

Competition Act

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Chapter 1

General Provisions

Purpose of Act

1.—(1) The purpose of this Act is to safeguard free competition upon the extraction of natural resources, manufacture of goods, provision of services, sale and purchase of products and services (hereinafter goods), and to prevent and eliminate the restriction of competition in other economic activities based on the interests of free enterprise.

(2) This Act also applies if the action or omission directed at restricting competition takes place outside the territory of Estonia but restricts competition in the territory of Estonia.

Subjects of Act

2.—(1) The subjects of this Act are undertakings. The provisions applicable to undertakings pursuant to this Act also extend to non-profit associations, foundations and other persons who participate in a market or act in the interests of undertakings.

(2) The provisions of this Act extend to State agencies and local government agencies if the decisions or activities of such agencies restrict competition.

(3) For the purposes of this Act, undertakings which belong to the same group of companies or other undertakings which are connected through control are deemed to be one undertaking.

(4) For the purposes of this Act, the following are deemed to be control over another undertaking:

1. control of a parent company over a subsidiary;
2. a situation where an undertaking has the right to appoint or remove a majority of the members of the directing bodies of another undertaking; or
3. a situation where an undertaking, by an agreement and together with some of its stockholders or shareholders, has a majority of votes in another undertaking.

Scope of Application of Act

3.—(1) This Act is applied to safeguard competition between persons who participate or intend to participate in a market. A market is an area in the whole territory of Estonia or a

part thereof in which goods which are regarded as interchangeable by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated.

(2) The Competition Board has the right to define the market for each specific good.

Chapter 2 **Prohibition on Agreements and Concerted Practices**

Prohibition on Agreements and Concerted Practices which Restrict Competition

4.—(1) Contracts, other transactions and agreements (hereinafter agreements) or concerted practices which have as their object or effect the restriction, prevention, limitation or distortion of free enterprise and competition are prohibited. Such agreements or activities are deemed to restrict competition if they directly or indirectly:

1. fix pricing conditions, including the purchase or selling prices of goods, tariffs, mark-ups, rebates, interest rates, rent or lease payments to be applied to a third person;
2. limit production, markets, technical development or investment;
3. share markets, including sources of supply;
4. restrict access to markets to third persons or attempt to exclude third persons from markets;
5. disseminate information which distorts competition;
6. apply dissimilar conditions to equivalent agreements with third undertakings, thereby placing them at a competitive advantage or disadvantage;
7. make the entry into agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with such agreements; or
8. restrict competition in a manner not specified in clauses 1.—7. of this subsection.

Permissibility of Agreements and Concerted Practices

5.—(1) Agreements or concerted practices are deemed not to restrict, prevent, limit or distort competition such that free enterprise may be distorted if:

1. the combined significance of the parties entering into an agreement or developing concerted practices does not exceed five per cent of the turnover of the market influenced by such agreement or concerted practices; and
2. the combined significance of similar agreements entered into by an undertaking with several other undertakings or of concerted practices of such parties does not exceed five per cent of the turnover of the market influenced by such agreements or concerted practices.

(2) The conditions of subsection (1) of this section shall be fulfilled during the entire term of the agreement or concerted practices.

Exemptions

6. At the request of an undertaking, the Director General of the Competition Board or his or her deputy may grant by a decision an exemption in respect of entry into an agreement specified in Section 4 of this Act if such agreement:

1. contributes to improving the supply of services or production or distribution of goods, protecting the environment or promoting technical or economic progress;
2. allows consumers a fair share of the resulting benefit;
3. does not bring about restrictions on third persons which are not indispensable to the attainment of the objectives specified in clause 1. of this section, and
4. does not bring about a substantial restriction of competition in the market.

Block Exemptions

7.—(1) Block exemptions are permission granted by the Government of the Republic on the proposal of the Minister of Finance to enter into a certain category of agreement which complies with the conditions provided for in Section 6 of this Act and restricts or may restrict competition.

(2) A block exemption is established for a specified term and determines:

1. the name of the category of agreement to which the block exemption applies;
2. restrictions or conditions which shall not be included in such agreements;
3. conditions which must be included in such agreements, and restrictions and conditions which may be included in such agreements;
4. other conditions which such agreements shall comply with.

(3) A block exemption granted on the basis of subsection (1) of this section does not apply to an agreement if:

1. the agreement or a condition thereof is considered an abuse by an undertaking of a dominant position within the market, provided for in Section 14 of this Act;
2. competition is virtually non-existent in the market influenced by the agreement for a party to the agreement or the parties to the agreement jointly.

Invalidity of Agreements Restricting Competition

8. Agreements or conditions thereof which have as their object or effect that specified in Section 4 of this Act and which are not granted an exemption on the basis of Section 6 or 7 of this Act are void, except agreements or conditions thereof which comply with Section 5 of this Act.

Chapter 3 **Application for Exemption**

Submission of Application for Exemption

9.—(1) In order to obtain an exemption provided for in Section 6 of this Act, an application shall be submitted to the Competition Board before entry into an agreement or within six months after entry into an agreement which requires an exemption. Such

agreement or a condition thereof which restricts competition is invalid until the exemption is granted.

(2) An application for an exemption concerning an agreement which was not contrary to this Act at the time of entry into such agreement shall be submitted within three months after circumstances due to which the agreement or a condition thereof is contrary to this Act, become evident. Such agreement or condition thereof is invalid from the time the circumstances become evident until the exemption is granted.

(3) One party or the parties to the agreement jointly shall submit an application for exemption.

(4) An applicant for exemption or the other party to the agreement which is the basis of a submitted application for exemption may withdraw the application for exemption at any time until the exemption is granted, by submission of a written application.

Requirements for Application for Exemption

10.—(1) An application for exemption shall be submitted to the Competition Board together with all necessary information in accordance with the instructions established by the Minister of Finance, whereupon, at the request of the Competition Board, explanations shall be given and the originals of documents or copies or transcripts thereof shall be submitted for examination, the authenticity of which shall be confirmed by the signature of the submitter.

(2) If information contained in an application for exemption or information relating to the application is incomplete, incorrect or misleading, the Competition Board shall notify the applicant thereof in writing and shall demand submission of all information and determine a deadline for submission thereof. In such case, the terms provided for in Section 11 of this Act shall commence from the date the Competition Board sends a written notice to the applicant confirming receipt of all information.

(3) The person for whose benefit an exemption is granted and the person who applies for the decision to grant an exemption shall notify the Competition Board of substantial changes in the information presented in the application for exemption within seven calendar days after receipt of the relevant information.

(4) An applicant for exemption shall designate information he or she deems to be a business secret or shall submit such information separately as an annex. Information subject to public disclosure is not a business secret.

Processing of Application for Exemption

11.—(1) The Director General of the Competition Board or his or her deputy shall make one of the following decisions concerning an application for exemption:

1. to grant the exemption if he or she finds that the agreement which is the basis of the application complies with the conditions provided for in Section 6 of this Act;

2. to refuse the exemption if he or she finds that the agreement which is the basis of the application does not comply with the conditions provided for in Section 6 of this Act;

3. to initiate supplementary proceedings concerning the application for exemption if he or she finds that it is doubtful whether the agreement which is the basis for the grant of exemption pursuant to Section 6 of this Act qualifies for an exemption and it is necessary to obtain additional information or conduct a supplementary examination in order to decide to grant or refuse the exemption;

4. to declare that the agreement does not require an exemption if he or she finds that the agreement is not an agreement provided for in Section 4 of this Act;

5. to terminate the proceedings without granting an exemption if the agreement does not require an exemption on the bases provided for in Section 5 of this Act or if a block exemption has been granted to the category of agreement, the application for exemption is withdrawn, or the applicant for exemption or the other party to the agreement has not submitted all necessary information by the deadline specified therefor by the Competition Board for a second time.

(2) The Director General of the Competition Board or his or her deputy shall make one of the decisions provided for in clauses (1)1. or 2. of this section within two months after submission of all information.

(3) If the Director General of the Competition Board or his or her deputy decides to commence supplementary proceedings on the basis of clause (1)3. of this section, he or she shall notify the applicant for exemption in writing and make a final decision to grant or refuse the exemption or declare that the agreement does not require an exemption within six months after the submission of complete information.

(4) The Competition Board may extend the deadlines provided for in subsections (2) and (3) of this section only with the written consent of the applicant for exemption.

Decision to Grant Exemption

12.—(1) A decision specified in subsection 11(1) of this Act shall be in writing and contain justification for the decision.

(2) A decision to grant an exemption may contain conditions or obligations for the parties to the agreement the fulfilment of which is mandatory for the exemption to be valid.

(3) The Director General of the Competition Board or his or her deputy may grant an exemption for up to five years, whereupon the term of the exemption may be extended by a decision to grant an exemption upon expiry of the specified term.

(4) A party or the parties to an agreement (4) to whom an exemption is granted shall submit an application for extension of the exemption at least six months before expiry of the exemption specified in the decision.

(5) The Director General of the Competition Board or his or her deputy may revoke or amend a decision to grant an exemption if:

1. substantial changes take place in the information or conditions which are the basis of the decision;

2. a party or parties to the agreement violate the obligations or conditions imposed on them by the decision; or

3. the decision is based on incomplete, incorrect or misleading information.

(6) All decisions made pursuant to clause 11(1)1. of this Act and subsection (5) of this section are published in the *Riigi Teataja*.

Chapter 4

Undertaking Dominating Market

Definition of Undertaking Dominating Market

13.—(1) For the purposes of this Act, an undertaking dominating the market is an undertaking which accounts for at least 40 per cent of the turnover in the market or whose economic position enables the undertaking to operate in the market to an appreciable extent independently of competitors, suppliers and buyers.

(2) For the purposes of this Act, two or more economically linked undertakings are undertakings which jointly dominate a market if they jointly control at least 40 per cent of the turnover in the market or whose economic position enables them to operate in the market to an appreciable extent independently of competitors, suppliers and buyers. For the purposes of this provision, an economic link is, for example:

1. an agreement between undertakings which gives an appreciable technological or commercial advantage to the parties thereto compared to other undertakings in the relevant market;

2. an undertaking owns sufficient part of the stocks, shares, votes or control over the management board of another undertaking (or a combination of such circumstances) which enables the undertaking to significantly influence the decisions or economic activities of the other undertaking.

(3) Undertakings with special or exclusive rights or a natural monopoly specified in Sections 15 and 16 of this Act are also undertakings dominating the market.

Abuse by Undertaking of Dominant Position in Market

14. Any direct or indirect abuse by an undertaking of a dominant position within a market, i.e. abuse by one undertaking or several undertakings, which jointly have a dominant position in the market to restrict competition which directly or indirectly consists in:

1. imposing unfair pricing conditions or other unfair trading conditions, including the unjustified sale of goods below the cost price which prejudices the activities of another undertaking in the market or excludes another undertaking from the market;

2. limiting production, services, markets, technical development or investments to the prejudice of consumers;

3. applying dissimilar conditions upon entry into equivalent agreements with other undertakings, thereby placing some of them at a competitive advantage or disadvantage;

4. upon entry into agreements making one agreement conditional on another agreement that is unrelated to the first agreement, into which the other party would not enter voluntarily;

5. forcing an undertaking to merge with the undertaking or another undertaking or to enter into an agreement or concerted practices;

6. unjustified refusal to sell goods to another undertaking;

7. unequal treatment of undertakings which participate in sales offers or purchase bids;
or

8. restricting competition in a manner not specified in clauses 1.—7. of this section, is prohibited.

Chapter 5

Undertaking with Special or Exclusive Rights or Natural Monopoly

Undertaking with Special or Exclusive Rights

15.—(1) For the purposes of this Act, special or exclusive rights are permission granted to an undertaking by the State or a local government which enables the undertaking to have a competitive advantage in the market over other undertakings or to be the only undertaking in the market.

(2) State agencies and local governments have the right to grant special or exclusive rights to undertakings pursuant to legislation.

(3) If legislation on the basis of which special or exclusive rights are granted does not provide the procedure for the grant of special or exclusive rights, a public competition for the grant of such rights shall be arranged pursuant to the procedure established by the Government of the Republic.

Definition of Natural Monopoly

16. An undertaking has a natural monopoly if it owns, possesses or operates a network or infrastructure which other persons cannot duplicate or for whom it is economically inexpedient to duplicate and which gives the undertaking a dominant position in the market.

Restrictions to Activities of Undertakings with Special or Exclusive Rights or Natural Monopoly

17.—(1) The State agency or local government which grants special or exclusive rights to an undertaking may establish the procedure for regulation of prices or the prices to be used or impose other conditions or obligations on the undertaking so that the buyers of goods of such undertaking or sellers of goods to such undertaking are not placed in a substantially worse situation than they would be in if competition were present in that area of activity.

(2) State agencies and local governments determined by a specific Act or, in the absence of a specific Act, the Government of the Republic and local governments may establish the procedure for regulation of prices or the prices to be used or impose other conditions or obligations on an undertaking which has a natural monopoly so that the buyers of goods of such undertaking or sellers of goods to such undertaking are not placed in a substantially worse situation than they would be in if competition were present in that area of activity.

Obligations of Undertakings with Special or Exclusive Rights or Natural Monopoly

18.—(1) An undertaking with special or exclusive rights or a natural monopoly shall:

1. permit access to the network or infrastructure by other undertakings under reasonable and non-discriminatory conditions for the purpose of provision or sale of services;

2. draw a clear distinction in accounting between primary and secondary activities (for example production, transportation, marketing and other activities of the undertaking) thereby ensuring the transparency of accounting, and disclose all expenses to consumers and their representatives;

3. purchase things and order construction work and services necessary for the exercise of special or exclusive rights or a natural monopoly pursuant to the procedure provided for in the Public Procurement Act (RT I 1995, 54, 883; 1997, 9, 79).

(2) An undertaking with special or exclusive rights or a natural monopoly may refuse access to the undertaking's network or infrastructure to other undertakings if the refusal is based on the following objective reasons:

1. the safety and security of the equipment connected with the network or infrastructure or the efficiency and security of the operation of such network or infrastructure are endangered;

2. maintenance of the integrity of the network or infrastructure or inter-operability of services is endangered;

3. equipment to be connected to the network or infrastructure is not in conformity with established technical standards or rules;

4. the undertaking applying for access lacks the technical and financial capabilities and resources to efficiently and safely, to the necessary extent, provide services through or with the assistance of the network or infrastructure; or

5. as a result of access, data protection provided by law is not ensured.

Chapter 6 **State Aid**

Definition of State Aid

19.—(1) For the purposes of this Act, State aid is a financial advantage granted by the State, a city or rural municipality or through their resources which distorts or threatens to distort competition by favouring certain undertakings or the production or sale of certain goods, including financial aid, postponement of payment of tax arrears, debt write-offs and the grant of loans under essentially more favourable terms than usually given to other undertakings.

(2) For the purposes of this Act, State aid, except export aid, is of minor importance if it does not exceed 1.5 million kroons per undertaking over three subsequent years.

Conditions for Grant of State Aid

20.—(1) In addition to State aid of minor importance, only the following types of State aid may be granted:

1. State aid having a social character provided that such aid is granted without discrimination related to the origin of the products concerned;

2. State aid to make good the damage caused by natural disasters or other exceptional occurrences;

3. State aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment;

4. State aid to facilitate the development of certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

5. to remedy a serious disturbance in the economy; or

6. to promote culture and heritage conservation.

(2) State aid specified in subsection (1) of this section:

1. shall be granted for a specified period of time and shall be terminated when it no longer complies with the relevant criterion specified in subsection (1) of this section;

2. shall be granted to the extent needed to achieve an objective specified in subsection (1) of this section.

(3) The Government of the Republic establishes the procedure for the grant, notification and repayment of State aid.

Grant of State Aid

21.—(1) State aid, except State aid set out in a State, city or rural municipality budget, State aid provided by other Acts and State aid of minor importance, may be granted only with the prior written permission of the Minister of Finance which is published in the *Riigi Teataja*.

(2) An application for permission to grant State aid specified in subsection (1) of this section shall be submitted to the Minister of Finance with the necessary information pursuant to the instructions established by the Minister of Finance.

(3) If the information submitted in an application is incomplete or contains incorrect or misleading information, the Minister of Finance shall notify the applicant thereof in writing, demand submission of all information and determine a deadline for submission thereof. In such case, the terms provided for in subsections 23(2) and (3) of this Act commence from the date that all information is submitted to the Minister of Finance.

(4) A rural municipality or city government shall notify the Minister of Finance of State aid set out in the draft budget of the rural municipality or city, except State aid of minor importance, before the draft budget is presented to the council.

Duties of Minister of Finance and City and Rural Municipality Governments

22.—(1) The Minister of Finance shall apply uniform and impartial treatment to all undertakings in the market and their goods taking into account all circumstances upon making decisions concerning State aid regardless of whether the grant of State aid is allowed or not on the basis of Sections 20 and 21 of this Act.

(2) The Minister of Finance shall apply all the criteria specified in Section 20 of this Act in all his or her decisions concerning permission to grant State aid.

(3) Rural municipality and city governments are prohibited to prescribe State aid which does not comply with Section 20 of this Act in a draft budget.

(4) The Minister of Finance monitors the grant and use of State aid set out in city and rural municipality budgets, except State aid of minor importance, and shall, if necessary, make a proposal to employ measures to ensure the compliance of State aid with Section 20 of this Act.

Permission to Grant State Aid

23.—(1) The Minister of Finance shall make one of the following decisions concerning an application for State aid:

1. to grant permission if he or she finds that the application complies with the provisions of Section 20 of this Act;
2. to refuse permission if he or she finds that the application does not comply with the provisions of Section 20 of this Act;
3. to initiate supplementary proceedings concerning the application for State aid if he or she finds that it is doubtful whether the agreement which is the basis for the grant of permission pursuant to Section 20 of this Act qualifies for State aid, and it is necessary to obtain additional information in order to decide to grant or refuse permission.

(2) The Minister of Finance shall make a decision concerning an application for the grant of State aid within two months after submission of all necessary information.

(3) If the Minister of Finance decides to commence further proceedings concerning an application for the grant of State aid, he or she shall notify the applicant thereof in writing and make a final decision concerning the grant of State aid within six months after receipt of all information.

(4) In conducting further proceedings on the basis of subsection (3) of this section, the Minister of Finance shall take into account all written and oral explanations given by the planned beneficiary of State aid and other parties with a legitimate interest in the matter.

(5) If the Minister of Finance does not make a decision within the term provided for in this section, permission for the grant of State aid is deemed to be granted.

(6) A decision to grant State aid may contain conditions and obligations for the beneficiary of State aid the fulfilment of which is mandatory upon the use of State aid.

(7) The Minister of Finance may revoke or amend his or her permission to grant State aid if:

1. substantial changes take place in the information which is the basis of such permission;
2. an undertaking violates the conditions or obligations imposed on it; or
3. the permission is based on incomplete, incorrect or misleading information.

Repayment of State Aid

24.—(1) The Minister of Finance may require the repayment of State aid or the revocation of permission to grant State aid or make a corresponding proposal if:

1. the Minister of Finance is not notified of the State aid pursuant to subsection 21(4) of this Act;
2. State aid is used for purposes other than the use or purpose set out in the information concerning the State aid;
3. a condition or obligation established pursuant to subsection 23(6) of this Act is not fulfilled; or
4. the decision to grant State aid is based on incomplete, incorrect or misleading information.

(2) The Minister of Finance has the right to demand a justified interest rate on the amount of repaid State aid in all cases where State aid is repaid pursuant to subsection (1) of this section.

Reporting on State Aid

25.—(1) Grantors of State aid, that is distributors, payers, guarantors of loans, tax administrators, etc., shall present a report on the grant and use of State aid once a year by the date and in the form established by the Minister of Finance, including State aid contained in the State, city and rural municipality budgets and other State aid granted pursuant to an Act and State aid of minor importance.

(2) The Minister of Finance shall prepare a report within twelve months after the end of a calendar year on all State aid granted during that year of which he or she has been notified pursuant to the provisions of this Chapter.

Chapter 7 Merger Control

Merger

26.—(1) For the purposes of this Act, a merger is deemed to arise where undertakings merge as defined in the Commercial Code (RT 1 1995, 26-28, 355; 1996, 52-54, 993; 1997, 16, 258; 48, 774; 77, 1313; 1998, 2, 48; 23, 322) or where an undertaking acquires control over another undertaking by some other means.

Merger Notice

27.—(1) The Competition Board shall be notified of a merger in advance if:

1. the aggregate annual turnover of the merging parties exceeds 100 million kroons; or
2. the merging parties separately or jointly have control over more than 40 per cent of the market.

(2) A merger notice shall be submitted to the Competition Board together with the merger agreement, merger report and merger decision, if these exist, in accordance with the Commercial Code, the Non-Profit Associations Act (RT 1 1996, 42, 811) or the Foundations Act (RT 1 1995, 92, 1604; 1996, 42, 811), and other necessary information pursuant to the instructions established by the Minister of Finance, whereupon, at the request of the Competition Board, the documents shall be submitted as originals or copies certified by the undertaking or its representative.

(3) If information contained in a merger notice or its annexes is incomplete, incorrect or misleading, the Competition Board shall notify the notifying party thereof in writing and shall demand the provision of all information and determine a deadline for provision thereof.

(4) A merger may not be implemented earlier than within one month after the submission of all information to the Competition Board unless otherwise agreed with the Competition Board in writing.

(5) The notifying party shall designate information he or she deems to be a business secret or shall submit such information separately as an annex.

Chapter 8 **Unfair Competition**

Prohibition on Unfair Competition

28.—(1) Unfair competition means any act which restricts free enterprise and is contrary to good morals and customs, including:

1. the publication of misleading information, or presentation or ordering of misleading information for publication;
2. the disparagement of a competitor or a competitor's goods;
3. the misuse of confidential information;
4. the misuse of an employee or representative of another undertaking;
5. unfair restriction or promotion of the sale of goods.

(2) Unfair competition is prohibited.

(3) The provisions of the Advertising Act (RT 1 1997, 52, 835) apply to misleading, offensive or denigratory information as a method of advertising.

Presentation or Ordering of Misleading Information for Publication

29.—(1) Misleading information means the publication, or presentation or ordering of false information for publication either concerning oneself or another undertaking which is a participant in the same market or the undertaking's goods which may leave a misleading impression of an offer, given ordinary attention by the buyer.

(2) Information specified in subsection (1) of this section primarily refers to information concerning the origin, qualities, method of production, means or sources of supply, price, tariff, discounts, prizes awarded, reasons for sale and the amount of stock of the goods offered, as well as preferential rights, financial status and other qualities of the undertaking.

(3) Markings concerning the producer, origin or other qualities of goods are also misleading if a mark, information, description or a name is used on the goods, its packaging or accompanying documents or elsewhere which may be misleading as regards the place of production, the producer or the qualities of the goods, given ordinary attention by the buyer.

Disparagement of Competitor or its Goods

30. Disparagement of a competitor or its goods means the dissemination of false information concerning another undertaking or goods sold by another undertaking in the same market which harms or may harm the reputation or economic activities of the other undertaking.

Misuse of Confidential Information

31.—(1) Confidential information means any technical, technological or other business information the publication of which is not mandatory, and information concerning commercial negotiations, transactions, market research and other circumstances:

1. which is disclosed to other persons only on a confidential basis;

2. the confidentiality of which the undertaking considers necessary for a justified reason;
3. which is not generally available to buyers or potential buyers concerning such undertaking; or
4. which is not available on the basis of an inquiry by or in the name of an undertaking operating in the market.

(2) Misuse of confidential information means the use of confidential information of another undertaking if such information is obtained unlawfully or the use thereof is contrary to an agreement entered into with the other undertaking.

Misuse of Employee or Representative of Another Undertaking

32. Misuse of an employee or representative of another undertaking means influencing him or her to act in the interests of the influencing party or a third person in order to achieve a competitive advantage.

Unfair Restriction or Promotion of Sale of Goods

33.—(1) Unfair restriction of the sale of goods means:

1. restriction of the amount of goods or services to be sold to a buyer or subjecting such sale to any condition unless this is absolutely necessary for using such good or is related to a special offer or arises from legislation; or
2. calling for implementation of a prohibition on sale or purchase against some other undertaking operating in the same market.

(2) Unfair promotion of the sale of goods means subjecting the sale thereof to the obligation to purchase other goods or to find a new buyer.

Chapter 9 State Supervision

State Competition Supervisory Authorities

34.—(1) The Competition Board supervises the implementation of this Act, except in respect of credit institutions, securities brokers and insurance companies.

(2) State supervision over credit institutions, securities brokers and insurance companies is exercised by the State supervision authority in the relevant field whereupon the Competition Board has the right to present opinions as recommendations and exercise control over all mergers.

(3) The rights and obligations of the Competition Board under this Act to exercise State supervision over competition also extend to the State supervision authorities specified in subsection (2) of this section.

Competence of Competition Board

35.—(1) The Competition Board is competent to perform all acts assigned to it by this Act and to take measures to protect competition.

(2) The Competition Board analyses the competitive situation, designs measures to promote competition, makes recommendations to improve the competitive situation, makes proposals to pass or amend legislation and develops co-operation with competition supervisory authorities of other States and associations of States.

Right of Competition Board to Demand Information

36.—(1) The Competition Board has the right to demand information from undertakings, State agencies, local government agencies and natural persons in order to:

1. monitor the situation of competition and markets;
2. conduct proceedings concerning agreements and concerted practices;
3. grant exemptions;
4. monitor the activities of undertakings dominating the market;
5. monitor mergers;
6. conduct proceedings concerning violations or possible violations of this Act;
7. exercise other supervision over implementation of this Act.

(2) The information specified in subsection (1) of this section shall be demanded in writing with a deadline for submission of not less than ten calendar days, whereupon the purpose and legal basis of the request shall be specified and the sanctions provided for the provision of incomplete, incorrect or misleading information or failure to provide information shall be referred to.

(3) The Competition Board has the right to take oral explanations from the persons specified in subsection (1) of this section or their representatives and to prepare a report to be signed by the person preparing the report and the person giving the explanations.

Right of Competition Board to Demand Documentation

37.—(1) In order to exercise supervision over competition, the Competition Board has the right to demand from undertakings, State agencies, local government agencies and natural persons the originals, copies or transcripts of the documents, drafts thereof and other materials necessary for exercising supervision over competition, the authenticity of which shall be certified by the signature of the person submitting such materials. Upon submission of a copy or transcript, the Competition Board has the right to request the original document to check the correctness of the copy or transcript.

(2) At the request of the person who submits the material, the Competition Board shall issue a letter of confirmation to the person concerning receipt of the material. The person has the right to have the originals of the documents, drafts and other materials submitted by him or her returned by the Competition Board after the supervisory proceedings are completed.

Inspection of Seat of Undertaking or Location of Activities of Undertaking

38.—(1) An official or representative of the Competition Board authorised by a directive of the Director General of the Competition Board or his or her deputy has the right, without prior warning or special permission, to inspect the seat or location of the activities, that is, the territory, buildings, rooms and transport vehicles of the undertaking both during working hours and at any time the location of the activities is used in order to establish any violation or possible violation of this Act. The seat of an undertaking or the location of the

activities of an undertaking may also be inspected at any other time with the consent of such undertaking.

(2) At the seat of the undertaking or the location of the activities of an undertaking under inspection, the person conducting such inspection shall present to the undertaking, its representative or employee an extract of the directive issued by the Director General of the Competition Board or his or her deputy concerning the commencement of the proceedings and authorisation of the person conducting the inspection.

(3) Upon an inspection provided for in subsection (1) of this section, an official or representative of the Competition Board has the following rights and obligations:

1. the right to immediately examine documents relating to the activities of the undertaking, drafts thereof and other materials, and to obtain, at the expense of the person under inspection, originals or copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;

2. the right to receive oral explanations from the undertaking, its representatives or employees;

3. the obligation to prepare a summary of the inspection in two original copies which shall be signed by the undertaking under inspection, its representative or employee and of which a copy shall be given to the signatory.

(4) The inspection provided for in subsection (1) of this section shall be conducted with the knowledge of the undertaking, its representative or employee, and they have the right to be present at the inspection.

Proceedings of Matter

39.—(1) The Director General of the Competition Board or his or her deputy shall, within ten calendar days after receipt of a complaint or application concerning a possible violation of law, decide:

1. to commence proceedings of the matter and appoint an official to conduct the proceedings;

2. to refuse to commence proceedings of the matter if it becomes evident from the materials of the complaint or application that the proceedings of the matter are not within the competence of the Competition Board or that this Act has not been violated.

(2) The Director General of the Competition Board or his or her deputy has the right to commence proceedings of a matter on his or her own initiative to analyse the competitive situation in a market, define a market or perform other duties arising from this Act within the competence of the Competition Board.

(3) The Competition Board shall publish a notice concerning the decision to initiate proceedings of a matter in at least one daily national newspaper. Third parties with an interest in the matter or their representatives have the right to present their written opinion concerning the matter. The Competition Board has the right to demand additional information from third parties with an interest in the matter or to invite them to the oral discussion of the matter provided for in subsection (5) of this section.

(4) The aim of the proceedings or the alleged violation of law shall be described to the undertaking under inspection in a written notice and a term of not less than seven calendar days shall be prescribed for submission of written opinions and materials; copies or transcripts of materials (if they exist) which are the basis of the information shall be appended thereto and a reference shall be made to the liability pursuant to this Act.

(5) If necessary, the oral discussion of a matter may be conducted on a date and in a place prescribed by the Director General of the Competition Board or his or her deputy, of which the undertaking shall be notified in writing. At the request of the undertaking under inspection, the Director General of the Competition Board or his or her deputy is required to conduct the oral discussion of the matter in one session.

(6) The undertakings, their representatives, officials of the Competition Board, representatives of the Competition Board and persons invited by agreement of the undertakings and the Competition Board may participate in the oral discussion of a matter. A summary shall be prepared of the discussion, which shall be signed by the participants.

(7) The term for submission of written opinions and materials established by the Director General of the Competition Board or his or her deputy shall not be less than ten calendar days, and notice of the oral discussion of a matter shall be given not less than ten calendar days in advance. At the reasoned request of an undertaking or its representative, the Director General of the Competition Board or his or her deputy has the right to change a determined term.

Termination of Proceedings of Matter

40.—(1) The Director General of the Competition Board or his or her deputy shall make a final decision concerning a matter within three months after receipt of all information. The undertaking under inspection shall be notified of the receipt of all information in writing.

(2) Before making a decision to establish a violation, the undertaking shall be notified thereof in writing and a term of not less than ten days shall be determined during which the undertaking may examine all materials, except the business secrets of other undertakings, and present its position.

(3) Proceedings of a matter shall be terminated by a decision of the Director General of the Competition Board or his or her deputy on:

1. non-establishment of an offence or:
2. establishment of an offence.

(4) A decision specified in subsection (3) of this section shall contain a justification and, if necessary, recommendations, and the decision shall be given to the undertaking against a signature or shall be mailed to it by post with advice of delivery.

(5) A decision specified in clause (3)2. of this section may contain a mandatory precept for the undertaking or a proposal to a government agency or local government agency. The term for fulfilment of a mandatory precept specified in clauses (6)2. or 3. of this section shall not be less than one month from the date of receipt of the decision.

(6) One or several of the following obligations shall be imposed on an undertaking by a mandatory precept provided for in subsection (5) of this section:

1. to terminate the violation;
2. to restore the situation which existed before the violation;

3. to take actions to eliminate the violation of this Act;
4. not to perform acts which may lead to a violation of the requirements of this Act.

(7) Proceedings of a matter shall be terminated by a decision of the Director General of the Competition Board or his or her deputy or shall not be commenced if it becomes evident that the same matter has been filed with a court or a court order in force concerning the matter already exists.

(8) The Competition Board shall publish a decision made pursuant to this section within three months of the entry into force of such decision in at least one daily national newspaper.

Obligation to Maintain Business Secrets

41.—(1) The Competition Board does not have the right to disclose any business secrets of an undertaking to any other person or to make such business secrets public.

(2) Complaints submitted to the Competition Board and decisions, reports and summaries relating to the proceedings of a matter or the activity of an undertaking made by the Director General of the Competition Board or any other official or representative of the Competition Board are not business secrets.

(3) Upon establishing a violation of any of the provisions of this Act, the Competition Board shall not use any information against an undertaking which, in accordance with the provisions of this Act, may not be disclosed to such undertaking.

(4) The Competition Board shall omit business secrets from the texts of decisions published pursuant to this Act.

(5) The Competition Board has the right to submit all information to a court at the request of the court.

Chapter 10 Liability

Liability for Violation of this Act

42.—(1) The following persons are held liable for violation of this Act:

1. natural persons —pursuant to the Code of Administrative Offences;
2. legal persons —pursuant to Sections 43 and 45 of this Act.

(2) If a natural person acting on behalf of or in the interests of a legal person violates this Act or legislation arising therefrom, both persons are held liable for the violation and an administrative punishment may be imposed on both the legal person and the natural person.

(3) Upon imposition of a punishment for violation of this Act or legislation arising therefrom on a legal person, the gravity and nature of the violation and other circumstances, the extent of co-operation by the offender with the Competition Board and termination of the prohibited activity before the imposition of a punishment shall be considered. No punishment is imposed if more than three years have passed from the violation or termination of performance of a contract or the contract becoming void.

Liability for Non-Fulfilment of Request or Decision

43.—(1) If an undertaking fails, without good reason, to submit information or materials by the deadline demanded in a written demand of the Competition Board on a basis provided for in Sections 27 or 36—39 of this Act, prevents the inspection of the location of its activities, or, without good reason, refuses inspection prescribed by a directive of the Director General of the Competition Board or his or her deputy or fails to appear, without good reason, at an oral discussion, the Director General of the Competition Board or his or her deputy may by a decision impose a fine of up to 2 000 kroons per calendar day, subject to mandatory collection as of the day following the date of imposition of the fine until the day the undertaking submits written information to the Competition Board or allows inspection (the last day excluded).

(2) If an undertaking fails to fulfil or unsatisfactorily fulfils a mandatory precept set out in a decision of the Director General of the Competition Board or his or her deputy as provided for in subsection 40(6) of this Act by the date specified in the decision, the Director General of the Competition Board or his or her deputy may by a decision impose a fine of up to 5 000 kroons per calendar day, subject to mandatory collection as of the day following the date of imposition of the fine until the day the undertaking fulfils the precept set out in the decision and notifies the Competition Board thereof in writing (the last day excluded).

Appeal of Decisions

44.—(1) An undertaking has the right to file an appeal with a court against a decision of the Director General of the Competition Board or his or her deputy on the imposition of a fine specified in Section 43 of this Act pursuant to the procedure provided for in the Code of Administrative Offences within one month from the date such decision is received.

(2) An appeal suspends execution of a decision on the imposition of a fine by the Director General of the Competition Board or his or her deputy, unless the court decides otherwise. If the court rules that the decision of the Director General of the Competition Board or his or her deputy is lawful, the undertaking shall pay the fine as of the day following the date of imposition of the fine until the day the appeal was made (the last day excluded) and shall continue to pay the fine from the day following the passage of ten days from the entry into force of the court order until the day the requirement or precept set out in the decision is fulfilled (the last day excluded).

(3) If the court rules that the decision of the Director General of the Competition Board or his or her deputy is unlawful, the collected fine shall be returned to the undertaking which paid the fine, to the extent determined by the court.

Liability of Legal Person for Administrative Offence

45.—(1) For submission of incorrect, incomplete or misleading information or for failure to give notice of a merger or to give notice of a merger on time to the Competition Board, a fine of up to one per cent of the net turnover of the financial year of the offender preceding the year that the decision to impose a fine is made shall be imposed, but not less than 10 000 kroons.

(2) For concerted practices, enforcement of a prohibited agreement, failure to apply for an exemption for an agreement which requires exemption within six months from entry into such agreement, failure to fulfil a condition or obligation established in a decision of exemption, for abuse of a dominant position of an undertaking in the market or for planning such acts, a fine of up to five per cent of the net turnover of the financial year of the offender

preceding the year that the decision to impose a fine is made shall be imposed, but not less than 20 000 kroons.

(3) For failure to fulfil the obligations provided for in Section 18 of this Act imposed on an undertaking with special or exclusive rights or a natural monopoly, a fine of up to one per cent of the net turnover of the financial year of the offender preceding the year that the decision to impose a fine is made shall be imposed, but not less than 10 000 kroons.

(4) Administrative judges have the right to impose punishments for the administrative offences provided for in this section.

Preparation of Administrative Offence Report

46.—(1) The Director General, his or her deputy, department heads, deputy department heads and chief specialists of the Competition Board have the right to prepare reports of administrative offences provided for in Section 45 of this Act.

(2) A report specified in subsection (1) of this section need not be prepared if the situation in the market has been remedied and the losses, if any, have been compensated for.

(3) A report specified in subsection (1) of this section shall include the following information:

1. the date and place of preparation;
2. the name and address of the agency in whose name the report is prepared;
3. the official title, given name and surname of the person who prepared the report;
4. the name or business name, registration number and seat of the administrative offender;
5. the given name, surname and office of the representative of the administrative offender;
6. the place, time and description of the administrative offence;
7. a reference to the provisions of this Act which are the basis for imposition of administrative liability;
8. the explanation provided by the representative of the administrative offender or a notation concerning the refusal to provide an explanation.

(4) The person who prepares the report and the administrative offender or his or her representative shall sign the report. If the administrative offender or his or her representative refuses to sign the report, a corresponding entry shall be made therein. Written notations of the administrative offender or his or her representative concerning the report and on refusal to sign the report shall be appended to the report.

Proceedings Concerning Administrative Offences

47.—(1) Proceedings concerning administrative offences by legal persons provided for in this Act are conducted pursuant to the procedure provided for in the Code of Administrative Offences (RT 1992, 29, 396; RT 1 1997, 66—68, 1109; 73, 1201; 81, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561 and 1563; 93, 1564 and 1565; 1998, 2, 42; 17, 265; 23, 321) and the Code of Enforcement Procedure (RT 1 1993, 49, 693; 1997, 43/44, 723), unless otherwise provided by this Act.

Compensation for Damage

48. Proprietary or other damage caused by actions prohibited by this Act shall be compensated for by way of civil procedure.

Chapter 11 Implementing Provisions

Amendments to Code of Administrative Offences

49. The references specified in clause 228(1)16. of the Code of Administrative Offences are amended and worded as follows: “Section 137², subsection 159(1)”.

Amendments to Commercial Code

50. The Commercial Code is amended as follows:

1. the following text is added to subsection 393(2):

“, with the exception of cases where the realised net turnover of the merging commercial undertakings for the financial year exceeds one hundred million kroons or the merging commercial undertakings have control over more than 40 per cent of the market”;

2. clause 9) is added to subsection 400(1) with the following wording:

“9) the confirmation from the Competition Board of receipt of all necessary information concerning the merger, if the realised net turnover of the merging commercial undertakings for the financial year exceeds one hundred million kroons or the merging commercial undertakings have control over more than 40 per cent of the market.”.

Implementation of Act

51.—(1) This Act applies to all agreements and concerted practices which restrict competition and are in force at the moment of entry into force of this Act and which are carried out thereafter.

(2) An application for exemption concerning an agreement entered into before the entry into force of this Act is deemed to be submitted without exceeding the deadline specified in this Act if it is submitted to the Competition Board within six months after the entry into force of this Act.

(3) The Minister of Finance shall make a report concerning the grant of State aid in 1996 and 1997 during 1999 pursuant to Section 25 of this Act.

Repeal of Act

52. The Competition Act (RT 1993, 47, 642; 1995, 26—28, 355; 1996, 49, 953) is repealed.

Entry into Force of Act

53. This Act enters into force on October 1, 1998.
