

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 resorted to in those articles of the Act on the Protection of Competition No. 4054 (the Act) that are related to the notification obligation. With the amendment referred to, the must to notify to the Board those agreements, concerted practices and decisions of associations of undertakings under article 4 of the Act has been removed. In parallel to it, imposition of fines on undertakings, associations of undertakings and persons in their bodies of management due to their failure to notify to the Board those agreements, concerted practices and decisions under article 4 of the Act has also been terminated.
- (2) In the past period, it was observed that undertakings, mostly for purposes of ensuring legal certainty and guarantee, opted for the way to notify to the Board their agreements, concerted practices and decisions which did not contain an important infringement of competition, benefitted from block exemption or could fall under communiqués of block exemption with small amendments.
- (3) The removal of the obligation to notify shall result in the fact that the assessment of exemption be primarily made by undertakings and associations of undertakings. But by decisions it shall take and communiqués and guidelines it shall publish, the Board shall continue to help undertakings and associations of undertakings in this process.
- (4) In the light of the explanations included above, the purpose of this Guidelines is to make 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 Exemption Decisions On One's Own Initiative

(5) With an amendment made to the Act, the Board shall be able to grant exemption on its own initiative to those agreements, concerted practices and decisions that have not been notified to it but about which it has been informed in any manner in case they bear the terms in article 5 of the Act. The term of having notified the agreement, concerted practice or decision in question to the Board shall not be sought.

(6) As a result of an amendment made to the Act, the legal uncertainty as to the pre-exemption decision has been relieved by adopting the principle of applying retrospectively 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. But in cases where the Board provides for a condition for being able to give an exemption, exemption shall be valid as of the date the condition is fulfilled.

3. Notification

(7) The Board shall be able to impose, on undertakings and associations of undertakings, an administrative fine 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 for which it decided that it cannot obtain an exemption. In fixing the amount of the administrative fine, whether the agreement, concerted practice and decision in question has been notified to the Board shall not be decisive in any manner.

(8) After removing the obligation to notify, it is essential that undertakings and associations of undertakings make an assessment for exemption themselves without resorting to notification. When it is regarded that the Board has the authority to have a regard on its own initiative whether conditions for exemption are met in any file and exemption decisions are also allowed to apply retrospectively, undertakings or associations of undertakings are not required to resort to notification for precautionary purposes. While making an assessment for exemption, it would be relevant that undertakings and associations of undertakings take into consideration

those conditions in article 5 of the Act, block exemption communiqués, guidelines issued for the explanation of these communiqués, past decisions of the Board, principles in the source competition rules and case law insofar as it is appropriate.

4. Duration of Exemption

(9) While exemption decisions could only be given for a maximum of five years before the amendment made by the Act numbered 5388, the limitation of duration has been removed by the amendment in question. Therefore, the Board can tie exemption decisions to a particular duration just as it can give them indefinitely.

5. Filing the Notification

(10) Despite the fact that the obligation to notify has been removed, those notifications to be filed voluntarily are required to be filed by the Notification Form enclosed with this Guidelines. The notification can be filed by one of the parties just as joint notification can also be filed. In case any one of the parties commits a notification, it is compulsory that the notifier informs the other party concerned of the situation. In case a decision of an association of undertakings is in question, the association of undertakings concerned shall commit notification.

(11) A notary-certified signature circular should be enclosed with the Notification Form. The notification can also be filed by representatives of undertakings or associations of undertakings, or a joint representative. Notary-certified proxies showing that a 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 form in these information until the Board decides should be notified to the Board without delay. Fine shall be applicable under article 16 of the Act against those who make a false or misleading declaration in the Notification Form. In case a part of the information and documents requested are not in 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 these 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 and so forth) prepared in foreign language should also be enclosed with the Notification Form. In case translations have not been made by a sworn translator, it is compulsory that they are approved by authorized persons or representatives.

(14) The Notification Form and attached documents shall be prepared also in electronic form, and shall be 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 fact that copies which take place among documents used in application conform 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 arrives in the entries of the Board. If there is incompleteness in information and documents requested in the Notification Form, the notification shall be deemed to have been filed on the date the incompleteness is completed.

7. Application of the Notification to Applications for Negative Clearance

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

PRESIDENCY OF THE COMPETITION AUTHORITY

NEGATIVE CLEARANCE/EXEMPTION

NOTIFICATION FORM

If parts allocated for each question in the Form are not adequate for the information requested here, detailed information can be given on a separate sheet which would constitute the enclosure of the Form on condition that the relevant item numbers are followed.

Before proceeding with answering the questions that take place below, state whether the notification filed by you is a NEGATIVE CLEARANCE APPLICATION or an EXEMPTION NOTIFICATION by marking the choice A or B among the following alternatives.

A- NEGATIVE CLEARANCE APPLICATION (Application) in relation to the establishment that the agreement, decision or concerted practice stated 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 stated below under articles 5 and 12 of the Act from the application of the provisions of article 4 of the Act

1. Information in relation to the identity of the parties

1.1. With regard to the undertaking or undertakings or associations of undertakings which file(s) an Application/Notification:

Name -Title	Address	Telephone, Fax Numbers, Web Addresses	Capital Distribution (%)	Members of the Board of Directors	Members of the Supervisory Board	Name, authorized persons, contact information of the associations of undertakings (chamber, society etc.) where they are a member

1.2. In cases where the Application/Notification is filed by a representative:

Name and Surname of the Representative	Address	Telephone and Fax Numbers, E-Mail address

1.3. 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	Areas of Activity

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 relationship** 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 freely as to issues such as for example

- 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.

State in detail such provisions and their potential effects according to you.

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 are 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 neighbouring regions because conditions of competition are appreciably different than those regions.

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

- 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 neighbouring regions,
- transport costs.

3.1. In the 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 responses to be given to the questions that take place in this part, 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 Officer	Market Share in the Entire 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 in relation to the 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.)
- Facilities to provide raw material,
- 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 licences 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 favourable effects emerge or would emerge. It is required that studies made by the parties as to such favourable 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.

6.3. 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 that takes place 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, if any, with the Application/Notification plannings, 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, if any, with the Application/Notification media such as floppy disk, CD which contain the notification form and the enclosures such as the agreement and so forth.

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

Date

Signature