



**GUIDELINES ON THE VOLUNTARY
NOTIFICATION OF AGREEMENTS, CONCERTED
PRACTICES AND DECISIONS OF ASSOCIATIONS
OF UNDERTAKINGS**

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GUIDELINES ON THE VOLUNTARY NOTIFICATION OF AGREEMENTS, CONCERTED PRACTICES AND DECISIONS OF ASSOCIATIONS OF UNDERTAKINGS

1. Purpose

(1) With the Act dated 2.7.2005 and numbered 5388, important amendments were made to those articles of the Act on the Protection of Competition No. 4054 (the Act) concerning the obligation to notify. With the amendment referred to, the requirement to notify the Board about those agreements, concerted practices and decisions of associations of undertakings under article 4 of the Act has been removed. In parallel, the practice of imposing fines on undertakings, associations of undertakings and persons in their administrative bodies due to their failure to notify those agreements to the Board, concerted practices and decisions under article 4 of the Act has also been terminated.

(2) In the past, it is observed that undertakings are opting to notify the Board concerning their agreements, concerted practices and decisions which do not contain an important infringement of competition, benefit from block exemption or can fall under block exemption communiqués with small amendments, mostly for purposes of ensuring legal certainty and guarantee.

(3) The removal of the obligation to notify shall result in the assessment of exemption to be made primarily by the undertakings and associations of undertakings. However, by decisions it takes and communiqués and guidelines it publishes, the Board shall continue to assist undertakings and associations of undertakings in this process.

(4) In light of the explanations included above, the purpose of these Guidelines is to provide explanations as to the new situation that emerged after the amendment to the Act in question and the procedure to be followed by undertakings and associations of undertakings in the voluntary exemption notifications.

2. Ability to Take Ex Officio Exemption Decisions

(5) With the amendment to the Act, the Board shall be able to grant ex officio exemption to those agreements, concerted practices and decisions that have not been notified, but about which it has been made aware in some manner, provided meet the conditions in Article 5 of the Act. It shall not be required to notify the agreement, concerted practice or decision in question to the Board.

(6) As a result of the amendment to the Act, the legal uncertainty concerning the period before the exemption decision has been removed by the adoption of the principle of retrospective application as to exemption decisions taken by the Board. Exemption decisions shall be valid as of the date an agreement is concluded or a concerted practice is performed or a decision of an association of undertakings is taken. However, in cases where the Board imposes a condition for granting an exemption, that exemption shall be valid as of the date the condition is fulfilled.

3. Notification

(7) Undertakings and associations of undertakings shall be imposed an administrative fine by the Board in accordance with article 16 paragraph two of the Act for agreements, concerted practices and decisions which fall under article 4 of the Act and are found ineligible for exemption by the Board. When setting the amount of the administrative fine, whether the agreement, concerted practice and decision in question is notified to the Board shall not be decisive in any manner.

(8) Following the removal of the obligation to notify, the principle is for the undertakings and associations of undertakings to make the assessment for exemption themselves, without resorting to notification. In consideration of the fact that the Board has the authority to assess, on its own initiative, whether conditions for exemption are met in any file and that exemption decisions are allowed to apply retrospectively, undertakings or associations of undertakings do not need to resort to notification for precautionary purposes. While making an assessment for exemption, undertakings and associations of undertakings should take into consideration the conditions listed in Article 5 of the Act, block exemption communiqués, guidelines issued for the explanation of these communiqués, past decisions of the Board as well as the principles in the source competition rules and case law insofar as it is appropriate.

4. Duration of the Exemption

(9) While before the amendment of the Act no 5388 exemption decisions could only be granted for a maximum of five years, this restriction has been removed by the amendment in question. Therefore, the Board is able to grant exemption decisions for a particular duration, or it can grant them an indefinite period.

5. Filing the Notification

(10) Despite the fact that the obligation to notify has been removed, voluntary notifications must be filed with the Notification Form enclosed in these Guidelines. The notification can be filed by any of the parties, or a joint notification may be filed. In case any one of the parties makes a notification, it is compulsory that the notifying party informs the other party concerned of the situation. In case a decision of an association of undertakings is concerned, the association of undertakings concerned shall submit the notification.

(11) A notary-certified signature circular should be enclosed with the Notification Form. The notification may be filed by representatives of undertakings or associations of undertakings, or a joint representative. Notary-certified letters of attorney showing that the representative or representatives is/are authorized should also be enclosed with the Notification Form. Those notifications filed by unauthorized persons are invalid.

(12) The notification should contain all requested information and documents completely and correctly. Changes to occur in this information before the Board takes a decision should be notified to the Board without delay. Under Article 16 of the Act, fines shall be imposed those who make a false or misleading declaration in the Notification Form. In case a portion of the information and documents requested are not in the possession of the parties, it is required that the parties state the reasons of it, and provide the healthiest estimated data in their possession related to the information in question and make an explanation as to sources on which they base this estimated information. It is required that the parties also state from where to obtain the information or documents not in their possession. Financial information should be given in YTL or together with the conversion rate if they exist other than in YTL.

(13) Turkish translations of texts (agreement, etc.) prepared in a foreign language should also be enclosed with the Notification Form. In case translations have not been made by a certified translator, it is compulsory that they are approved by authorized persons or representatives.

(14) The Notification Form and any documents attached to it must also be prepared in electronic form and forwarded to the Authority headquarters in Ankara by hand or by mail. It is required that all of the pages of the Notification Form be initialed by authorized persons or representatives and that the conformity of any copies among the documents in the application to their originals be approved by authorized persons or representatives.

6. Validity Date of the Notification

(15) The notification shall be deemed to have been filed on the date it is entered into the records of the Board. If the information and documents requested in the Notification Form are incomplete, the notification shall be deemed to have been filed on the date the missing documents or information are submitted.

7. Application of the Notification to Negative Clearance Applications

(16) Principles to be followed in a notification to be filed pursuant to these Guidelines shall also be applicable for negative clearance applications under article 8 of the Act. The term “notification” used in these Guidelines also refer to the term “application”.

PRESIDENCY OF THE COMPETITION AUTHORITY
NEGATIVE CLEARANCE/EXEMPTION
NOTIFICATION FORM

If the sections allocated below for each question in the Form are not adequate for the information requested therein, detailed information may be provided on a separate sheet enclosed to the Form, on condition that the relevant item numbers are followed.

Before proceeding with answering the questions below, please state whether you are filing a NEGATIVE CLEARANCE APPLICATION or an EXEMPTION NOTIFICATION by marking the choice A or B among the following options.

A- NEGATIVE CLEARANCE APPLICATION (Application) in relation to the establishment that the agreement, decision or concerted practice notified below under article 8 of the Act is not contrary to articles 4, 6 and 7 of the Act

B- NOTIFICATION IN RELATION TO THE EXEMPTION (Notification) of the agreement, decision or concerted practice notified below from the application of the provisions of article 4 of the Act, under articles 5 and 12 of the Act

1. Information in Relation to the Identity of the Parties

1.1. (Amended: Competition Board decision dated 07/02/2016 and numbered 06-09/123-M) With regard to the undertaking or undertakings or associations of undertakings filing the Application/Notification:

Name- Title	Address; Electronic Notification Address¹ and MERSIS No., if any²	Telephone, Fax Numbers, Web Addresses	Capital Distribution (%)	Members of the Board of Directors	Members of the Supervisory Board	Names, authorized persons, contact information for the associations of undertakings (chamber, society etc.) where they are a member

¹ Must be notified by those undertakings which are obligated to have an electronic notification address in accordance with paragraph 1, Article 7 of the Electronic Notification Regulations, published in the Official Gazette dated 19/01/2013.

² Must be notified by undertakings which have a MERSIS number.

1.2. (Amended: Competition Board decision dated 07/02/2016 and numbered 06-09/123-M) In cases where the Application/Notification is filed by a representative:

Name and Surname of the Representative	Address and Electronic Notification Address, if any	Telephone and Fax Numbers, E-Mail Addresses

1.3. (Amended: Competition Board decision dated 07/02/2016 and numbered 06-09/123-M) With regard to the undertakings that are party to the agreement or fall under the decision or participate in the concerted practice which is the subject of the Application/Notification:

Name-Title	Address; Electronic Notification Address and MERSİS No., if any	Telephone and Fax Numbers, web addresses	Fields of Operation

1.4. With regard to an officer, who can be contacted if required, of the undertakings that file the Application/Notification and that are party to the agreement or fall under the decision or participate in the concerted practice which is the subject of the Application/Notification:

Name-Title of the Undertaking	Name and Surname of the Officer	Position of the Officer	Address	Telephone and Fax Numbers, E-Mail address

1.5. Information in relation to the group of affiliation

For purposes of this form, group affiliation expresses the cases where an undertaking

- owns more than half of the capital or commercial property of another undertaking or*
- is authorized to use more than half of the voting rights of another undertaking, or*
- has the authority to appoint more than half of the members of the board of directors, supervisory board or bodies legally representing the undertaking or*
- has the right to manage/control activities of another undertaking by any means.*

If the undertaking or undertakings that are party to the agreement or fall under the decision or participate in the concerted practice which is the subject of the Application/Notification is/are affiliated with any group of companies, with regard to this group:

Name-Title	Sector(s) of Operation	Turnover

2. Information in relation to the agreement, decision or concerted practice

2.1. State the nature, scope and goals of the agreement, decision or concerted practice which is the subject of the Application/Notification and is enclosed with this Form.

2.2. Does the agreement, decision or concerted practice which is the subject of the Application/Notification have provisions or effects that may hinder, because of this agreement, decision or concerted practice, those who are party to this agreement or fall under this decision or participate in this concerted practice from taking their commercial decisions independently as to issues such as,

- purchasing or selling prices, discounts or other trade conditions,
- quantity of goods to be produced or distributed or services to be offered,
- technical development or investments,
- selection of markets or sources of supply,
- purchases to be made from third persons, or sales to be made to third persons,
- whether similar terms are applied for the supply of equivalent goods or services,
- whether different services are provided separately or together?

State in detail any such provisions as well as their potential effects in your opinion.

3. Information in relation to the relevant market

The relevant market is made up of the relevant product market and the relevant geographical market.

***The relevant product market** is made up of the entire goods and/or services which are deemed by the consumer as interchangeable or substitutable in respect of characteristics, prices and intended uses of products.*

The below-listed factors can be taken into consideration in determining the relevant product market:

- the degree of physical similarity between the products in question,*
- intended uses of products,*
- price differences between two products,*
- the cost for switching from one product to the other in terms of producers or consumers,*
- consumer preferences.*

***The relevant geographical market** consists of those regions where the relevant undertakings operate in the demand and supply of their goods or services, where conditions of competition are adequately homogenous and which particularly can be differentiated from the neighboring regions because conditions of competition are appreciably different than those regions.*

- the structure and qualities of the products in question,*
- the existence of barriers to entry or consumer preferences,*
- appreciable differences in market shares of undertakings or significant price differences between the neighboring regions,*
- transport costs.*

3.1. In light of the above information, define the relevant product market or markets where the agreement, decision or concerted practice which is the subject of the application/notification is effective and which you think the Board should take as the basis when assessing this Application/Notification. In responses to be given, it should be stated how the factors included above are taken into consideration. Besides the relevant product market or markets, list the goods and services which you think would be directly or indirectly affected from the agreement, decision or concerted practice which is the subject of the application/notification.

3.2. Define the relevant geographical market or markets where the agreement, decision and concerted practice which is the subject of the Application/Notification is effective and which you think the Board should take as the basis when assessing this Application/Notification. In responses to be given, it should be stated how the factors included above are taken into consideration.

3.3. For each party to the agreement, decision or concerted practice which is the subject of the Application/Notification, state all the other undertakings which are affiliated with the same group and which operate in the above-mentioned relevant product market and also in the lower and upper markets of this market.

4. Information in relation to the parties, competitors and customers in the relevant product market

(In the responses to the questions in this section, not only the undertakings which are party to the agreement, decision or concerted practice but also the group with which these undertakings are affiliated shall be taken into consideration.)

4.1. With regard to the relevant product market/markets you determined in 3.1. above, state the market shares that the groups with which the parties are affiliated possess in the relevant geographical market in the last three years. *(For responses in this part, market shares can be calculated by taking into consideration the sales value (in YTL-New Turkish Lira) or sales amount. Total market size in terms of the sales value (in YTL) or sales amount used in the calculation of market share, and sales values (in YTL) or sales amounts of each party within such size should be provided. Sources of such information (for example, official statistics, studies of independent research companies, estimations etc.) should also be stated, and copies of the relevant pages of these sources should be provided as well.)*

4.2. With regard to the five largest competitors of the parties in the entire relevant market/markets:

Name-Title	Address	Telephone and Fax Numbers	Name and Surname of Its Official	Market Share in All Relevant Markets

(When providing market shares of competitors, sources of such information (for example, official statistics, studies of independent research companies, estimations etc.) should also be stated, and copies of the relevant pages of the sources from which the information is derived should be provided as well.)

4.3. With regard to the five largest customers of each party in the entire relevant market/markets:

Name-Title	Address	Telephone and Fax Numbers	Name and Surname of Its Officer

5. Information on conditions of market entry and potential competition

5.1. What are the factors that affect entry to the relevant product market/markets? In other words, what are the barriers that hold back undertakings which do not already produce the products in the relevant product market or markets from entering this market/these markets? When giving a response to this question, the following factors should be taken into consideration insofar as it is appropriate:

- Legal barriers to entry (requirement to obtain authorization, obligation to comply with particular standards, legal or regulatory controls etc.),
- Ability to procure raw materials,
- The nature and duration of supply and distribution agreements in the market,
- The importance of research and development activities in the market, particularly the importance of patent, know-how and the other rights and licenses as to such rights,
- The existence of economies of scale/scope in the market,
- The total cost of entering the market as a significant competitor (investment, research and development, the setting up of a distribution system, advertisement costs etc.)

- Installed capacity and capacity usage rates.

5.2. What are the factors that affect entry to the relevant geographical market/markets? In other words, what are the factors that hold back undertakings which already produce and/or market the relevant product outside the relevant geographical market/markets from entering the relevant geographical market/markets? When giving a response to this question, the following factors should be taken into consideration insofar as it is appropriate:

- Transport costs,
- The adequacy of the existing facilities for distribution and retail,
- Legal trade barriers such as tariff, quota and import ban,
- Specifications or technical requirements,
- Procedures for purchase and supply of goods,
- Consumer preferences directed at the existing brands or products.

5.3. Within the last three years, has there been an undertaking that newly entered the relevant market? If so, state the name, address, telephone and fax numbers and estimated market shares in the relevant market/markets, together with the name and surname of an officer, who can be contacted when required, of this undertaking.

6. Information in relation to the grounds of the Application/Notification

6.1. If you are filing a Negative Clearance Application, according to you in what terms or because of which provision of it does the agreement, decision or concerted practice which is the subject of the Application require to be examined in respect of the Act? Explain with its reasons whether the agreement, concerted practice or decision which is the subject of the Application bears the object of directly or indirectly preventing, distorting or restricting competition in a particular market for goods or services, or whether it gives rise or has the nature of giving rise to such effect, or whether it is in question for your undertaking to abuse its dominant position.

6.2. If you are filing a Notification for Exemption, explain in the light of the following questions those reasons that would require according to you that an exemption be granted to the agreement, decision or concerted practice which is the subject of the Notification.

6.2.1. State in what terms the agreement, decision or concerted practice ensures or would ensure new development and improvement or economic or technical development in the production or distribution of goods and the offering of services. Explain particularly how these favorable effects emerge or would emerge. It is required that studies made by the parties as to such favorable effects be enclosed with the Notification.

6.2.2. Explain how the consumer benefits or would benefit from developments and improvements that result or would result.

6.2.3. Explain why competition is not or would not be eliminated in a substantial part of the relevant market.

6.2.4. Explain why the agreement, decision and concerted practice does not or would not restrict competition more than necessary to create the abovementioned positive effects and to ensure that the consumer benefits from them.

6.3. In case your application for Negative Clearance is rejected by the Board, do you have a request that your application be considered as a notification for exemption?

6.4. Explain the other issues you would like to state about the agreement, decision or concerted practice which is the subject of the Application/Notification.

7. Information as to the enclosures of the Application/Notification

In addition to the information above,

7.1. The Parties shall enclose with this Application/Notification the copy of the signed final version of the agreement or decision which is the subject of the Application/Notification together with its enclosures, or the definition of the concerted practice. *(In cases such as where a provider makes sample vertical agreements of a particular type with a large number of distributors that take place in the distribution system set up by him, it is sufficient to enclose the copy of the agreement signed between the provider and one of the distributors, and the list of the other distributors, their authorized persons and contact information.)*

7.2. The Parties shall enclose with this Application/Notification their annual reports showing their activities, balance sheets, revenue charts and accounts belonging to the latest three years.

7.3. The Parties shall enclose with the Application/Notification any plans, market researches and relevant studies made by their authorized bodies or third persons, which contain information such as the market and competitive conditions, the existing and potential competitors.

7.4. The Parties shall also enclose with the Application/Notification any media such as floppy disks, CDs, etc., which contain the notification form and the enclosures such as the agreement and so forth.

We declare that the information in the above Application/Notification Form are complete and correct.

Date

Signature