COMPETITION AUTHORITY

COMPETITION BOARD DECISION

File No : 2022-5-036 **(Investigation)**
Decision No. : **24-20/466-196**
Date of Decision : 24.04.2024

A. BOARD MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE
Members : Ahmet ALGAN (Deputy Chairman), Şükran KODALAK
Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN,
Cengiz ÇOLAK, Berat UZUN

B. RAPPORTEURS : Eren YALDIZLI, Sebahat YILMAZ, Dilara TÜRK, Nilay ÖZLÜK, Ferit CEYLAN, Metehan KAYA

C. COMPLAINANT : - Requested confidentiality.

D. THOSE UNDER INVESTIGATION :
- Saint-Joseph Private French High School
Representative: Atty. Merter ÖZAY
Kerim Bey Köşkü Göztepe Mah. Tanzimat Sok. No:63/1 Kadıköy/İstanbul
- Notre-Dame de Sion Private French High School
Representatives: Atty. Saro BENGLİAN, Atty. Liana BENGLİAN, Atty. Fulya KESKİN
Esentepe Mah. Kasap Sok. No:12 K:4-5 Şişli/İstanbul
- Sainte Pulchérie Private French High School
Representative: Atty. Semiha Melis AKCEN BAYIR
Kolektif House - Maslak Mah. AOS 55. Sok. 42 Maslak Sitesi No:4 İç Kapı:542 Sarıyer/İstanbul
- Saint Benoît Private French High School
Representative: Atty. Özcan KARAKOÇ
Kartaltepe Mah. Limon Çiçeği Sok. No:6 D:5 Bakırköy/İstanbul
- Saint-Michel Private French High School
Representatives: Atty. Tora PEKİN, Atty. Ceren GÖRMÜŞ AVUNDUK
Kamer Hatun Mah. Al Hatun Sok. 25/3 Beyoğlu/İstanbul

(1) **E. SUBJECT OF THE FILE: The allegation that, of the French-based private education institutions operating in İstanbul, Saint-Joseph Private French High School, Saint Benoît Private French High School, Notre-Dame de Sion Private French High School, Saint-Michel Private French High School, Sainte Pulchérie Private French High School violated Article 4 of the Act no 4054 on the Protection of Competition by jointly fixing school registration fees as well as teacher salaries.**

(2) **F. SUMMARY OF THE CLAIMS:** The confidential application submitted into the Competition Authority (Authority) records on 22.06.2022 with the number 29114 includes the allegations summarized below, and requests necessary action be taken under the Act no 4054 on the Protection of Competition (Act no 4054):

- Saint-Joseph Private French High School (ST. JOSEPH), Saint Benoît Private French High School (ST. BENOÎT), Notre-Dame de Sion Private French High School (NDS),

Saint-Michel Private French High School (ST. MICHEL) and Sainte Pulchérie Private French High School (STE. PULCHÉRIE), which are among the private secondary education institutions operating in İstanbul, colluded to implement single pricing for tuition fees for preparatory classes during the 2021-2022, 2022-2023 academic years,

- Among the relevant high schools, only ST. JOSEPH kept tuition fees lower, in order to create the impression among customers that there was no collusion among the schools,
- Examining the prices of the relevant high schools for the previous academic years shows that the high schools implemented price fixing, with one of them always keeping its prices lower to try to create the impression that there was no collusion,
- The prices set by the schools for the 2022-2023 academic year were raised significantly over the inflation rate compared to their prices in the previous year, leading to an exorbitant rise in prices.

(3) **G. PHASES OF THE FILE:** The Preliminary Examination Report dated 05.07.2022 and numbered 2022-5-036/İİ, prepared in response to a confidential complaint which entered into the Authority records on 22.06.2022 with the number 29114, was discussed in the Competition Board (Board) meeting of 21.07.2022, and the decision no 22-33/532-M was taken to launch a preliminary inquiry on ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÉRIE concerning the allegations in the application under Article 40.1 of the Act no 4054.

(4) The preliminary inquiry process was initiated on 10.10.2022 in accordance with the abovementioned Board decision and the appointment approval of the Presidency of the Authority, dated 05.10.2022 and numbered 50868, simultaneous on-site inspections were conducted at ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÉRIE on 11.10.2022.

(5) The Preliminary Inquiry Report dated 08.11.2022 and numbered 2022-5-036/ÖA, prepared within the framework of the information and documents acquired during the preliminary inquiry process, was discussed in the Board meeting of 10.11.2022, and the decision no 22-51/766-M was taken to launch an investigation under Article 41 of the Act no 4054 on French-based private education institutions ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÉRIE, operating in İstanbul, to determine if they violated Article 4 of the same Act.

(6) Following the aforementioned decision to launch an investigation, the parties under investigation were notified that they were under investigation as per Article 43.2 of the Act no 4054 with the letters dated 22.11.2022 and numbered 53879, 53878, 53877, 53876, 53875, and they were requested to submit their first written pleas within 30 days.

(7) During the ongoing process, since the first six-month period of the investigation would conclude on 10.05.2023, the Information Note dated 07.04.2023 and numbered 2022-5-036/BN-01 which included a request for extension to conclude the investigation was discussed by the Board, which took the decision dated 13.04.2023 and numbered 23-18/328-M to extend the investigation for a further six months, in line with the provision in Article 43.1 of the Act no 4054.

(8) Afterwards, the undertakings were asked to provide information and documents as part on of the investigation process on 21.07.2023, and the response letters submitted by the undertakings entered into the Authority records on 27.07.2023.

(9) On the other hand, while the investigation process was ongoing, information and documents were requested from ST. JOSEPH with a letter dated 11.08.2023 and numbered 70232, in order to get more information on the source of the discrepancy between the weekly additional course numbers and monthly additional course fees listed in the response letters submitted by ST. JOSEPH. The response letter of ST. JOSEPH entered into the Authority records on 14.08.2023, with the number 41565.

(10) In this framework, the Information Note dated 15.08.2023 and numbered 2022-5-036/BN-02, concerning the submission of false/misleading information by ST. JOSEPH, was discussed in the Board meeting of 18.08.2023, and the decision no 23-39/752-261 was taken, ruling that ST. JOSEPH provided false/misleading information, therefore ST. JOSEPH should be imposed an administrative fine at 0.1% of its annual gross revenues generated by the end of the financial year of 2022, as determined by the Board, under Article 16.1(c) of the Act no 4054, but since this amount cannot be below the minimum fine limits specified in the same Article of the Act and the "Communiqué on the Increase of the Lower Threshold for Administrative Fines Specified in Paragraph 1, Article 16 of the Act no 4054 on the Protection of Competition, to be Valid until 31/12/2025", an administrative fine of 105,688.00 TL should be imposed on the undertaking concerned.

(11) The Investigation Report dated 10.11.2023, based on the investigation conducted, was notified to the investigation parties on 16.11.2023 and 17.11.2023 in accordance with Article 45 of the Act no 4054, and the second written pleas of the parties were requested.

(12) The Additional Written Opinion, dated 31.01.2024, was prepared in response to the second written pleas of the undertakings concerned, in accordance with Article 45 of the Act no 4054, and was notified to the undertakings concerned on 05.02.2024. In response to the Additional Written Opinion, STE. PULCHÉRIE submitted its third written plea into the Authority records on 28.02.2024 with the number 49195, NDS on 29.02.2024 with the number 49225, ST. JOSEPH on 01.03.2024 with the number 49273, ST. BENOÎT on 04.03.2024 with the number 49350, and ST. MICHEL on 05.03.2024 with the number 49407, all within the deadline prescribed.

(13) In accordance with Article 46 of the Act no 4054, the Board discussed the matter of holding a hearing at its meeting of 14.03.2024 and took the decision numbered 24-13/268-M to hold the hearing on 17.04.2024. The hearing was held on the aforementioned date.

(14) In accordance with the Report, Additional Opinion and the evidence collected as a result of the investigation, the written pleas, the statements made in the hearing and the content of the file under examination, the Board took its final decision, dated 24.04.2024 and numbered 24-20/466-196.

(15) **H. RAPPORTEURS' OPINION:** In summary, the relevant Report and the Additional Opinion conclude that

- Investigation parties ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÉRIE violated Article 4 of the Act no 4054 by jointly fixing school registration fees and the elements that constitute the fee, and also by fixing the wages of Turkish teachers,
- An individual exemption could not be granted to the relevant practices of the undertakings in question under Article 5 of the Act no 4054,
- Therefore, two separate administrative fines should be imposed on the investigation parties, in accordance with Article 16.3 of the Act no 4054.

I. EXAMINATION, GROUNDS AND LEGAL BASIS

I.1 Undertakings under Investigation

I.1.1 ST. JOSEPH

(16) ST. JOSEPH was established by the French Lasallien Christian Schools Brotherhood in 1870 and was granted its main status with the Treaty of Lausanne. While the high school was founded as a school for boys, it started to accept female students in 1987, continuing its operations as a coeducational school. The duration of education at the school is five years in total, including one preparatory year. In the high school, courses in French, intensive French, math and science (physics, chemistry, biology) are provided by French teachers or by Turkish teachers with an excellent command of French. Other courses such as Turkish literature, social sciences and philosophy are taught in Turkish, with one third of the faculty consisting of French nationals.

(17) Since ST. JOSEPH provides education primarily in French and offers courses in English as a second foreign language, it holds the *"FrancEducation Certificate"* granted to international francophone schools, which certifies quality bilingual education. At the same time, ST. JOSEPH diploma has become equivalent to the French Baccalauréat since 12.03.1963. Thus, students are accepted to higher education institutions in European countries, especially French and other French-speaking countries.

(18) Each year Galatasaray University sets aside a 25% quota for students who graduated from high schools in Türkiye which implement a French program approved by the Ministry of National Education in France. Students with French baccalauréat can take the internal exam held by the Galatasaray University itself, and are accepted into the Galatasaray University if successful. ST. JOSEPH is one of the high schools in question.

I.1.2 ST. BENOÎT

(19) ST. BENOÎT, established in 1783 by Lazarist Congregation of the Mission, was granted the right to operate in Türkiye with the Treaty of Lausanne, provided it complied with the Constitution, laws, regulations and circulars in force. The high school is administered by a French principal and a Turkish chief vice-principal charged with assisting the principal on laws and regulations. In addition to French teachers who provide French, math and science courses, ST. BENOÎT also has Turkish teachers with a good command of the French language. The duration of education at the school is five years in total, including one preparatory year.

(20) Since ST. BENOÎT provides education primarily in French and offers courses in English as a second foreign language, it holds the *"FrancEducation Certificate"* granted to international francophone schools, which certifies quality bilingual education. At the same time, ST. BENOÎT diploma is equivalent to the French Baccalauréat. Thus, students are accepted to higher education institutions in European countries, especially French and other French-speaking countries.

(21) Each year Galatasaray University sets aside a 25% quota for students who graduated from high schools in Türkiye which implement a French program approved by the Ministry of National Education in France. Students with French baccalauréat can take the internal exam held by the Galatasaray University itself, and are accepted into the Galatasaray University if successful. ST. BENOÎT is one of the high schools in question.

I.1.3 ST. MICHEL

(22) Established in 1886 by Frères Des Ecoles Chrétiennes Institute, ST. MICHEL's founder representative is Fadi Sfeir. The high school started its operations as a school for boys and, similar to the other French schools, gained its main status with the Treaty of Lausanne, becoming the first coed high-school among the İstanbul French schools after accepting its first female students in 1970. ST. MICHEL provides education for a total of five years, one of which is preparatory. Most of the courses are taught in French, either by French nationals or by Turkish teachers with a good command of French.

(23) Since ST. MICHEL provides education primarily in French and offers courses in English as a second foreign language, it holds the *"FrancEducation Certificate"* granted to international francophone schools, which certifies quality bilingual education. At the same time, ST. MICHEL diploma is deemed equivalent to the French Baccalauréat with a decree issued in France in March 1963. Thus, students are accepted to higher education institutions in European countries, especially French and other French-speaking countries.

(24) Each year Galatasaray University sets aside a 25% quota for students who graduated from high schools in Türkiye which implement a French program approved by the Ministry of National Education in France. Students with French baccalauréat can take the internal exam held by the Galatasaray University itself, and are accepted into the Galatasaray University if successful. ST. MICHEL is one of the high schools in question.

I.1.4 NDS

(25) NDS was established by the Notre Dame de Sion Sisters in 1856, and it is the first official girls school opened in Türkiye. It provides education for a total of five years, one of which is preparatory. The high school was granted its main status with the Treaty of Lausanne. It provides bilingual education in Turkish and French, with a majority of the courses offered in French by French teachers or by Turkish teachers with a good command of French. NDS provides exclusively French education to students during their preparatory year, with the later grades having French as the main language and English as a second foreign language.

(26) Since NDS provides education primarily in French and offers courses in English as a second foreign language, it holds the *"FrancEducation Certificate"* granted to international francophone schools, which certifies quality bilingual education. At the same time, NDS diploma is equivalent to the French Baccalauréat. Thus, students are accepted to higher education institutions in European countries, especially French and other French-speaking countries.

(27) Each year Galatasaray University sets aside a 25% quota for students who graduated from high schools in Türkiye which implement a French program approved by the Ministry of National Education in France. Students with French baccalauréat can take the internal exam held by the Galatasaray University itself, and are accepted into the Galatasaray University if successful. NDS is one of the high schools in question.

I.1.5 STE. PULCHÉRIE

(28) STE. PULCHÉRIE operated as a girls middle school from its establishment in 1846 until 2000, and then became a high school in accordance with the Primary Education Law that was enacted in 1998, and with the approval of the Ministry of National Education. The duration of education at the school is five years in total, including one preparatory year. While courses involving sciences such as math, physics, chemistry, biology and computer science are provided in French by French-nationals or by Turkish teachers with a good

command of French, other courses including Turkish language and literature, history, geography, philosophy, physical education, religious culture and moral knowledge are provided in Turkish, with English as the second foreign language.

(29) Since STE. PULCHÉRIE provides education primarily in French and offers courses in English as a second foreign language, it holds the *"FrancEducation Certificate"* granted to international francophone schools, which certifies quality bilingual education. At the same time, STE. PULCHÉRIE diploma has become equivalent to the French Baccalauréat in 1963. Thus, students are accepted to higher education institutions in European countries, especially French and other French-speaking countries.

(30) Each year Galatasaray University sets aside a 25% quota for students who graduated from high schools in Türkiye which implement a French program approved by the Ministry of National Education in France. Students with French baccalauréat can take the internal exam held by the Galatasaray University itself, and are accepted into the Galatasaray University if successful. STE. PULCHÉRIE is one of the high schools in question.

I.2 Relevant Market

I.2.1 Information on the Sector

(31) French schools operating in Türkiye derive their foundation from the Treaty of Lausanne, signed on 24.07.1923. Currently, Article 2 of the Law No. 5580 on Private Education Institutions (Law no 5580), titled "*Definitions*," define foreign schools as "*Private schools established by foreign nationals.*" The same Law establishes the Turkish legislation as the legislation that will apply to French schools operating in Türkiye with the provision of Article 1, titled "*Purpose and Scope,"* which states "*The purpose of this Law is to regulate the rules and principles pertaining to the training-education, administration, inspection, supervision and personnel employment of the private educational institutions established by (...) foreign nationals."*

(32) Since one of the allegations examined under the file involves schools under investigation jointly fixing tuition fees, the following section only includes those regulations concerning the setting of tuition fees and related required provisions in the Turkish legislation.

(33) Article 12 of the Law no 5580 on financial matters stipulates that schools may not organize their activities solely for profit; however, they may generate income for the purposes of improving the quality of education and for making investments and providing services that offer opportunities of development, in line with the objectives of Turkish national education. Article 13 of the same Law includes the provisions, "*Tuition fees and other fees are set annually by the institutions and announced starting from January until May at the latest*," and "*The rules governing the setting, announcement and collection of the fees are established with a regulation.*" The regulation to which the Article refers is the Ministry of National Education's Regulation on Private Education Institutions (Regulation), published in the Official Gazette dated 20.03.2012 and numbered 28239

(34) This Regulation, which governs the rules and procedures involving the establishment and operation of private schools of all levels and types, and includes various provisions concerning the issues examined under the file, organizes the matter of "*Setting, Announcing and Collecting Fees*" in section five, where Article 53 titled "*Setting of Fees*," notes that schools must determine their fees in accordance with the training and education facilities they committed to provide in the private contracts signed with parents or students, which are determined by the Ministry and published on the website of the General Directorate, as well as with the investments and services that will lead to their development and other operating costs.

(35) The same Article included the provision "*However, the tuition fee for the schools will be determined by applying an increase of 5% at the highest to the previous year's rate of average domestic producer price index(D-PPI) plus Consumer Price Index (CPU)/2, on the tuition fees announced during the previous academic year for intermediate grades, and on the tuition fees specified in the student enrollment contract for continuing students,*" which was amended by the Regulation Amending the Regulation on Private Education Institutions of the Ministry of National Education, issued on 06.01.2023, to "*However, the tuition fee for the schools will be determined by applying an increase rate that is no higher than the rate specified by the Ministry in consideration of the year-end CPI, on the tuition fees announced during the previous academic year for intermediate grades, and on the tuition fees specified in the student enrollment contract for continuing students,*" This is followed by the provision "*When setting the tuition fees for the next year, the rate specified in this paragraph will be applied to the tuition fee announced for the registration year with regard to students who enrolled within the academic year, and to the non-discounted fee in the registration year with regard to those students who have lost their discounts in the current academic year, for each year of education.*"

(36) The relevant Article shows two basic approaches to setting private school tuitions. The first and more fundamental of these involves private schools setting their tuition fees based on the training/education facilities they will offer within the framework of the agreements signed with the parents, on the investments they will make and on their operation costs. In that respect, private schools seem to be under no restrictions when setting their fees, *with the exception of intermediate grades*. In other words, private schools may freely set their registration fees for preparatory grades, or for the first grade in schools with no preparatory years.

(37) On the other hand, the second main condition in Article 53 of the Regulation puts a maximum limit on the price hikes that can be implemented by private schools under certain conditions. Accordingly, for *intermediate grade students* who are continuing in the school, tuition fees may be set by applying a rate of increase to the tuition fee specified in the student enrollment contract for the previous term, which may not exceed the rate determined by the Ministry in light of the end-of-year CPI. Similarly, tuition for students who wish to transfer into intermediate grades of private schools may be set by applying a rate of increase to the tuition announced for the previous academic year, which may not exceed the rate determined in consideration of the CPI.

(38) At the same time, with the amendment made to the Regulation to 06.01.2023, the Ministry of National Education limited the increase in the tuition fees of private schools by 65% for the 2023-2024 academic year. However, the Regulation published in the Official Gazette dated 05.08.2023, the regulation that allowed the Ministry of National Education to set the price increases for private schools was removed and the relevant article was restored to its previous version.

(39) As a result, private schools may set the tuition fees for newly-enrolled first, fifth and ninth grade students through the agreements they sign with parents based on their cost structures, without being subject to any limitations. However, the rate of increase for the intermediate grades other than the first, fifth and ninth grades are calculated by adding a maximum of 5% to the rate of (D-PPI+CPI)/2, in accordance with the provisions of the Regulation.

(40) Following the information on the legal status and setting of the tuition fees for French schools, another matter of importance involves the status of the teachers working at those

schools. Following the conclusion of the "*Labor Treaty Between Türkiye and France*[1]" on 08.04.1965 through the principle of reciprocity in order to regulate the social security relationship between the Republic of Türkiye and the French Republic, the "*General Convention on Social Security between the Republic of Türkiye and the French Republic*[2]" was signed on 20.01.1972, which includes the following provision in Article 5.2:

The following persons are not included within the scope of this Convention;

(1) Workers other than those engaged in salaried or equivalent activities;

(2) Civil and military servants and equivalent;

(3) Professional staff in Embassies or Consulates as well as Chancellery staff;

(4) Civil servants made available by one of the States to the Other State under a technical assistance contract, who are governed by the social security provisions set forth or to be set forth in the cooperation agreements concluded between the two countries.

(41) French teachers working in the French schools in Türkiye are considered civil servants under the laws of their country, with their personal rights and social security in France maintained, and the rules and procedures according to which they are appointed as well as the terms under which they work in a foreign country are determined by the French Government. Thus, French teachers are appointed according to the systems and exams in France, even when they are working in Türkiye, and matters governing their personal rights are established by the French Government. As a result and as made clear by the provision above, the principle of reciprocity adopted by the Convention in general is not valid for this particular Article.

(42) At this point, it would be beneficial to look at the education system in France, as well as the conditions and types of being appointed as a teacher. The French education system is organized in three levels, consisting of primary, secondary and higher education. In France, "Teacher Training Institutes" (*Institut Universitaire de Formation des Maitres*) play an important role in training candidates to become a teacher. This system based on the Teacher Training Institutes, which are included in the university structure, train teachers for pre-schools, primary schools, secondary schools, high-schools and preparatory schools. Teacher Training Institutes include programs for

a) Primary school teaching (CAPE / *Certificat D'aptitude Au Professorat des Écoles* / Certificate of Qualification for Teaching in Primary Schools),
b) College and high school teaching (CAPES / *Certificat D'aptitude Au Professorat De L'enseignement Du Second Degré* / Certificate of Qualification for Secondary School Teaching),
c) Physical education and sports teaching (CAPEPS / *Certificat D'aptitude Au Professorat D'éducation Physique Et Sportive* / Certificate of Qualification for Teaching Physical Education and Sports),
d) Technical high school teaching (CAPET / *Certificat D'aptitude Au Professorat De L'enseignement Technique* / Certificate of Qualification for Teaching in Technical Education),
e) Vocational high school teaching (CAPLP2 / *Certificat D'aptitude Au Professorat De Lycée Professionnel* / Certificate of Qualification for Teaching in Vocational High Schools), and

[1] https://www.csgb.gov.tr/media/75661/digm_isgucu_fransa.pdf
[2] https://www.csgb.gov.tr/media/80553/digm_sga_fransa.pdf

f) Primary education counselling (CPE / *Conseiller Principal D'éducation*)

(43) Within the secondary education system, "***capésien***" type teachers[3] must successfully pass a national exam called CAPES (*Certificat d'Aptitude au Professerat de l'Enseignement du Second degres*). That is why they are called "***capésien***". These teachers provide 18 hours of courses a week, starting from the first grade of secondary school to the last grade of high school, if staffing allows, in only one subject. Unlike primary school teachers, a candidate with a CAPES degree can leave their region and is appointed throughout the country. Teachers with CAPES degrees are not contracted but are given tenure[4]. CAPES is a centralized exam covering five subjects;

a) Literature: Philosophy, classical literature, modern literature, history and geography, living foreign languages (German, English, Arabic, etc.), regional languages (Breton, Catalan, Basque, etc.)
b) Life Sciences: Math, biology and geology, physics and chemistry, physics and applied electricity.
c) Economics: Economics and social sciences.
d) Art: Plastic arts, musical training, vocal training.
e) Documentation.

(44) The information above shows that French teachers working in Türkiye, known as "capésiens," are subject to different regulations in terms of their rules and procedures of appointment as well as their personal rights, due to the authority they fall under. On the other hand, Turkish teachers working at the French schools operating in Türkiye are not subject to such a distinction, and are covered by the Turkish legislation, both in terms of getting qualified as a teacher and of working rules and procedures. In fact, Article 9 of the Act no 5580, titled "*personal rights and responsibilities*," includes the following provision:

"(…)

Additional payments within the scope of social assistance are paid to school teachers and staff on the same basis as those granted by the budget laws to public schools teachers and staff. No income tax shall be deducted from additional payments made under social assistance.

The amount of additional course fees in these institutions may not be less than the amount determined for public schools. However, the amount of additional course fees to be paid to those assigned on a paid basis from public schools and institutions in accordance with Article 8 may not exceed twice the additional course fee set for public schools.

Without prejudice to the provisions of this Law; administrators, teachers, specialist instructors and master instructors employed in the institutions are subject to the provisions of

a) The Social Insurance Law No. 506 and the Labor Law No. 4857, in terms of social security and personal rights,

(…)"

(45) With the scope of the present file, an important issue is the gross salaries of the Turkish teachers together with each component that constitutes them. Information and documents collected throughout the investigation process showed that the gross salaries of the Turkish teachers working at French high schools were calculated based on a number of

[3] https://www.wordstream.com/blog/ws/2016/05/24/google-mobile-first Accessed: 24.08.2023
[4] https://www.wordstream.com/blog/ws/2016/05/24/google-mobile-first Accessed: 24.08.2023

legislative provisions issued by various Ministries aimed at civil servants originally, and that the gross salaries of Turkish teachers were composed of a number of items including their base salaries. Of these items, job difficulty allowance, education compensation, and additional course fees appear uniformly on the payrolls prepared by all the schools involved in the investigation, while the other components that make up the gross salary differ only in name.

(46) Of the items in question, the indicators related to the job difficulty are determined by summing the points listed in the Council of Ministers' Decision[5] No. 2006/10344, titled "*Decision on the Raises and Allowances to be Paid to Civil Servants*" (Council of Ministers' Decision No. 2006/10344), under "(D) Training and Education Services Section" of Scale no I (Scale no I Section (D)). In addition, the "*NOTE*" section regulates that, in addition to the base points, 500 points of difficulty raise shall be paid to principals, vice-principals, teachers who provide courses other than foreign languages in a foreign language and foreign language teachers. In other words, in addition to the base points in Scale no I Section (D), there are differences in the points based on the title of the personnel working in training-education services, as well as the language in which they provide education. The table concerning the abovementioned points is as follows:

Table 1: Indicators for the Personnel Working in Trainin-Education Services

		RAISES				
		Job Difficulty	Occupational Risk	Difficulty in Provision	Difficulty in Provision Included in the NOTE	Total
TITLES	Principal	925	250	0	500	1675
	Vice-Principal	900	250	0	500	1650
	Teacher Providing Education in a Foreign Language	0	500	250	500	1250
	Teacher Providing Education in Turkish	0	500	250	0	750

(47) The coefficients to be applied to those indicators are determined in accordance with the provisions of the Communiqué titled "*6th Term Collective Agreement Covering the Years 2022 and 2023 on Financial and Social Rights for Public Servants in General and by Service Sectors*," (Communiqué), issued by the Ministry of Labor and Social Security and published in the Official Gazette dated 25.08.2021 and numbered 31579, under Article 5, "*Setting of coefficients and increase of salaries*" in Section Two titled "*Financial and Social Rights for Public Servants in General*," Part I titled "*Collective Agreement for Public Servants in General*". Paragraph 5 of the same Article states that in case one of the cases regulated under Article 8 of the Communiqué in question[6] occurs, the coefficients would be re-determined and announced by the Ministry of Treasury and Finance.

(48) To that end, the Circular dated 04.07.2022 (Item No: 9)[7], issued by the Directorate General of Public Financial Management and Transformation of the Ministry of Treasury and Finance, establishes the coefficients to be used for job difficulty and education compensation components in Article 1, sub-paragraph (a). Accordingly, "*Pursuant to Article 154 of the Civil Servants Law No. 657, the supplementary payment coefficient to be applied for converting the figures in the monthly indicator table (...) as well as the job difficulty,*

[5] https://www.resmigazete.gov.tr/eskiler/2006/05/20060505-1.htm
[6] Article 8 of the Communiqué specifies the rates by which the CPI rates would be increased in accordance with the percentage change in the six-month rates in CPI as announced by Turkish Statistical Institute (Türkiye İstatistik Kurumu—TÜİK).
[7] https://ms.hmb.gov.tr/uploads/2022/07/Mali-ve-Sosyal-Haklar.pdf

occupational risk, provision difficulty and financial responsibility raises into monthly amounts have been determined as (0.105796)."

(49) Another item in the gross salaries of the teachers is education compensation, for which the indicators are shown under "*Education and Training Allowance*" "*Those receiving salaries at degree 3-4*" in the "*Other Compensation*" section of Scale no III in the Council of Ministers' Decision No. 2006/10344. Since the rate of compensation is a percentage, the indicator is calculated as 95x100=9500.

(50) The coefficients to be applied to this item are similarly established in Article 1(a) of the Circular Dated 04.07.2022 (Item No: 9). Accordingly, "*Pursuant to Article 154 of the Civil Servants Law No. 657, the monthly coefficient to be applied in converting the figures in the monthly indicator table, as well as the additional indicator and monthly enhancement figures, into monthly amounts, has been determined as (0.333603) (…)*".

(51) Under the provision in the tenth paragraph of Article 8 of Law No. 5580, "*Founders and principals of schools that provide education in a language other than Turkish that have been established by foreigners shall propose to the Governor's Office one Turkish citizen, who possesses the qualifications to teach Turkish or Turkish culture courses and knows the language of instruction, to have a work permit prepared as the Turkish chief vice-principal*," it is mandatory for French-origin high schools operating in Türkiye to have a Turkish vice-principal alongside the French principal in their administrative staff.

(52) Under Article 13 of Law No. 5580, the student enrollment fees determined by the schools must be announced from January to the end of May at the latest, and the enrollment fees from the previous year are applied instead if this is not done within the due period.

I.2.2 Relevant Product Market

(53) A relevant product market is composed of a particular product as well as any product that is similar to it from the perspective of the consumers in terms of price, intended use and characteristics. In other words, a relevant product market covers all products that the consumer considers substitutable with respect to product features, prices and intended uses. In addition to demand-side substitution, the definition of relevant product market takes into account supply-side substitution where it has a comparable impact with the former.

(54) ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÈRIE, which are under investigation, are private secondary education institutions all of which are operating in the training and education sector in the İstanbul province, and they offer mandatory education in French during the preparatory year. In the following grades, education is provided in Turkish and English as well, but the primary foreign language remains French. The courses are mostly taught in French, either by French nationals or by Turkish teachers with a good command of French. All of the schools investigated under the investigation have the *Label FrancEducation Certificate*, which certifies that the education is offered in French and provides study opportunities in various fields in French, and which is accepted throughout the world.

(55) The diplomas awarded to students after graduation are considered "equivalent to French baccalauréat". Thanks to that equivalence, students have the right to apply to universities in France as well as other French-speaking countries without an examination. Additionally, Galatasaray University sets aside a special quota for students who graduate from the relevant French high schools, accepting students through an internal exam organized by the University itself. Thus, students who graduate from the relevant schools have the

opportunity to get into Galatasaray University either through the general university exams conducted in that term, or through the exam offered by the Galatasaray University itself.

(56) With the exception of minority and foundation schools, private schools differ from public schools in that they are for-profit institutions. At the same time, private schools are broken down into subcategories as well, since the nature and quality of the services offered in the market differ by individual private school. In that framework, an examination into the activities of private schools throughout the country reveals that due to the language of instruction as well as the opportunities offered to students both before and after graduation, the service provided by the French high schools are different from those of the other private schools and cannot be substituted by them from the perspective of the consumers in terms of features and purpose.

(57) Another allegation of infringement that comprise the subject matter of the investigation is the claim of collusion concerning joint fixing of the wages of Turkish teachers working at the private secondary education institutions under investigation that provide education services in French. In line with the provision of "*(...), in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be prepared*," in paragraph 20 of the Guidelines on the Definition of Relevant Market, no precise market definition was made since this would not affect the assessment of the allegations examined in the investigation in light of the observations above. However, the observations and assessments took into account "*the market for private secondary education institutions offering education services in the French language*," and "*the labor market for private secondary education institutions offering education services in the French language*."

I.2.3 Relevant Geographic Market

(58) Since the investigation was launched into the French high schools operating in the İstanbul province, the relevant geographical market was defined as "*İstanbul province*".

I.3 Past Board Decisions Concerning the Parties to the Investigation

- **Board Decision dated 19.12.2013 and numbered 13-71/960-407**

(59) The relevant Board decision found that school managers of the French high schools met in April each year to jointly set annual enrollment fees, and consulted on many subjects in addition to registration fees (including pedagogical needs, education program, cultural activities, etc.). In light of the findings and indications acquired, it was decided that an opinion should be rendered under Article 9.3 of the Act no 4054 to the undertakings investigated, stating that they should avoid practices that have or might have anti-competitive impact under Article 4 of the same Act, and that action would be taken against them under the Act no 4054 otherwise.

- **Board Decision dated 07.07.2015 and numbered 15-28/328-103**

(60) On 24.02.2015, NDS made an application to the Authority requesting exemption to the French high schools' practice of jointly setting their annual enrollment fees. The relevant decision of the Board ruled that the practice of jointly setting annual tuition fees by the French high schools operating in İstanbul could not be granted individual exemption since it did not meet the conditions of Article 5 of the Act no 4054, that there was no need to launch an investigation under Article 41 of the Act no 4054 concerning the allegations in the file at this stage, but that an opinion under Article 9.3 of the Act should be rendered to

the relevant undertakings once again, particularly in consideration of the previous opinion submitted to the undertakings stating that practices that have or might have anti-competitive impact under Article 4 of the Act no 4054 should be avoided in accordance with the Board decision dated 19.12.2013 and numbered 13-71/960-407, and action would be taken against them under the Act no 4054 otherwise.

I.4 Documents Collected during the On-Site Inspections[8],[9]

I.4.1 ST. MICHEL

(61) Documents acquired during the on-site inspection conducted at ST. MICHEL on 11.10.2022 within the framework of the file are included below.

(62) **Finding-2:** The e-mail titled "*Charte protocolaire pour les inscriptions*"[10] and its attachment[11], collected from the computer used by ST. MICHEL (.....)[12] and sent by ST. MICHEL (.....) to (.....) <(.....)>, ST. MICHEL (.....), ST. MICHEL (.....), (.....)<(.....)>, ST. MICHEL (.....) and (.....) <(.....)> on 30.06.2022 is as follows:

30.06.2022
From : ST. MICHEL (…..) To : ST. MICHEL personnel (…..) ST. MICHEL (…..) ST. MICHEL (…..) ST. MICHEL personnel (…..) ST. MICHEL (…..) ST. MICHEL personnel (…..) Subject : *Charte protocolaire pour les inscriptions*
"Dear colleagues, *Prior to the enrollments that will start this Monday, I would like to share with you the enrollment protocol which was signed by all principals in the last meeting and which was approved by Tutel[13].* *I would appreciate it if you read it carefully. First of all, I'd like to remind teachers and students that they should not compare the institutions and should emphasize the successes and strengths of our schools. I have the utmost trust in our teams because we are working in a spirit of transparency.* *We should not promise scholarships to those students who place in the top 3. We can of course discuss the possibility of a scholarship but a commission will be set up in the end of september and we cannot guarantee any scholarships before then. All other schools do the same.* *(…)"*

[8] Phrases used in the correspondence are quoted as they are in the original, without any corrections.
[9] The numbering of the documents follows the document numbers in the relevant report.
[10] In the first written plea sent by ST. MICHEL, the relevant phrases were translated as *"guideline for enrollments"* .
[11] The Turkish translation of the relevant e-mail attachment was acquired during the on-site inspection conducted at ST. BENOÎT and the document in question is included in Finding-8.
[12] It is determined that the person referred to as (.....) in the e-mail is ST.MICHEL (.....)
[13]The first written plea sent by ST. MICHEL notes that the term is used to refer to the "founding representative".

(63) **Finding-3**: The e-mail titled "*minutes*" which was acquired from the computer used by ST. MICHEL (.....) and sent by ST. JOSEPH (.....) to ST. BENOÎT personnel (.....) on 10.09.2022 is as follows:

10.09.2022
From: ST. JOSEPH (.....) To : ST. BENOÎT personnel (.....) Subject : *minutes*
"Hello Ms. (.....), *Please find attached the minutes of the meeting translated from Turkish into french.* *Unfortunately I couldn't get a handle on the method used or to be used by the high-schools from the minutes you sent and so I translated it mot à mot.* *In my opinion, it would be best for each high school to present a calculated total gross salary a teacher of the following status would receive so that the Principles and us can fully understand the method used.* *YEARS OF SENIORITY. 20 years* *ADDITIONAL COURSES. 9 hours.* *Please find attached the total gross salary indicator for a S.J. teacher with this status.* *(…)"*

(64) The e-mail titled "minutes," sent by ST. BENOÎT personnel (.....) <(.....)> to the accounting department of the relevant school, to ST. JOSEPH (.....), to NDS personnel (.....) <(.....)>, to ST. MICHEL (.....), to STE. PULCHÉRIE personnel (.....) <(.....)>, to (.....) <(.....)> and to ST. BENOÎT (.....) on 12.09.2022 in response to the e-mail above is as follows:

12.09.2022
From: ST. BENOÎT personnel (.....) To : ST. BENOÎT Accounting ST. JOSEPH (.....) NDS personnel (.....) ST. MICHEL (.....) STE. PULCHÉRIE personnel (.....) (.....) ST. BENOÎT (.....) Subject : *minutes*
"Hello, *I would like to submit the Turkish and French translations of the meeting held at Saint Benoit French High School on 07.09.2022 for your approval, for the purposes of sharing them with our principals.* *Thanks to Mr. (.....) for the translation.* *In addition, in case every school shares their calculation in accordance with his recommendation, those amounts may be sent to our managers as well.* *Thank you in advance for your understanding, cooperation and feedback.* *Have a good week."*

(65) The e-mail attachment titled "*MINUTES*" referred to in the e-mail chain in Finding-3 is as follows:

"-MINUTES-
Agenda: Calculation of the French Schools' 2022-2023 Teacher Salaries *At the address Private Saint Benoit French High School Kemeraltı Cad.No:11 Karaköy/Beyoğlu/İstanbul, between 10:30 and 12:10, the individuals whose schools and names*

are listed below convened to discuss the matters specified below, which have been duly recorded in the minutes.

Saint Joseph French High School;
-42% increase over base salary (staff salary) + July allowances
-Last year other staff received an increase with the same system (Base salary+allowances),
-The payroll did not show the 13% increase separately but added it to the base salary,
-Contract information includes allowances,
-Allowances did not take into account the 13% calculation and 42% was applied over july allowances,
-All schools can make their calculations over the table implemented by SJ,

Saint Pulchérie French High School;
-Base salary (staff salary) was based on grille and updated in January and July in addition to teacher seniority and course hours,
-Pay increase not implemented with the exception of allowances
-Allowances are not included in the contract,
-Only base salary (staff salary) and additional course fees are included,

- Notre-Dame de Sion Private French High School
- raise calculated at a rate of 13% on base salary (staff salary) + allowances are shown separately in the payroll and paid to the teachers,
-Base salary (staff salary) for the contract taken from the grille,
-A raise of 13% was calculated and paid for allowances, and 42% salary should be calculated over that,

- Saint-Joseph Private French High School
- 13% raise shown in the additional benefits section of the payroll,
-When calculating contract, base salary (staff salary) is based on grille with a 42% raise over the 13% portion of the allowances,
-July allowances were updated but since the increase was insufficient, the gross amount in the contract couldn't be reached and the small difference could be added into the payroll,
-Salary differences between the schools would be an advantage before the Competition Board,

Saint Pulchérie French High School;
- *- 13% raise shown in the additional benefits section of the payroll,*
- *In July, changing allowances and 13% raise was subtracted,*
- *The raise was applied to the staff salary,*

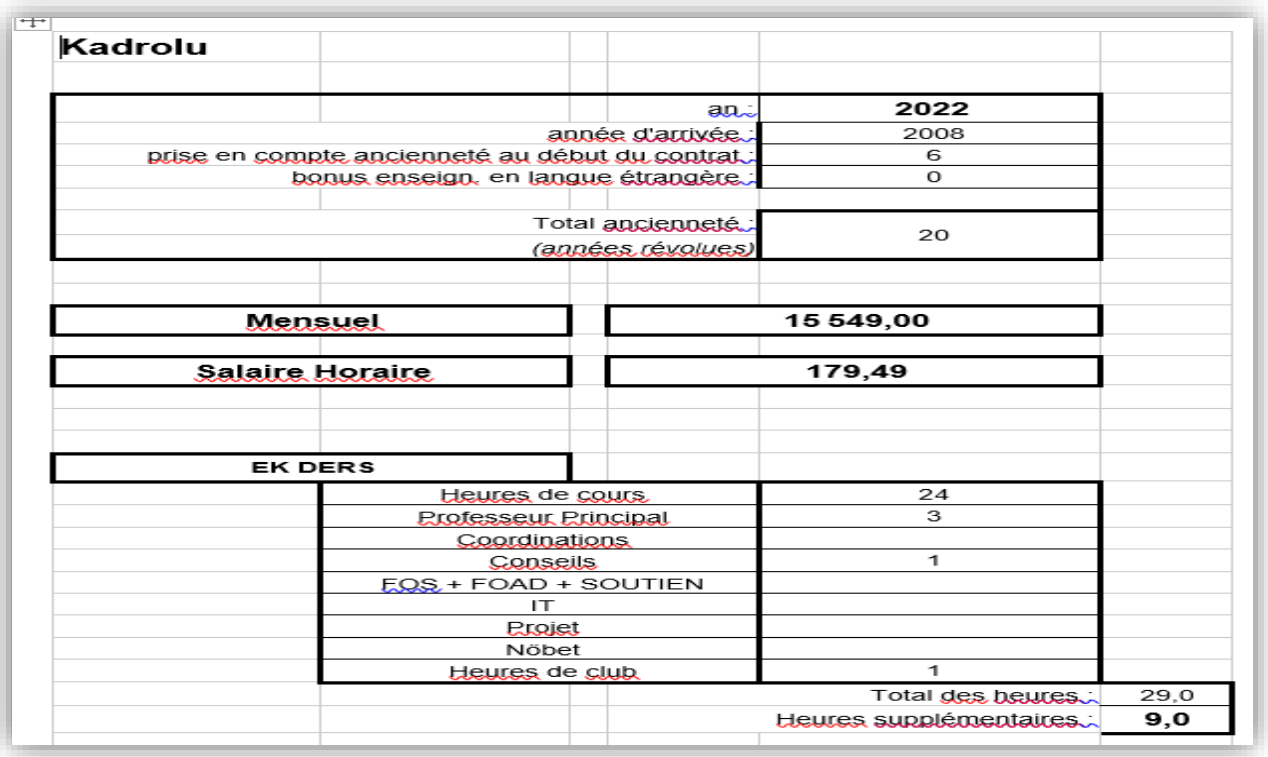
As a result;
Each school must decide by a discussion with its principal
The matter of which practice should be adopted in response to the 2023 coefficient increase in January was brought to the agenda and discussed with the parties before the end of the meeting.

Attendees:
Ms. (.....) and Ms. (.....) St.Joseph French High School
(.....) St.Benoit French High School
(.....) Ste. Pulcherie
(.....) St.Benoit and Ste. Pulcheri (…..)
Ms. (.....) and Ms. (.....) Notre-Dame de Sion French High School
(.....) St. Michel French High School"

(66) The document titled "*Permanent staff*," which is referred to in the phrase "*All schools can make their calculations over the table implemented by SJ*" in the document "*MINUTES*" and attached thereto is as follows:[14]

[14] The highlighted sections in the table are also included the original version of the finding.

24-20/466-196



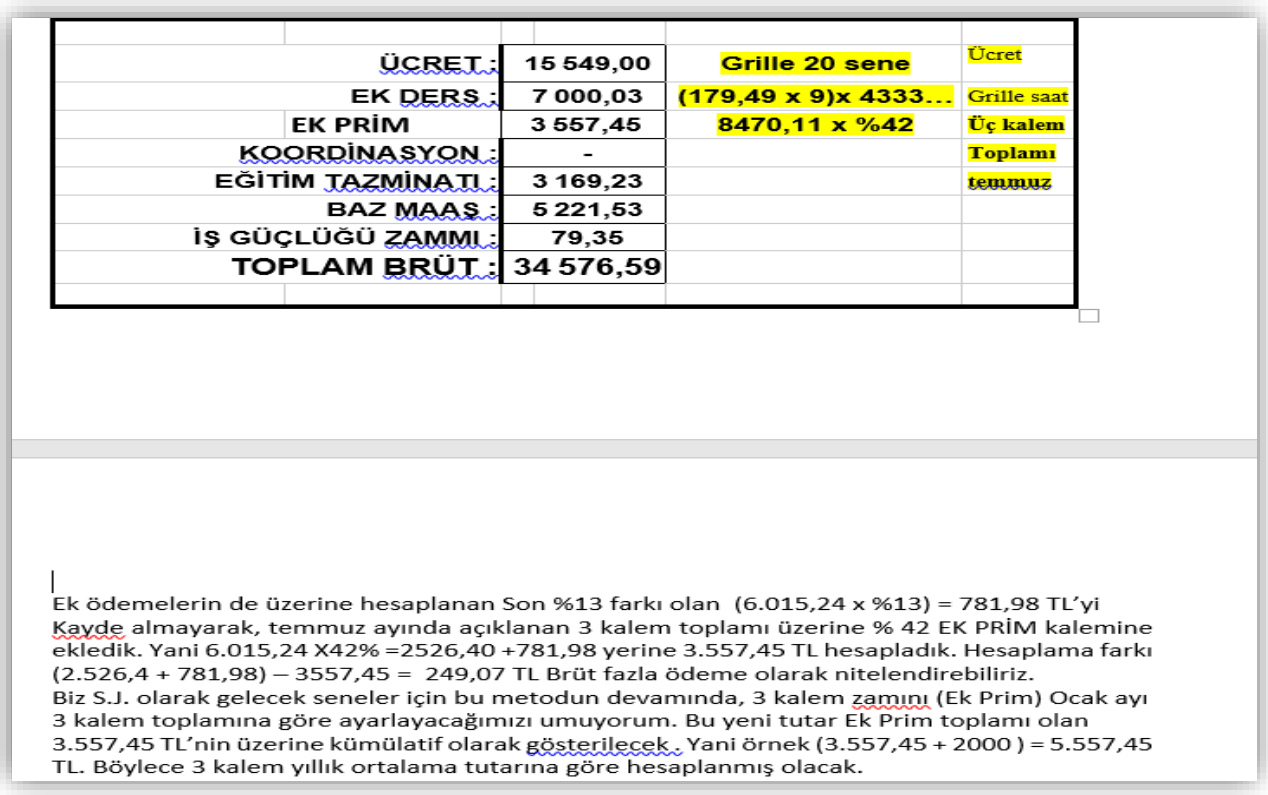
Kadrolu

an :	**2022**
année d'arrivée :	2008
prise en compte ancienneté au début du contrat :	6
bonus enseign. en langue étrangère :	0
Total ancienneté : (années révolues)	20

Mensuel	**15 549,00**
Salaire Horaire	**179,49**

EK DERS

Heures de cours	24
Professeur Principal	3
Coordinations	
Conseils	1
EOS + FOAD + SOUTIEN	
IT	
Projet	
Nöbet	
Heures de club	1
Total des heures :	29,0
Heures supplémentaires :	**9,0**



ÜCRET :	15 549,00	**Grille 20 sene**	Ücret
EK DERS :	7 000,03	**(179,49 x 9)x 4333...**	Grille saat
EK PRİM	3 557,45	**8470,11 x %42**	**Üç kalem**
KOORDİNASYON :	-		**Toplamı**
EĞİTİM TAZMİNATI :	3 169,23		**temmuz**
BAZ MAAŞ :	5 221,53		
İŞ GÜÇLÜĞÜ ZAMMI :	79,35		
TOPLAM BRÜT :	34 576,59		

Ek ödemelerin de üzerine hesaplanan Son %13 farkı olan (6.015,24 x %13) = 781,98 TL'yi Kayde almayarak, temmuz ayında açıklanan 3 kalem toplamı üzerine % 42 EK PRİM kalemine ekledik. Yani 6.015,24 X42% =2526,40 +781,98 yerine 3.557,45 TL hesapladık. Hesaplama farkı (2.526,4 + 781,98) – 3557,45 = 249,07 TL Brüt fazla ödeme olarak nitelendirebiliriz.
Biz S.J. olarak gelecek seneler için bu metodun devamında, 3 kalem zamını (Ek Prim) Ocak ayı 3 kalem toplamına göre ayarlayacağımızı umuyorum. Bu yeni tutar Ek Prim toplamı olan 3.557,45 TL'nin üzerine kümülatif olarak gösterilecek . Yani örnek (3.557,45 + 2000) = 5.557,45 TL. Böylece 3 kalem yıllık ortalama tutarına göre hesaplanmış olacak.

(67) The e-mail that includes ST. MICHEL (.....)'s response of 12.09.2022 to the e-mail chain as well as the screenshot of the Excel table attached to that e-mail are included below:

12.09.2022
From : ST. MICHEL (.....) To : ST. BENOÎT personnel (.....) ST. MICHEL (.....) ST. MICHEL (.....) CC : ST. BENOÎT Accounting ST. JOSEPH (.....) NDS personnel (.....) STE. PULCHÉRIE personnel (.....) (.....) ST. BENOÎT (.....) Subject : *minutes*
"Hello, *We also did our calculations and thought this would be the best way We applied seniority fees and additional courses fees based on the grille. We'll add 42% to the sum of the three items announced in July and show this raise in our payrolls as additional bonuses starting from september. We discussed this with our principal and got approval. Please find attached our calculation example.* *Best regards"*

(68) The screenshot of the attachment titled "*salary calculation september 2022*" referred to in the e-mail above is shown below:

KIDEMİ			20 yıl kıdem 9 saat
BRÜT	:		**15.549,00**
TABAN MAAŞ	:		5.221,53
EĞİTİM TAZMİNATI	:		3.169,23
İŞ GÜÇLÜĞÜ	:		79,35
EK DERS	:		7.000,00
EK PRİM	:		3.557,45
BRÜT ÜCRET TOPLAMI	:		**34.576,56**

(69) The screenshot of the e-mail sent as a response to the e-mail chain in Finding-3 by ST. BENOÎT personnel (.....) to the same recipients on 14.09.2022 is shown below:

14.09.2022
From : ST. BENOÎT personnel (.....) To : STE. PULCHÉRIE personnel (.....) CC : ST. JOSEPH (.....) ST. BENOÎT Accounting ST. MICHEL (.....) NDS personnel (.....) (.....) ST. BENOÎT (.....) STE. PULCHÉRIE (.....) Subject : *minutes*

> *"Bonjour,*
> *est-ce que le compte-rendu écrit estt valide par les responsables de tous les lycées ?*
> *Pour rendre résultat des simulations plus lisibles, pourriez- vous compléter ce tableau?*
> *https://docs.google.com/spreadsheets/d/liWnWpw4ZYsz7NMkoqhcB-od2aM690W5bhJjwm9lxf-Q/edit#gid=0*
> *Par avance merci*
> *Bonne journée*
>
> *Hello,*
> *Is the written minutes approved by each school's official?*
> *Can you please fill in this table so that the simulations are more easily understood?*
> *https://docs.google.com/spreadsheets/d/liWnWpw4ZYsz7NMkoqhcB-od2aM690W5bhJjwm9lxf-Q/edit#gid=0*
> *Thanks in advance.*
> *Have a nice day."*

(70) The filled-in version of the table whose access link was shared with all parties in the e-mail above and which shows the salary calculation simulations of the schools was requested from ST. BENOÎT with an information request letter dated 24.10.2022 and numbered 52112, the response to which was received into the Authority records on 26.10.2022, with the number 32486. The screenshot of the table in question is included below:

pour un professeur 2022-2023 (20ans ancienneté et 9 heures supplémentaires)								
	Notre Dame de Sion	Saint Joseph Kadiköy	Saint Benoît 1 (40% sur	Saint Benoît 2(42% sur	Saint Benoît 3(42% sur le sa	Sainte Pulchérie 1.	Sainte Pulcherie 2.	Saint Michel
BRÜT	15 549,00	15 549,00	15 549,00	15 549,00	15 549,00	15 549,00	15 549,00	15 549,00
TABAN MAAŞ	5 221,53	5 221,53	5 221,53	5 221,53	5 221,53	5 221,53	5 221,53	5 221,53
EĞİTİM TAZMİNATI	3 169,23	3 169,23	3 169,23	3 169,23	3 169,23	3 169,23	3 169,23	3 169,23
İŞ GÜÇLÜĞÜ	79,35	79,35	79,35	79,35	79,35	79,35	79,35	79,35
EK DERS	7 000,03	7 000,03	7 000,03	7 000,03	7 000,03	7 000,03	7 000,03	7 000,00
EK PRİM (Maaş Fark Ödemesi)	1 122,04	3 557,45	0,00	1 122,04	3 557,45	1122,04	3 557,45	3 557,45
BRÜT ÜCRET TOPLAMI	**32 141,18**	**34 576,59**	**31 019,14**	**32 141,18**	**34 576,59**	32 141,18	34 576,59	**34 576,59**
SOSYAL YARDIMLAR	dans cette simulation cette partie n'est pas prise en compte car la simulation est faite avec un célibataire, sans enfant (donc pas de prime obligatoire). Chaque lycée a sa ploitique concernant la prime de transport, de mutulle privée...							

(71) The e-mail sent by ST. JOSEPH (…..) to STE. PULCHÉRIE personnel (.....) and forwarded to the same parties in response to the e-mail chain in Finding-3 by (.....) on 15.09.2022 is included below::

15.09.2022
From : STE. PULCHÉRIE personnel (…..) To : ST. JOSEPH (…..) ST. BENOÎT personnel (…..) ST. BENOÎT Accounting ST. MICHEL (…..) NDS personnel (…..) (…..) ST. BENOÎT (…..) STE. PULCHÉRIE (…..) Subject : *minutes*
"Hello (.....) , *I think you sent this only to me by mistake, I'm reposting it.* *best regards"* ST. JOSEPH (.....) : *"hello all* *Ms. (.....), there are 2 columns in the table for Saint Benoit. In one you've entered 40% social aid and Additional Premium=0, in the other 42% and Additional Premium is 1,122.04 TL. Could I please ask you to tell me how you got these numbers and your calculation method so that I can explain the difference between the two schools to (.....).* *Thank you and have a nice working day*"

(72) The e-mail sent by ST. BENOÎT personnel (…..) to the same parties in response to the e-mail chain in Finding-3 on 16.09.2022 is included below::

16.09.2022
"Hello, *In the video conference held in May we decided to enter the 42% raised amount for total gross salary.* *Thus we increased the allowances for May by 42% as well.* *In May, Base Salary 3,685.18* *Education Compensation 2,236.73* *Job Difficulty 56* *Total 5,977.91 TL Of this, 13% = 777.13 TL and 42% of that is 326.39 TL.* *In July, Allowances increased by 41.69%* *Base Salary 5,221.53* *Education Compensation 3,169.23* *Job Difficulty 79.35* *Total 8,470.11 TL.* *The difference would have been 2,510.72 TL if the increase was 42%, but since the raise was 41.69, the difference is* *8,470.11-5,977.91=2,492.20 TL.* *Therefore 2,510.72-2,492.20=18.52* *With this amount, the total gross I wrote on the contract and the total gross I calculated right now have a difference of*

777.13+326.39+18.52=1,122.05. *This difference is less for retired personnel to whom we don't pay base salary.* *It's a little bit more for managers with higher job difficulty.* *In the meeting I made a mistake about this amount. This was the amount of difference I said was between 250-750 TL. I apologize if I misled you by giving you a number without doing the precise calculation.* *As SB, what we need to decide is whether we will continue paying this difference.* *As I understand the table, we have this problem in common with NDS.* *Thank you for giving me your valuable time.* *Have a nice working day.*

(73) The screenshot of the e-mail sent by STE. PULCHÉRIE personnel (.....) in response to the e-mail chain in Finding-3 to the same parties on 16.09.2022 is included below:

16.09.2022
From: STE. PULCHÉRIE personnel (.....)
"Hello all, *When I took a look at the table after Ms. (.....)'s mail I realized I made a mistake in the calculations.. I apparently wrote the allowances without factoring in the raise required... fixed now...* *best day."*

(74) The screenshot of the e-mail sent by ST. ST. BENOÎT personnel (.....) in response to the e-mail chain in Finding-3 to the same parties on 21.09.2022 is included below:

21.09.2022
From: ST. BENOÎT personnel (.....)
"Hello, *We request your approval concerning the minutes of the meeting.* *Can a representative from each school respond please?* *I'm giving approval on behalf of the Saint Benoit French High School,* *Thank you for your understanding and cooperation."*

(75) The screenshot of the e-mail sent by STE. PULCHÉRIE personnel (.....) in response to the e-mail chain in Finding-3 to the same parties on 21.09.2022 is included below:

21.09.2022
From: STE. PULCHÉRIE personnel (.....)
"Good morning all, *As discussed at the meeting each school will continue after getting approval from their own Principal.* *As the table shows that each school will have a different practice.* *Best regards."*

(76) The screenshot of the e-mail sent by NDS personnel (.....) in response to the e-mail chain in Finding-3 to the same parties on 21.09.2022 is included below:

21.09.2022
NDS personnel (.....)
"Hello Ms. (.....), *We approve the minutes.* *Thank you to you and Mr (.....) for your efforts.* *Regards* *(.....)"*

I.4.2 ST. JOSEPH

(77) Documents acquired during the on-site inspection conducted at ST. JOSEPH on 11.10.2022 within the framework of the file are included below.

(78) **Finding-4:** The document acquired from the computer used by ST. JOSEPH (.....) and sent by ST. JOSEPH (.....) to ST. BENOÎT personnel (.....) <(.....)> to provide information on how many people will attend the meeting from the schools under investigation is included below:

02.09.2022
From : ST. JOSEPH (.....) To : ST. BENOÎT personnel (.....) Subject : *Rencontre*
"Hello Ms. (.....), *For the meeting on October 07 at 10:30, S.J. will send 2-3 people, and S.M. will send 2 people* *Regards"*

(79) **Finding-5:** The document concerning the meeting held by the schools under investigation on 07.09.2022, which was in the e-mail titled "*Minutes of the Meeting*," acquired from the computer used by ST. JOSEPH (.....) and sent by ST. BENOÎT personnel (.....) <(.....)> to ST. BENOÎT personnel (.....) <(.....)> and ST. JOSEPH (.....) on 08.09.2022, is included below:

08.09.2022
From : ST. BENOÎT personnel (.....) To : ST. BENOÎT personnel (.....) ST. JOSEPH (.....) CC : (.....) ST. BENOÎT (.....) Subject : *Re: Minutes of the Meeting*
"Thank you for your efforts, Ms. (.....), *I added the names. I don't know the surnames of some of them.* *Mr. (.....), can you please add their surnames during translation if you know them?* *Thank you for your understanding and cooperation."*

(80) In relation to the e-mail in the previous finding, the screenshot of the e-mail sent by (.....) to (.....) asking for the French version of the minutes in question is included below:

09.09.2022
From : ST. BENOÎT personnel (.....) To : ST. BENOÎT (.....) CC : ST. BENOÎT personnel (.....) ST. JOSEPH (.....) (.....)
"Mr. (.....), hello, *Could you kindly sent me the French version of the minutes if it's ready?* *I need to send it to the accountants of each school and take their approvals.* *After that the TR-FR versions will be brought to the attention of the principals.* *Thank you for making time for us in your busy schedule."*

(81) The e-mail titled "*minutes*" and the contents of its two attachments, which were acquired from ST. MICHEL (.....)'s computer and examined in Finding-3, and were sent by ST. BENOÎT personnel (.....) <(.....)> to the accounting department, ST. JOSEPH (.....), NDS personnel (.....) <(.....)>, ST. MICHEL (.....), STE. PULCHÉRIE personnel (.....) <(.....)>,

(.....) <(…..)> and ST. BENOÎT (.....) were also collected from the computer used by ST. JOSEPH (.....) .

(82) **Finding-6[15]:** The e-mail[16] with the subject "*Compte-rendu de la Reunion des directuers du 6 avril 2022[17]*," collected from the computer used by ST. JOSEPH (.....), and sent by ST. JOSEPH School Principal (.....) to (.....) <(…..)>, ST. MICHEL (.....), STE. PULCHÉRIE (…..) and ST. BENOÎT (.....) on 21.04.2022 discussing the meeting held between the schools under investigation is included below:

21.04.2022
From : ST. JOSEPH (…..) To : İzmir ST. JOSEPH personnel (…..) NDS official (.....) ST. MICHEL (…..) STE. PULCHÉRIE (…..) ST. BENOÎT (…..) CC : (.....) Subject : *Compte-rendu de la Reunion des directuers du 6 avril 2022*
"Cher frére, cher.e.s collègues *Vous trouverez ci-joint le comple-rendu de notre réunion en date du 6 avril qui a eu lieu à Sainte-Puichérie Il est fait mention dans ce comple-rendu d'un fichier excel que je peux vous envoyer si vous me donnez votre bolle mail personnele Bonne reprise à tou Bin cordialement"*

[15] Turkish translation of Finding-6 was acquired from the e-mail account used by ST. BENOÎT (.....) as well.
[16] The relevant text was translated by the rapporteurs as *"Dear brother, dear colleagues, please find attached the minutes of the April 6 meeting held at Sainte Pulcherie. If you can provide me with your personal e-mail addresses I can send you the excel file mentioned in that meeting. Welcome back to all, Regards."*
[17] In the first written plea submitted by ST. MICHEL, the relevant phrase was translated as *"Minutes of the Principal's Meeting of April 6, 2022"*.

(83) **Finding-7:** The screenshots[18] of the relevant sections of the document titled "*RÉUNION DES DIRECTEURS 2021-2022*"[19], which was collected from the computer used by ST. JOSEPH (.....) and which is understood to be the minutes of the meeting held at STE. PULCHÉRİE on 06.04.2022, mentioned in Finding-6 are included below:

RÉUNION DES DIRECTEURS 2021-2022

Mercredi 6 avril 2022 à 13h — Lycée Sainte Pulchérie

PARTICIPANTS

LYCÉE OU INSTITUTION	NOMS	ABSENT ou PI *
SAINTE-PULCHÉRIE	[redacted]	
NOTRE DAME DE SION	[redacted]	
SAINT-BENOÎT	[redacted]	
SAINT-JOSEPH - Izmir	[redacted]	
SAINT-JOSEPH - Kadiköy	[redacted]	
SAINT-MICHEL	[redacted]	
FÉDÉRATEUR	[redacted]	

* PI = Présence indirecte

[18] The term "*PL*" in the screenshots is an abbreviation of the French term *"Pre-Lycee"*, which means "*High School Prep*". The text in the screenshots were translated as "...

- *Increase capped at 36.7% for the moment, after consultation with other private schools.*
- *(.....) will share an Excel file simulating the separated schooling arrangements in the PL. Question from (.....) about the risk of not filling up enrollments: Is there a risk of not reaching full capacity? Unanimous response: No, since the level of unpaid fees is very low in our schools.*

  …
- *(.....) suggested increasing PL tuition fees as much as possible, up to the rate of inflation in consumer prices. We must anticipate a minimum salary increase of 35–36% (to decide by the end of the month).*
- *Prepare a revised contract with PL families reflecting the separation.*
- *Meeting with the trustees on 27/04 to present the proposal for increases.*
- *Set tuition fees no later than May 5–6, holding a videoconference meeting (date to be set after the Easter holidays).*

  (…)
- *The principals are responsible and accountable for the school's enrollment policy and must guide the admissions team in line with the non-competition principles defined by the governing bodies.*
- *Announce the information day for the school at the same day and time in all high schools that require upstream coordination.*
- *Announce the information day for the school at the same day and time in all high schools that assume prior coordination.*
- *Refrain from granting scholarships upon enrollment except in the following cases: siblings - 10%, staff of our schools 50%, teachers from other schools 10%, alumni of the foundation %10, those who have an agreement with the foundation (SAJEV, SM, NDS?) 10% national athlete 25%*
- *Do not call families to persuade them to enroll in your school by offering them a larger scholarship.*

  …
- *Do not offer to refund the 10% retained by the school where they are already enrolled.*
- *Do not slander the reputation or undermine the quality of a school.*
- *During the meeting on 27/04, we expect our governing bodies to clarify whether or not an ordinary institution is authorized to take precedence over another in terms of entry points.*

by the rapporteurs.

[19] In the first written plea submitted by ST. MICHEL, the relevant phrase was translated as *"Minutes of the 2021-2022 Principals' Meeting"*.

N°	*INFORMATIONS OU SUJETS SUPPOSANT DES SOLUTIONS À TROUVER*	*notes / proposition / décision (en gras)*
1	Frais de scolarité 2022-2023	Augmentation plafonnée à 36,7% pour l'instant après consultation d'autres écoles privées Paul partage un fichier Excel simulant les scolarités dissociées en PL. Question de Sébastien sur le risque aux inscriptions: y a-t-il un risque de ne pas remplir. Réponse unanime: Non vu le niveau d'impayés très bas dans nos écoles. Se préparer par contre à descendre les points. Jacques suggère de majorer au maximum les scolarités des PL jusqu'au taux de l'inflation des prix à la consommation. Nous devons anticiper une augmentation des salaires à 35-36% minimum (trancher à la fin du mois). Préparer un contrat révisé avec les familles de PL actant de la dissociation réunion des tutelles le 27/04 pour présenter la proposition des augmentations Définir les frais de scolarité au plus tard le 5-6 mai, en se réunissant en visioconférence (Heure à définir au retour des vacances de Pâques)

(…)

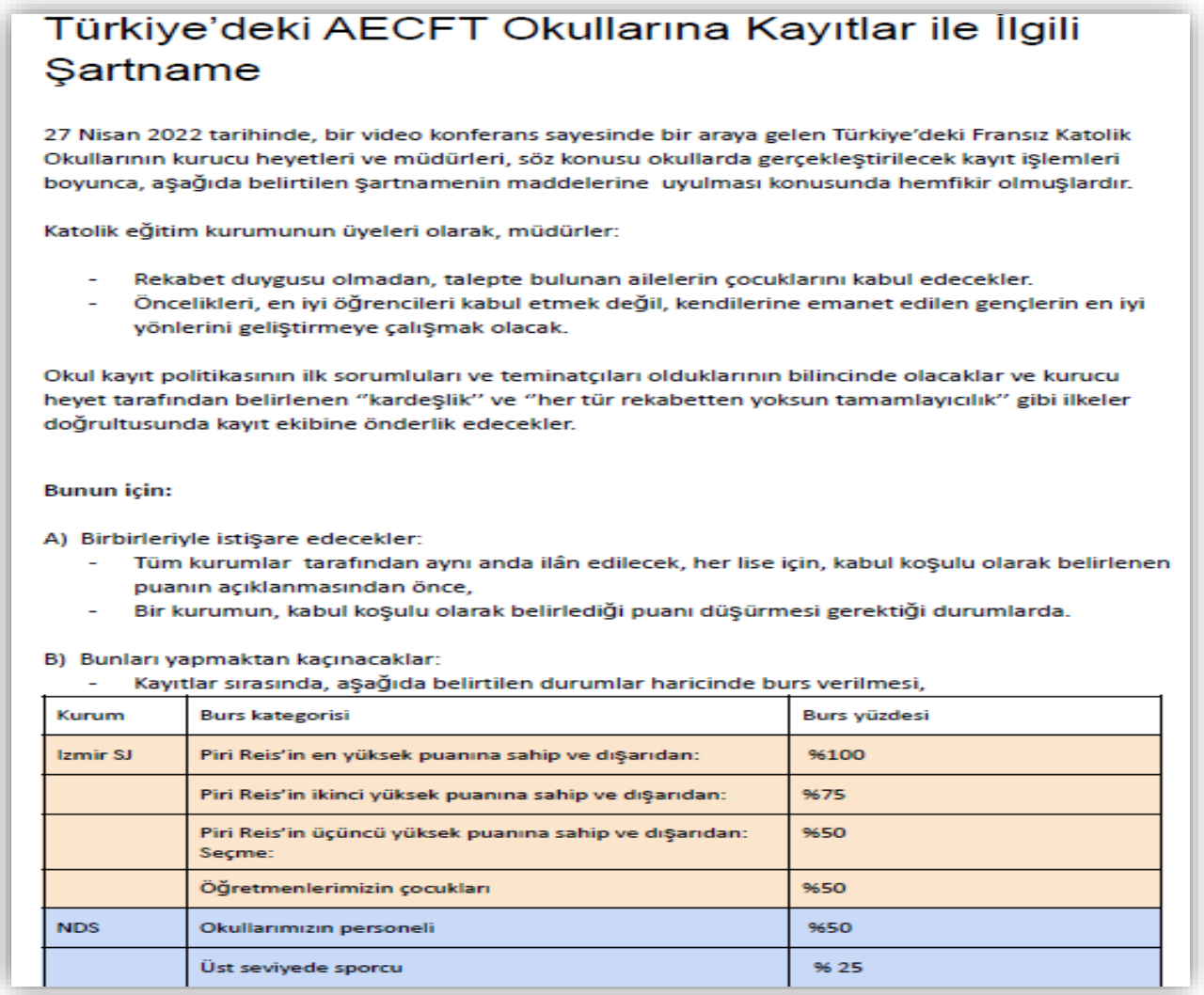
6	Charte concernant les inscriptions	- Les directeurs sont responsables et garants de la politique d'inscription du lycée et doivent piloter l'équipe d'inscriptions dans la ligne des principes définis par nos tutelles à savoir **la non-concurrence** - Annoncer le point de son lycée le même jour et à la même heure dans tous les lycées ce qui suppose une concertation en amont - Annoncer le point de son lycée le même jour et à la même heure dans tous les lycées, ce qui suppose de s'être concerté en amont - S'interdire d'attribuer des bourses aux inscriptions en dehors des situations suivantes: fratrie - 10%, personnel de nos lycées 50%, professeurs d'autres lycée 10%, ancien de la fondation (10% convention avec une fondation (SAJEV, SM, NDS?) sportif de haut niveau 25% - Ne pas téléphoner aux familles pour les convaincre de venir dans notre lycée en proposant une bourse plus conséquente

		- Si on appelle une famille, c'est pour leur demander si elle confirme leur inscription ou non avant la clôture de la liste. - Ne pas proposer de rembourser les 10% retenus par le lycée où il est déjà inscrit - Ne pas calomnier la réputation / déprécier la qualité d'un lycée Lors de la réunion du 27/04, nous attendons de la part de nos tutelles de préciser si oui ou non un établissement lambda est autorisé ou pas à passer devant un autre en terme de point d'entrée.

I.4.3 ST. BENOÎT

(84) Documents acquired during the on-site inspection conducted at ST. BENOÎT on 11.10.2022 within the framework of the file are included below.

(85) **Finding-8[20]:** The document titled "*Specifications Concerning Enrollments into the AECFT Schools in Türkiye,"* prepared by the French Catholic Schools in Türkiye as a result of their meeting of 27.04.2022 in both French and Turkish was recovered from ST. BENOÎT (…..)'s computer. The screenshot of the document in question is included below:



Türkiye'deki AECFT Okullarına Kayıtlar ile İlgili Şartname

27 Nisan 2022 tarihinde, bir video konferans sayesinde bir araya gelen Türkiye'deki Fransız Katolik Okullarının kurucu heyetleri ve müdürleri, söz konusu okullarda gerçekleştirilecek kayıt işlemleri boyunca, aşağıda belirtilen şartnamenin maddelerine uyulması konusunda hemfikir olmuşlardır.

Katolik eğitim kurumunun üyeleri olarak, müdürler:

- Rekabet duygusu olmadan, talepte bulunan ailelerin çocuklarını kabul edecekler.
- Öncelikleri, en iyi öğrencileri kabul etmek değil, kendilerine emanet edilen gençlerin en iyi yönlerini geliştirmeye çalışmak olacak.

Okul kayıt politikasının ilk sorumluları ve teminatçıları olduklarının bilincinde olacaklar ve kurucu heyet tarafından belirlenen "kardeşlik" ve "her tür rekabetten yoksun tamamlayıcılık" gibi ilkeler doğrultusunda kayıt ekibine önderlik edecekler.

Bunun için:

A) Birbirleriyle istişare edecekler:
- Tüm kurumlar tarafından aynı anda ilân edilecek, her lise için, kabul koşulu olarak belirlenen puanın açıklanmasından önce,
- Bir kurumun, kabul koşulu olarak belirlediği puanı düşürmesi gerektiği durumlarda.

B) Bunları yapmaktan kaçınacaklar:
- Kayıtlar sırasında, aşağıda belirtilen durumlar haricinde burs verilmesi,

Kurum	Burs kategorisi	Burs yüzdesi
İzmir SJ	Piri Reis'in en yüksek puanına sahip ve dışarıdan:	%100
	Piri Reis'in ikinci yüksek puanına sahip ve dışarıdan:	%75
	Piri Reis'in üçüncü yüksek puanına sahip ve dışarıdan: Seçme:	%50
	Öğretmenlerimizin çocukları	%50
NDS	Okullarımızın personeli	%50
	Üst seviyede sporcu	% 25

[20] The same document as in Finding-8 was also recovered from the computer used by ST. JOSEPH (.....).

	Kardeşler	%10%
	LGS'de NDS'nin en yüksek 3 puanına sahip (bakınız SP)	%75 , %50, %25
SM	Okullarımızın personeli	%50
	Üst seviyede sporcu	%25
	Kardeşler	% 10
	Kurumlarımızın dışından öğretmenler	% 10
	Saint-Michel mezunu ebeveyne sahip olanlar	% 10
SJ	Okullarımızın personeli	%50
	Petit-Prince Koleji mezunları arasında kayıt listesinde birinci	% 50
	Petit-Prince Koleji mezunları arasında kayıt listesinde ikinci	% 25
	Üst seviyede sporcu	%25
	Kardeşler	%10
SP	Kardeşler	%10
	Okullarımızın personeli	%50
	Öğretmen çocuğu	%10
	Yeni Nesil 2000 Okullarının en iyi öğrencileri için 4 tane %25'lik burs	%25
SB	Kardeşler	%10
	Öğretmen çocuğu: MEB'e bağlı tüm kurumlar (ana-ilk-orta-lise) + üniversite	%10
	Federasyona bağlı ilkokul, ortaokul ve liselerde çalışan öğretmenlerin çocukları için indirim	%50
	Saint Benoît Lisesi çalışanı	%50- %100 arası
	Millî takım mensubu sporcular	25%

* SAJEV Vakfı, Saint-Joseph Lisesi'ne kayıt yaptıran birinci için %50,ikinci için ise %25'lik burs sunmaktadır. Ayrıca, üçüncüye bir yıl boyunca %50, dördüncüye ise bir yıl boyunca %25'lik burs imkânı sağlar.

- Kayıtların kapanmasından önce, kaydı teyid etmek amacı haricinde, çocuklarını, Federasyona bağlı başka bir okula kayıt yaptırmış olan aileleri, örneğin, onlara, yukarıda listelenenler haricinde bir burs teklifi sunarak veya kayıt yaptırmış oldukları okula ödedikleri %10'luk kesintiyi geri ödemeyi teklif ederek, kendi okullarına kayıt yaptırmaya ikna etmek için aramak.
- Federasyona bağlı diğer okulları değersizleştiren eleştirel yorumlarda bulunmak.
- Velilerin kararını, ne pahasına olursa olsun, kendi kurumlarının lehine olacak şekilde değiştirmeye çalışmak.
- İlgili komisyon, hazırlık seviyesine dair burs taleplerini incelemek için eylül ayının sonunda toplanacağından, kurumlarımız, kayıt döneminde, ailelere burs konusunda hiçbir taahhüt vermemektedir.

Kurucu heyet, okulların aldıkları öğrencilerin puanlarına değil, okullar arasındaki işbirliğine, öğrencilerin geleceklerine önem verdiğini belirtmektedir.

Kurucu heyet, müdürlere, bu belgeyi ve bu şartname ile altı çizilmek istenen bakış açısını, okullarının eğitim kadrolarıyla paylaşmalarını önermektedir.

Bu şartname ../../…. tarihinde, ……. 'da hazırlanmıştır.

Kurucu üyeler	Müdürler

(86) **Finding-9:** The e-mail acquired from the computer used by ST. BENOÎT (.....), which was sent by ST. JOSEPH (.....) to (.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....), (.....) and (.....) on 07.07.2022 is included below:

07.07.2022
From: ST. JOSEPH (.....) To : (.....) (.....) (.....) (.....) (.....) (.....) (.....) (.....) (.....) NDS official (.....) STE. PULCHÉRIE (.....) ST. MICHEL (.....) İzmir ST. JOSEPH personnel (.....)
" Dear AECFT members, *I am writing following a meeting held between the administrators last Tuesday concerning the Association's decision to freeze the index points of the French civil servants appointed on a temporary basis to our institutions.* *We would like to remind that the salaries of the appointed civil servants are determined by a three way agreement between our institutions, the Ministry of Foreign Affairs and the Ministry of National Education in 2012. They are subject to this agreement which mandates us to follow the index points approved or aggregated in accordance to a table sent to us by the cultural services*

of the French Embassy. In return we can receive indefinite temporary appointment for each civil servant.

Moreover, when we recruit into the professorial staff from the public or private sector, we are required to send a contract proposal to the Ministry of National Education and the Ministry of Foreign Affairs, indicating the rank, level and index to obtain the necessary approval.

In addition, I should note that the cost of temporary civil servants increases with the fact that the institution is exempt from paying their social security fees after the sixth year, which is not the case for French local contracts.

Clearly, in light of the economic situation, we need to find leverage to minimize the effect of the salaries on our budget, and such leverage exists: that is, the option to modulate the salary scale of the French local contracts and at the same time, the option to cut the number of foreign professors. This is an option that must be carefully considered since the parents of our students have certain expectations regarding the existence of foreign teachers at our schools.

In light of the latest measures taken concerning the tuition fees we increased for new enrollments, we are confident in our ability to weather this crisis. This did not cause any complaints anywhere else."

I.4.4 STE. PULCHÉRIE

(87) Documents acquired during the on-site inspection conducted at STE. PULCHÉRIE on 11.10.2022 within the framework of the file are included below.

(88) **Finding-10:** The e-mail[21] with the subject *"Proposition de reconte (Meeting proposal)*," which was collected from the computer of STE. PULCHÉRIE (.....) and sent by (.....) on 27.09.2022 to the employees of the schools under investigation as well as to persons who are not parties to the investigation and whose identity could not be established is included below:

27.09.2022
From: (.....) To : Employees of the schools under investigation as well as other persons who are not parties to the investigation and whose identities could not be established Subject : *Proposition de reconte (Meeting proposal)*

[21] The relevant text was translated as *"In care of Brother (.....) and (.....), Dear (.....), (.....), (.....), (.....), (.....) and (.....), The members of the executive board of AECFT met in Paris on September 26, Monday, and held an extensive discussion about the difficulties you are facing due to the economic situation in Türkiye. The issues regarding the salaries of the different categories of staff, and the growing gap between the French and the Turks are a matter of concern to us. However, it is difficult to fully understand your concerns to respond quickly to your requests. Besides, the Council has decided to entrust a mission of dialogue and consultation to three members of the Council — Brother (…..), (…..), and myself — in order to meet you, to listen to you, and to hear you out. (…..) informed us that our next meeting is scheduled for October 18, Tuesday. Unfortunately, that date does not fit into our schedules. Would it be possible to move your meeting to the following day, October 19, Wednesday? That way, we could join you for a half-day of work. While awaiting your reply and this meeting, which we hope will be fruitful, I remain attentive to each of you for any comment or question to add to the agenda!"* by the rapporteurs.

"Aux bons soins de Frère (…..) *Chère (…..),* *Chers (.....), (.....), (.....), (.....), (.....),* *Les membres du conseil exécutif de l'AECFT, réunis à Paris hier lundi 26 sept ont longuement échangé sur les difficultés que vous rencontrez en raison de la situation économiqueen Turquie. Les questions de salaire des différentes catégories de personnel, l'écart croissant entre ceux des Français et des Turcs nous interpellent. Mais il est difficile à distancede partager vos préoccupations, de bien les comprendre et donc de répondre rapidement à vos sollicitations. Aussi le conseil a décidé de confier une mission d'échange et deconcertation à 3 membres du conseil, Frère (.....), (.....) et moi-même pour vous rencontrer, vous écouter, vous entendre.* *Frère (.....) nous a dit que votre prochaine réunion est prévue le mardi 18 octobre. Malheureusement cette date n'entre pas dans nos agendas.* *Est-ce possible de déplacer votre réunion au lendemain, mercredi 19 octobre ? Nous pourrions ainsi vous rejoindre pour une demi journée de travail.* *Dans l'attente de votre réponse et de cette rencontre que nous souhaitons fructueuse, je reste à l' écoute de chacun pour toute remarque, question à mettre au menu !* *(.....)"*

(89) The following statements are in the e-mail[22] sent by ST. JOSEPH (.....) in response to the relevant e-mail:

27.09.2022
From: ST. JOSEPH (.....) To : Principals of the schools under investigation as well as other persons who are not parties to the file and whose identities could not be established Subject : *Proposition de reconte (Meeting proposal)*
"Cher frère, cher (.....), cher (.....), *Je te remercie (.....) pour ton message d'aujourd'hui qui va dans le sens d'une clarification nécessaire de la situation de nos écoles et de nos priorités de pilotage. Aprèsconcertation avec mes collègues, nous sommes d'accord pour organiser une visioconférence le mercredi 19 octobre de 14h (13h heure française) à 16h (15h heure française).Voici le lien de notre rencontre :* *https://meet.google.com/fvn-jmsq-pkx* *Je vous envoie aussi une invitation sur google agenda."*

[22] The relevant text was translated as "Dear Brother, dear (…..), dear (…..), Thank you (…..) for your message today, which contributes to the much-needed clarification of the situation of our schools and of our management priorities. *After consulting with my colleagues, we have agreed to organize a videoconference on October 19, Wednesday, from 14:00 (13:00 French time) to 16:00 (15:00 French time). Here is the link for our meeting: https://meet.google.com/fvn-jmsq-pkx I am also sending you an invitation through Google Calendar.*" by the rapporteurs.

I.5 Assessment

I.5.1 Assessment under Article 4 of the Act no 4054

I.5.1.1 Competition Law Assessment of the Infringements in Input Markets

(90) An examination of the existing literature within the context of competition law and the decisions taken by the competition authorities[23] shows that while the practices predominantly involved output markets, there is no difference between input and output markets in terms of impact and assessment of agreements restricting competition, as demonstrated in both the literature and authority decisions in the recent years. When the legislation applied and decisions taken by various authorities involving purchase cartels are reviewed, it is observed that there is a symmetrical approach to purchase and sale cartels. Buyers who act in coordination in the markets for goods or services in order to directly or indirectly fix purchase prices aim to mutually eliminate competition amongst themselves. In parallel, competition law considers purchase cartels infringement by object, similar to sale cartels, and therefore the authorities focus on establishing the existence of an agreement concluded to fix prices or other competition parameters.

(91) Article 4 of the Act no 4054, which prohibits anti-competitive agreements, concerted practices and decisions, provides: *"Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited."* Paragraph 2, subparagraph (a) of the same article lists "*Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any condition of purchase or sale*," among the cases which are illegal and prohibited. The relevant provision shows that the Act no 4054 is not limited to the sale side and it bans practices with a restrictive effect on competition on the purchase side as well. In fact, the Board has previously taken decisions where it found an infringement in input markets. Examples of the decisions taken by the Board concerning infringements in the input markets are provided below.

(92) In the Board's *Dry Fig* decision[24], it was decided that the investigated undertakings violated Article 4 of the Act no 4054 by colluding to fix maximum purchase prices for dried figs. The decision also concluded that an individual exemption could not be granted to the agreement, noting that "*the collusion, which involved joint fixing of the maximum level of dried fig purchase prices, mainly aimed to suppress on fig purchase prices*."

(93) The *Cherry* decision[25] of the Board found that undertakings purchasing cherries formed a cartel in the purchase market by agreeing on the terms of purchase in the market for cherries intended for exports, decided that they acted in accordance with the cartel agreement in their pricing decisions in the market, and concluded that they violated Article 4 of the Act no 4054. On the other hand, the decision noted that *maintenance of prices or all types terms of purchase and sale are per se prohibited practices which are in violation of Article 4 of the Act no 4054 and which cannot be justified under competition law.*" Even though the "*per se*" concept is taken from the competition law practice in the United States of America (USA), the decision found that the agreement examined fundamentally "*restricted competition by object*," as defined in the European Union (EU) competition law

[23] European Commission Case AT.40018, European Commission Case AT.40410
[24] Board Decision dated 16.03.2012 and numbered 12-12/383-112.
[25] Board Decision dated 24.07.2007 and numbered 07-60/713-245.

practices, and it was concluded that the agreement in question could not be granted exemption since it failed to fulfill the conditions listed in Article 5 of the Act no 4054.

(94) The *Raw Milk* decision[26] of the Board examined the allegation that undertakings operating in the trade and transportation of milk and dairy products in the Şarkikaraağaç district of the Isparta province allocated the district center, towns and villages among themselves according to a protocol they signed, imposed compensation sanctions on those who purchase milk from a village in violation of that allocation, and thus jointly fixed the price and payment terms of the collected raw milk. The Board found that the undertakings investigated allocated regions by villages in the Şarkikaraağaç district and/or Konya province, and decided that the relevant undertakings violated Article 4 of the Act no 4054 by colluding to set the producer purchase price of raw milk they used for production outside of the market and stopping raw milk purchases during certain periods, and thus the agreement in question did not meet the necessary conditions for individual exemption, noting that "*in competition law, practices such as price maintenance, region allocation and purchase boycotts are the best known and least disputed violations*".

(95) The *Sour Cherry* decision[27] of the Board examined the allegation that undertakings purchasing sour cherries colluded to gradually lower the prices they offered to the producer, thereby causing the producers to suffer losses. Although sour cherry buyers contacting competing undertakings in the market to ensure that there were no hidden increases to the prices announced to producers may constitute an infringement under Article 4 of the Act no 4054, it is decided that launching an investigation was not necessary, in consideration of the market failures and the extraordinary fall in the yields, as well as the fact that no price movements could be identified to indicate a reduction in purchase prices following the meeting of the sour cherry buyers. On the other hands, an opinion was rendered to the undertakings investigated stating that the practices in question had the characteristics of an infringement under the Act no 4054 and therefore should be terminated.

(96) Clearly, the decisions listed above concern anti-competitive agreement involving the fixing of purchase prices and terms of purchase which form those prices in the markets for goods and services. The decisions concerned show that there is no difference in the Board's approach between the input and output markets.

I.5.1.1.1 Theoretical Framework under Competition Law concerning Agreements in the Labor Market

(97) It is a well-known fact that in many sectors the qualifications of the employees are gaining more importance every day, with workers being considered among the most important inputs for undertakings. On the one side, employees are a decisive factor for the competitive power of the undertakings in the output market, but on the other side they are one of the significant cost items. Since employees are a significant cost item and they are among the most important elements of competition with their rivals, undertakings tend to prevent employees from leaving. The tendency to decrease the mobility of employees is mostly observed in innovation-heavy sectors, but it can also be seen in those sectors with unskilled laborers. The mobility of the employees can impact the market power of the undertaking, as well as the market structure.

(98) Undertakings that compete for labor may mutually abandon competition, by signing agreements related to employee mobility, wages and side benefits, in particular. Similar to

[26] Board Decision dated 26.07.2006 and numbered 06-56/714-204.
[27] Board Decision dated 14.09.2011 and numbered 11-47/1181-422

other purchase cartels, the goal of agreements restricting competition in the labor markets is to intervene with the terms of purchase to the benefit of the undertaking. While there are novel harm theories under competition law concerning certain coordinated or unilateral conduct by employers in the labor market, the most commonly seen types of infringement in these markets are “no-poach agreements,” where employers agree not to employ each other's workforce, and wage fixing agreements,” where employers act in coordination with respect to wages and other working conditions. Accordingly, agreements between undertakings concerning labor, which has the characteristics of an input, are examined under competition law.

(99) Wage-fixing agreements are those agreements signed between employers with an aim to harmonize or coordinate wages paid to employees and/or other working conditions. The sharing of sensitive information concerning the workers in order to serve that purpose may cause the wage structure of competitors to converge, which lead to an outcome similar to price fixing agreements. In a competitive market, those offering their labor receive a wage at a level that matches the marginal value of their labor, but when wages are suppressed by an undertaking with monopsony power or by multiple undertakings via anti-competitive agreements, the supply of labor will fall, which would cause a reduction in production and thus output, and the reduction in output would lead to a rise in the prices and a loss in welfare for final consumers.[28]

(100) As a result, wage fixing agreements in the labor markets are considered to be no different than price fixing agreements in the selling market. Thus, the impact of these infringements in the buying and selling sides of the same market are also similar. The Portuguese Competition Authority’s study establishing the effect of agreements in the labor markets can provide guidance with respect to the impact of wage fixing agreements[29]. Under the heading “potential effects of no-poach agreements on the labor market,” the Authority notes that these agreements,

- will align the prices paid for an input, resulting in similar cost structures between competitors and this symmetry in costs could increase price coordination in the downstream market and reduce the strategic uncertainty which characterizes competition,
- would prevent undertakings from paying workers they wish to employ a different wage than the agreed wage, which would mean undertakings cannot expand their workforce,
- standardize the wage workers can receive from various employees, thereby restricting labor mobility and removing the ability of an employee to get a higher wage at a competing undertaking,
- restrict competition by coordinating strategies.

The negative effects agreements with a restrictive effect on competition can have on the employees when implemented by undertakings in the labor market will have indirect negative effects on consumer welfare as well. Thus, competition authorities have begun to review such agreements in the labor market. Some of the decisions taken by the European Commission (Commission), the U.S. Department of Justice (DoJ) and the Board are listed below.

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[28] HOVENKAMP, H. (2019) “Competition Policy for Labour Markets” U of Penn, Inst for Law & Econ Research Paper No. 19-29, p. 2-3; NAIDU, S., POSNER, E. & WEYL, E. G. (2018) “Antitrust Remedies for Labor Market Power”, 132 HARV. L. REV. 536

[29] https://www.concorrencia.pt/sites/default/files/documentos/Issues%20Paper_Labor%20Market%20Agreements%20and%20Competition%20Policy%20-%20EN.pdf Accessed: 08.11.2023

(101) The *Exxon* decision[30] found that the undertakings sent periodic surveys to compare undertakings' past and current wages, set up a system where they regularly met to discuss current and future salary budgets, prevented experienced workers from switching, and the meetings they held to prevent employees from switching to other firms reduced their incentives to increase the wages of their employees. At the same time, the decision noted that sharing the wage information of the employees and future wage budgets with competitors could constitute an infringement.

(102) When the DoJ examined an agreement an association of undertakings created by hospitals and nursing centers in Arizona for collective procurement signed with offices that provide nurses to its members, it found that this agreement decreased competition between hospitals for recruiting nurses and reduced the fees paid to the offices providing nurses (and thus the wages to be paid to nurses), and decided that the association of undertakings violated the law.[31]

(103) In EU competition law practice, there are currently no decisions taken by the Commission with regard to labor markets, but there are various decisions by national competition agencies. In fact, when examining the price agreements signed by modeling agencies, the competition agencies of UK and France also addressed agreements which indirectly meant wage fixing for models, and identified an infringement by object.

(104) Meanwhile, unlike the global examples, there are many decisions in the Turkish competition law practice which examine allegations of competition law violation in the labor market. The *TV Show Producers* decision[32] of the Board examined the allegation that undertakings operating in the TV show production market colluded to prevent actor transfers and fix actors' wages . The relevant decision concluded that setting of actor fees by TV series producers through agreements would mean fixing purchase prices, which would constitute a clear restriction of competition by object and if the principle decisions were implemented, competition would be prevented in the market. As a result, it was decided that written opinions under Article 9.3 of the Act no 4054 should be sent to the undertakings which were under preliminary inquiry, stating that the infringement should be terminated.

(105) The Board's *Container Drivers* decision[33] included the assessment "*agreements to fix worker wages/no-poach agreements, which form the main portion of the competition law enforcement in labor markets, are no different than cartels set up in the buying side of the market*." The decision, which addressed the issue of undertakings operating in the transportation of containers fixing drivers' wages stated that agreements in labor markets could constitute an infringement under the Act no. 4054, and that wage-fixing agreements were fundamentally similar to price-fixing agreements in goods and services markets. The decision also noted that agreements restricting competition in the labor market could have negative effects in the output market, for instance by reducing output due to a decrease in labor supply which would lead to losses in welfare for the consumers.

(106) In the *Private Schools* decision[34] taken in 2011, the Board examined whether private schools operating in Türkiye and the association of undertakings formed by these private schools violated Article 4 of the Act no 4054 through agreements, concerted practices and

[30] Todd v. Exxon, 275 F.3d 191, 198 (2d Cir. 2001)
[31] Competitive Impact Statement, United States v. Arizona Hosp. & Healthcare Ass'n & AzHHA Service Corp., No. CV07-1030-PHX (D. Ariz. 2007)
[32] Board Decision dated 28.07.2005 and numbered 05-49/710-195
[33] Board Decision dated 02.01.2020 and numbered 20-01/3-2
[34] Board Decision dated 03.03.2011 and numbered 11-12/226-76

association of undertakings decisions concerning fees and staff policies. The Board clarified its approach on the subject by noting that the schools had meetings and shared information on tuition fees, scholarships and wages, and listed information on teachers' wages among the main competition parameters. In other words, in addition to sharing information on tuition fees, sharing information on the wages of the employees was considered to have a restrictive effect on competition on its own.

(107) The *BFIT* decision[35] of the Board states, "*Like in other purchase cartels, undertakings which restrict competition in the labor market are able to reduce the labor costs incurred and thus increase their profits, which, theoretically under certain competitive market conditions, may be passed on to the consumers in the output market in the form of welfare increases. However, such agreements lead to a more striking decrease in worker welfare in the labor market, creating similar effects in that market to the effect customer allocation between competitors would have in the output market. In this framework, it is predicted that these agreements would have anti-competitive effects similar to horizontal market allocation agreements, restricting the workers' ability to change their jobs in the labor market thereby fixing their wages indirectly. The approach adopted by the U.S. Department of Justice in the decisions and statements above, which was supported by many authors, focus on the direct restrictions these agreement introduce on input markets, i.e. labor markets, rather than their potential indirect effects on output markets,*" emphasizing that there is no difference in terms of competition law between the infringement occurring in the output market or in the input market.

(108) In the *GÜSOD* decision[36], the Board evaluated the request for negative clearance/exemption to the recommended sample wage lists that Security Services Organization Union Association (*Güvenlik Servisleri Organizasyon Birliği Derneği*– GÜSOD) planned to publish for private security personnel working in various regions in Türkiye. The decision concluded that the law covering GÜSOD members did not include a provision concerning setting the wages of security personnel, therefore the sample wage list GÜSOD wished to publish was not based on a task or power clearly granted by the legislation, and that since wages were among the basic competition parameters for undertakings, their determination by mutual agreement between the undertakings and/or by professional associations instead of the relevant undertakings would clearly be in violation of the Act no 4054, even if in the form of a recommendation. In addition, the relevant decision emphasized that while the practice in question could increase service quality and employment, the desire to increase quality of service and employment in a market should not be met through methods that could violate public interests related to the establishment of a free competitive environment, which is protected by the Act no 4054, by adopting clearly anti-competitive decisions and practices, when the same goal can be achieved through structural measures taken in the market. Within this framework, it was found that the notified practice of publishing a recommended sample wage list could not be granted exemption, since it did not meet the conditions specified in Article 5 of the Act no 4054.

(109) The *KASTDER* decision[37] evaluated the request for an individual exemption regarding the publication on the association's official website of a draft contract prepared as a recommendation to be used between casting agencies and advertising agencies/advertising production companies, with the aim of ensuring the necessary

[35] Board Decision dated 07.02.2019 and numbered 19-06/64-27.
[36] Board Decision dated 18.03.2015 and numbered 15-12/166-78
[37] Board Decision dated 24.03.2020, numbered 20-43/588-262 and dated 04.03.2021, numbered 21-11/148-61

conditions for improving artists' working standards and protecting their rights. From the phrases *".....half of the daily fee at a minimum...," "hourly rate calculated over the daily fee," "...at a rate of one tenth...," "...half of the one day and single use area fee..."*, it was concluded that while KASTDER did not fix purchase or sale prices directly, it engaged in indirect price fixing by setting tariffs, and thereby intervened with commercial terms. Although the matters specified in the contract were stated to be of a recommendatory nature and agencies were free to modify them as they wished, due to concerns that its application by large enterprises operating in the market could result in binding and competition-restricting decisions for undertakings, it was decided that an individual exemption could be granted to the contract in question, provided that expressions which could lead to indirect price-fixing regarding payment terms were removed. In response to the second application submitted by KASTDER after removing the infringing provisions from the agreement in accordance with the decision, the Board decided to grant a certificate of negative clearance to the agreement concerned, under Article 8 of the Act no 4054.

I.5.1.1.2 Assessment of the Findings concerning the Wage Fixing Agreement

(110) Finding-3 shows that accounting managers working at the schools under investigation met at ST. BENOÎT on 07.09.2022, after which each school was asked to send how they calculated wages for their staff. The response mail of 10.09.2022 makes it clear that the calculations in question were related to teachers' wages. In order to determine the methods the schools used in calculating wages, all schools under investigation were asked to send a calculation concerning the gross wages of a hypothetical teacher with 20 years of seniority who taught nine hours of additional courses each week. The attachment to the e-mail titled "*Permanent Staff*" includes the calculation of the gross wages of a Turkish teacher with the aforementioned qualifications working at ST. JOSEPH.

(111) The Word document titled "*MINUTES*," attached to the e-mail chain in Finding-3, shows that the agenda of the meeting of 07.09.2022 was phrased as "*Calculation of the French Schools' 2022-2023 Teacher Salaries*" in the document, that the minutes in question included the method each school used at the time for calculating the relevant wages as well as their suggestions concerning a joint calculation, which was made clear by the expressions "*All schools can make their calculations over the table implemented by SJ*," "*A raise of 13% was calculated and paid for allowances, and 42% salary should be calculated over that*," "*July allowances were updated but since the increase was insufficient the gross amount in the contract couldn't be reached and the small difference could be added into the payroll*".

(112) In response, ST. MICHEL sent a calculation similar to the one prepared by ST. JOSEPH[38] to the parties under investigation, concerning the gross salary a teacher with 20 years of seniority who taught nine hours of additional courses every week, and both calculations were exactly the same in terms of the items (base salary, education compensation, job difficulty raise and additional courses) used in the calculation of the gross salary of a teacher with the same qualifications, as well as in terms of the gross salary ((.....)TL) arising from the sum of those items.

(113) Within the e-mail chain, the e-mail sent by ST. BENOÎT personnel (.....) on 14.09.2022 presents a table to explain the differences in the wage calculation simulations for each school, shares a common link accessible by all of the schools, and asks that the relevant

[38] The wage calculation table prepared by ST. JOSEPH is the one in the document titled "*Permanent Staff*," included in Finding-3

departments of the schools fill the table concerned. The filled-in version of the table whose access link was shared with all schools under investigation in the e-mail above and which shows the salary calculation simulations of the schools was requested from ST. BENOÎT with an information request letter dated 24.10.2022 and numbered 52112, the response to which was received into the Authority records on 26.10.2022, with the number 32486. The response letter explains the contents of the table as follows: "*Includes simulation studies concerning the issues in the calculation method of the gross wages for a teacher with 20-year seniority teaching 29 hours of courses a week, which stemmed from the fact that the interim raises applied due to high inflation in the 2021-2022, period in particular, were reflected on the base wage and/or social benefits differently.*"

(114) The table in question includes a simulated calculation of the gross wages of a teacher with the same qualifications, performed by each school. As noted in the document "*MINUTES*," the table shows that NDS and ST. BENOÎT calculated gross wages by adding 13% of the allowances calculated in May 2022 to 42% of the result, while ST. JOSEPH, ST. MICHEL and STE. PULCHÉRIE calculated gross wages by adding 42% of the allowances paid in July. The e-mail chain shows that ST. BENOÎT included both scenarios under its own column in the table concerned, which led to ST. JOSEPH (.....) asking that it be explained to ST. JOSEPH (.....) how and by which methods the different wages were calculated.

(115) In response, ST. BENOÎT personnel (.....) broke down the gross wage calculation method. In response to (.....)'s explanation, STE. PULCHÉRIE (.....) noted that they found a mistake in the first calculation under the column for STE. PULCHÉRIE and that the mistake was fixed. It is observed that this led to uniformity in practice due to the transparent process for calculating wages, i.e., it caused the wages to be the same. In the last e-mail of the chain, (.....) declared that the minutes of the meeting were approved on behalf of NDS.

(116) Finding-4 includes a response e-mail by ST. MICHEL and ST. JOSEPH, dated 02.09.2022, concerning how many people would attend from those schools to the meeting that would be hosted by ST. BENOÎT on 07.09.2022. The phrase "*For the meeting on October 07 at 10:30, S.J. will send 2-3 people, and S.M. will send 2 people*" in the document shows that ST. MICHEL and ST. JOSEPH were willing to attend the meeting, and Finding-3 clarifies that participation was not limited to these two schools, with other schools under investigation also attending the meeting.

(117) In Finding-5, ST. BENOÎT requested the French version of the minutes of the meeting, where the sentence "*I need to send it to the accountants of each school and take their approvals*" shows that the version received would be sent to each school for approval, and the sentence "*After that the TR-FR versions will be brought to the attention of the principals*" makes it clear that it will be shared with the school principals after approval. This proves that intent by all undertakings were sought for the approval of the schools attending the meetings.

(118) Finding-6 shows that a meeting was held at STE. PULCHÉRIE on 06.04.2022, which was attended by all schools under investigation.

(119) Finding-7, which includes a document containing the minutes of the meeting mentioned in Finding-6, is established to involve both purchase and sale side of the theories of harm examined under the investigation, however since this section only examines competition restricting practices on the purchase side of the market, only those points related to this subject are addressed here, with the points related to the sale side is addressed under the next section. Relating to the purchase side of the market, the phrase "*(.....), (...) We must anticipate a minimum salary increase of 35–36% (to decide by the end of the month)*" shows that there were discussions related to the range of the raise to be applied to the

wages, which are undoubtedly for the labor force, even though it was not possible to determine exactly which personnel group was concerned.

(120) An examination of the document in Finding-9 shows that the e-mail sen by ST. JOSEPH (.....) to the other parties of the investigation on 07.07.2022 concerned the regulation of the employees' wages, based on the statements: "*Clearly, in light of the economic situation, we need to find leverage to minimize the effect of the salaries on our budget, and such leverage exist: that is, the option to modulate the salary scale of the French local contracts and at the same time, the option to cut the number of foreign professors. This is an option that must be carefully considered since the parents of our students have certain expectations regarding the existence of foreign teachers at our schools.*" The statements above suggest that the schools were seeking a consensus on methods to mitigate the burden of the personnel wages on the costs. Two options are mentioned in relation to this point. One of them is revising the wages of the French teachers, and the other involves decreasing the number of French teachers. However, the schools seem to be reluctant to adopt the second option, since it is thought that the parents' preferences are influenced by the existence of French teachers in the schools' staff. The statements above indicate that the schools found the first option preferable.

(121) In parallel to Finding-9, Finding-10 includes the statements "*The issues regarding the salaries of the different categories of staff, and the growing gap between the French and the Turks are a matter of concern to us. However, it is difficult fully understand your concerns to respond quickly to your requests*," which shows that the different nationalities of the teachers led to problems regarding wages, while the statement "*Besides, the Council has decided to entrust a mission of dialogue and consultation to three members of the Council — Brother (…..), Mr. (…..), and myself — in order to meet you, to listen to you, and to hear you out. Brother (…..) informed us that our next meeting is scheduled for October 18, Tuesday*," reveals that a meeting would be held to find solutions to these problems, which would be attended by all of the schools under investigation. In response to the e-mail in question, ST. JOSEPH (.....) noted that the meeting concerned would be held on 19.10.2022, Wednesday, and sent a video conference link for the meeting.

I.5.1.1.3 General Assessment Concerning Labor Findings

(122) As mentioned above, there is no difference between practices with a restrictive effect on competition performed on the purchase and sale sides of the market.

(123) A special case of anti-competitive conduct on the purchase side is the competition infringements in labor markets. In a general sense, the labor market is where labor is offered by workers and sought by employers. Competition law assessments, precedents from the Board and various countries' competition agencies in the labor market and the literature on the subject are included above.

(124) Documents acquired within the framework of the file shows that the schools under investigation identified the differences in practice regarding gross wages and other allowances of the teachers, and then fixed the wages by aligning the items used in determining the wages and the factors of the rates of raise to be applied. As indicated in the *Private Schools* decision[39], which is partly similar to the subject matter of the file herein, wages and elements that form the wages are competitively sensitive, strategic information with regard to the exchange of human resources-related information between the undertakings.

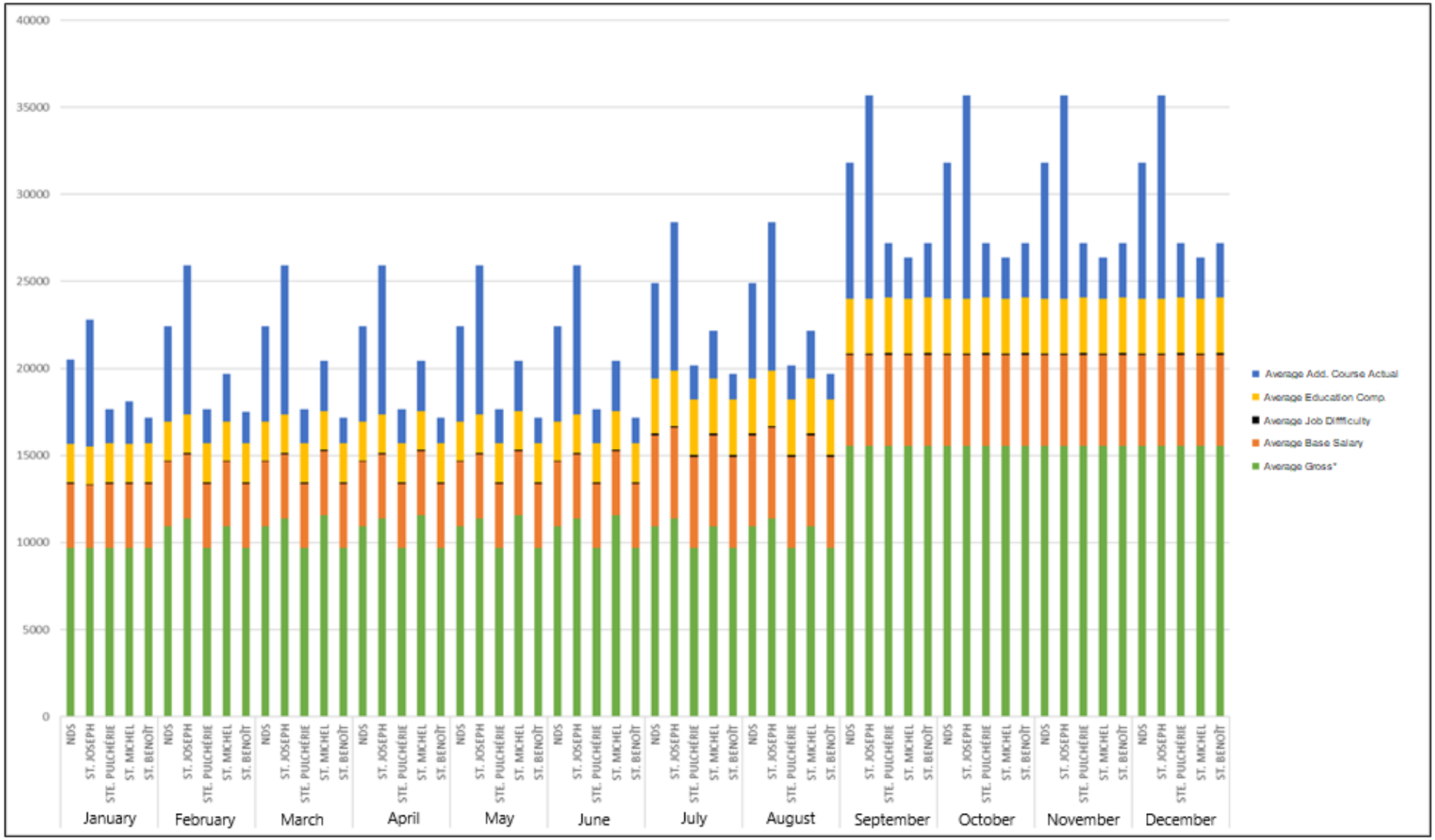
[39] Board Decision dated 03.03.2011 and numbered 11-12/226-76

(125) An examination of the Findings-3, 4, 6, 7, 9 and 10 as a whole shows that individual will of the schools were replaced by a coordinated, cooperative will of all of the schools in the determination of the wages and allowances of the working teachers.

(126) The wage chart for a Turkish teacher with 20 years of seniority working at the schools under investigation, including their gross wage, base salary, job difficulty, education compensation and current additional course fees is shown below.

24-20/466-196

Chart 1: Total Salary of Turkish Teachers with 20 Years of Seniority in 2022, Calculated as a Sum of Gross Salary, Base Salary, Job Difficulty Fee, Education Compensation, and Current Additional Course Fees (TL)

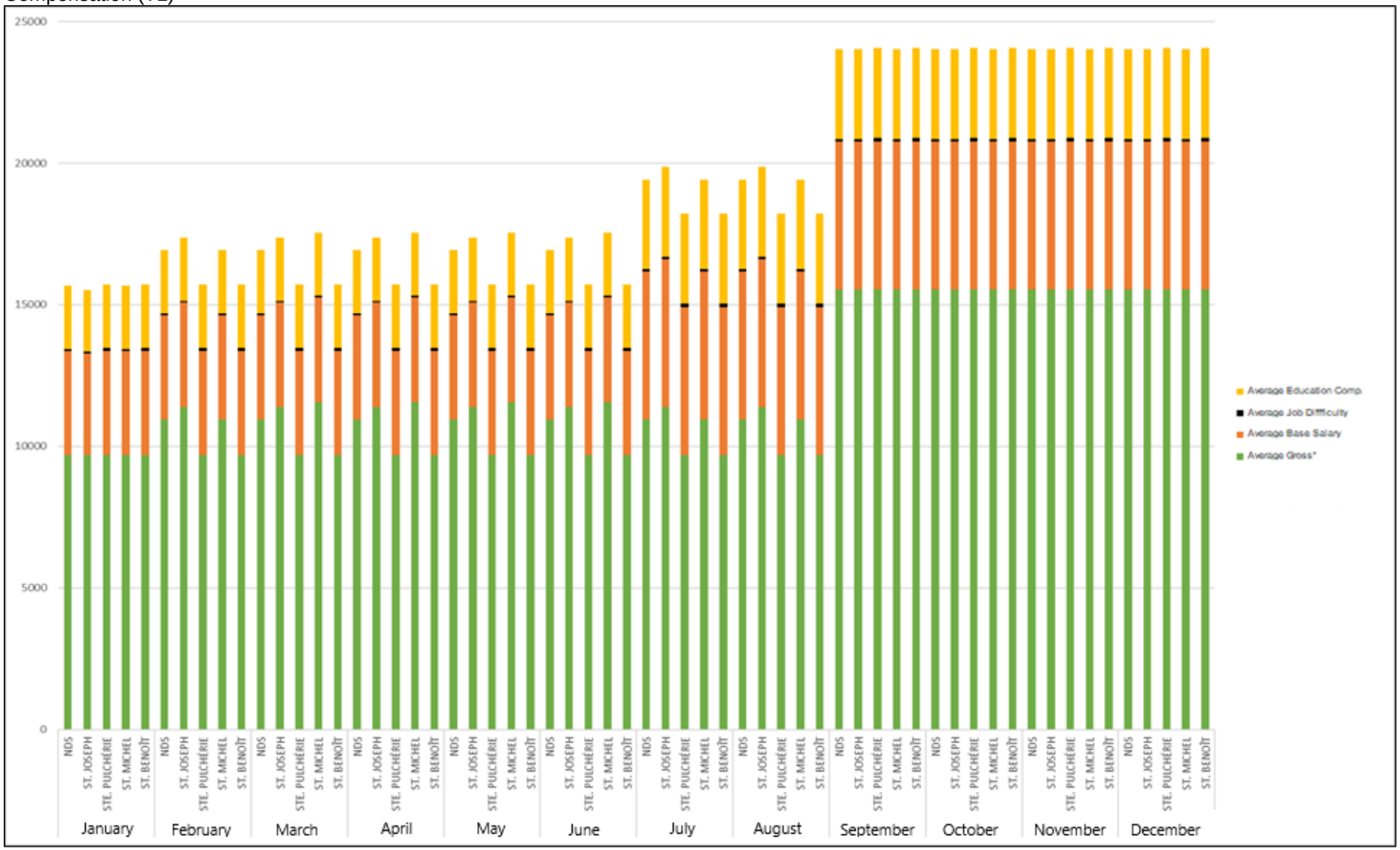


(127) Examining Chart 1 shows that the schools under investigation paid the same wages to their teachers starting from September 2022, following the decisions taken during the meeting of 07.09.2022, which was attended by the accounting officials of the schools concerned and where wage calculations for the Turkish teachers were exchanged. Before the meeting, there were differences between the schools in the gross salaries of Turkish teachers with 20 years seniority, but these differences were eliminated and an alignment in practice was achieved following the meeting. To provide an example based on Chart 1, in February 2022, a teacher with 20 years of seniority working at ST. JOSEPH used to get a gross salary of (.....) TL, a teacher at STE. PULCHÉRIE used to get (.....) TL, and a teacher at ST. MICHEL used to get (.....) TL. However, starting from September 2022, the same teachers were paid a monthly gross salary of (.....) TL.

(128) However, as detailed above in the section titled “Information on the Sector,” the remuneration items shown in the chart under job difficulty and education compensation are determined as fixed amounts, since they are calculated based on the figures set out in the monthly indicator table pursuant to Article 154 of the Civil Servants Law No. 657 and the coefficients announced twice a year in the circulars issued by the Ministry of Treasury and Finance. Thus, the items of job difficulty and education compensation do not vary between the schools, but are included in the chart in order to provide a fuller picture of teacher wages.

(129) While gross salary, base salary, job difficulty and education compensation items were rendered uniform following the meeting, any difference in the wages after the month of September shown in Chart 1 stems from the fact that weekly additional course hours are not the same. Another remuneration item on which the schools aligned in practice during the meeting of 07.09.2022 is the hourly additional course fees, which was set at (.....) TL by the schools under investigation. In fact, starting from September, the total additional courses fees differ between schools due to the variance between the weekly hours of additional courses provided, despite the fact that Turkish teachers were paid the same hourly additional course fees. As a result, in order to clarify the uniformity in the remuneration items of the Turkish teachers, the following chart shows the total salaries minus the additional course fees.

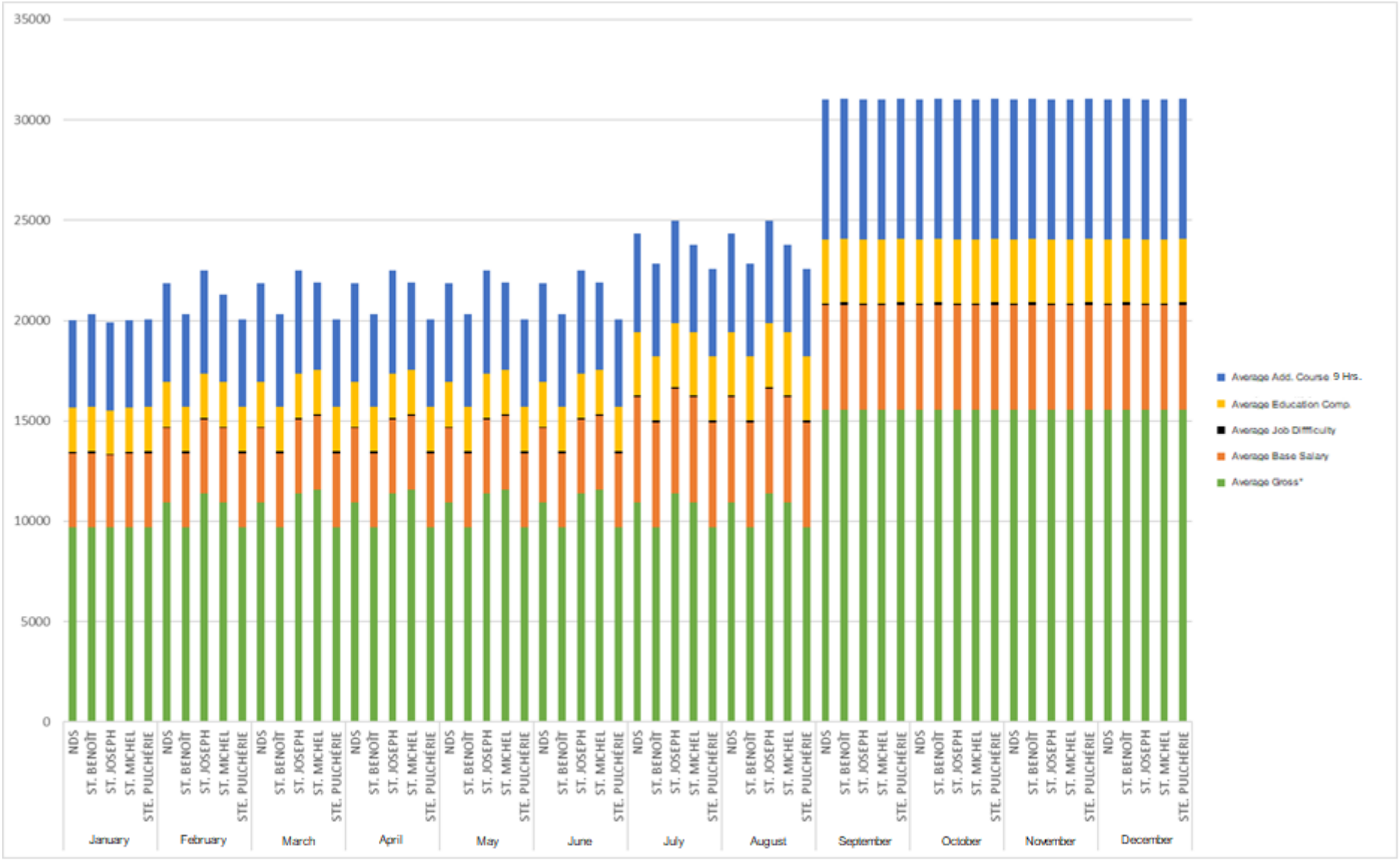
Chart 2: Total Salary of Turkish Teachers with 20 Years of Seniority in 2022, Calculated as a Sum of Gross Salary, Base Salary, Job Difficulty Fee, Education Compensation (TL)



(130) As shown in Chart 2, when monthly additional course fees are not included in the chart, uniformity has been achieved in the wages of the Turkish teachers with 20 years of seniority since the meeting held in September 2022. Due to the fact that the remuneration items in the relevant chart are determined as fixed amounts, with the exception of gross salaries, the salaries of Turkish teachers with the same years of seniority are aligned following the equalization of the gross salaries by the schools. At the same time, since the schools under investigation set the hourly additional courses fee at (.....) TL, assuming nine hours of weekly additional courses for Turkish teachers working at different schools, as presumed by the undertakings in Finding-3, the total wages of the teachers will also be the same, which is shown in the following chart.

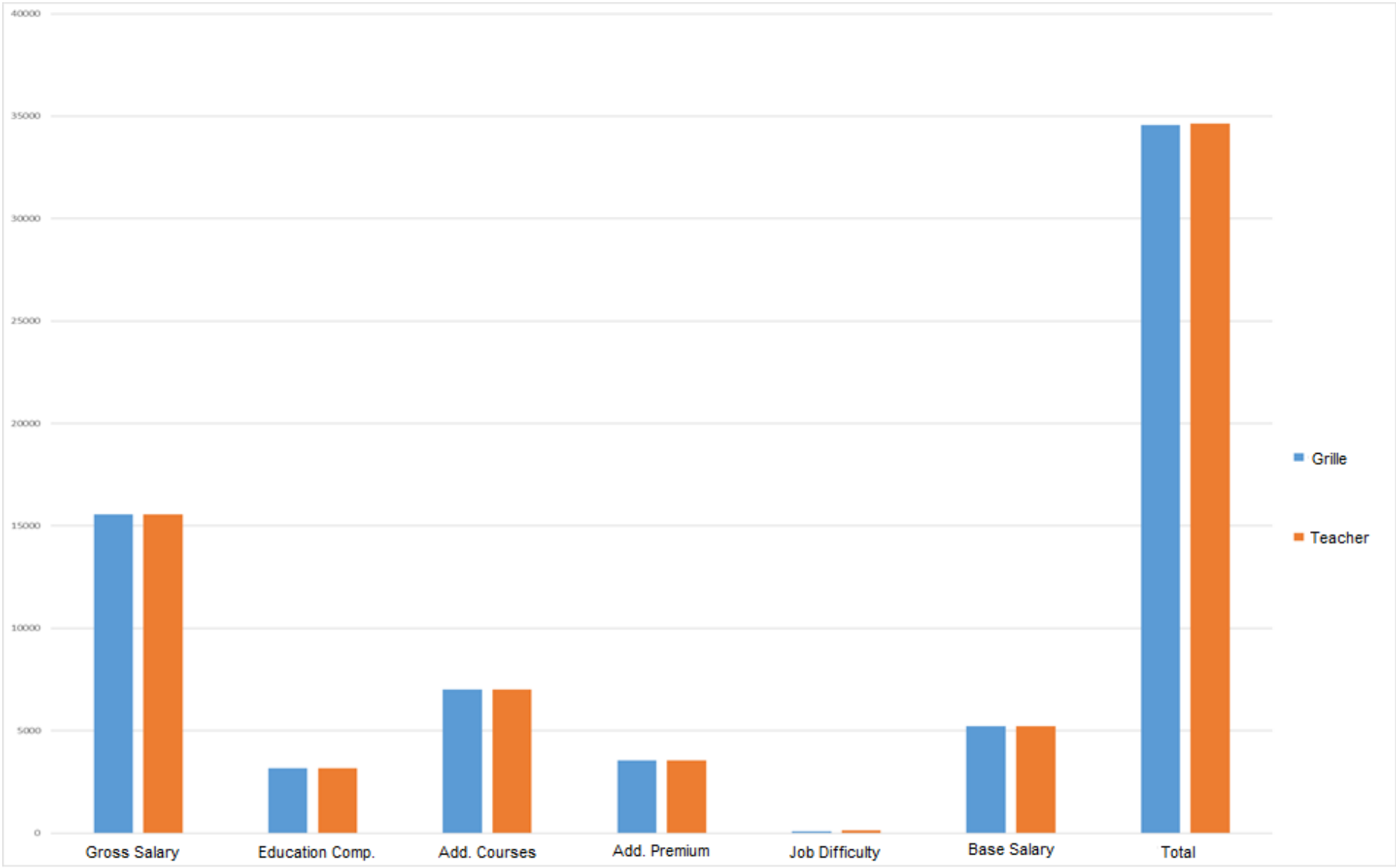
24-20/466-196

Chart 3: Total Salary of Turkish Teachers with 20 Years of Seniority in 2022, Calculated as a Sum of Gross Salary, Base Salary, Job Difficulty Fee, Education Compensation, and under the Assumption of They Receive Nine Hours of Additional Course Fees a Week (TL)



(131) As shown by the document acquired within the framework of the file and presented in Finding-3, in the meeting of 07.09.2022 the schools under investigation assumed nine hours of additional courses a week for calculating the wages of Turkish teachers with 20 years of seniority. In this case, under the assumption that teachers with 20 years of seniority provided nine hours of additional courses each week, their wage charts will be as follows:

Chart 4: Comparison Between the “Grille” Charts of the Schools Under Investigation and the Teachers Corresponding to the Hypothetical Situation Defined by the “Grille” (TL)



(132) On-site inspections conducted within the scope of the file found a document the parties under investigation called “Grille,” which showed the calculation table for the wages to be paid to a teacher with 20 years of seniority working at the schools concerned, who teaches nine hours of additional courses a week. At the same time, information and documents requested from the schools under investigation revealed that (.....), a teacher working at ST. JOSEPH, had 20 years of seniority and provided nine hours of additional courses a week. When compared to the Chart “Grille,” the payroll of the teacher (.....) only showed a difference under the job difficulty item, with all other items of remuneration being the same. The “Grille” chart shows job difficulty fee as 79.35 TL, while teacher (.....) was paid a job difficulty fee of 132.25 TL in actuality.

(133) This discrepancy in the job difficulty item stems from the fact that the teacher was providing education in another language, as detailed under the section “Information on the Sector.” That is to say, as shown in Table 1, the indicator of a teacher providing education in a foreign language is 1,250 points, while a teacher providing education in Turkish will have an indicator of 750 points. To that end, the Circular dated 04.07.2022 (Item No: 9), issued by the Directorate General of Public Financial Management and Transformation of the Ministry of Treasury and Finance, establishes the coefficients to be used for job difficulty and education compensation components in Article 1, sub-paragraph (a). Job difficulty pay is calculated by multiplying the points in the table with the relevant coefficients. In this case, for 2022, the job difficulty pay for a teacher providing education in a foreign language is calculated as (1.250x0.105796=132.25 TL), while it is calculated as (750x0.105796=79.35 TL) for a teacher who provides education in Turkish.

(134) As a matter of fact, the “Grille” chart assumes a teacher providing education in Turkish when calculating the gross salary for a teacher with 20 years of seniority who teaches nine hours of additional courses a week, which results in a job difficulty pay of 79.35 TL, while the teacher whose remuneration items are compared in Chart 4 teaches in a foreign language and therefore their job difficulty fee is calculated as 132.25 TL. As a result, it is observed that the schools under investigation put into practice the remuneration items for Turkish teachers, upon which they came to an agreement in their meeting of 07.09.2022.

I.5.1.2 Theoretical Framework for Price Fixing and Information Exchange in Output Markets

(135) While the competition law assessment on the input markets were provided above, this heading will focus on competition law assessments for output markets, within the context of price fixing and information exchange, in particular.

(136) Article 4 of the Act no 4054 prohibits, “*agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services*,” and the same Article provides a non-exhaustive list of prohibited practices which includes “*fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any condition of purchase or sale*”.

(137) Price fixing is an agreement between participants operating at the same level of a supply chain, intended to ensure the sale or purchase of products, goods or services at fixed prices, or to maintain market conditions by keeping the prices at a certain level through participants’ controlling the supply and demand. Price fixing is among the most common cartel agreements. Prices may be fixed by setting maximum or minimum levels, or by standardizing various discount systems. Thus, not only direct agreements that result in price control, but also practices which indirectly trigger price control mechanisms may be

assessed as competition law infringements under price fixing. Moreover, it should be noted that cartels are considered anti-competitive by nature, and they constitute an infringement by object, regardless of their effect on the market.[40]

(138) The purchase or sale price of goods and services, as well as the factors and terms that form that price must be determined by the market conditions. Intervening in the prices in an illegal, artificial way in particular, in particular, can have a negative impact on the price of goods or services, in innovation, in output, in product quality or diversity. Prices need to form freely at the point where demand meets supply, not through the concurrent will of the undertakings. Fixing the purchase or sale price of a certain good or service by an "agreement" between the competitors restrict competition.

(139) At this point, in order to conclude an infringement under Article 4 of the Act no 4054, it must be established that the undertakings took part in an agreement and/or concerted practice which was intended to prevent, distort or restrict competition. The article uses two different definitions, namely "agreements" and "concerted practices," which results from the variation in the strength and emergence of the coordination between the undertakings. This ensures that all types of concurrence of wills and their potential alternative manifestations that could be contrary to the obligation of economic actors to determine their decisions in the market independently have been brought within the scope of the provision.[41]

(140) The distinction between agreements and concerted practices among competitors arises in the manifestation of the practices or transactions conducted by the undertakings, and there is no difference between the two in terms of their restrictive/obstructive effects on competition. The legal nature or form of the relationship between the parties is not important. The important part is the emergence of a common and mutual will to act in a certain way in the market, with competitors coming to an agreement on this point.

(141) Emergence of the alignment between the parties is based on the exchange of sensitive commercial information between the parties which could affect competition. Information exchange may be regarded as a "*facilitating practice*" insofar as it makes it easier to determine whether a collusion among competitors has been disrupted; however, it may also be considered an agreement that restricts competition in itself. From this perspective, information exchange may be seen as an objective or as a tool for restriction/obstruction of competition, depending on the circumstances.

(142) It is more likely for an exchange of strategic data between competitors that reduces uncertainty in the market to be caught by Article 4 of the Act no 4054 than exchanges of other types of information. Sharing of strategic data can give rise to restrictive effects on competition by reducing competitive incentives of the parties. Information related to prices, quantities, customers, costs, turnovers, sales, purchases, capacities, product features, marketing plans, risks, investments, technologies, R&D programs, etc. are considered competition sensitive. Generally, information related to prices and quantities are considered to have the highest strategic value. These are followed by information about costs and demand. However, if undertakings compete with regard to R&D, for instance, then it may be the technology data that is the most strategic for competition. Also, the strategic importance of data depends on factors such as the frequency of the information exchange and its market coverage as well as whether the data is aggregated and its age.[42]

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[40] Board Decision dated 29.03.2018 and numbered 18-09/180-85.
[41] Board Decision dated 23.06.2022 and numbered 22-28/443-180.
[42] Horizontal Guidelines, paragraph 67.

(143) Especially in markets where the number of players is low and the good or service is homogeneous, price becomes the sole parameter of competition. As a matter of fact, in the lawsuit filed to annul the Board decision which found that cement producers operating in the Aegean Region acted in violation of the Act no 4054, 13th Chamber of the Council of State ruled: "*Based on the idea that increasing market transparency will decrease competition in oligopolistic markets in particular, a more sensitive approach needs to be adopted concerning information exchange. In markets involving a homogeneous product, customers are sensitive to very small changes in prices. While it is possible for one company to act differently than its competitors to gain significant benefits, all companies implementing a similar strategy is mostly due to an exchange of information among them."*[43]

(144) Whether information exchange is performed unilaterally by a single undertaking or multiple undertakings exchange information mutually, or the features of the environment in which the exchange occurred is not important in terms of recognition of the infringement. In addition, if firms which receive the strategic data from competitors do not explicitly notify the competitors that they do not want to have this type of information, they will be considered to have accepted the information disclosed by their competitors and adopted their market behavior accordingly.[44] In fact, in the its decision numbered Case C-8/08, the Court of Justice of the European Union (CJEU) examined the GSM operators in Netherlands colluding to decrease standard dealer fees for postpaid subscribers and found that "*...in so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market, even if the concerted action is the result of a meeting held by the participating undertakings on a single occasion.*" Similarly, 13th Chamber of the Council of State decision dated 08.05.2012 and numbered E. 2008/9080 K. 2012/965 examined the agreements and exchange of price lists among the undertakings operating in the enameled coil wire market, and stated that "*... Moreover, although it may be argued that coordination and information exchange between undertakings did not have an impact on the market, it must be accepted that the communication in question would affect the future market decisions of the undertakings, unless proven otherwise.*"

(145) In parallel, paragraphs 45 and 46 of the Guidelines on Horizontal Cooperation Agreements (Horizontal Guidelines) specifies: "*Under the normal circumstances, undertakings prudently adapting themselves in accordance with the existing or anticipated conduct of their competitors is not considered a violation. However, any direct or indirect communication between competitors, the object or effect of which is to create conditions of competition differing from the normal conditions of the market are considered as violations and prohibited. For instance, an undertakings disclosing to its competitor the policy which it is implementing or is planning to implement may be evaluated under this framework. Therefore, if information exchange reduces uncertainty in the market through the exchange of competition-sensitive information and facilitates anti-competitive cooperation, then it may constitute a violation under Article 4. There is no difference between an undertaking unilaterally disclosing its competition-sensitive information via various means such as e-mail, phone calls, meetings, etc. to its competitors who then explicitly or implicitly accept these information and many undertakings sharing information among themselves concerning their goals and plans. For example, mere attendance at a*

[43] 13th Chamber of the Council of State decision numbered E. 2016/4902 K. 2019/4247.

[44] Competition Board decisions dated 16.03.2012 and numbered 12-12/383-112, dated 12.06.2012 and numbered 12-32/916-275, dated 07.01.2021 and numbered 21-01/18-8.

meeting where an undertaking discloses its pricing policy to its competitors may be caught by Article 4 of the Act, even in the absence of an explicit agreement to raise prices. When an undertaking is sent competition-sensitive information by a competitor, the relevant undertaking will be presumed to have accepted the information and adapted its market conduct accordingly, unless it responds with a clear statement that it does not wish to receive such information."

(146) In fact, the CJEU's *Sugar* decision[45] also states *"…while it is legal for undertakings to adapt themselves intelligently to the existing and anticipated conduct of their competitors, meetings and direct or indirect exchanges of information would lead to parallel conduct by removing future uncertainties and thus constitute an infringement of competition…*".

(147) Similarly, paragraph 57 of the Horizontal Guidelines notes that "... *the exchange of competition-sensitive information among rivals such as future prices, outputs or sale amounts are normally considered cartels, since they generally aim to fix prices or quantities...*" The relevant phrases indicate that sharing competitively sensitive future information with a competing undertaking in the market could constitute an infringement of competition.

(148) In light of all of these clarifications, the exchange of information that is considered strategic in the relevant market between undertakings may be assessed as an infringement, even if this information was shared for a single time and/or did not have any impact on the market. Unless an undertaking clearly communicates to the others that it does not wish to be a part of this exchange, it may be considered to have adapted its market behavior in accordance with that exchange. Information exchange may take the form of an independent agreement, concerted practice or decision of an association of undertakings, or it may be a part/complement of another cooperation agreement. In this context, the exchange of information through which undertakings come together to determine prices or the conditions constituting the price also falls within the scope of Article 4 of Act No. 4054.

I.5.1.2.1 Assessment of the Findings Acquired under the File

(149) In light of the parties to the communication in Finding-2, dated 30.06.2022, the relevant document seems to be an internal correspondence. The e-mail is sent by ST. MICHEL (.....) to the ST. MICHEL personnel, and includes the statements "*We should not promise scholarships to those students who place in the top 3. We can of course discuss the possibility of a scholarship but a commission will be set up in the end of september and we cannot guarantee any scholarships before then. All other schools do the same*," showing that enrollment personnel was warned not to promise scholarships to the top three students with the highest marks and their families, that other schools followed the same process in this matter, and that the decision of the scholarship committee which would be set up in September should be awaited in the matter of scholarships.

(150) As noted under the "Relevant Market" heading above, in the "private secondary education institutions offering education services in the French language market," which is a relatively separate and narrow market with fewer players, scholarship opportunities is an important factor for differentiating/distinguishing between undertakings. Since within the context of the relevant product market considered in this investigation "scholarships and scholarship terms" could be considered competitively sensitive strategic information under paragraph 67 of the Horizontal Guidelines, determination of scholarships and scholarship terms through the concurrent will of the schools is considered an agreement with a restrictive effect on competition under competition law.

[45] C-40/73 - *Suiker Unie and Others v Commission*

(151) Examination of the minutes of the meeting held by the schools under investigation at STE. PULCHÉRIE on 06.04.2022, presented in Finding-7, shows that all school principals had attended that meeting. The statement *"(.....) suggested increasing PL tuition fees as much as possible, up to the rate of inflation in consumer prices,"* in the minutes reveal that the Private İzmir Saint-Joseph French High School (.....) proposed increasing the new enrollment fees for the preparatory class by CPI, and a note was taken down to determine the fees during a videoconference to be held on the later date of May 5-6.

(152) The relevant finding states that the registration process should be conducted in accordance with the principle of non-competition. This was especially valid for the scholarships, which were thought to affect the choice of the parents during enrollment. According to the same minutes, the schools also agreed to provide a 10% discount to siblings, 50% to staff, 10% o teachers, 10% to foundation members, and 25% to national athletes; that no scholarships should be offered during enrollment other than these or that parents should not be enticed by offering higher scholarships; that the 10% down payment the schools received from the parents for enrollment should not be returned. All of these involve fixing the terms of sale for the service provided. On the other hand, the statements "*The principals are responsible and accountable for the school's enrollment policy and must guide the admissions team in line with the non-competition principles defined by the governing bodies,*," and "*Do not call families to persuade them to enroll in your school by offering them a larger scholarship*," in the Finding show that the schools under investigation agreed not to compete with each other. The minutes conclude with an agreement to reconvene on 27.04.2022.

(153) Finding-8 shows that the meeting mentioned in the previous finding was held on 27.04.2022, that all schools set their scholarship rates jointly during the meeting, that they agreed not to offer additional scholarships other than those determined in the meeting and not to reimburse the 10% down payment received from the parents for enrollment. While the information acquired within the framework of the file shows that while the scholarship rates are public knowledge published on the schools' official websites, the finding of infringement depends not on the fact that this information was shared, but on the fact that they agreed not to offer other scholarship opportunities. In fact, this assessment is supported by the following statement at the beginning of the minutes: "*On April 27, 2022, the founding boards and principals of the French Catholic schools in Türkiye came together through a videoconference and agreed to comply with the provisions of the specification set out below throughout the enrollment procedures to be carried out at the said schools*".

(154) According to the minutes concerned, the principals would lead the enrollment process and the principles of "*brotherhood*" and "*complementarity devoid of all kinds of competition*" would not be compromised to attract students and parents. To that end, the minutes provided a list on what should be avoided by the schools with the heading "*They will avoid doing the following*," which includes "*Offering scholarships during enrollment, with the exception of the following*." As shown by this Finding, scholarships were set up under the specified rates and the schools noted it in the minutes that they would not provide any scholarships otherwise.

(155) Another point under the things to avoid heading is "*with the exception of calling to confirm enrollment, calling families who enrolled their children to another school under the Federation before the end of the enrollment period to convince them to enroll at their school by, for example, offering them scholarships beyond what is listed above or offering to reimburse the 10% down payment they made to the school they enrolled*." These statements show that the schools under investigation agreed not to poach families who enrolled their children to another school by offering them additional scholarship options

and that they would not utilize scholarship opportunities, which comprise an important tool to get ahead of each other in the market where they operate. Something else to avoid was listed as "*Trying to change the decisions of the parents in favor of their own institutions at all costs*," which is believed to be intended to reinforce the goal of eliminating any incentives to compete by the parties.

(156) The minutes concerned also notes that the schools would meet in September to evaluate any existing or potential scholarship requests from the parents. However, the statement "*We can of course discuss the possibility of a scholarship but a commission will be set up in the end of september and we cannot guarantee any scholarships before then,*" in Finding-2 shows that the planned meeting concerned determining the scholarship opportunities.

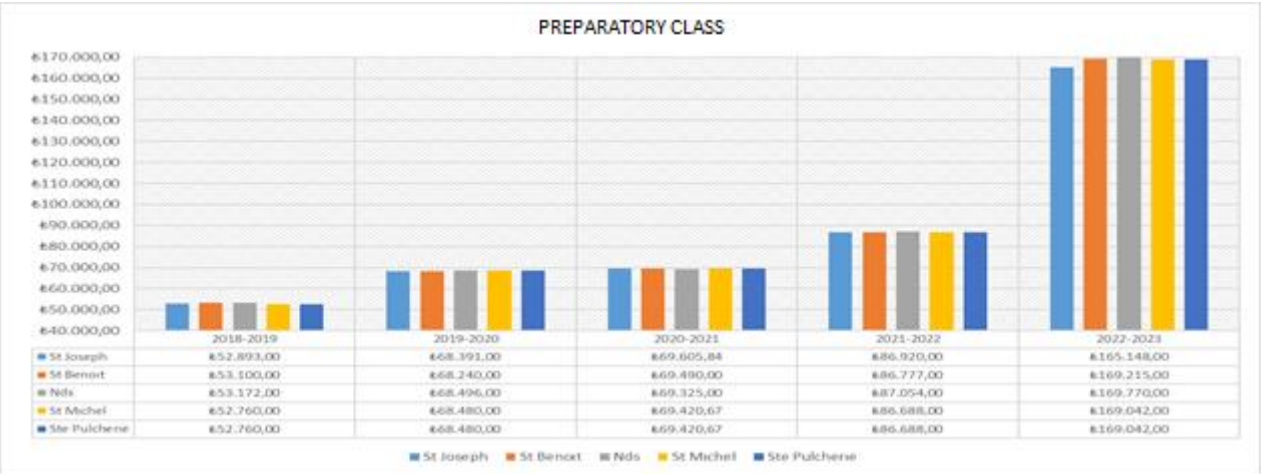
(157) The statement "*In light of the latest measures taken concerning the tuition fees we increased for new enrollments, we are confident in our ability to weather this crisis*," in Finding-9 makes it clear that the schools increased their tuition fees as a result of certain measures they took in coordination.

I.5.1.2.2 General Assessment Concerning Price Fixing and Information Exchange

(158) In the market examined within the scope of the investigation, which has a limited number of players and which clearly displays the effects of an oligopolistic market structure, information exchange increases market transparency and reduces uncertainties regarding competitively sensitive elements such as school fees, scholarships, discounts, and parameters that may indirectly determine these factors. As can be understood from the findings obtained under the scope of the file, the uniformity observed in elements such as school fees and scholarships implemented by the undertakings does not stem from similarities in their cost structures, but rather from coordination and information exchange among the undertakings.

(159) An examination of the data concerning preparatory class tuition fees of the schools under investigation for the 2018–2022 period reveals the following chart which shows no divergence in school prices over the years and supports the existence of coordination among the undertakings:

Chart 5: Preparatory Class Fees Implemented by the Schools under Investigation from 2018 to 2022 (TL)



(160) As shown by the document in Finding-8, the schools under investigation shared the scholarship rates they applied with each other at the meeting of 27.04.2022 and agreed not to offer any scholarship rates other than those specified during the meeting. From the

statements "*Offering scholarships during enrollment, with the exception of the following*," and "*With the exception of calling to confirm enrollment, calling families who enrolled their children to another school under the Federation before the end of the enrollment period to convince them to enroll at their school by, for example, offering them scholarships beyond what is listed above or offering to pay back the 10% down payment they made to the school they enrolled*," listed in the minutes of the meeting under the heading "*They will avoid doing the following*" show that the schools under investigation reinforced the agreement concerning scholarship rates and eliminated competition amongst themselves.

(161) In that context, the tables comparing the scholarship rates implemented by the schools under investigation for the 2022-2023 academic year and the scholarship rates they agreed upon on the meeting of 27.04.2022, included in Finding-8, are below:

Table 2: Comparison of the Scholarship Rates in Finding-8 with the Scholarship Rates Implemented by ST. JOSEPH

Scholarships	Siblings	School Personnel	Teachers at Other Schools	National Athlete	Achievement Scholarship	Separate Scholarship
Scholarship Rates in Finding-8	10%	50%	-	25%	-	Petit-Prince College Enrollment First and Second Place (50%, 25%)
Scholarships Implemented by ST. JOSEPH	10%	50%	-	25%	First Place 50%, Second Place 30%, Third Place 20%	Petit-Prince College Enrollment First and Second Place (50%, 25%)
Source: Response Letter						

Table 3: Comparison of the Scholarship Rates in Finding-8 with the Scholarship Rates Implemented by ST. BENOÎT

Scholarships	Siblings	School Personnel	Teachers at Other Schools	National Athlete	Achievement Scholarship	Separate Scholarship
Scholarship Rates in Finding-8	10%	between 50%-100%	10%	25%	-	Children of Teachers Working at the Schools under the Federation (50%)
Scholarships Implemented by ST. BENOÎT	10%	50%	10%	25%	-	Children of Teachers Working at the Schools under the Federation (50%)
Source: Response Letter						

Table 4: Comparison of the Scholarship Rates in Finding-8 with the Scholarship Rates Implemented by NDS

Scholarships	Siblings	School Personnel	Teachers at Other Schools	National Athlete	Achievement Scholarship	Separate Scholarship
Scholarship Rates in Finding-8	10%	50%	10%	25%	Highest Scoring Top 3 (75%, 50%, 25%)	-
Scholarships Implemented by NDS	10%	50%	10%	25%	First Place 75%, Second Place 50%,	Private Neslin Değişen Sesi Schools Top 3 (%75)

					Third Place 25%	
Source: Response Letter						

Table 5: Comparison of the Scholarship Rates in Finding-8 with the Scholarship Rates Implemented by ST. MICHEL

Scholarships	Siblings	School Personnel	Teachers at Other Schools	National Athlete	Achievement Scholarship	Separate Scholarship
Scholarship Rates in Finding-8	10%	50%	10%	25%	-	SM Alumni Parent (10%)
Scholarships Implemented by ST. MICHEL	10%	50%	10%	25%	25%	SM Alumni Parent (10%)
Source: Response Letter						

Table 6: Comparison of the Scholarship Rates in Finding-8 with the Scholarship Rates Implemented by STE. PULCHÉRIE

Scholarships	Siblings	School Personnel	Teachers at Other Schools	National Athlete	Achievement Scholarship	Separate Scholarship
Scholarship Rates in Finding-8	10%	50%	10%	-	-	4 Graduates of Yeni Nesil 2000 (25%)
Scholarships Implemented by STE. PULCHÉRIE	10%	50%	10%	%100	-	4 Graduates of Yeni Nesil 2000 (25%)
Source: Response Letter						

(162) As seen from the tables above (Table 2-6), the scholarship rates of the investigation parties for 2022-2023 academic year were implemented at the rates specified in the specifications prepared following the meeting of 27.04.2022 for every school, in line with the decisions taken at that meeting. To provide an example from the tables, it can be observed that all schools under investigation implemented a 10% sibling discount, which was set at 10% in the specifications. Although some discount rates set out in the specifications were not implemented by all schools, the tables reveal that those discounts implemented by the schools under investigation in common were mostly identical.

(163) As a result, an examination of the information and documents acquired within the scope of the file show that the undertakings met with each other on various dates, and they took joint decisions about tuition fees, scholarships and related conditions during those meetings. A comprehensive study of Findings-2, 7, 8, 9, as well as the Chart 5 above and the tables (Table 2-6) lead to the conclusion that the individual wills of all of the schools were replaced by cooperative conduct.

I.5.2 Assessment under Article 5 of the Act no 4054

(164) According to the Horizontal Guidelines which set out the principles to consider when assessing agreements between undertakings, decisions of associations of undertakings and concerted practices with the characteristics of horizontal cooperation within the framework of Articles 4 and 5 of the Act no 4054, in case of an agreement between existing or potential competitors, the cooperation is “horizontal” in nature.

(165) According to the Horizontal Guidelines, the assessment under Articles 4 and 5 of the Act no 4054 is comprised of two steps. The first step is the assessment of whether, under Article 4 of the Act no 4054, the agreement between the parties has an anti-competitive

object or actual or potential anti-competitive effects on competition. In case the agreement is found to have a restrictive effect on competition under the relevant Article, the assessment moves on to the second step where an exemption assessment under Article 5 of the Act no 4054 is conducted in light of the competitive benefits and restrictive effects on competition which might arise as a result of the agreement. The first paragraph of the aforementioned Article lists the conditions of exemption as follows:

"*a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,*

b) Benefiting the consumer from the above-mentioned,

c) Not eliminating competition in a significant part of the relevant market,

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

(166) Article 5 conditions must be fulfilled cumulatively and if it is shown that any one of those conditions are not met, the exemption assessment no longer needs to examine the remaining conditions. As a result of the assessments above, it was decided that the investigated undertakings restricted competition through their coordinated actions which involved fixing teacher salaries in the input market and jointly setting school enrollment fees in the output market. As stated in the Guidelines on the General Principles of Exemption, agreements that, by their very nature, excessively restrict competition both legally and economically, and that are unlikely to generate economic benefits capable of offsetting their negative effects on competition, will not be able to meet the conditions for exemption. Restrictions of this nature, which are characterized as cartels under the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Regulation on Fines), are considered incapable of "*Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services*," which is the first condition for exemption and therefore it is assessed that such conduct cannot be granted an exemption.

I.5.3 Assessment of the Pleas

I.5.3.1 Pleas Submitted by ST. MICHEL and the Assessment Thereof

I.5.3.1.1 Plea that the Relevant Product Market Was Defined Too Narrowly

(167) The plea submitted by ST. MICHEL can be summarized as follows:

- The market was defined more narrowly than it should have been and other private schools should also have been included in the market definition, on the grounds that public high schools and other private schools in Istanbul providing education in foreign languages operated at similar standards; that most of the preference forms for the High School Entrance Examination (*Liselere Geçiş Sınavı*–LGS) included high schools providing education in other foreign languages in addition to French-language schools; that the determining factor for parents' choices was whether education in a foreign language was being offered; that the decision as to which foreign language to study was entirely up to the student; that private schools were therefore substitutable with one another in terms of language education; that the opportunity to obtain a diploma recognized abroad was not unique to French-language schools; that there were other private schools offering foreign diplomas as well as numerous private schools providing programs and opportunities for studying at universities abroad.

(168) Although the schools under investigation provide mandatory French education in the preparatory class, the remaining grades offer education in English and Turkish in addition to French. As detailed above, unlike other private schools offering foreign language education, the schools under investigation hold the "*Label FrancEducation Certificate*," which means graduates of these high schools are considered to have diplomas which are "equivalent to French baccalauréat," granting them the right to apply to universities in France and many other countries without taking an examination. Additionally, in Türkiye, Galatasaray University sets aside a 25% quota each year for students who graduated from high schools which implement a French program approved by the Ministry of National Education in France, and accepts students with an internal exam organized by the University itself. Since students who graduate from the schools under investigation meet these criteria, they have the opportunity to take the internal exam of Galatarasaray University and receive education there if they are successful.

(169) Besides, consumers distinguish the schools under investigation from other private schools providing education in foreign languages in terms of the opportunities and services provided to the students both during and after education, which means there is no demand substitution between the other schools providing education in different languages and French high schools. For the reasons explained above, the observations and assessments under the file took into consideration "the market for private secondary education institutions providing education in the French language." In that framework, it is not possible to agree with a wider definition of the relevant product and relevant geographical markets.

(170) Moreover, as is the case for the present file, there is no obligation or requirement to define a relevant market in investigations conducted into those types of infringements which are clearly anti-competitive by object, regardless of the market definition, such as agreements between undertakings. Consequently, no exact market definition was provided under Article 20 of the Relevant Market Guidelines, since no alternative market definition affect the conclusion.

(171) At the same time, ST. MICHEL also claimed that the definition for the labor market was too narrow. The plea in that context can be summarized as follows:

- The market definition for the labor market was made more narrowly than it should have been, on the grounds that more than half of the weekly courses taught at ST. MICHEL in general do not require French, and therefore teachers of such subjects—regardless of their foreign language proficiency—could work at any private school, at public schools under contract, or at private tutoring centers depending on their field; that offering French as a second foreign language is a very common practice in private schools, and thus teachers providing instruction in French could also be employed at other private schools or, depending on their subject area, at private tutoring centers.

(172) An allegation of infringement that comprise the subject matter of the investigation is the collusion concerning fixing of the wages of Turkish teachers working at the private secondary education institutions under investigation that provide education services in French. An examination of the e-mails in Finding-3 shows that the schools shared the methods they used to calculate the wages of Turkish teachers with each other in a meeting attended by all of the schools under investigation; that ST. MICHEL sent to the other schools under investigation calculations for the gross salary a teacher with 20 years of seniority who provides nine hours of additional courses a week would receive; that when it was realized that the calculations between the schools differed, all schools were asked to fill a table concerning the calculation of Turkish teachers' salaries; that uniformity in teacher salaries between the schools was thus ensured in practice.

(173) Moreover, Finding-7 shows that the schools under investigation jointly fixed the rate of raise for the wages of Turkish teachers, as made clear by the statements "*(.....), (...). We must anticipate a minimum salary increase of 35–36% (to decide by the end of the month)*". In light of the other findings, it is assessed that, for determining the salaries of Turkish teachers, the individual will of the schools were replaced by cooperative conduct from all of the schools. As a result, since the infringement committed by the schools under investigation led to anti-competitive outcomes with respect to teachers working at private secondary education institutions providing education in the French language, the observations and assessments made took into consideration "*the labor market for private secondary education institutions that provide education in the French language*," although no exact market definition was provided for the infringement concerned.

(174) On the other hand, as can be seen from the previous Board decisions[46] concerning the labor markets, in those files where it was concluded that the undertakings violated Article 4 of the Act no 4054 by entering into no-poaching and/or wage-fixing agreements, an exact product market was not defined in the file since it would not affect the outcome of the investigation. As such, since the infringement identified had the nature of a cartel, alternative market definitions would not affect the outcome reached. Therefore it is not possible to agree with the plea submitted by the undertaking.

I.5.3.1.2 Plea Arguing That ST. MICHEL and ST. JOSEPH Were in the Same Economic Unity

(175) The plea submitted by ST. MICHEL can be summarized as follows:

- There were three French high schools in Türkiye belonging to the Frères des Écoles Chrétiennes Institute, namely ST. MICHEL, ST. JOSEPH, and İzmir Saint Joseph French High School; that these schools constituted a single undertaking since their founders and representatives were the same; that the tuition fees, teachers' salaries, and salary increases for ST. MICHEL were determined by the school principal in accordance with the legislation and the projections made to provide the best possible education to students, and were then submitted for the approval of the founder's representative; that, in addition, for any expenditure exceeding USD 10,000, consultation with and approval from the founder's representative was mandatory.

(176) Article 2 of the Act no 4054, titled "Scope" indicates that undertakings are the subject of the rules specified in the same Act and these undertakings must "*conduct an economic activity*," and "*conduct the economic activity in question independently*". Economic independence refers to an undertaking's ability to take decisions through its own decision-making bodies, without being dependent on any other undertaking[47]. Thus, for a real or legal person to be considered economically independent, it must be able to take its strategic decisions concerning its commercial activities without being beholden to another undertaking.

(177) The observations made during the investigation show that ST. JOSEPH and ST. MICHEL can act independently in the market, that they have separate economic structures, strategic decision-making processes, administrative, financial and operation structures as well as resources. The schools under investigation have their own employees and are separate from each other in financial and operational aspects as well. For the reasons explained above, it is concluded that the fact that the founders and representatives of ST. JOSEPH

[46] Board Decisions dated 24.02.2022, numbered 22-10/152-62, and dated 02.01.2020, numbered 20-01/3-2.
[47] Board Decision dated 13.03.2001 and numbered 01-12/114-29.

and ST. MICHEL are the same persons is not, by itself, sufficient to consider these schools as forming a single economic unity; therefore, ST. JOSEPH and ST. MICHEL have been treated as separate undertakings.

I.5.3.1.3 Pleas Concerning the Calculation of the Administrative Fine

(178) The plea submitted by ST. MICHEL can be summarized as follows:

- A review of the Board's past decisions reveals that even exchanges of competitively sensitive information and anticompetitive agreements between direct competitors, supported by numerous findings, were not characterized as "cartels." Instead, an approach more in favor of the undertakings were adopted and such horizontal infringements were classified under the category of "*other infringements*," with relevant undertakings fined under that category. In addition, mitigating factors such as ST. MICHEL's cooperation with the Authority throughout the investigation process, the absence of any restrictive effects on competition in the market, ST. MICHEL's position in the market, and the implementation of a competition compliance program by ST. MICHEL should be taken into consideration.

(179) Article 3.1(ç) of the Regulation on Fines defines cartels as agreements restricting competition and/or concerted practices between competitors aimed at fixing prices, allocation of customers/territories, etc. In that framework, undertakings exchanging competitively sensitive information with each other and setting elements such as prices/fees jointly is considered under the cartel definition[48].

(180) In this context, as a result of the examinations and observations conducted under the file, the agreements of the schools under investigation to jointly determine enrollment fees and the wages of Turkish teachers are found to fall under the scope of cartels. Article 5 of the Regulation on Fines provides that the base fine for cartels can be set between 2% and 4%, while Article 7 states that the base fine may be reduced by one fourth to three fifths in case the undertakings provide assistance to the examination beyond what is legally required, or willingly compensate those who suffer damages, and in case the infringing activities have a very small share in the annual gross revenue of the undertaking. At the same time, under the relevant Article of the Regulation on Fines, the burden of proof is with the undertakings or associations of undertakings, and the Board has discretion regarding the mitigating factors. However, the undertaking has failed to provide any information or documents to the Board that could be considered to present a mitigating factor.

I.5.3.1.4 Pleas Arguing That a Violation of Article 4 of the Act No. 4054 Requires the Establishment of Concurrence of Wills and an Impact Analysis

(181) The plea submitted by ST. MICHEL can be summarized as follows:

- For an infringement under Article 4 of the Act no 4054 to exist, a concurrence of wills must be established between the parties in the first place, and then the object and/or effect of that concurrence of wills must be identified.

(182) Among the findings which led to the conclusion that the schools under investigation jointly determined tuition fees and the elements that form the prices, Finding-2 clearly shows the concurrence of wills among the schools under investigation, stating that scholarship rates, as one of the elements that form tuition fees, were noted in the minutes with the "*enrollment protocol which was signed by all principals in the last meeting and which was approved by Tutel*," and by the minutes in Finding-8, which includes a list for the scholarships to be

[48] Board Decisions dated 25.11.2009, numbered 09-57/1393-362, and dated 25.04.2022, numbered 22-19/310-135.

applied by the schools warning not to "*Offer scholarships during enrollment, with the exception of the following*," under the heading "*They will avoid doing the following.*"

(183) In fact, an examination of Chart 5, which compares the tuition fees implemented by the schools under investigation between 2018 and 2022 shows that the variance between the tuition fees of the schools were negligible, and when the findings are taken as a whole, it is assessed that the individual will of the schools were replaced with the concurrent will of all schools in the determination of the tuition fees, scholarships and the related conditions.

(184) On the other hand, it is considered obvious that agreements aimed at joint price fixing, market and customer allocation and supply control have the restriction of competition as their object and are sufficiently harmful to the normal functioning of competition, with such agreements deemed to be restrictive of competition by object. Accordingly, there is no need to conduct a separate impact analysis for the agreement examined under the file, which has the characteristics of a cartel and which restricts competition by object. In other words, it is not necessary for the agreement that violates competition to have an effect on the market for it to constitute an infringement under Article 4 of the Act no 4054. Therefore, the plea is not found to be justified, on the grounds explained above.

(185) The plea submitted by ST. MICHEL which states that the agreements found to be infringing had no effect and that the parties under investigation held a low market share can be summarized as follows:

- If there were an agreement among the parties under investigation to fix or suppress personnel salaries, the personnel concerned would be expected to move to other private schools, private tutoring centers, public schools as permanent or contracted teachers, or language schools offering higher salary opportunities; however, such a situation was not observed for the personnel of St. Michel. In order to establish a competition law infringement on the purchase side of the market, the undertakings that are parties to the agreement must account for a significant portion of the purchases in the relevant market; otherwise, the agreement would be unenforceable and have no actual effect. In this even if an agreement were made on the purchasing side, the parties would not be able to create any purchasing power, and the agreement would not produce any effect, since the undertakings under investigation account for approximately 1% of the relevant product market.

(186) Conduct that is restrictive of competition by object do not require that the practices carried out by the undertakings have an impact on the market for them to be considered infringement under the Act no 4054. Under Article 4 of the Act no 4054, for an infringement to occur at the horizontal level, the mere existence of an agreement or a concerted practice between undertakings operating at the same level of the relevant market is sufficient. In that framework, whether the agreements were implemented by the undertakings and the numbers and scales of the undertakings parties to the agreement do not have a decisive effect on the occurrence of the infringement. In short, it is sufficient for liability under the Act no 4054 for competing undertakings to jointly fix the wages of their employees and tuition fees, regardless of the market share or number of the undertakings that participated in the agreement.

(187) However, the plea submitted by ST. MICHEL explains that since its personnel did not move to other private schools, private tutoring centers, public schools as permanent or contracted teachers, or language schools offering higher salary opportunities, there could not have been an agreement between the investigation parties to fix/suppress personnel salaries. However, one of the values competition law aims to protect within the labor market is to ensure worker mobility. Thus, a decrease in worker mobility, generally resulting from

"no-poach agreements" concluded between competing undertakings, would not prove the non-existence of a salary fixing agreement between the schools, but instead would be an undesirable outcome under competition law. By way of argument *a contrario*, promoting employee mobility is one of the objectives of competition law when intervening in the relevant area.

(188) In addition, a study by the Portuguese Competition Authority which aims to establish the effects of agreements in the labor markets, it is noted that wage fixing agreements standardize the fees workers can receive from various employers, thereby limiting labor mobility. Thus, the fact that teachers working at ST. MICHEL failed to take any action towards finding employment elsewhere is seen as an outcome of the wage fixing agreements. Therefore, it was not possible to agree with the plea, on the grounds explained above.

I.5.3.1.5 Plea Arguing That the Conditions of the Relevant Market Must Be Considered to Establish the Existence of an Infringement under the Act No. 4054

(189) The plea submitted by ST. MICHEL can be summarized as follows:

- In the *Private Schools* Decision[49] of the Board, it is stated that "*In order to perform a sound assessment of whether joint price fixing eliminated competition by object, the specific characteristics of the relevant product market must be examined. Education services provided by the private sector constitute, by nature, a market where the emphasis is on the variable of quality before the price parameter. These education institutions utilize their revenues for internal investment and improvement with regard to education quality, within the framework of the restrictions of the current legislation".* Due to the unique characteristics of the market in which the parties under investigation operate, the provisions of the legislation prohibit undertakings active in the relevant market to act with a profit motive, and this is clearly established by the aforementioned Board Decision.

(190) In the Decision concerned, the Board noted that when parents/students preferred the relevant schools, their primary concern was the quality and nature of the education provided rather than the tuition fees. Certainly, the relevant Board decision cannot be interpreted to mean that undertakings are only expected to compete in terms of education quality and that they can act in alignment concerning the remaining competitive elements. Neither do the past Board decisions in the market where the schools under investigation operate suggest that this point may be raised as a justification for eliminating price competition. In fact, the Board Decision dated 07.07.2015 and numbered 15-28/328-103 examined a request by the undertakings which constitute the parties to the investigation of the file herein for the grant of an exemption to the joint establishment of school enrollment fees, and the Board ruled that the practice concerned could not benefit from exemption. Moreover, in the same Decision, the Board ruled that an opinion letter should be sent to the undertakings concerned as per Article 9.3 of the Act, stating that such a practice could constitute an infringement of Article 4 of the Act no 4054, and should be avoided.

(191) As a result, it is assessed that within the market where private schools operate, tuition fees are considered competitively sensitive information and signing an agreement between the parties concerning tuition fees constitutes an infringement under Article 4 of the Act no 4054. For the reasons explained above, the plea arguing that price competition was not important between the parties could not be accepted.

[49] Board Decision dated 23.11.2022 and numbered 22-52/776-320.

I.5.3.1.6 Plea Arguing that School Enrollment Fees and Scholarship Rates Were Not Determined Jointly with the Other Schools

(192) The plea submitted by ST. MICHEL can be summarized as follows:

- The assessment on Finding-7 state that "*all schools... agreed...not to reimburse the 10% down payment received from the parents for enrollment*," but it was impossible for schools to make an agreement concerning the reimbursement of the 10% portion of the down payment since this was a legal requirement. The term "*commission*" in Finding-2 and Finding-8 was used for the scholarship commissions set up under each school by the employees of the relevant school in accordance with the legal regulations and was not related to any other school.

(193) Although it was stated by the undertaking that the non-refundability of 10% of the down payment collected by schools during enrollment is a legal requirement, this matter in fact appears to be an issue agreed upon among the schools in order to avoid making one school more preferable than another in the eyes of the parents who wished to enroll their children, and to act in line with the "*principles of non-competition*". In fact, Finding-7 shows that schools tried to prevent poaching parents by offering them scholarships other than those in the joint list, by offering higher rates of scholarships to convince them to enroll, or by offering to reimburse 10% of the down payment the parents paid during enrollment. As a result, it was found that the argument on the subject could not be accepted.

(194) On the other hand, the *"Assessment Board"* subtitle under the *"Students and Trainees That Will Study Free of Charge or on Scholarship"* section of the Regulations, includes some provisions on the commission which should be established by the school each year in order to identify the students who will receive scholarships. Therefore, although the undertakings' arguments that the term *"commission"* refers to the scholarship committee established within each school and composed solely of that school's staff are found to be reasonable, this does not alter the finding that the schools jointly determined the scholarships and the conditions thereof. In fact, when Finding-7 and Finding-8 are considered together, the observation that the schools created a list for scholarships and determined them as a result of the coordination and information exchange among themselves, independent of the commission, remains valid.

(195) The plea submitted by ST. MICHEL arguing that there was no concurrence of wills between the schools on establishing school enrollment fees or scholarship rates can be summarized as follows:

- An examination of the document in Finding-7 and the practices of ST. MICHEL shows that there was no explicit and/or implicit concurrence of wills between the parties, since the scholarships and discount rates applied by ST. MICHEL were determined by ST. MICHEL's own officials and no changes were made to any discount items other than the advance payment discount granted to preparatory classes over the past five years. If there had been an agreement among the parties, changes would be expected in the scholarships and discount rates applied by ST. MICHEL, which did not occur. The phrases and terms in Finding-7 and Finding-8 such as "*must guide...in line with the principles [of] non-competition*," "*brotherhood*," and "*complementarity devoid of all kinds of competition*" are considered to reinforce an anti-competitive objective. However, these phrases are translated expressions which, in essence, refer to the "*sister-school*" tradition among French-language schools, a tradition observed in many schools both in Türkiye and around the world.

(196) Within the scope of Article 4 of Act no. 4054, the existence of an agreement is deemed established if there is a concurrence of wills or alignment between undertakings; it is not necessary for the agreement to have been implemented or for its anti-competitive effects to have occurred or been proven in the market. In that context, communication that includes information on strategic data such as price, output, sale strategy and cost may be considered competition infringements, even when they are offered unilaterally. In the "*market for private secondary education institutions that provide education in the French language*," scholarships and scholarship conditions may be considered competitively sensitive strategic information under competition law insofar as they allow undertakings to differentiate or distinguish themselves from their competitors. Thus, determination of scholarships and conditions thereof by the joint will of the schools is deemed to be an agreement restricting competition under competition law.

(197) On the other hand, ST. MICHEL points out the fact that the scholarship and discount rates applied did not change as proof that the schools did not jointly determine scholarship rates. An examination of Finding-7 from this perspective shows that the schools agreed to provide scholarships at 10% for siblings, 50% for staff, 10% for teachers, 10% for foundation members and 25% for national athletes, and not to offer any other scholarships during the enrollment process or try to poach parents by offering higher rates for scholarships. As can be understood from the relevant finding, the fact that no changes were made by ST. MICHEL to the scholarship rates is assessed to result from decisions taken among the schools under investigation to refrain from competing on scholarships.

(198) Furthermore, even if it were assumed for a moment that it is necessary to demonstrate the effects of the decisions regarding scholarship rates on the market, the tables prepared based on the response letters submitted by the parties under investigation show that the schools applied the scholarship rates they committed to implement in Finding-8 with very little variation, or, in some cases, exactly as listed. Accordingly, as can be seen from Table 5, ST. MICHEL also appears to have used the listed scholarship rates as a reference for its own implementation. In that framework, it was found that the arguments of the undertaking on the subject could not be accepted.

(199) It is also claimed that the schools announced their school enrollment fees before the month of May every year in accordance with the legislation, and therefore, in light of the date of the relevant finding, the information concerning the increase in fees did not have the characteristics of competitively sensitive information. The plea submitted by ST. MICHEL in this context can be summarized as follows:

- The phrase "*in light of the latest measures taken concerning the tuition fees we increased for new enrollments, we are confident in our ability to weather this crisis*" in Finding-9 was interpreted as indicating that the private schools under investigation had acted collectively to increase the fees. However, considering the date of the document is 07.07.2022, and private schools announce their tuition fees publicly between January and at the latest May each year, as of the date of the finding, the information regarding the fee increase by ST. MICHEL did not constitute competitively sensitive information on the date of the Finding.

(200) Although it is true that private schools are required by the legislation to announce their enrollment fees between January and May each year and that the meeting was held after May, as can be understood from the date of the relevant finding, the expression "*in light of the latest measures taken concerning the tuition fees we increased for new enrollments, we are confident in our ability to weather this crisis*," suggests a joint decision taken as a result of an agreement during a past meeting.

(201) At the same time, Finding-2, Finding-7, Finding-8 and Finding-9 clearly show that the schools jointly set their enrollment fees by sharing competitively sensitive information. In that respect, it is not possible to agree with the relevant plea.

I.5.3.1.7 Plea Arguing that Teacher Salaries Were Not Determined Jointly with the Other Schools under Investigation

(202) The plea submitted by ST. MICHEL can be summarized as follows:

- There are differences between ST. MICHEL and the schools under investigation in terms of physical conditions, number of students and teachers, as well as the number and hours of weekly courses; therefore, teacher wages could not have been uniformly determined among the schools concerned. Finding-9 contains assessments regarding the wages of French and other foreign teachers but does not mention any rate of increase or specific salary amount; rather, the email in question refers to the measures taken by the parties during the inflationary period. Moreover, since the salaries of French teachers are determined by federation representatives as required by the French government, Finding-9 cannot be considered evidence of an infringement. The meeting mentioned in Finding-10 was held to address the negative effects caused by the salary gap between Turkish and French teachers resulting from inflation in Türkiye; therefore, both findings should be excluded from the case file.

(203) Although the plea submitted by the undertaking claims that the meetings held with the parties under investigation were aimed at minimizing the projected differences between the salaries of Turkish and French teachers resulting from inflation and exchange difference, based on the quote *“Clearly, in light of the economic situation, we need to find leverage to minimize the effect of the salaries on our budget, and such leverage exist: that is, the option to modulate the salary scale of the French local contracts and at the same time, the option to cut the number of foreign professors. This is an option that must be carefully considered since the parents of our students have certain expectations regarding the existence of foreign teachers at our schools,”* from the e-mail, it is understood that decisions regulating the salaries of the employees were taken, and undertakings tried to come to a consensus of methods to relieve the burden of staff salaries on their costs.

(204) In fact, as the relevant charts (Chart 1-4) show, salaries in the table titled simulation were taken as a reference point by the schools under investigation. Even when it is assumed that the schools did not implement those salaries, the behavior of setting the wages collectively would result in the distortion of the competitive environment in the labor market, and since labor is an element of cost, it would constitute an infringement by object of Article 4 of the Act no 4054, which prohibits the joint establishment of all types of terms of sale as well as elements forming the price, such as costs and profits.

(205) The plea submitted by ST. MICHEL arguing that the meetings held between the parties under investigation were intended to make pedagogical assessments can be summarized as follows:

- In the correspondence cited as Finding-7, the phrase “...*We must anticipate a minimum salary increase of 35–36%*...” is treated as evidence; however, this statement was used with the intention of preventing teachers from being adversely affected by inflation and refers only to a minimum rate of increase. Accepting this phrase as evidence of a wage-fixing agreement would imply that the parties to the investigation had entered into an anti-competitive agreement to raise staff salaries, which would contradict both the purpose and principles of competition law. Furthermore, the expressions in the correspondence in Finding-7 merely reflect considerations concerning the economic

crisis, and that the meetings mentioned in Finding-4 and Finding-6, which show communication among the administrators of the private schools under investigation, were held to discuss legislative amendments and ensure a proper understanding thereof, as well as to address pedagogical matters. Therefore, the mere organization of meetings among the parties to the investigation could not, by itself, be considered evidence of a competition law infringement.

(206) Although the undertaking claims that accepting the agreement between the schools to raise salaries as an infringement would be against the purpose and principles of competition law, in actuality competition law would not have been violated if the undertakings had determined minimum wages and minimum rates of increase by their own individual wills. The fact that the undertakings set a minimum rate of increase for the salaries through their concurrent wills constitutes an infringement under competition law due to the reason explained above.

(207) On the other hand, while it is claimed that the meetings held with the participation of all schools under investigation were intended to discuss pedagogical matters, the findings acquired and the charts created based on the observations made within the scope of the file shows that the undertakings took joint decisions concerning tuition fees and the elements that formed the fees during the meetings concerned.

(208) The plea submitted by ST. MICHEL arguing that the additional course fees implemented were determined by the individual will of the school can be summarized as follows:

- Paragraph 130 of the Investigation Report states "*Another remuneration item on which the schools aligned in practice during the meeting of 07.09.2022 were the hourly additional course fees, which were set at (.....) TL by the schools under investigation*," but there was no document or information to prove that. In fact, ST. MICHEL calculated the additional course fee of (.....) TL, set for the 2022-2023 academic year, by applying a (.....)% increase to the fee of (.....) TL set for the 2021-2022 academic year, based on the rate of change in the 12 month average CPI in October 2022, as announced by the Turkish Statistical Institute (Türkiye İstatistik Kurumu—TÜİK).

(209) An examination of the e-mails included in Finding-3 shows that in a meeting attended by all of the schools under investigation, the schools shared the methods they used to calculate the salaries of the Turkish teachers, and ST. MICHEL sent to the other schools under investigation a calculation of the gross salary a teacher with 20 years of seniority teaching nine hours of additional courses a week would receive. The study conducted by ST. MICHEL calculated monthly additional course hours as (9x52)/12 = 39, and, since the monthly additional course fee was (.....) TL, the fee per additional course was calculated to be (.....)TL/39 = (.....)TL, and the relevant calculation was shared with all of the schools under investigation. Consequently, the conduct that constitutes the infringement under investigation is not the fact that the undertaking calculated a fee of (.....) TL by raising the hourly additional course fee, but the fact that it shared the fee in question with the other schools under investigation and the schools then collectively determined the individual items forming the teacher salaries.

(210) Moreover, as detailed above, when the schools realized that the methods each school used to calculate the salaries of the Turkish teachers differed, they utilized a simulation study to ensure uniform practice between the schools concerning teacher salaries. As shown in Chart 3, an outcome of the study concerning the hourly additional course fees was that the simulation study for a teacher with 20 years of seniority teaching nine hours of additional courses a week was implemented in practice by the schools. Therefore, it was not possible to agree with the pleas submitted by the undertaking.

I.5.3.2 Pleas Submitted by ST. JOSEPH and the Assessment Thereof

I.5.3.2.1 Plea Arguing that the Relevant Product Market Was Defined Too Narrowly

(211) The plea submitted by ST. JOSEPH can be summarized as follows:

- In the first written plea submitted by ST. JOSEPH, a request was made to examine the tuition fees announced and applied by all private high schools in Istanbul and the proportion of students who preferred only French-language high schools in the LGS exam, but this request was rejected on the grounds that a precise market definition was not necessary for the assessment of the allegations under investigation. Nevertheless, in the Investigation Report, regarding the findings on scholarships, the following assessment was made: "*As noted under the 'Relevant Market' heading above, in the private secondary education institutions offering education services in the French language market, which is a relatively separate and narrow market with fewer players, scholarship opportunities is an important factor for differentiating/distinguishing between undertakings.*" This assessment effectively makes the relevant market definition a substantive element of the investigation and further substantiates ST. JOSEPH's argument that "*the existence of many different schools creates a market structure in which restriction of competition is not possible*." This makes the undertaking's request to have the matter examined and the obtained information shared with it, in anonymized form if necessary, so that it can effectively exercise its right of defense, even more significant. However, no assessments were made on this matter during the course of the investigation.

(212) The schools under investigation are distinguished from other private schools in certain aspects, including the fact that they have the globally valid "*Label FrancEducation Certificate*" which documents education in the French language and provides opportunities to study in the French language in various fields; that the diploma of the school is recognized as equivalent to the French baccalauréat, giving graduates the right to apply to universities in France and other countries without exams, and that they provide their graduates a limited quota to take the internal exam prepared by Galatasaray University whereby they can be accepted into the University if they are successful. As a result, in light of the facilities offered by the French high schools under investigation, no demand-side substitution could be established between them and other schools that provide education in different languages.

(213) Moreover, since the infringement identified in the investigation was evaluated to be a cartel under the Regulation on Fines, alternative market definitions would have no effect on the outcome.

I.5.3.2.2 Plea Arguing That ST. JOSEPH and ST. MICHEL Were in the Same Economic Unity

(214) The plea submitted by ST. JOSEPH can be summarized as follows:

- The approach of treating ST. JOSEPH and ST. MICHEL"*as undertakings with separate legal entities*" is clearly in violation of the definition of "*undertaking*" in the Act no 4054 and the case-law surrounding that definition. An investigation process within the framework of this approach could lead to an establishment of infringement and application of administrative fines which may result in structural measures.
- The grounds for Article 3 of the Act no 4054 clearly states that "*principle of economic unity is adopted for the definition of undertakings. In other words, a subsidiary will not be evaluated independently, but together with the company or companies it is connected to*". In addition, when explaining the term "undertaking," the Competition Law Basic

Concepts study[50] published by the Authority notes that "*a company for which all decisions about economic activities are taken by the holding it is affiliated to … [is] not regarded as [an undertaking].*" In light of the definitions of "undertaking" in Article 3 of the Act no 4054, in the Competition Terms Glossary, and in Competition Authority Basic Concepts study published by the Authority, the two schools concerned must be evaluated as part of the same economic unity.

- As one of the fundamental concepts of competition law, this term has been the subject of little debate, and the Board decisions have also interpreted it in line with the definitions and principles mentioned above. Indeed, in its *Bayburt Group*[51] Decision, the Board held that "*the legal entities should be considered as a single undertaking due to the unity of interest arising from the family and economic ties between the shareholders and managers of the undertakings within Bayburt Group.*" In the *Gübre*[52] decision, the Board concluded that "*the mere fact that different natural persons sit on the boards of directors does not justify the conclusion that Ege and Bagfaş do not belong to the same economic entity (undertaking)*." Likewise, in the *Engingrup*[53] decision, the Board stated that "*natural or legal persons who cannot make independent decisions in the market during their economic activities form an economic unit with those natural or legal persons by which they are controlled in terms of shareholding and decision-making influence, and must therefore be regarded as a single undertaking, even if they form separate legal entities.*"
- ST. JOSEPH, ST. MICHEL, and the Private İzmir Saint-Joseph French High School, the latter of which is not within the scope of the investigation, are among nearly 1,000 Lasallian schools operating in more than 80 countries worldwide, and, as a natural consequence of this structure, all strategic decisions concerning these schools are taken by the same founder. This fact can be easily verified from multiple sources, primarily including the official websites of the schools. In this context, these three schools belong to the same economic entity within the meaning of the definition of "undertaking" in Article 3 of Act No. 4054 and the grounds thereof, and in line with the Board's precedents cited above.
- On the other hand, if St. JOSEPH and ST. MICHEL are deemed not to be within the same economic unity, this could give rise to an unprecedented structural implication that is incompatible with commercial reality, and could potentially affect all holdings and corporate groups operating in Türkiye, namely, that *by receiving information and making decisions simultaneously from these two schools considered as competitors, the Frères des Écoles Chrétiennes Institute*[54]*, would be regarded as violating the Act No. 4054*."

(215) In Article 2 of the Act no 4054, titled "*Scope*," specifies undertakings as subject of the rules set out in the Act, and Article 3 defines them as "*Natural and legal persons who produce, market and sell goods or services in the market, units which can decide independently and constitute an economic whole.*" In that framework, for a unit to be defined as an undertaking, it should have the characteristics of "conducting an economic activity," and "conducting the economic activity independently."

[50]https://www.rekabet.gov.tr/tr/Sayfa/Rekabet-savunuculugu/rekabet-hukuku/rekabet-hukukunun-esaslari/temel-kavramlar?AspxAutoDetectCookieSupport=1

[51] Board Decision dated 14.07.2011 and numbered 11-43/954-308.

[52] Board Decision dated 26.11.2020 and numbered 20-51/718-317.

[53] Board Decision dated 23.02.2023 and numbered 23-10/154-48.

[54] "*Institut des Freres des Ecoles",* is the organization with which ST. JOSEPH and ST. MICHEL are affiliated.

(216) At the same time, when assessing whether an undertaking forms an economic unity with others, it is necessary to determine whether there exist economic and familial ties between the persons/groups concerned, to examine the basis, nature and extent of such economic links, and, if applicable, to compare them with any independent activities in order to assess whether the persons or groups act in a unity of interest and make strategic decisions independently on that basis. In other words, if the decisions of the undertaking are subject to approval by a body other than itself, the undertaking is considered lack economically wholeness.

(217) The observations made under the file show that ST. JOSEPH and ST. MICHEL can act independently in the market, that they have separate economic structures, strategic decision-making processes, administrative, financial and operation structures as well as resources. The fact that the principal of each school had initiative on determining the matters concerning school enrollment fees and wages of Turkish teachers show that the schools are independent in terms of strategic decision making. For the reasons explained above, it is concluded that the fact that the founders and representatives of ST. JOSEPH and ST. MICHEL are the same persons is not, by itself, sufficient to consider these undertakings as forming a single economic unity; therefore, ST. JOSEPH and ST. MICHEL have been treated as separate undertakings.

I.5.3.2.3 Pleas Concerning the Reason for the Communication between the Schools

(218) The plea submitted by ST. JOSEPH can be summarized as follows:

- The primary reason for the communications in 2022 carried out among the undertakings investigated was the economic fluctuations experienced in Türkiye. The CPI and PPI rates announced by TÜİK, which constitute the main reference parameters for determining tuition fees for intermediate grades, significantly strained the schools in view of the actual cost increases they encountered. The statement made by the President in 2022 limiting the increase in tuition fees for private schools to 36.7% further aggravated the financial difficulties faced by all private educational institutions, including ST. JOSEPH.
- In addition, the salaries of 22 French teachers employed by St. JOSEPH were determined and paid in Euros, the depreciation of the Turkish lira directly affected these payments, and consequently, the wage disparity between French and Turkish teachers employed within the same institution progressively widened. Despite all financial efforts, this disparity in wages could not be eliminated, which also disrupted the internal balance within the school. Meanwhile, the solution of reducing the number of foreign teachers would entail a decline in educational quality. Therefore, meetings were held with the other schools under investigation to address these challenges.
- When the statements contained in Finding-2, 6, 7, and 8 are evaluated collectively, the communications among the schools under investigation merely consisted of reminders concerning ethical principles and acts prohibited by Articles 54 et seq. of the Turkish Commercial Code No. 6102 for constituting unfair competition, as well as of efforts to find a solution to the adverse economic conditions prevailing in the country. Discussions and exchanges on such matters among the schools is a natural and internationally recognized practice.

(219) Article 4 of the Act no 4054 prohibits agreement between undertakings which prevents, restricts or distorts competition, and, as a rule, administrative fines are imposed on those undertakings found to have violated the Act. Regardless of the subjective intent or justifications that played a part in the undertakings' participation in the agreements, these are not a principle factor in determining whether an agreement is restricting competition by

object and therefore are not taken under consideration in the assessments made under competition law. In this context, the plea arguing that the communication between the undertakings was due to the economic changes in the country or the financial difficulties of the undertakings removes neither the infringing nature of the agreements between the schools nor the will of the schools to become a part of those agreements.

(220) In fact, the *CB v Commission* Decision[55] of EUCJ notes that the subjective intent of the parties was not a principle factor in determining whether the relevant agreement was restricting competition by object, and that even if an agreement that restricts competition by object had additional, legal objects, the existence of a single object to restrict competition would be sufficient to establish a violation.

(221) In parallel, under domestic law, the Horizontal Guidelines address the concept of intent in the section concerning agreements that have the object of restricting competition within the meaning of Article 4 of Act No. 4054, where it states that "*When assessing whether an agreement restricts competition by object, the contents of the agreement, the objectives it is trying to attain, and the economic and legal framework in which it exists must be taken into consideration. Although it is not a necessary factor in determining whether an agreement restricts competition by object, the intention of the parties may also be taken into consideration in the assessment.*" Accordingly, it is explicitly provided that intent is an optional element in the assessment of whether an agreement between undertakings has the object of restricting competition. The primary and essential factors to be considered are the content of the agreement, the objectives pursued, and the economic and legal framework within which the agreement operates. A collective analysis of the evidence collected under the scope of the file leaves no doubt that the investigated undertakings have jointly determined tuition fees and the elements that form tuition fees in the output market, as well as the salaries of the Turkish teachers employed by the schools in the input market.

I.5.3.2.4 Plea Arguing that the Schools under Investigation Were Not For-Profit Organizations

(222) The plea submitted by ST. JOSEPH can be summarized as follows:

- Neither ST. JOSEPH nor the other schools under investigation were for-profit organizations, and if a profitability target was achieved the schools did not give bonuses to the administrators who are also teachers.

(223) Under the Act no 4054, a unit is regarded as an undertaking if it performs "*an economic activity*" and if it is "*independent*" in the performance of this activity. In that framework, it is not necessary for an undertaking that is obligated to abide by the rules set out in the Act no 4054 to "*make a profit*" or "*give bonuses, etc.*"

(224) Since it is established that the schools under investigation are conducting economic activities in the education sector and that they are independent when conducting those activities, they are considered undertakings under the Act no 4054. Therefore, the plea submitted by the undertaking was found unjustified.

I.5.3.2.5 Plea Concerning the Assessment of the Findings

(225) The plea submitted by ST. JOSEPH can be summarized as follows:

- When Finding-3, 4, 5, and 7 are evaluated together, it is understood that the schools under investigation, including ST. JOSEPH, are non-profit organizations managed by

[55] Case C-67/13 P - *CB v Commission*

administrators who are themselves teachers, and therefore have no incentive to suppress teacher salaries. In fact, with the participation of their accountants, the schools conducted a benchmarking study to learn from each other's best practices and to identify areas where improvements could be made regarding teacher compensation. At this point, it is clear that the schools' purpose was not to suppress wages, and the table prepared by ST. JOSEPH was merely used to facilitate comparison. Thus the table in question was not an agreed outcome, but an input for each school's own independent decision-making process.

- Furthermore, regarding the allegation in Finding-7 that teacher salaries were jointly determined, the statement "*(.....), ...We must anticipate a minimum salary increase of 35–36%,*" is of significance. This statement is the clearest indication that the schools had no intention of suppressing salaries. Had that been their intention, the expression used would have been "maximum" instead of "minimum."
- Finding-9 discusses the financial burden caused by the salaries of French teachers and the document should be interpreted as exculpatory evidence demonstrating the schools' efforts to preserve the quality of education rather than evidence of a competition infringement with regard to wages. Moreover, since the salaries of French teachers are determined in accordance with French legislation, it would not have been possible for the schools to make an agreement on this matter.
- The Presidential decree setting a 36.7% cap on tuition fee adjustments for intermediate grades caused nearly all private schools in the sector to reflect the increases they could not apply to mid-year grades onto preparatory classes due to rising costs. Accordingly, the statement in Finding-9 noting that "*in light of the latest measures taken concerning the tuition fees we increased for new enrollments, we are confident in our ability to weather this crisis*," refers not to jointly adopted measures by the schools under investigation, but rather to this sector-wide measure taken independently by all private schools.
- Finally, the expressions in Finding-10 clearly reflect the financial difficulties faced by the schools; hence, Finding-10 also constitutes exculpatory evidence for the undertakings.

(226) In light of the evidence acquired during the on-site inspections conducted under the investigation, the parties are found to have committed two separate infringements in two different markets. Since the principle of *ex officio* investigation applies in competition law, the system of free evaluation of evidence is in effect. This is expressly stipulated in Article 59 of Act no. 4054, which provides that "*The existence of agreements, decisions and practices limiting competition may be proved by any kind of evidence*." As a consequence of the free evidence system, certain matters are not required to be proven by specific types of evidence; rather, all types of evidence capable of establishing proof of the relevant matter may be admitted as means of evidence.

(227) In this system, what is important about the evidence in terms of conclusive power is not to whom the document belongs or where it was collected, but what it means in terms of content. In that context, the content of the evidence acquires meaning only through a holistic assessment of all the evidence taken together. Pursuant to the principle of holistic assessment of evidence, once it has been established that the undertakings are parties to a single concerted practice, it is not necessary for each piece of evidence forming the basis of the investigation to contain all elements of the infringement, nor is it required that each document concerning the undertakings include information or statements demonstrating the intent to infringe for each undertaking.

(228) The pleas submitted by ST. JOSEPH assess the evidence individually and submit a separate argument for each evidence. In addition to distorting the system and process for the holistic assessment of the evidence, this approach also takes the evidence out of context.

(229) On the grounds explained above, it is concluded that the pleas presented by the undertaking do to go no further than abstract statements.

(230) ST. JOSEPH also argued that

- Finding-6 and Finding-7 were about the meetings held in April 2022 intended to find solutions for the crises the school under investigation faced because of the salaries of the foreign teachers. No decision was taken in those meetings to determine tuition fees jointly.

(231) Although the undertaking states claims that no decision was taken to determine tuition fees jointly under Finding-6 and Finding-7, Finding-6 shows that a meeting was held at STE. PULCHÉRIE on 06.04.2022 that was attended by all of the schools under investigation, and Finding-7 includes the minutes of that meeting. The statement "*(.....) suggested increasing PL tuition fees as much as possible, up to the rate of inflation in consumer prices,"* in the minutes in question reveal that the Private İzmir Saint-Joseph French High School (.....) proposed increasing the new enrollment fees for the preparatory class by CPI, and a note was taken down to determine the final fees during a videoconference to be held on the later .date of May 5-6

(232) The relevant finding, noted that the enrollment process should be conducted in accordance with the principle of non-competition, with the minutes stating that "*The principals are responsible and accountable for the school's enrollment policy and must guide the admissions team in line with the non-competition principles defined by the governing bodies.*"[56] This was especially valid for the scholarships, which were thought to affect the choice of the parents during enrollment. According to the same minutes, the schools also agreed to list the scholarships on a school-by-school basis, not to offer any scholarships during enrollment other than the ones listed, and not to poach parents by offering higher scholarships, and not to reimburse the 10% down payment the schools received from the parents for enrollment. All of these factors are considered to involve fixing the terms of sale for the service provided. Consequently, the argument that the meetings mentioned in Finding-6 and Finding-7 did not include a decision to determine tuition fees jointly is found to be groundless.

I.5.3.2.6 Pleas Concerning the Calculation of the Administrative Fine

(233) The plea submitted by ST. JOSEPH can be summarized as follows:

- Without constituting an admission, assuming the schools under investigation did engage in conduct that could be in violation of the Act no. 4054, such conduct would constitute "*exchange of competitively sensitive information*," and therefore the "*other infringements*" category should serve as the basis in determining the basic fine. Even if the schools exchanged information regarding teacher salaries, school enrollment fees, etc., no decision was taken by the schools on these matters.
- In the Board's *Chicken II* decision[57], it was clearly established that poultry producers jointly fixed prices and/or shared information aimed at controlling supply but the

[56] The expression was translated into Turkish by the rapporteurs. The original expression is "*Les directeurs mont ….*".
[57] Board Decision dated 13.03.2019 and numbered 19-12/155-70.

conduct was still assessed under the category of other infringements. In the *Chemotherapy Drug Preparation* decision[58], collusive bidding in public tenders was evaluated under "other infringements"; and the *Insurance*[59], *Çerkezköy Jewelers*[60], *Mersin Banana*[61] and *Burdur Autogas*[62] decisions may also be cited as examples.

- If the Board concludes that an infringement has been committed, the current investigation should also be assessed under the other infringements category, in accordance with the principle of equality before the law in Article 10 of the Constitution.
- Communication between the schools was intended to find solutions to the economic changes throughout the country and did not constitute more than one independent action in terms of markets, nature and chronological process. Therefore, they should not lead to the imposition of two separate fines.
- The Investigation Report determined that there were no mitigating factors; however, the Board's observation in the *Burdur Autogas* decision that "*the relevant markets are under regulation and therefore the infringement had a limited effect*" also applied to this file. On the other hand, another significant mitigating factor should be the fact that the schools under investigation are non-profit organizations.
- In the *İK-I* decision, the Board took into consideration the share of personnel costs within total costs when determining gross revenue over which the fines would be imposed, and thus the calculated annual gross revenues were less than the net sales indicated in the uniform chart of accounts. Since this file involves a similar allegation, the approach must also be similar in case an infringement is found and fines are imposed.

(234) Emergence of the alignment between the parties is based on the exchange of sensitive commercial information between the parties which could affect competition. Information exchange may be regarded as a "facilitating practice" insofar as it makes it easier to determine whether a collusion among competitors has been disrupted; however, it may also be considered an agreement that restricts competition in itself. From this perspective, information exchange may be seen as an objective or as a tool for restriction/obstruction of competition, depending on the circumstances.

(235) Within the scope of the investigation, it has been determined that the undertakings went beyond merely exchanging strategic information concerning both the input and output markets, and in fact reached a consensus to jointly determine elements on which they should, under the free-market dynamics, be competing with one another.

(236) Administrative fines to be imposed due to competition infringements are set by the Board in accordance with Article 16 of the Act and with the Regulation on Fines. Article 4.2 of the Regulation on Fines establishes the framework for the fine to be imposed by the Board with the provision, "*The amount of the fines to be determined under the provisions of this Regulation may not exceed the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of those associations, generated at the end of the financial year preceding the final decision, or, in case this cannot be calculated, over the annual gross revenues generated at the end of the financial year that is closest to the date of the final decision, as determined by the Board, and it may*

[58] Board Decision dated 02.01.2020 and numbered 20-01/14-06.
[59] Board Decision dated 23.01.2020 and numbered 20-06/61-33.
[60] Board Decision dated 12.08.2021 and numbered 21-38/553-267.
[61] Board Decision dated 11.11.2021 and numbered 21-55/780-386.
[62] Board Decision dated 09.01.2020 and numbered 20-03/28-12.

not exceed ten per cent of these revenues." In the present case, the administrative fine was calculated based on the provisions of the Regulation on Fines.

I.5.3.3 Pleas Submitted by ST. BENOÎT and the Assessment Thereof

I.5.3.3.1 The Plea Arguing that the Investigation Report Did Not Include the First Written Pleas of the Parties

(237) The plea submitted by ST. BENOÎT can be summarized as follows:

- The Investigation Report did not include the pleas submitted by ST. BENOÎT and other schools under investigation, did not explain why the pleas were disregarded and thus the conclusion reached was based on insufficient reasoning.

(238) Under the Communiqué on the Regulation of the Right of Access to the File and Protection of Trade Secrets, numbered 2010/3, any information acquired during the application of the Act no 4054 is examined to determine if it contains trade secrets, and documents classified as trade secrets are protected. Although the Investigation Report includes all pleas submitted by the undertakings, since pleas of the other investigated undertakings are classified as trade secrets, and since those please do not play a role in the finding of an infringement concerning ST. BENOÎT, these pleas are kept inaccessible to ST. BENOÎT. Thus, the plea submitted by the undertaking is found to be groundless.

I.5.3.3.2 Plea Arguing that Tuition Fees and Scholarship Rates Were Not Jointly Determined by the Other Schools under Investigation

(239) The plea submitted by ST. BENOÎT can be summarized as follows:

- Observations claiming that the parties under investigation prevented or distorted competition based on the email correspondence cited as Findings 2 through 10 do not meet the applicable standard of proof, and there is no concurrent will or element of intent on the part of the undertakings to engage in concerted conduct that would constitute an infringement under Article 4 of the Act No. 4054.

(240) Article 16 of the Act no 4054 titled "*Administrative Fines*" specifies that when deciding on an administrative fine on those who engaged in conduct prohibited by Articles 4, 6 and 7 of the same Act, the Board shall take into account Article 17.2 of the Misdemeanor Law no 5326. Article 2 of the Misdemeanor Law defines all wrongdoings for which the law prescribes administrative sanctions as misdemeanors, and Article 9 specifies that "*In cases where no explicit provision exists in the law, misdemeanors be committed both on purpose and negligently*". As clarified by the provision above, not only is the element of intent not required when assessing if an agreement is an infringement under competition law, these infringements may even be committed negligently, and therefore subjective assessments on the intent of the parties do not eliminate illegality.

(241) Moreover, under Article 4 of the Act no 4054, what is important is whether the infringement of competition currently or potentially restricts competition by object or effect, and intent by the undertakings committing the infringement is not required. Thus, it is concluded that arguing the absence of an infringement on the grounds that there was no intent does not constitute a valid defense.

(242) ST. BENOÎT argued that the meetings held by the schools under investigation cannot be characterized as an agreement or concerted practice under the Act no 4054. Within that context;

- It is stated that the content of the e-mail in Finding-4, the schools under investigation provide information regarding the number of participants to attend the meeting, and

that neither the Act no. 4054 and national legislation on competition law nor foreign regulations prohibit undertakings from holding meetings together. It is further stated that, upon reviewing the content of the e-mail in Finding-5, there is no correspondence indicating an agreement, concerted practice, and/or jointly decision or action among the undertakings.

(243) When making an assessment concerning the infringing conduct, documents acquired during the case as well as the tables and charts prepared based on those documents and on the response letters submitted by the undertakings are taken into consideration as a whole. Therefore, although Finding-4 and Finding-5, when considered in isolation, may not allow for a definitive assessment of infringement, an examination of these findings together with the others shows that the meeting referred to in Finding-3 was held and was attended by the accounting officers of the schools, that efforts were made to develop methods for fixing the wages of Turkish teachers at the schools within the scope of this meeting, and a simulation was shared in order to understand and eliminate the differences in salary calculations.

(244) In that framework, Finding-4 shows participation in the meeting concerned, while Finding-5 shows that the minutes of the meeting, whose French version was requested by ST. BENOÎT, would be sent to each school for approval with that version, as made clear by the expression "*I need to send it to the accountants of each school and take their approvals*". As a result, a holistic assessment of the findings remove any doubt as to whether they include statements concerning the infringement. At the same time it should be noted that while the mere fact that the schools organized a meeting is not illegal, it is considered an infringement under the Act no 4054 that the schools collusively took decisions concerning school enrollment fees and teacher salaries during the meetings concerned. Therefore, the plea submitted by the undertaking was found unjustified, on the grounds explained above.

(245) The plea submitted by ST. BENOÎT can be summarized as follows:

- The email provided in Finding-4 is intended for the schools under investigation to exchange information among themselves regarding the number of participants who would attend the planned meeting. There is no provision under the Act No. 4054 prohibiting undertakings from holding meetings, and that such meetings would only be unlawful if the discussions held therein were aimed at preventing, distorting, or restricting competition.

(246) Finding-4 dated 02.09.2022 must be evaluated in the context of the previous finding. This is because while Finding-4 simply provides participation information for a meeting planned by ST. JOSEPH on 07.09.2022 at 10:30, the content of the meeting in question is clarified in Finding-3. Finding-3 shows that on 07.09.2022, between 10:30 and 12:10, a meeting was held with the participation of the accounting officers of the schools under investigation, following which each school was requested to submit its calculations regarding its personnel salaries, specifically teacher salaries. During the meeting, the parties kept minutes, which included each school's current method for calculating salaries as well as the parties' proposals for a joint calculation. On 14.09.2022, a simulation was shared to clarify the differences between the salary calculations of the schools. Although the Act no 4054 does not prohibit undertakings from organizing meetings, the undertakings in question has acted in violation of the Act no 4054 during the relevant meeting by exchanging strategic information with the nature of trade secrets and, furthermore, by coming to an agreement on elements in which they are expected to compete. Therefore, it is not possible to agree with the plea submitted by the undertaking.

(247) The plea submitted by ST. BENOÎT can be summarized as follows:

- When setting the fees, ST. BENOÎT acted in accordance with Article 53 of the Regulation, titled "*Setting Fees,*" that under the relevant provisions it was not possible to apply an increase exceeding the rate specified therein. Fees were not set for preparatory classes, the fees for preparatory classes were at the discretion of private schools, whereas this was not possible for intermediate grades.

(248) The provisions of the Regulation concerning the determination of private school fees show that a fundamental two-tier distinction is applied in the fee-setting process. The first and more fundamental of these involves private schools setting their tuition fees based on the training/education facilities they will offer within the framework of the agreements signed with the parents, on the investments they will make and on their operation costs. In that respect, private schools seem to be under no restrictions when setting their fees, with the exception of intermediate grades.

(249) On the other hand, the second main condition in Article 53 puts a maximum limit on the price hikes that can be implemented by private schools under certain conditions. Accordingly, when setting the tuition fees for the intermediate grade students other than the first, fifth and ninth grades, the increase may be up to the rate of (domestic PPI+CPUI)/2 + 5% over the previous year's fees. Meanwhile tuition fees for the first, fifth and ninth[63] grades, which are considered new enrollments, can be determined freely based on the schools' own cost structures, without any restrictions.

(250) Even when Finding-7 is examined in terms of the conduct under investigation, the minutes prepared during a meeting attended by all school principals show that it was proposed that the tuition fees for new registrations to the preparatory class be increased as much as possible in line with the CPI rate; that a note was taken regarding the determination of tuition fees via videoconference on May 5–6, a date later than the date of the minutes; that the enrollment process should be managed with the principle of non-competition; that certain scholarship rates were determined; and that it was decided no scholarships would be offered during the enrollment period other than these specified rates. In light of all of the points above, ST. BENOÎT's plea arguing that the schools could not freely set their tuition fees is not considered to be justified.

(251) On the other hand, Article 4 of the Act no 4054 prohibits competing undertakings from determining the purchase or sale prices of goods or services or the elements of such prices, and in this respect, the Act's letter and spirit make no distinction between competing undertakings setting minimum, maximum, or fixed prices for goods or services.

I.5.3.3.3 Plea Arguing that Teacher Salaries Were Not Determined Jointly with the Other Schools under Investigation

(252) The plea submitted by ST. BENOÎT can be summarized as follows:

- There was no concurrent will among the schools to determine teacher salaries jointly, and the simulation study concerning the salaries received by the Turkish students, included in the Investigation Report, clearly shows that different salaries were paid by each undertaking.

(253) An examination of the Findings-3, 4, 6, 7, 9 and 10 as a whole shows that individual will of the schools were replaced by the concurrent will of all of the schools in the determination of the wages of the teachers. Within the framework of the findings acquired at the

[63] In schools with preparatory classes, ninth grade is considered an intermediate grade as well.

undertakings and their response letters, the salaries included in the simulation study conducted by the schools were taken as a reference point, as seen from the salary charts concerning the payments made to the Turkish teachers with 20 years of seniority working at the schools under investigation, and the goal was to ensure uniformity among the schools concerning the salaries paid to Turkish teachers.

(254) Even when it is assumed that the schools did not implement the salaries in the simulation, the behavior of setting the wages collectively would result in the distortion of the competitive environment in the labor market, and since labor is an element of cost, it would constitute an infringement by object of Article 4 of the Act no 4054, which prohibits the joint establishment of all types of terms of sale as well as elements forming the price, such as costs and profits. In this regard, although the undertaking claims that the schools subject to the investigation paid different salaries, the differences between the tuition fees implemented by the schools are considered negligible, and it is assessed that the individual wills of the schools have been replaced by a collective will aligned among all schools. Consequently, it is not possible to agree with the plea submitted by the undertaking.

I.5.3.4 Pleas Submitted by STE. PULCHÉRIE and the Assessment Thereof

I.5.3.4.1 Argument Concerning the Fact that On-Site Inspections Were Conducted without A Court Decision

(255) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- In accordance with the Constitutional Court (CC) Decision dated 23.03.2023, application number 2019/40991, which was published in the Official Gazette of 20.06.2023, on-site inspections conducted without a judge decision violated the inviolability of the domicile regulated under Article 21 of the Constitution. Thus, since the CC laid out a new case-law, the on-site inspection conducted at STE. PULCHÉRIE on 11.10.2022 was against the law, making the evidence acquired during the on-site inspection illegal, violating constitutional right.

(256) One of the substantive decisions that can be taken by the CC in response to individual applications are those which find that one or more rights guaranteed by the Constitution, by the European Convention of Human Rights, or by one of the latter's supplementary protocols ratified by Türkiye has been violated by subjects exercising public power. In those cases, in addition to the decision concerning the violation of the right, the CC also rules on the types of remedies. At this point, there are differing views on whether the CC's decision on the individual application is binding only on the persons and institutions that are parties to the application, or whether such decisions must also be followed in all similar cases. In other words, there is no doubt that violation decisions rendered upon an individual application are binding on the parties to that specific case; however, there is no consensus as to whether such decisions also produce legal effects and consequences for all similar cases.

(257) The fact that the CC's violation decision rendered upon an individual application, together with its reasoning, is binding on the applicant and the public authority that caused the violation reflects its subjective effect; its application not only to the applicant but also to those in similar situations arises as a consequence of its objective effect. With respect to the subjective effect, upon a request for release made by invoking a violation decision rendered in favor of a member of parliament from one political party as a precedent for a member of parliament from another political party, the Diyarbakır 5th Assize Court held that "*Constitutional Court decisions have different effects; the impact, binding nature, finality, and implementation of decisions rendered through abstract or concrete norm*

review differ from those rendered upon individual applications, decisions of the Constitutional Court resulting from annulment and objection proceedings carry general legal binding force (…) whereas decisions rendered upon individual applications, unlike abstract and concrete norm review, are effective only with respect to the parties to the case, (…) the Constitutional Court's decision is valid and binding only for the relevant person and the administrative act or decision that is the subject of the application…", and accordingly rejected the requests for release.[64]

(258) In the individual application submitted following the refusal of the request, the CC assessed the application on its own without discussing objective effect, and ruled in favor of a violation. This indicates that the CC does not take a violation decision concerning an opposition MP by merely citing its decision about another opposition MP as a positive justification of objective effect. Consequently, the CC practice also shows that the objective effect has no positive justification.

(259) The CC's Plenary decision on the individual application no. 2019/40991 filed by Ford Otomotiv Sanayi Anonim Şirketi on 23.03.2023, which was published in the Official Gazette on 20.06.2023 (Ford Decision), also found a violation of the inviolability of the domicile with an on-site inspection; however, no assessment was made as to whether the documents obtained during the inspection constituted unlawfully obtained evidence. The CC has decided to notify the Grand National Assembly of the current situation in order to find a solution to this structural issue.

(260) Accordingly, it is not possible to annul a statutory provision on the grounds that it is unconstitutional as a result of an individual application to the CC, and likewise, the Ford Decision cannot nullify the effect of an existing statutory provision. Due to the lack of consensus in case law regarding the objective effect of the CC decisions on individual applications, the defense raised by the undertaking claiming that all on-site inspections conducted by the Board and the evidence obtained during those inspections are unlawful based on the Ford Decision is unfounded. Accordingly, the assertion that the Ford Decision implicitly annulled the relevant statutory provision is legally baseless, as is clearly evident from both the applicable legislation and the reasoning of the Ford Decision. Therefore, the plea submitted by the undertaking was found unjustified, on the grounds explained above.

I.5.3.4.2 Plea Arguing that Tuition Fees and Scholarship Rates Were Not Jointly Determined by the Other Schools under Investigation

(261) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- The meetings held with the other schools under investigation referred to in Finding-7 were intended to discuss education values from a pedagogical perspective; the meetings concerned did not involve any conduct aimed at fixing school enrollment fees jointly; in parallel, the content of the e-mail in Finding-2 aimed at ensuring correct application of the rules of the legislation issued by the Ministry of National Education and therefore there was no will to jointly fix school enrollment fees and scholarship rates in actuality.

(262) The plea submitted by the undertaking notes that the meetings held with the schools under investigation were intended to discuss education values from a pedagogical perspective. However, as seen in Finding-7, the statements included in the minutes kept for the meetings held by the schools, namely "*Set the tuition fees no later than May 5–6, holding a videoconference meeting*," and "*The principals are responsible and accountable for the*

[64] Gülser Yıldırım, B. No 2013/9894, 02.01.2014

school's enrollment policy and must guide the admissions team in line with the non-competition principles defined by the governing bodies.," show that the schools under investigation acted in concert to fix enrollment fees and committed not to compete with each other when setting these fees. It is clear that any decision taken between competing undertakings concerning the joint setting of tuition fees do not constitute an assessment from a pedagogical perspective, and the conduct in question constitutes an infringement under the Act no 4054.

(263) At the same time, the statement "*We should not promise scholarships to those students who place in the top 3. We can of course discuss the possibility of a scholarship but a commission will be set up in the end of september and we cannot guarantee any scholarships before then. All other schools do the same*," show that in order to move forward on the matter of scholarships, the undertakings needed to wait for the decision of the scholarship commission, which would be set up in September. In light of the statements in the relevant findings, it becomes obvious that the undertaking's plea arguing that the meetings were held for pedagogical purposes is groundless.

I.5.3.4.3 Pleas Concerning the Reason for the Communication between the Schools

(264) The plea submitted by ST. PULCHÉRIE concerning the application of different scholarship rates than the other schools can be summarized as follows:

- Scholarships and tuition-free education are implemented based on the annually determined fees and in accordance with the procedures and principles set out in the Regulation on Students and Trainees to Be Educated Free of Charge or on Scholarship in Private Educational Institutions; a 10% discount is granted for children of teachers and academics, a 50% discount for children of teachers working in French high schools, and a 10% discount if siblings attend STE. PULCHÉRIE; a 25% scholarship is awarded to the top four students coming from Yeni Nesil 2000 Primary and Secondary School who qualify to study at STE. PULCHÉRIE, and a 100% scholarship is granted to national athlete students. Accordingly, STE. PULCHÉRIE generally applies scholarship rates different from those listed in Finding-7, and the statement in Finding-8 indicating that the schools agreed that the 10% down payment collected from parents for enrollment would not be refunded is a mandatory provision under the Regulation.

(265) Although the undertaking claims that the scholarship rates applied to students differed from the other schools, the statement "*Refrain from granting scholarships upon enrollment except in the following cases: siblings - 10%, staff of our schools 50%, teachers from other schools 10%, alumni of the foundation %10, those who have an agreement with the foundation (SAJEV, SM, NDS?) 10%, national athlete 25%*," shows that the scholarship rates were determined jointly, and the statement "*Do not call families to persuade them to enroll in your school by offering them a larger scholarship*," points out that implementing a rate different than those specified should be avoided. At the same time, Table 6, which is prepared in light of the response letter submitted by the undertaking, shows that the current scholarship rates implemented by STE. PULCHÉRIE are significantly similar to the rates it committed to apply in Finding-8, and thus it seems that the undertaking obeyed the scholarship rates it guaranteed previously. In fact, even if a rate different than that specified in the minutes were implemented by STE. PULCHÉRIE, the fact that the schools coordinated and exchanged information by preparing a list for scholarships is, by itself, a restriction of competition by object.

(266) On the other hand, Finding-7 shows that the parties under investigation agreed not to reimburse the 10% down payment received from the parents for enrollment and all of these

points are assessed to be aimed at determining the terms of sale for the service provided. In paragraph three, subparagraph (a) of Article 56 titled “Refund of Fees”, the Regulation provides that, “*Except for those who document that they have enrolled in the 9th grades of public schools that admit students through an examination before the start of the academic year, in preschool institutions, primary schools, middle schools, special education schools, and secondary education institutions that set tuition fees on an annual basis, the annual fee shall be refunded to those who withdraw from the school, with the exception of a 10% portion*.” As clarified by the provision, the non-refundability of 10% of the down payment received by the schools is a legal obligation, but the point on which the schools have agreed is not to make one school more preferable than another in the eyes of the parents, and acting in line with the “principles of non-competition” Thus, the plea arguing that the undertaking’s agreement with other schools under investigation not to reimburse the 10% down payment stemmed from a legal obligation was found to be groundless.

I.5.3.4.4 Plea Arguing that Teacher Salaries Were Not Determined Jointly with the Other Schools under Investigation

(267) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- The e-mail on teacher salaries sent by ST. PULCHÉRIE personnel to the other schools noted that each school would have a different practice; there were differences between the schools under investigation in terms of physical conditions, number of students and teachers, as well as the number and hours of weekly courses; therefore, teacher wages could not have been uniformly determined among the schools concerned. Finding-9 contains assessments regarding the wages of French and other foreign teachers but does not mention any rate of increase or specific salary amount; rather, the email in question refers to the measures taken by the parties during the inflationary period. Moreover, since the salaries of French teachers are determined by federation representatives as required by the French government, Finding-9 cannot be considered evidence of an infringement. The meeting mentioned in Finding-10 was held to address the negative effects caused by the salary gap between Turkish and French teachers resulting from inflation in Türkiye.

(268) Although the plea submitted by the undertaking claims that the investigation parties held the meetings in order to minimize the expected differences between the salaries of Turkish and French teachers arising from the inflation and the exchange rate, the statements *“Clearly, in light of the economic situation, we need to find leverage to minimize the effect of the salaries on our budget, and such leverage exist: that is, the option to modulate the salary scale of the French local contracts and at the same time, the option to cut the number of foreign professors. This is an option that must be carefully considered since the parents of our students have certain expectations regarding the existence of foreign teachers at our schools,*” show that decisions were taken to fix the salaries of the employees and the undertakings sought consensus on methods which would mitigate the burden of personnel fees on the costs. In fact, as the above charts (Chart 1-4) show, salaries in the table titled simulation were taken as a reference point by the schools under investigation. Even when it is assumed that the schools did not implement those salaries, the behavior of setting the wages collectively would result in the distortion of the competitive environment in the labor market, and since labor is an element of cost, it would constitute an infringement by object of Article 4 of the Act no 4054, which prohibits the joint establishment of all types of terms of sale as well as elements forming the price, such as costs and profits.

I.5.3.5 Pleas Submitted by NDS and the Assessment Thereof

I.5.3.5.1 Plea that the Relevant Product Market Was Defined Too Narrowly

(269) The plea submitted by NDS can be summarized as follows:

- Public high schools and other private schools operating in İstanbul and providing education in a foreign language had similar standards to NDS; there were 90 private schools offering international baccalauréat programs in Türkiye; other private schools offered other privileges to their students; the market was defined narrower than necessary and other private schools should have been included in the relevant market definition.

(270) As made clear by the information and documents acquired under the file, although the schools under investigation provide mandatory French education in the preparatory class, the remaining grades offer education in English and Turkish in addition to French. Moreover, unlike other schools, they hold the "*Label FrancEducation Certificate*," which documents that they provide education in French and offers study opportunities in the French language in various fields. Therefore, students who graduate from the high schools in question receive a diploma with "*French baccalauréat equivalency*," allowing students to apply to universities in many countries, including France, without an exam. Moreover, students who graduate from the schools under investigation have the opportunity to take the internal exam of Galatarasaray University and receive education there if they are successful, limited to a quota of 25%. As a result, in light of the facilities offered by the French high schools under investigation, no demand-side substitution could be established between them and other schools that provide education in different languages.

(271) On the other hand, when explaining the reason for the fact that its enrollment fees were similar to those of the other French high schools, NDS argued that the curricula, education quality, physical facilities, qualifications of the teachers working were all very similar between the schools under investigation. Therefore, on the one hand NDS is arguing that the schools have the same features and therefore implemented the same tuition fees by coincidence, and on the other hand, it is claiming that the schools were different in terms of relevant product market definition and that the relevant product market should have been defined more broadly. These two arguments are found to be in conflict with each other.

(272) Besides, documents acquired under the file clearly show the concerted practices between the undertakings, and therefore no relevant market was defined, in accordance with paragraph 20 of the Relevant Market Guidelines. In other words, alternative market definitions would not have an effect on the finding and conclusion that the conduct comprising the subject matter of the file infringed Article 4 of the Act no 4054.

I.5.3.5.2 Plea Arguing That the Conditions of the Relevant Market Must Be Considered to Establish the Existence of an Infringement under the Act No. 4054

(273) The plea submitted by NDS can be summarized as follows:

- The connection of the theoretical information and decisions cited in the Investigation Report to the subject matter of the investigation could not be understood; there was no assessment on issues such as the amount of tuition fees implemented during the relevant period and whether the high schools in question colluded to establish fixed, maximum or minimum prices;
- The decisions dated 11.02.1999, numbered 99-6/48-17 and dated 19.12.2013, numbered 13-71/960-407 of the Board found that the main element of competition in the relevant market was not the prices but the quality of education; in the education

services sector where the schools under investigation operated, the parameter of price was not at the forefront; instead various activities such as culture, arts and sports as well as other parameters played a decisive role in the provision of services; therefore, comparing the education services sector with automotive, textile, supply, etc. sectors could lead to misleading interpretations and conclusions.

(274) In the decisions concerned, the Board noted that when parents/students preferred the relevant schools, their primary concern was the quality and nature of the education provided rather than the tuition fees. Certainly, the relevant Board decision cannot be interpreted to mean that undertakings are only expected to compete in terms of education quality and that they can act in alignment concerning the remaining competitive elements. There is no doubt that the assessments in the previous Board decisions concerning the market in which the schools under investigation operate cannot be used as a justification for eliminating price competition. In fact, the Board Decision dated 07.07.2015 and numbered 15-28/328-103 examined a request by the undertakings which constitute the parties to the investigation of the file herein for the grant of an exemption to the joint establishment of school enrollment fees, and the Board ruled that the practice concerned could not benefit from exemption. Moreover, in the same Decision, the Board ruled that an opinion letter should be sent to the undertakings concerned as per Article 9.3 of the Act, stating that such a practice could constitute an infringement of Article 4 of the Act no 4054, and should be avoided.

(275) As a result, it is assessed that within the market where private schools operate, tuition fees are considered competitively sensitive information and signing an agreement between the parties concerning tuition fees constitutes an infringement under Article 4 of the Act no 4054. For the reasons explained above, the plea arguing that price competition was not important between the parties was not accepted.

(276) NDS also plead as follows:

- Due to the fact that the formula for determining school fees was specified under the applicable legislation, NDS did not have full discretion in its pricing policy; the Investigation Notification did not address whether the schools under investigation set their school fees as fixed, minimum, or maximum; and it did not discuss issues such as whether the determined school fees complied with the calculation method set out in Article 53 of the Regulation.

(277) The provisions of the Regulation concerning the determination of private school fees show that a fundamental two-tier distinction is applied. The first and more fundamental of these involves private schools setting their tuition fees based on the training/education facilities they will offer within the framework of the agreements signed with the parents, on the investments they will make and on their operation costs. In that respect, private schools seem to be under no restrictions when setting their fees, with the exception of intermediate grades.

(278) On the other hand, the second main condition in Article 53 puts a maximum limit on the price hikes that can be implemented by private schools under certain conditions. Accordingly, when setting the tuition fees for the intermediate grade students other than the first, fifth and ninth grades, the increase may be up to the rate of (domestic PPI+CPUI)/2 + 5% over the previous year's fees. Meanwhile tuition fees for the first, fifth and ninth[65] grades, which are considered new enrollments, can be determined freely based on the schools' own cost structures, without any restrictions.

[65] In schools with preparatory classes, ninth grade is considered an intermediate grade as well.

(279) Even when Finding-7 is examined in terms of the conduct under investigation, the minutes prepared during a meeting attended by all school principals show that it was proposed that the tuition fees for new registrations to the preparatory class be increased as much as possible in line with the CPI rate; that a note was taken regarding the determination of tuition fees via videoconference on May 5–6, a date later than the date of the minutes; that the enrollment process should be managed with the principle of non-competition; that certain scholarship rates were determined; and that it was decided no scholarships would be offered during the enrollment period other than these specified rates. In light of all of the points above, NDS's plea arguing that the schools could not freely set their tuition fees is not considered to be justified.

(280) On the other hand, Article 4 of the Act no. 4054 prohibits competing undertakings from determining the purchase or sale prices of goods or services or the elements of such prices, and in this respect, the Act's letter and spirit make no distinction between competing undertakings setting minimum, maximum, or fixed prices for goods or services.

I.5.3.5.3 Plea Arguing that the Schools under Investigation Were Not For-Profit Organizations

(281) The plea submitted by NDS can be summarized as follows:

- Foreign schools are subject to various restrictions under Law No. 5580, such as the fact that they are not allowed to open branches, they can increase their capacity by at most fivefold only with the authorization of the President, they can only carry out renovations in their existing buildings with the permission of the governor's office, they cannot expand their current buildings or construct new ones, they cannot increase student capacity, and they are prohibited from acquiring or leasing any property; in light of these restrictions they clearly do not engage in commercial activities and do not qualify as commercial enterprises; NDS, one of the parties to the investigation, is not owned by a natural or legal person; the schools under investigation were established during the Ottoman Empire and their legal status was defined by the Lausanne Treaty, and their sole purpose is to provide excellent education in French language and culture in Türkiye in compliance with Turkish legislation; they are not commercial enterprises operating for profit or for the distribution of profits; any revenue obtained by NDS are allocated to the mandatory expenses required for the school's maintenance and to technological infrastructure.

(282) Article 2 of the Act no 4054 specifies the scope of the Act in question with the provision "*Agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the boundaries of the Republic of Turkey, and the abuse of dominance by the undertakings dominant in the market, and any kind of legal transactions and behavior having the nature of mergers and acquisitions which shall decrease competition to a significant extent, and transactions related to the measures, establishments, regulations and supervisions aimed at the protection of competition fall under this Act.*" The grounds for the relevant Article states that competition rules must be applied to all undertakings which have economic operations to ensure that competition benefits all areas of the economy as a whole. Thus undertakings, which are the subject of the Act no 4054, are held responsible within the framework of the Act no 4054 for their agreements, concerted practices or decisions that restrict competition.

(283) In competition law, the concept of undertaking is defined in Article 3 of the Act no 4054 as "*natural and legal persons who produce, market and sell goods or services in the market, units which can decide independently and constitute an economic whole*." According to this

definition, the concept of an undertaking has two criteria, one functional and the other formal. The functional criterion can be defined as the pursuit of an economic activity on a continuous basis, regardless of whether the entity aims to make a profit in the market; whereas the formal criterion refers to the ability of the entity to make independent decisions and to constitute an economic unit.

(284) First of all, for any unit to be evaluated as an undertaking under competition law, it must be engaged in economic activities. Economic activity is defined as being engaged in sale, purchase or marketing or generating revenue in a market for goods or services. Accordingly, an activity does not need to be profit-oriented in order to qualify as an economic activity. In its "*Turkish Underwater Sports Federation (Türkiye Su Altı Sporları Federasyonu—TSFF)*" decision[66], the Board found that although, as a public organization, TSSF conducted its diver and trainer certification activities on a non-profit basis, the activities of TSFF could be considered economic activity since these activities could be carried out by a private undertaking in order to gain profits. The "*Höfner*" Decision[67] of the CJEU ruled that although *Bundesanstalt Für Arbeit (Federal Employment Bureau)* claimed that it conducted its activities to implement a social policy and therefore acted on a non-profit basis, it is not always and absolutely required for employment services to be provided by public institutions, and that the employment agency was engaged in an economic activity, regardless of whether it was profit-oriented.

(285) As a result, on its own, the mere fact that an undertaking is a non-profit organization does not mean that it is not engaged in economic activities. It is concluded that the activity carried out by NDS constitutes an economic activity, given that the service provided by NDS in the education sector can be performed by other undertakings on a for-profit basis, i.e. there exists a potential to generate profit in the education sector, and that there are other undertakings with which NDS competes in the relevant market.

(286) However, an organization must also meet the condition of economic independence/unity in order to be considered an undertaking. Economic independence may be defined as an undertaking's possession of managerial and accounting autonomy; its ability to determine its production, financing, and sales policies within its own structure in line with its own economic objectives and interests; the retention of economic planning and decision-making powers within its own organization; and, in short, the absence of subordination to the economic control of another undertaking. From the perspective of the independent decision-making criterion, NDS possesses economic independence since it is not dependent on any undertaking within the economic entity in which it operates and it is able to take economic and strategic decisions within its own structure.

(287) In conclusion, it is concluded that NDS does not need to have a profit motive in order to qualify as an undertaking; that NDS operates in the education sector, carries out an economic activities, and possesses economic independence, and therefore, the argument that NDS does not qualify as an undertaking within the meaning of the Act No. 4054 is not deemed well-founded.

I.5.3.5.4 Plea Arguing that School Enrollment Fees and Scholarship Rates Were Not Determined Jointly with the Other Schools

(288) The plea submitted by NDS can be summarized as follows:

- The Investigation Report states that there were no restrictions in setting private school tuition fees with the exception of intermediate grades, whereas the increase that may

[66] Board Decision dated 07.08.2014 and numbered 14-26/530-235.
[67] Case C-41/90 Höfner, [1991]

be applied to tuition fees for intermediate grades are limited by the Regulation; considering the levels at which NDS provides education, including the preparatory class, the only level for which fees can be determined freely is the preparatory class; imposing a sanction on the school as a whole based solely on the determination of preparatory class fees together with competitors would not be equitable; the other schools that are parties to the investigation had standards and expense items similar to those of NDS; therefore, it was inevitable that school enrollment fees would resemble one another; moreover, any research conducted would reveal that the enrollment fees of other private schools operating in the market were higher than those of the schools under investigation;

- The claim that "*each year one of the schools set lower enrollment fees than the others to ensure that the parents do not realize the schools are acting in collusion*," which was among the points of complaint, is shown to be groundless under the investigation conducted; claiming that the parties committed an infringement by setting equal tuition fees would be in violation of the principle of *venire contra factum proprium*.

(289) While private schools do not face any restrictions when setting enrollment fees for the first, fifth and ninth grades, the Regulation specifies that they can apply an increase to the fees of intermediate grades other than the first, fifth and ninth, at a rate of (domestic PPI+CPI)/2 + 5% to the price they announced in the previous year.

(290) Although the undertaking claimed that the only level for which fees could be determined freely was the preparatory class and that imposing a sanction on the school as a whole based solely on the joint determination of preparatory class fees with competitors would not be equitable, there is no doubt that Article 4 of the Act no 4054 has been violated since this argument does not change the fact that the investigated schools' conduct of jointly setting the enrollment fees of one or more grades comprises an infringement by object.

(291) The infringement is deemed to have occurred through the conduct of jointly determining enrollment fees by competing schools, and subsequent differences in the undertakings' practices regarding school enrollment fees do not alter the nature of the infringement.

(292) Moreover, based on the findings obtained from the examinations carried out within the scope of the case file, it has been concluded that the schools under investigation jointly determined their tuition fees and the elements constituting those fees. When the evidence is evaluated as a whole, it is understood that the alignment of tuition fees and price-affecting factors such as scholarships stems from an anti-competitive agreement among the undertakings; therefore, the undertaking's defense cannot be accepted.

I.5.3.5.5 Pleas Arguing That a Violation of Article 4 of the Act No. 4054 Requires the Establishment of Concurrence of Wills and an Impact Analysis

(293) The plea submitted by NDS can be summarized as follows:

- When establishing a fully competitive market, neither the annual fees charged to students nor the salaries paid to teachers constitute a restriction on competition; individuals seeking to continue their secondary education at a French school must first achieve a specified level of success in the LGS examination; the scores and quotas of the schools under investigation differ; parents are only able to enroll their children within these limits, or they may be unable to enroll them at all; given that the schools under investigation provide education in a language distinct from other private educational institutions, it is not feasible for these schools to mislead the market or consumers;

- Without implying acceptance, the meeting minutes did not contain any language suggesting that an agreement was reached; the simulation shared among the schools served as a formula demonstrating how teacher salary increases could be applied in response to rising inflation and multiple adjustments in the minimum wage; it should be considered a non-binding example for the schools to show how economic changes in Türkiye should affect salary increase rates; this did not impact the students which are in the position of consumers in the education services market;
- The mere exchange of information does not, in itself, constitute a breach of competition law; it is essential to assess whether the findings acquired accurately reflect the undertakings' true intentions and whether the undertakings subsequently acted in accordance with these intentions; only upon such analysis can the effects of the conduct be substantiated with concrete, verifiable, and scientific evidence;
- Since achieving the required LGS exam results is a prerequisite for enrollment in the schools under investigation, even before scholarship became a concern for a student, scholarship rates could not be regarded solely as a matter of choice on its own; scholarship information was readily accessible to consumers, and the sharing of such information did not negatively affect consumers nor constituted conduct that eliminates competition; accordingly, an impact analysis of the alleged conduct is necessary.

(294) Exchange of information concerning future prices and/or pricing strategies is considered a restriction of competition by object. Thus, when such exchange of such strategic information with competing undertakings is identified, this constitutes a competition infringement, regardless of its effects on the market. It is assumed by EU competition authorities that meetings discussing competitively sensitive information such as prices and sale strategies restrict competition by object. Participation in meetings held with an aim to restrict competition are deemed sufficient to prove that the undertaking concerned was a party to the infringement, regardless of whether the participating undertakings actually acted in accordance with the decisions taken during the meeting.

(295) The 13th Chamber of the Council of State decision[68] concerning the lawsuits filed against the Board's *Automotive* Decision[69] includes the following observations on this matter: *The exchange of future competitively sensitive information, which are definitely significant for competition, with another undertaking competing in the market would raise suspicions of infringement of competition by object. As a matter of fact, both the T-Mobile decision of the Court of Justice of the European Union (CJEU) and the doctrine note that information exchange between competitors that can potentially remove uncertainties regarding future behavior must be considered anti-competitive. If the competitively sensitive information in question involves future prices or related strategic information, infringement of competition by object should be clear without the need for any further scrutiny. Besides, while it is possible to argue that exchange of information between the undertakings does not have an effect on the market, it must be acknowledged that the exchange of competitively sensitive information in question would affect the future decisions of the undertakings, unless proven otherwise. This was evaluated as a presumption against the undertakings in CJEU's Polypropylene[70] and Sugar[71] decisions. In other words, even if competitors do*

[68] 13th Chamber of the Council of State Decision dated 06.04.2017 and numbered E:2011/3594, K:2017/950 sayılı kararı.
[69] Board Decision dated 18.04.2011 and numbered 11-24/464-139.
[70] T-8/89 *DSM NV v Commission (Polypropylene)* [1991] ECR II-1833
[71] C-40/73 - *Suiker Unie and Others v Commission*

not come to a definite agreement on raising prices, merely attending a meeting where one competitor revealed its future pricing strategy is considered to be a presumption."

(296) When the findings in the file are assessed as a whole, it is assessed and shown that undertakings shared strategic information among themselves when determining tuition prices, scholarships and their conditions, and that schools under investigation replaced their individual wills with the concurrent will of all of the schools. Thus, it is considered that the undertaking's relevant argument does not go beyond abstract statements.

(297) The plea submitted by NDS arguing that schools under investigation implemented scholarships in different rates and categories can be summarized as follows:

- The rates and categories of scholarships offered by the schools under investigation to students were different; the scholarships provided by the schools without considering such conditions as income level constituted a practice to the benefit of the consumers.

(298) Within the scope of Article 4 of Act no 4054, the existence of an agreement is deemed established if there is a concurrence of wills or alignment between undertakings; it is not necessary for the agreement to have been implemented or for its anti-competitive effects to have occurred or been proven in the market. The main goal of the provision of Article 4 of the Act no 4054 is to ensure that each undertaking determine its own commercial policies and market practices on its own, i.e., independently. Determining their strategies based on information obtained by monitoring the market behavior of their competitors is a part of the ordinary course of commercial life for undertakings. However, the exchange of competitively sensitive information among competitors reduces uncertainty in the market and risks coordination among rivals.

(299) In the "*Private secondary education institutions offering education in the French language market*,"scholarships and scholarship conditions are an important factor that distinguish undertakings from their competitors as well as competition sensitive strategic information; therefore, determination of scholarships and scholarship conditions through the concurrent will of the schools is considered an anti-competitive agreement under competition law.

(300) On the other hand, the undertaking points out that many different scholarships were offered beyond those in Finding-8 that were are determined jointly by the schools. Providing scholarships to students without considering such conditions as income level does not constitute an infringement within the scope of the file; however, the determination of scholarship rates through the exchange of scholarship rates among schools, which qualify as competitively sensitive strategic information, and the joint setting of such rates, as well as a school benefiting from the information it obtained while making market-related decisions, would restrict competition by object, even if the jointly determined scholarship rates implemented by the schools did not produce any market effects. As a matter of fact, the tables prepared in light of the response letters sent by the parties to the investigation show that the schools implemented the scholarship rates they committed to apply in Finding-8 with very little variance, and some undertakings even implemented them exactly. Thus, the schools seem to have abided by the scholarship rates they committed to apply. In that framework, it was found that the plea submitted by in the undertaking is found to be groundless.

I.5.3.5.6 Plea Arguing that the Finding Considered as Evidence of the Infringement Under Investigation Is Not Legally Valid

(301) The plea submitted by NDS can be summarized as follows:

- Finding-8, obtained during the examination of the computer of the ST. BENOÎT personnel, cannot be used as evidence against NDS; the specification included in the relevant finding is legally invalid since the document has left the date, founding members and directors sections blank; in fact, had the investigated schools taken any action in accordance with the contract, it would not have been possible for five students from ST. BENOÎT and one student from STE. PULCHÉRIE to have their enrollment transferred to NDS between 23.08.2023 and 05.09.2023.

(302) The grounds for Article 4 of the Act no 4054 explain that the term agreement refers to all kinds of compromise or accord, even if these do not meet the conditions for validity as regards civil law. There are no formal conditions for an agreement to be considered as such under competition law. Thus, an agreement may be considered as such under competition law, even if it does not comply with the conditions set out for agreements in the Law of Obligations. An agreement may be written or it may be oral. Consequently, the specification in Finding-8 fulfills the requirements of evidence under competition law.

(303) On the other hand, although NDS claimed that the specification in Finding-8 was found on a ST. BENOÎT computer and could not be used as evidence against NDS, in the *Cimenteries CBR v. Commission* Decision[72], CJEU rejected the appeal against the decision, noting that a document that was prepared simultaneously could be used as evidence regardless of who created it, and that any piece of evidence acquired at a competing undertaking could be used as evidence against the other undertakings. Thus, evidence of anti-competitive alignment does not need to be acquired from each undertaking separately. A document obtained from a single undertaking is deemed sufficient to establish anti-competitive behavior. It is considered that the opposite situation would lead to rewarding the undertakings that are the most successful at destroying evidence. Consequently, the fact that Finding-8 was acquired during on-site inspections from the computer of a ST. BENOÎT personnel does not make a difference with regard to the liability of the other undertakings.

(304) Besides, the date of the decision to launch a preliminary inquiry on the undertakings is 21.07.2022, and the decision to initiate an investigation, taken as a result of the preliminary inquiry, is 10.11.2022; consequently, it is considered that student transfers carried out between the schools under investigation after the initiation of the investigation cannot be invoked as a matter of defense. Therefore it is not possible to agree with the plea submitted by the undertaking.

I.5.3.5.7 Pleas Concerning the Reason for the Communication between the Schools

(305) The plea submitted by NDS concerning the reason why it had knowledge of the internal operations of another school under investigation can be summarized as follows:

- NDS had a different founder than the other schools under investigation; NDS's principal previously worked as the principal of one of the other schools under investigation and this was why they were knowledgeable about the internal operations of the schools under investigation.

[72] Case T-25/95 *Cimenteries CBR v. Commission* [2000]

(306) Assessing Findings-2, 7, 8, 9, Chart 5 and Table 2-6 as a whole, it is observed that the schools under investigation replaced their individual wills with a concurrent will. Thus, as made clear by the findings acquired within the scope of the file, concerted practices among the schools stem from the fact that undertakings exchanged competitively sensitive information and jointly determined school enrollment fees and salaries of Turkish teachers, rather than the fact that NDS's principal previously worked at another one of the schools under investigation. As a result, it is not possible to agree with the argument.

(307) NDS stated that the minutes in Finding-3 was approved not by the school principal but by another personnel working at NDS, and therefore the relevant finding should not be accepted as evidence. Within that context, it claimed that;

- In order to speak of an agreement, there must be evidence showing that the competing undertakings considered themselves bound by it; in the email sent on 21.09.2022 by (…..) in response to the email in Finding-3, there is no statement indicating acceptance of the agreement; (…..), the personnel who stated "*we approve the minutes*" in the email dated 21.09.2022, was an employee in NDS's accounting department and did not have the authority to declare acceptance on behalf of NDS for such an important decision; furthermore, the reply to the email stating "*we approve the minutes*" only indicated that they received the minutes and carried no other meaning; subsequent emails included statements indicating that each school would act differently, which shows both that the authority to make such a decision lies solely with the principals and that each school would set its fee policy separately and independently; as can also be seen from the phrase in the conclusions of the document titled "*MINUTES*" in Finding-3 stating "*each school must decide by a discussion with its principal*," there was no will to make an agreement even in the conclusions of the minutes, and each school would follow its own decision-making process by consulting with its own principal, in accordance with its internal procedures; thus, the meeting only served as an example.

(308) The grounds for Article 4 of the Act no 4054 explain that the term agreement refers to all kinds of compromise or accord, even if these do not meet the conditions for validity as regards civil law. There are no formal conditions for an agreement to be considered as such under competition law. Thus, an agreement may be considered as such under competition law, even if it does not comply with the conditions set out for agreements in the Law of Obligations. An agreement may be written or it may be oral. In parallel, the Board observed that "*Implementation of all types of relationships which distort the competitive environment is considered an agreement, even if there is no formal contract*," in one of its decisions[73].

(309) Another Board decision[74] states "*In competition law legislation, the concept of agreement refers to all types of concurrence of wills among the parties*." Another observation[75] of the Board on the subject is that "*In competition law, the concept of agreement is interpreted more broadly than the contracts which form the subject of law of obligations and it is not necessary for it to be binding, to be in writing, to regulate sanctions in case of non-execution of the obligations, to have conditions of effectiveness, or any other formal conditions.*" For an agreement to exist under the Act no 4054, a concurrence of wills among the parties is deemed sufficient, and an accord or decision wherein they clearly state their agreement is not necessary. The findings acquired were assessed in detail under the file

[73] Board Decision dated 19.01.2011 and numbered 11-04/64-26.
[74] Board Decision dated 25.11.2009 and numbered 09-57/1393-362.
[75] Board Decision dated 18.04.2011 and numbered 11-24/464-139.

and it was shown that the parties engaged in an agreement violating competition law by achieving a consensus concerning tuition fees, scholarship rates and the salaries of Turkish teachers.

(310) In a lawsuit filed against the *Private Hospitals* decision[76] of the Board, Ankara 5th Administrative Court rejected the plea of the claimant undertaking arguing that the decisions taken in the meeting were not binding since only the human resources managers of the hospitals had attended the meeting held between the undertakings, and that the human resources departments were not charged with assessing the salaries of the doctors and determining their pay scale. As made clear by the recent decision of the Administrative Court, an undertaking constitutes a whole together with its employees, the internal tasks and titles of the undertaking's employees are not take into consideration when assessing anti-competitive conduct. Due to the reasons explained above, it is concluded that the pleas submitted by the undertaking could not be accepted.

I.5.3.5.8 Plea Arguing that Teacher Salaries Were Not Determined Jointly with the Other Schools under Investigation

(311) The plea submitted by NDS can be summarized as follows:

- NDS, which employs both French and Turkish teachers, must act fairly and equitably when addressing the differences in teachers' salaries arising from exchange rate fluctuations; it can be observed in the documents forming the basis of the alleged infringement that teachers' salaries were mentioned as a common issue among the schools; however, the schools did not resolve this issue in a way that would lead them to take aligned decisions;
- As can be seen from the payrolls submitted by NDS to the Authority, teachers with the same level of seniority were paid different salaries both before and after the investigation; while NDS itself paid different salaries even to teachers of the same seniority, position, and qualifications, salaries cannot be determined based on a simulation shared among the schools;
- The "*salary calculation simulation*" in Finding-3 was used to form an accounting-based opinion regarding the calculation method, and the figures in the table were entirely hypothetical; each school would reach a different result through the formula in question; sharing the simulation among the parties did not mean that teachers' salaries were determined based on this table; without constituting acceptance, the relevant table was merely an illustration of how inflation adjustments and increases in the minimum wage could be reflected in teachers' salaries; the simulation was not binding for the parties, and since students are the final consumers in the educational services market, practices regarding how to reflect economic changes into salaries did not affect students; the schools in question had similar cost structures and the fact that they exhibit similarities in salary and pricing matters did not indicate that they acted with the intention of eliminating competition;
- Employment rights and social security of French teachers employed at the schools were fully determined by the French Government in euros; this led to significant differences between the salaries of Turkish and French teachers due to the exchange rate; as seen in the documents submitted to the Authority, teachers with the same seniority were paid different salaries both before and after the investigation; it was not

[76] Ankara 5th Administrative Court Decision numbered 2023/508 E. and 2023/2044 K.

possible for the schools under investigation to have reached any agreement or exchanged information on the matter.

(312) The identification of infringement in the input market was made with relation to the salaries of the Turkish teachers under the file, not those of the French teachers. Thus, it is not possible to agree with the undertaking's argument that the gap between the salaries of the teachers widened due to exchange rates and the communication among the schools were done to address that issue.

(313) On the other hand, Charts 1, 2, 3 and 4, which were prepared based on the payrolls requested from the schools under investigation, including NDS, clearly show that the communication between the schools and the simulation shared among them was not used merely as an example to form a general opinion.

(314) Even when it is assumed that the schools did not implement the salaries in the charts concerned, setting the wages collectively would result in the distortion of the competitive environment in the labor market, and since labor is an element of cost, it would constitute an infringement by object of Article 4 of the Act no 4054, which prohibits the joint establishment of all types of terms of sale as well as elements forming the price, such as costs and profits. At the same time, it is evaluated that information exchange regarding salaries which was implemented or planned to be implemented in a way that would lead to cooperation among competing undertakings cannot be a recommendation. Therefore, it was not possible to agree with the pleas submitted by the undertaking.

I.5.3.6 Similar Arguments by the Parties

(315) The plea submitted by ST. BENOÎT can be summarized as follows:

- Preparatory class enrollment fees between 2018 and 2022, which were presented as a chart in the Investigation Notification, were not the same; in particular, the expected inflation rate was exceeded in 2022 and this led to a differentiation of the enrollment fees between the schools; recently, the unexpected rise in inflation led to a similar increase in the cost pressure and the schools became unable to meet their ordinary expenditures.

(316) The plea submitted by ST. JOSEPH can be summarized as follows:

- An examination of the table in the Investigation Notification regarding the preparatory class enrollment fees of the schools under investigation between 2018 and 2022 shows that there are differences between the relevant tuition fees; in particular, regarding the 2022-2023 term, ST. JOSEPH set a fee that was 4,000 TL lower than the other schools, despite the fact that its minimum admission score was higher than the others.

(317) The plea submitted by ST. MICHEL can be summarized as follows:

- ST. MICHEL had to meet its costs in order to continue its operations; in that context, ST. MICHEL officials set the fees for the preparatory classes in April 2022 after calculating all costs; an examination of the table in the Investigation Notification shows that the other schools also faced the same cost increases and it is believed that they asked for similar fees as a result of similar calculations.

(318) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- The assessment based on the e-mail included in Finding-9 which found that the school acted in cooperation with the other schools under investigation when determining tuition fees and/or terms related to those fees was incorrect; the e-mail in question did

not mention tuition fees or rates of increase therein, but merely referred to a measure taken during the inflationary period; it is absolutely impossible to speak of any collective will among the schools under investigation to implement a joint increase.

(319) Under the file, Findings-2, 7, 8 and 9 include the documents which led to the conclusion that the schools under investigation jointly determined tuition fees and the elements that form those fees. As made clear by the findings concerned, Finding-2 shows the coordination and information exchange among the schools under investigation, stating that scholarship rates, as one of the elements that form tuition fees, were noted in the minutes with the "*enrollment protocol which was signed by all principals in the last meeting and which was approved by Tutel*," and by the minutes in Finding-8, which includes a list for the scholarships to be applied by the schools warning not to "*Offer scholarships during enrollment, with the exception of the following*," under the heading "*They will avoid doing the following.*" When the findings are evaluated as a whole, it is concluded that the alignment of the elements such as tuition fees and scholarships applied by the schools stemmed not from the inflation or from the similarity of the schools' cost structures, but from the coordination and information exchange among the schools. In fact, an examination of Chart 5, which compares the tuition fees implemented by the schools under investigation between 2018 and 2022 shows that the variance between the tuition fees of the schools were negligible, and when the findings are taken as a whole, it is assessed that the individual will of the schools were replaced with the coordinated cooperative conduct by all schools in the determination of the enrollment fees, scholarships and the related conditions.

(320) On the other hand, it is considered obvious that agreements aimed at joint price fixing, market and customer allocation and supply control have the restriction of competition as their object and are sufficiently harmful to the normal functioning of competition, with such agreements presumed to be restrictive of competition by object. As noted in the EU Exemption Guidelines[77], this presumption is based on previous experience showing that such agreements endanger the goals competition rules seek to achieve and have negative effects on the market. In this regard, it is well established in competition law theory and practice that cartels, which are among the most significant forms of competition infringements, are also a type of agreement that are restrictive of competition by object, and that they cause harm to consumers. Accordingly, there is no need to conduct a separate impact analysis for the agreement examined under the file, which has the characteristics of a cartel and which restricts competition by object.

(321) In parallel, Article 4 of the Act no 4054 prohibits agreements which restrict competition by object or effect. As can be understood from the wording of the Article, even if the agreement has not produced any effect in the market, the fact that its object is to restrict competition is sufficient for a violation of Article 4. Therefore, the pleas submitted by the undertakings were found unjustified, on the grounds explained above.

(322) The argument submitted by NDS, ST. JOSEPH, ST. MICHEL and STE. PULCHÉRIE can be summarized as follows;

- The scholarship rates and categories offered by the schools under investigation to students differed; this information was easily accessible, especially for consumers; therefore an impact assessment should be conducted regarding the alleged conduct;
- While the existence of communication between the schools under investigation concerning scholarships within the scope of Findings-2 and 8 is acknowledged, the

[77] Guidelines on the application of the Article 101(3) of the Treaty para. 21

purpose of this communication was not profitability but the determination of ethical values regarding scholarships;

- No discrimination was made among students who qualified for a scholarship; once the conditions of the relevant scholarship category were met, no discriminatory policy was pursued; therefore, even if information regarding scholarships was shared, it could not have produced any negative effect on consumers;
- The conclusion drawn from Finding-8 that an agreement existed among the schools not to grant scholarships beyond what had been decided did not align with the factual situation, since students were provided with multiple scholarship opportunities beyond the rates mentioned in the finding;
- In conclusion, the exchange of information regarding scholarships neither had the object nor the outcome of restricting competition, and scholarship opportunities alone did not affect preference for any particular school.

(323) As mentioned in the section titled "*Theoretical Framework for Price Fixing and Information Exchange in Output Markets*" above, within the scope of Article 4 of Law No. 4054, the existence of an agreement is deemed established if there is a concurrence of wills or alignment between undertakings; it is not necessary for the agreement to have been implemented or for its anti-competitive effects to have occurred or been proven in the market. In that context, communication that includes information on strategic data such as price, output, sale strategy and cost may be considered competition infringements, even when they are offered unilaterally.

(324) In both Turkish competition law and EU competition law, exchange of competitively sensitive information among rivals suggest the existence of an agreement/concerted practice between the parties. At this point, it might be beneficial to refer to the *Banana Cartel* Decision[78] taken by the CJEU in 2015, which summarizes the Court's approach regarding the exchange of information between competitors. In that Decision, the Court held that the exchange of information that eliminates uncertainty among undertakings regarding the timing and extent of their future market conduct, or the changes therein, was restrictive of competition by object. Furthermore, it stated that for an agreement to be restrictive of competition by object, it is not necessary to establish a direct link between the agreement and consumer prices, noting that Article 101 of the Treaty on the Functioning of the European Union aims not only to protect the immediate interests of consumers or competitors but also to preserve the market structure and competition in a broader sense.

(325) When the principles set up by the EU practice on proving cartels through evidence of communication, it is observed that there is a presumption which was established in the *Sugar* Decision[79] and expressed in the *Polypropylene* Decision[80]. In case evidence is found showing that undertakings communicated with an aim to eliminate uncertainty regarding their future actions, it is presumed that the undertakings which were parties to the agreement/concerted practice concerned and which continued to operate in the relevant market would take the information they shared with their competitors into account when determining their own conduct. Based on this presumption, an undertaking which received such information and continued to be active in the market would make use of the information it received when taking decisions in the market and that the exchange in

[78] Case C-286/13P
[79] C-40/73 - *Suiker Unie and Others v Commission*
[80] T-8/89 *DSM NV v Commission (Polypropylene)* [1991] ECR II-1833

question would be restrictive of competition by object, even if it had no impact on the market.

(326) As noted above, the main goal of the provision of Article 4 of the Act no 4054 is to ensure that each undertaking determine its own commercial policies and market practices on its own, i.e., independently. This is because the fundamental dynamic that encourages competition in the market is the uncertainty among undertakings concerning how the others would act. Therefore, it can be concluded any action which reduces or eliminates the uncertainty concerning future conduct of undertakings would constitute a violation of Article 4 of the Act no 4054. In the "market for private secondary education institutions that provide education in the French language," scholarships and scholarship conditions are important factors and they may be considered competitively sensitive strategic information under competition law insofar as they allow undertakings to differentiate or distinguish themselves from their competitors. Thus, determination of scholarships and conditions thereof by the joint will of the schools is deemed to be an agreement restricting competition under competition law.

(327) Determining their strategies based on information obtained by monitoring the market behavior of their competitors is a part of the ordinary course of commercial life for undertakings. However, the exchange of competitively sensitive information among competitors reduces uncertainty in the market and risks coordination among rivals. Therefore, it is not possible to agree with the arguments that the exchange of information among the parties to the investigation occurred for the purposes of consumer benefit or the determination of ethical values.

(328) Another point of note is that the conclusion regarding the occurrence of information exchange between the parties does not arise from specific documents alone, but from an assessment of all documents as a whole. When Findings-2, 7 and 8 are evaluated as a whole, it is observed that the scholarship rates to be applied by the undertakings were recorded in the minutes with the "*enrollment protocol which was signed by all principals in the last meeting and which was approved by Tutel*," as stated in Finding-2, and that, as noted in the minutes in Finding-8, under the heading "*They will avoid doing the following,*" with the statement "*Offering scholarships during enrollment, with the exception of the following*," a list regarding the scholarships to be granted by the schools was created. Ultimately, it is concluded that the scholarships were determined as a result of coordination and information exchange among the schools under investigation.

(329) On the other hand, undertakings also pointed out that many different scholarships were offered beyond those in Finding-8 that were are determined jointly by the schools. Based on the fact that scholarship rates, which have the nature of competitively sensitive strategic information, were jointly determined and exchanged among the schools, it is determined that schools which continued their operations in the market made use of the information it acquired when making decisions concerning the market, and that this information exchange restricted competition by object, even if it had no effect on the market. As a matter of fact, as mentioned in the section titled "*Theoretical Framework for Price Fixing and Information Exchange in Output Markets*," the tables prepared in light of the response letters sent by the parties to the investigation show that the schools implemented the scholarship rates they committed to apply in Finding-8 with very little variance, and some undertakings even implemented them exactly. Thus, the schools seem to have abided by the scholarship rates they committed to apply. In that framework, it was found that the pleas submitted by in the undertakings are found to be groundless.

(330) The pleas submitted by ST. JOSEPH and ST. MICHEL can be summarized as follows:

- The assessment of Finding-7 stated that "*the schools agreed not to pay back the 10% down payment received from the parents for enrollment*," but it was not possible for the schools to come to an agreement regarding the reimbursement of the 10% portion of the down payment, since this was a matter of legal obligation;
- The term "*commission*" in Finding-2 and Finding-8 was used to refer to the scholarship commissions which were set up under each school by the employees of the relevant school in accordance with legal regulations and had nothing to do with any other school;

(331) Although it was stated by the undertakings that the non-refundability of 10% of the down payment collected by schools during enrollment is a legal requirement, this matter in fact appears to be an issue agreed upon among the schools in order to avoid making one school more preferable than another in the eyes of the parents who wished to enroll their children, and to act in line with the "*principles of non-competition*". In fact, Finding-7 shows that schools tried to prevent poaching parents by offering them scholarships other than those in the joint list, by offering higher rates of scholarships to convince them to enroll, or by offering to reimburse 10% of the down payment the parents paid during enrollment. Consequently, it was found that the pleas submitted by in the undertakings are found to be groundless.

(332) On the other hand, the *"Assessment Board"* subtitle under the *"Students and Trainees That Will Study Free of Charge or on Scholarship"* section of the Regulations, includes some provisions on the commission which should be established by the school each year in order to identify the students who will receive scholarships. Therefore, although the undertakings' arguments that the term *"commission"* refers to the scholarship committee established within each school and composed solely of that school's staff are found to be reasonable, this does not alter the finding that the schools jointly determined the scholarships and the conditions thereof. This is because, when Finding-7 and Finding-8 are considered together, it becomes clear that the schools created a list for scholarships and determined them as a result of the coordination and information exchange among themselves, independent of the commission, remains valid.

(333) Arguments submitted by NDS, ST. JOSEPH, ST. MICHEL and STE. PULCHÉRIE on fixing the wages of the teachers are presented below:

(334) The plea submitted by NDS can be summarized as follows:

- The "*salary calculation simulation*" in Finding-3 was used to form an accounting-based opinion regarding the calculation method, and the figures in the table were entirely hypothetical; each school would reach a different result through the formula in question; sharing the simulation among the parties did not mean that teachers' salaries were determined based on this table; without constituting acceptance, the relevant table was merely an illustration of how inflation adjustments and increases in the minimum wage could be reflected in teachers' salaries; the simulation was not binding for the parties, and since students are the final consumers in the educational services market, practices regarding how to reflect economic changes into salaries did not affect students; the schools in question had similar cost structures and the fact that they exhibit similarities in salary and pricing matters did not indicate that they acted with the intention of eliminating competition;

(335) The plea submitted by ST. JOSEPH can be summarized as follows:

- Finding-3, 4, and 5, which contain the communications of the investigated schools regarding teacher salaries, indicate that the 36.7% increase rate for private school fees announced by the Presidency made it difficult to cover teacher salaries; the salary gap between French teachers and Turkish teachers working at the schools widened due to the rise in the exchange rate; in order to maintain workplace harmony among teachers, the investigated schools conducted a benchmarking exercise to learn each other's best practices and to gather information on which areas of teacher compensation could be improved; the meeting in question was held by the schools' accountants in order to improve the deteriorating financial structure of the schools; the relevant findings show that the schools had different salary policies and that the purpose of the communications was not to reduce employee compensation; and expressions such as "*Consequently, each school must decide by a discussion with its principal*," and "*As discussed at the meeting each school will continue after getting approval from their own Principal. The table shows that every school will have a different practice*" showed that, ultimately, each schools made an independent decision on teacher salaries.
- In Finding-9, the financial burden created by the salaries of French teachers were evaluated and two possible solutions were identified; the first solution was "*the option to modulate the salary scale of the French local contracts*," by contacting France through the Ministry of Foreign Affairs, the Ministry of National Education, and the relevant institutions, and holding discussions regarding initiatives to be taken before public authorities does not constitute a competition infringement; the other option mentioned was "*the option to cut the number of foreign professors*," but it was also noted that this was "*an option that must be carefully considered since the parents of our students have certain expectations regarding the existence of foreign teachers at our schools*;" therefore, the relevant finding was intended to preserve the quality of education.

(336) The plea submitted by ST. MICHEL can be summarized as follows:

- Within the correspondence included under Finding-3, a simulation study was conducted using a hypothetical example, concerning which salary item should reflect the increases to be made during the year due to inflation; this study was intended to provide clarity to the schools' accounting staff regarding under which items potential mid-year salary increases should be recorded; the simulation regarding salaries showed a difference of 11.47% between the highest and lowest calculated salaries;
- In the correspondence examples included in Finding-7, the expression "...*We must anticipate a minimum salary increase of 35–36%*..." was meant to ensure that teachers were not disadvantaged against inflation and related to a minimum increase rate; accepting this expression as evidence of a wage fixing agreement would mean accepting that the investigated parties concluded an anti-competitive agreement to raise personnel salaries, and recognizing such a violation would be contrary to the purpose and rules of competition law;
- The statements in the correspondence included in Finding-7 were merely reflections on the economic crisis; there was no evidence that the ST. MICHEL representatives approved this e-mail, came to an agreement on this matter, or that any decision was taken between the parties regarding it; the purpose of the meetings mentioned in Finding-4 and Finding-6, which show communication among the officials of the private schools under investigation, was to discuss the legislative amendments, to ensure that these amendments were correctly understood by the parties, and to address

pedagogical matters; the mere fact that meetings were held among the investigated parties could not, by itself, constitute evidence of a competition law infringement.

(337) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- The e-mail dated 12.09.2022 with the subject "*minutes*," included in Finding-3, as well as the e-mail chain in Finding-4, were not sent with the purpose of jointly determining terms of purchase in the market, since the e-mails expressly indicated that each school would act separately when determining personnel salaries;
- The e-mail in Finding-7 referred to a CPI-related rate with regard to inflation; it was a necessity for employers to decide on salary increases for personnel due to inflation; the expression in the finding stemmed from an economic necessity; therefore, it could not be claimed that STE. PULCHÉRIE intended to reach a joint decision with the other schools under investigation regarding teacher salary increases;
- Due to inflation, a significant gap had emerged between the salaries of Turkish teachers and French teachers, the salaries of French teachers were determined based on the criteria used by the French Government; since this situation led to inequity between salaries, the schools under investigation sought solutions, and the meeting mentioned in Finding-10 was held not to jointly determine teacher salaries, but to find a solution to the aforementioned problem.

(338) Although the undertakings argued that the simulation calculating the salaries of Turkish teachers was created solely for the purpose of minimizing the anticipated gap between the salaries of Turkish and French teachers due to inflation and exchange-rate differences, and to serve as an example, that the simulation was not binding among the parties, and that each school would independently decide concerning the salaries of Turkish teachers, it seen in Charts 1–4, the salary figures shown in the table referred to as a "simulation" were in fact taken as a reference by the schools under investigation. Even when it is assumed that the schools did not implement the salaries in the charts concerned, the behavior of setting the wages collectively would result in the distortion of the competitive environment in the labor market, and since labor is an element of cost, it would constitute an infringement by object of Article 4 of the Act no 4054, which prohibits the joint establishment of all types of terms of sale as well as elements forming the price, such as costs and profits. At the same time, it is evaluated that information exchange regarding salaries which was implemented or planned to be implemented in a way that would lead to cooperation among competing undertakings cannot be a recommendation. Therefore, it was not possible to agree with the pleas submitted by the undertakings.

(339) The plea submitted by NDS can be summarized as follows:

- All employment and social security rights of the French teachers assigned to the schools were determined by the French Government, and that it was not possible for the schools under investigation to make an agreement or exchange information regarding this matter; even if it were concluded that information exchange occurred, this would not eliminate competition; the genuine wills of the schools and whether they acted in line with those wills should be examined; students were the consumers in educational services, and none of the actions alleged within the scope of the investigation had any adverse effect on students.

(340) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- The e-mail cited in Finding-9 concerned a discussion regarding the salaries of French and other foreign teachers; the salaries of French and foreign teachers were required

to be determined by the federation representatives; therefore, since the salaries of French and foreign teachers are determined by the representative of the federation to which STE. PULCHÉRIE is affiliated, it is not possible to speak of any infringement of competition law in the presence of this type of decision-making mechanism.

(341) Fixing teacher salaries, as one of the alleged infringements under investigation, concerned specifically the salaries of Turkish teachers, and the case file contains no assessment regarding the joint determination of French teachers' salaries by the parties. Accordingly, no assessment has been deemed necessary regarding the arguments presented above.

(342) The plea submitted by ST. MICHEL can be summarized as follows:

- In the event that there were an agreement among the investigated parties to fix or suppress personnel salaries, the relevant personnel would have the option to move to other private schools, private tutoring centers, public schools as permanent or contract staff, or language schools that offer higher salaries; however, no such situation currently existed for ST. MICHEL personnel;
- In order to speak of a competition law infringement on the purchasing side of the market, the undertakings party to the agreement would need to be responsible for a large share of the purchases in the relevant market; otherwise, the agreement would be unenforceable and ineffective; even if an agreement were made on the purchasing side, the parties would not be able to exert purchasing power, and it would be impossible to observe any effect of such an agreement, since the undertakings under investigation accounted for approximately 1% of the relevant product market.

(343) The plea submitted by STE. PULCHÉRIE can be summarized as follows:

- There were differences between STE. PULCHÉRIE and the other schools under investigation in terms of physical conditions and student numbers; moreover the number of teachers employed by each school, as well as the weekly teaching hours and schedules of teachers, varied; therefore, the schools under investigation could not have intended to standardize teacher salaries through a uniform calculation or to prevent teacher mobility between schools.

(344) Conduct that is an infringement by object do not require that the practices carried out by the undertakings have an impact on the market for them to be considered infringement under the Act no 4054. Accordingly, any change in employee mobility, whether an increase or decrease, is not relevant to the determination of a violation concerning the setting of personnel salaries. At the same time, under Article 4 of the Act no 4054, for an infringement to occur at the horizontal level, the mere existence of an agreement or a concerted practice between undertakings operating at the same level of the relevant market is sufficient. In that framework, whether the agreements were implemented by the undertakings and the numbers and scales of the undertakings parties to the agreement do not have a decisive effect on the occurrence of the infringement. As a result, it is sufficient for liability under the Act no 4054 for competing undertakings to jointly fix the wages of their employees, regardless of the market share or number of the undertakings that participated in the agreement. Therefore, the plea is not accepted, on the grounds explained above.

I.5.4 Assessment within the Framework of the Regulation on Fines

(345) Article 16.3 of the Act no 4054 includes the provision: "*Those who engage in conduct prohibited by articles 4, 6 and 7 of this Act will be imposed administrative fines up to ten per cent of the gross revenue of the undertaking and associations of undertakings or of the members of such associations of undertakings to be imposed a fine, as generated at the*

end of the previous financial year, or, in case the former cannot be calculated, until the end of the financial year that is closest to the final decision date, as determined by the Board."

(346) Meanwhile, Article 1 of the Regulation on Fines defines the purpose of the Regulation as "*to lay out the procedures and principles relating to the determination of the fines to be imposed on those undertakings and associations of undertakings, or on the members of such associations and the managers and employees thereof, which engage in conduct prohibited under Articles 4 and 6 of the Act no 4054 on the Protection of Competition, pursuant to Article 16 of the same Act.*"

(347) As a result of the findings and observations above, it is concluded that the parties under investigation, namely ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÈRIE, committed two separate infringements of Article 4 of the Act no 4054, one in the output market by jointly setting school enrollment fees and the elements that form those fees, and the other in the input market, by jointly setting the salaries of the Turkish teachers.

(348) Article 4.1(b) of the Regulation on Fines specifies that, when determining the amount of the fine to be imposed, the aggravating and mitigating factors would be considered after the setting of the base fine. Base fines are regulated in Article 5 of the Regulation on Fines. Accordingly, when calculating the base fine, a rate between 2% and 4% of the annual gross revenues of the undertakings parties to the violation, will be taken as the basis for the fine for cartels, and this rate will be applied between 0.5% and 3% for other violations .

(349) Moreover, under Article 5 of the Regulation on Fines, the second step in setting the base fine is the duration of the violation. In fact, the Article concerned states that the amount of the fine should be increased by half for violations lasting longer than one year but shorter than five years, and by one fold for violations lasting longer than five years. In addition to the relevant provision, Articles 6 and 7 of the Regulation on Fines lists the aggravating and mitigating factors.

(350) Meanwhile, Article 4.1(a) of the Regulation on Fines provides "*...In case more than one independent behavior – in terms of market, nature and chronological process – that are prohibited under Articles 4 and 6 of the Act are detected, the base fine shall be calculated separately for each behavior.*."

I.5.4.1 Assessment Concerning the Price Fixing Violation

(351) When the observations made within the scope of the file and Findings-2, 7, 8 and 9 are evaluated together, it is concluded that ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÈRIE jointly determined the school enrollment fees, both directly and indirectly. In this context, since the joint setting of enrollment fees by the schools under investigation falls under the category of "cartels" in accordance with Article 5.1(a) of the Regulation on Fines, the basic rate of fine was set at (.....)%.

(352) According to Article 5.3 of the Regulation on Fines, the amount of the base fine should be increased by half for violations lasting between one and five years, and by one fold for violations lasting longer than five years. In the current file, the documents showing that Article 4 of the Act no 4054 was violated through price fixing were dated between 30.06.2022 and 07.07.2022, and therefore the duration of the violation was less than one year. In this context, no increase has been applied under Article 5.3 of the Regulation on Fines, and the basic rate of fine was set at (.....)%. At the same time, no aggravating or mitigating factors were found related to the price fixing conduct.

I.5.4.2 Assessment Concerning the Joint Determination of Teacher Salaries

(353) When the observations made within the scope of the file and Findings-3, 4, 6, 7, 9 and 10 are evaluated together, it is concluded that ST. JOSEPH, ST. BENOÎT, NDS, ST. MICHEL and STE. PULCHÈRIE jointly determined salaries of Turkish teachers, both directly and indirectly. In this context, since the joint determination of the salaries Turkish teachers by the schools under investigation falls under the category of “other infringements” in accordance with Article 5.1(b) of the Regulation on Fines, the basic rate of fine was set at (.....)%.

(354) In the current file, the documents showing that Article 4 of the Act no 4054 was violated through joint determination of the salaries of Turkish teachers were dated between 06.04.2022 and 27.09.2022, and therefore the duration of the violation was less than one year. In this context, no increase has been applied under Article 5.3 of the Regulation on Fines, and the basic rate of fine was set at (.....)%. At the same time, no aggravating or mitigating factors were found related to the wage fixing conduct.

J. CONCLUSION

(355) According to the Report and the Additional Opinion prepared, evidence collected, written pleas, the statements made during the hearing and the scope of the file examined regarding the investigation conducted per the Board decision dated 10.11.2022 and numbered 22-51/766-M, it has been UNANIMOUSLY decided that

I) Saint-Joseph Private French High School, Saint Benoît Private French High School, Notre-Dame de Sion Private French High School, Saint-Michel Private French High School and Sainte Pulchérie Private French High School,

1- violated Article 4 of the Act no 4054 on the Protection of Competition by jointly determining school enrollment fees and the elements that form the fees,

2- the conduct of the schools concerned aimed at the joint determination of school enrollment fees and the elements that form the fees could not benefit from individual exemption under Article 5 of the Act no 4054 on the Protection of Competition,

3- Accordingly, under Article 16.3 of the Act no 4054 and Articles 5.1(a) and 5.2 of the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position, the following administrative fines should be imposed

   - 3,339,516.51-TL on Saint-Joseph Private French High School at (.....)%
   - 3,279,720.74-TL on Saint Benoît Private French High School at (.....)%
   - 2,532,943.46-TL on Notre-Dame de Sion Private French High School at (.....)%
   - 1,745,532.89-TL on Saint-Michel Private French High School at (.....)%
   - 1,897,231.86-TL on Sainte Pulchérie Private French High School at (.....)%

their gross revenues in 2023;

II) Saint-Joseph Private French High School, Saint Benoît Private French High School, Notre-Dame de Sion Private French High School, Saint-Michel Private French High School and Sainte Pulchérie Private French High School,

1- violated Article 4 of the Act no 4054 on the Protection of Competition by jointly fixing the wages of Turkish teachers,

2- the conduct of the schools concerned aimed at the joint fixing of the wages of Turkish teachers could not benefit from individual exemption under Article 5 of the Act no 4054 on the Protection of Competition,

3- Accordingly, under Article 16.3 of the Act no 4054 and Articles 5.1(a) and 5.2 of the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position, the following administrative fines should be imposed

- 2,226,344.34-TL on Saint-Joseph Private French High School at (.....)%
- 2,186,480.49-TL on Saint Benoît Private French High School at (.....)%
- 1,688,628.97-TL on Notre-Dame de Sion Private French High School at (.....)%
- 1,163,688.59-TL on Saint-Michel Private French High School at (.....)%
- 1,264,821.24-TL on Sainte Pulchérie Private French High School at (.....)%

over their gross revenues in 2023,

with the decision subject to appeal before Ankara Administrative Courts within 60 days following the notification of the reasoned decision.