigations, for which the decision to initiate an investigation was taken more than three months before this Communiqué has entered into force, the requirement laid down in article 5, paragraph one that the request to offer commitments shall be submitted to the Authority within three months after the notification of investigation is sent shall not be observed.

Entry into Force

ARTICLE 16 - (1) This Communiqué shall enter into force on the date it is published.

Execution

ARTICLE 17 - (1) The provisions of this Communiqué shall be executed by the President of the Competition Authority.