

THE ACT ON THE PROTECTION OF COMPETITION

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SECTION I

Purpose, Scope, Definitions

Purpose

Article 1- The purpose of this Act is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end.

Scope

Article 2- Agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the boundaries of the Republic of Turkey, and the abuse of dominance by the undertakings dominant in the market, and any kind of legal transactions and behaviour having the nature of mergers and acquisitions which shall decrease competition to a significant extent, and transactions related to the measures, establishments, regulations and supervisions aimed at the protection of competition fall under this Act.

Definitions

Article 3- In implementation of this Act, the terms express the following:

Ministry: The Ministry of Industry and Trade,

Competition: The contest between undertakings in markets for goods and services, which enables them to take economic decisions freely,

Dominant Position: The power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers,

Undertaking: Natural and legal persons who produce, market and sell goods or services in the market, and units which can decide independently and do constitute an economic whole,

Association of Undertakings: Any kind of associations with or without a legal personality, which are formed by undertakings to accomplish particular goals,

Goods: Any kind of movable or immovable property which is the subject of trade,

Services: Physical, intellectual or combined activities carried out in return for a cost or interest,

Authority: Competition Authority,

Board: Competition Board.

SECTION II

CHAPTER ONE

Prohibited Activities

Agreements, Concerted Practices and Decisions Limiting Competition

Article 4- Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

Such cases are, in particular, as follows:

- a)** Fixing the purchase or sale price of goods or services, elements such as cost and profit which form the price, and any terms of purchase or sale,
- b)** Partitioning markets for goods or services, and sharing or controlling all kinds of market resources or elements,
- c)** Controlling the amount of supply or demand in relation to goods or services, or determining them outside the market,
- d)** Complicating and restricting the activities of competing undertakings, or excluding firms operating in the market by boycotts or other behaviour, or preventing potential new entrants to the market,
- e)** Except exclusive dealing, applying different terms to persons with equal status for equal rights, obligations and acts,
- f)** Contrary to the nature of the agreement or commercial usages, obliging to purchase other goods or services together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or putting forward terms as to the resupply of a good or service supplied.

In cases where the existence of an agreement cannot be proved, that the price changes in the market, or the balance of demand and supply, or the operational areas of undertakings are similar to those markets where competition is prevented, distorted or restricted, constitutes a presumption that the undertakings are engaged in concerted practice.

Each of the parties may relieve itself of the responsibility by proving not to engage in concerted practice, provided that it is based on economic and rational facts.

Exemption

Article 5- The Board, in case all the terms listed below exist, may decide **(Annulled: 02.07.2005-Article 5388/1)[1] (...)** to exempt agreements, concerted practices between undertakings, and decisions of associations of undertakings from the application of the provisions of article 4:

- a)** Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,
- b)** Benefitting the consumer from the above-mentioned,
- c)** Not eliminating competition in a significant part of the relevant market,
- d)** Not limiting competition more than what is compulsory for achieving the goals set out in subparagraphs (a) and (b).

(Amended: 02.07.2005-Article 5388/1)[2] *Exemption may be granted for a definite period, just as the granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. Exemption decisions are valid as of the date of concluding an agreement or*

committing a concerted practice or taking a decision of an association of undertakings, or fulfilling a condition if it has been tied to a condition.

In case the terms mentioned in the first paragraph are fulfilled, the Board may issue communiqués which ensure block exemptions for the types of agreements in specific subject-matters and which indicate their terms.

Abuse of Dominant Position

Article 6- The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited.

Abusive cases are, in particular, as follows:

- a)** Preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market,
- b)** Making direct or indirect discrimination by offering different terms to purchasers with equal status for the same and equal rights, obligations and acts,
- c)** Purchasing another good or service together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or imposing limitations with regard to the terms of purchase and sale in case of resale, such as not selling a purchased good below a particular price,
- d)** Actions which aim at distorting competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by dominance in a particular market,
- e)** Restricting production, marketing or technical development to the prejudice of consumers.

Mergers or Acquisitions

Article 7- Merger by one or more undertakings, or acquisition by any undertaking or person from another undertaking – except by way of inheritance – of its assets or all or a part of its partnership shares, or of means which confer thereon the power to hold a managerial right, with a view to creating a dominant position or strengthening its / their dominant position, which would result in significant lessening of competition in a market for goods or services within the whole or a part of the country, is illegal and prohibited.

The Board shall declare, via communiqués to be issued by it, the types of mergers and acquisitions which have to be notified to the Board and for which permission has to be obtained, in order them to become legally valid.

CHAPTER TWO

Powers of the Board

Negative Clearance

Article 8- Upon the application by the undertaking or associations of undertakings concerned, the Board may, on the basis of information in hand, grant a negative clearance certificate indicating that an agreement, decision, practice or merger and acquisition are not contrary to articles 4, 6 and 7 of this Act.

The Board may, after issuing such a certificate, revoke its opinion at any time, under the conditions set out in article 13. However, in this case, criminal sanction is not applied to the parties for the period until the change of opinion by the Board.

Termination of Infringement

Article 9- If the Board, upon informing, complaint or the request of the Ministry or on its own initiative, establishes that articles 4, 6 and 7 of this Act are infringed, it notifies the undertaking or associations of undertakings concerned of the decision encompassing those behaviour to be fulfilled or avoided so as to establish competition and maintain the situation before infringement, in accordance with the provisions mentioned in section Four of this Act.

Natural and legal persons who have a legitimate interest are entitled to file a complaint.

The Board, prior to taking a decision pursuant to the first paragraph, shall inform in writing the undertaking or associations of undertakings concerned of its opinions concerning how to terminate the infringement.

Where the occurrence of serious and irreparable damages is likely until the final decision, the Board may take interim measures which have a nature of maintaining the situation before the infringement and which shall not exceed the scope of the final decision.

(...)[3] Notification of Mergers and Acquisitions to the Board

Article 10- (Annulled paragraph one: 02.07.2005-5388/Article 2)[4]

As of the date the Board is notified of merger or acquisition agreements falling under article 7, the Board is, as a result of the preliminary examination to be performed by it within fifteen days, obliged to permit the merger or acquisition transaction, or if it decides to deal with this transaction under final examination, it is obliged to duly notify, with its preliminary objection letter, those concerned of the fact that the merger or acquisition transaction is suspended and cannot be put into practice until the final decision, together with other measures deemed necessary by it. In this case, the provisions of articles 40-59 of this Act shall be applicable.

Where the Board does not respond to or take any action for the application as to a merger or acquisition within due time, merger or acquisition agreements shall take effect and become legally valid after 30 days as of the date of the notification.

Failure to Notify Mergers and Acquisitions to the Board

Article 11- Where a merger and acquisition transaction whose notification to the Board is compulsory is not notified to the Board, the Board shall deal with the merger or acquisition under examination on its own initiative, when it is informed about the transaction anyway. As a result of the examination;

a) it allows the merger or acquisition in case it decides that the merger or acquisition does not fall under the first paragraph of article 7, but imposes fines on those concerned due to their failure to notify.

b) in case it decides that the merger or acquisition falls under the first paragraph of article 7, it decides that the merger or acquisition transaction be terminated, together with fines; all de facto situations committed contrary to the law be eliminated; any shares or assets seized be returned, if possible, to their former owners, whose terms and duration shall be determined by the Board, or if not possible, these be assigned and transferred to third parties; the acquiring persons may

by no means participate in the management of undertakings acquired during the period until these are assigned to their former owners or third parties, and that other measures deemed necessary by it be taken.

Notification

Article 12- Notification fully and completely includes information required by the Notification Forms to be prepared by the Board. Either of the parties may submit the notification. The notifying party is obliged to inform the other party concerned of the situation. Relevant documents are enclosed with the notification, and the notification shall be considered to have been submitted on the date it is entered in the records of the Board.

Revocation of Exemption and Negative Clearance Decisions

Article 13- Exemption and negative clearance decisions may be revoked, or particular behaviour of the parties may be prohibited in the following cases:

- a)** Change in any event constituting the basis of the decision,
- b)** Failure to fulfil the terms or obligations resolved,
- c)** Having taken the decision on the basis of incorrect or incomplete information concerning the agreement in question.

Revocation decision shall be effective as of the date of the change in sub-paragraph (a), and the date of taking the exemption or negative clearance decision in other cases.

In case incorrectness and incompleteness mentioned in sub-paragraph (c) take place by the fraud or intent of the undertaking concerned, the decision shall be deemed not to have been taken at all.

Request for Information

Article 14- In carrying out the duties assigned to it by this Act, the Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings.

Officials of these authorities, undertakings and associations of undertakings are obliged to provide the requested information within the period to be determined by the Board.

On-the-Spot Inspection

Article 15- In carrying out the duties assigned to it by this Act, the Board may perform examinations at undertakings and associations of undertakings in cases it deems necessary. To this end, it is entitled to:

- a)** Examine the books, any paperwork and documents of undertakings and associations of undertakings, and take their copies if needed,
- b)** Request written or oral statement on particular issues,
- c)** Perform examinations on the spot with regard to any assets of undertakings.

Examination is performed by experts employed at the disposal of the Board. While going for an examination, experts carry with them an authorization certificate showing the subject-matter and

purpose of the examination, and that an administrative fine shall be imposed should incorrect information be provided.

(Supplementary paragraph: 01.08.2003-4971/Article 25): *Those concerned are obliged with providing the copies of information, documents, books and other instruments requested. In case an on-the-spot inspection is hindered or likely to be hindered, the on-the-spot inspection is performed with the decision of a criminal magistrate.*

CHAPTER THREE

Administrative Fines

Administrative Fine

Article 16- (Amended Article: 23.1.2008-5728/Article 472)[5] Among the cases that
a) false or misleading information or document is provided in exemption and negative clearance applications and in authorization applications for mergers and acquisitions,
b) mergers and acquisitions that are subject to authorization are realized without the authorization of the Board,
c) in implementation of articles 14 and 15 of the Act, incomplete, false or misleading information or document is provided, or information or document is not provided within the determined duration or at all,
d) on-the-spot inspection is hindered or complicated,

the Board shall impose on natural and legal persons having the nature of an undertaking and on associations of undertakings or members of such associations an administrative fine by one in thousand of annual gross revenues of undertakings and associations of undertakings or members of such associations which generate by the end of the financial year preceding the decision, which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board for those mentioned in sub-paragraphs (a), (b) and (c), and by five in thousand of their gross revenues to be calculated in the same manner for those mentioned in sub-paragraph (d). However, the penalty to be determined pursuant to this principle cannot be less than ten thousand Turkish Liras. Pursuant to sub-paragraph (b) of this paragraph, administrative fine is imposed to either of the parties in merger transactions and only to the acquirer in acquisition transactions.

The realization of on-the-spot inspection with a court decision shall not hinder the application of an administrative fine provided for in this Act in relation to the hindrance and complication of on-the-spot inspection.

To those who commit behaviour prohibited in articles 4, 6 and 7 of this Act, an administrative fine shall be imposed up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations to be imposed a penalty, which generate by the end of the financial year preceding the decision, which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board.

In case administrative fines mentioned in paragraph three are imposed on undertakings or associations of undertakings, an administrative fine up to five percent of the penalty imposed on the undertaking or association of undertakings shall be imposed on managers or employees of the undertaking or association of undertakings who are determined to have a decisive influence in the infringement.

When deciding on an administrative fine pursuant to paragraph three, the Board shall take into consideration issues such as the repetition of infringement, its duration, market power of undertakings or associations of undertakings, their decisive influence in the realization of infringement, whether they comply with the commitments given, whether they assist with the examination, and the severity of damage that takes place or is likely to take place, within the context of article 17 paragraph two of the Faults Act dated 30/3/2005 and numbered 5326.

To those undertakings or associations of undertakings or their managers and employees making an active cooperation with the Authority for purposes of revealing contrariness to the Act, penalties mentioned in paragraphs three and four may not be imposed or reductions may be made in penalties to be imposed pursuant to such paragraphs taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly.

Issues taken into consideration in fixing administrative fines to be imposed pursuant to this article, terms for immunity from or reduction of fines in case of cooperation, and procedures and principles in relation to cooperation shall be determined by communiqués to be issued by the Board.

Proportional Administrative Fine

Article 17- (Amended Article: 23.1.2008-5728/Article 473)6 Provided that penalties mentioned in article 16 paragraph one are reserved, the Board shall, for each day, impose on undertakings and associations of undertakings an administrative fine by five in ten thousand of annual gross revenues of the relevant undertakings and associations of undertakings and/or members of such associations which generate by the end of the financial year preceding the decision, which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board in the event that

- a)** obligations introduced or commitments made by a final decision or interim measure decision are not complied with,
- b)** on-the-spot inspection is hindered or complicated,
- c)** in implementation of articles 14 and 15 of the Act, information or document requested is not provided within the duration determined.

Pursuant to paragraph one sub-paragraphs (a) and (c), administrative fines can be imposed from the completion of the duration determined for complying with the obligations in the decisions mentioned in these sub-paragraphs. The administrative fine related to the act in sub-paragraph (a) can be imposed from the day following the notice of this decision if any duration has not been determined in the decision where an obligation is introduced. And the administrative fine related to the acts in sub-paragraph (b) can be imposed from the day following the day when the act has been realized.

Nature and Application of Fines Imposed Pursuant to This Act

Article 18- (Annulled: 23.1.2008-5728/Article 578)7

Prescription in Fines and Periodic Fines

Article 19- (Annulled: 23.1.2008-5728/Article 578)8

SECTION THREE

Organization

Competition Authority

Article 20- The Competition Authority having a public legal personality, and an administrative and financial autonomy is established in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment, to observe the implementation of this Act, and to fulfil the duties assigned to it by the Act.

The Ministry to which the Authority relates is the Ministry of Industry and Trade.

The Authority is independent in fulfilling its duties. No organ, authority and person may give commands and orders to influence the final decision of the Authority.

The central office of the Authority is based in Ankara.

Organization of the Competition Authority

Article 21- The organization of the Authority consists of the

a)Competition Board,

b)Presidency,

c)Service Units.

CHAPTER ONE

Competition Board

Organization of the Board

Article 22- (Amended Article: 02.07.2005-5388/Article 3)⁹ *The Competition Board is composed of a total of 7 members, one being the Chairman and the other being the Deputy Chairman.*

The Council of Ministers elects and appoints the members from among the two candidates apiece, to be nominated from inside or outside the following institutions for each vacant membership: two members from the Competition Board, one member from the Ministry of Industry and Trade, one member from the Ministry of State with which the Undersecretariat of State Planning Organization is affiliated, and one member apiece from the Supreme Court of Appeal, Council of State, and Turkish Union of Chambers and Commodity Exchanges.

The Council of Ministers shall commission one of the three candidates to be nominated by the Board as the President/Chairman. The Deputy President/Chairman is elected by the members of the Board.

Qualifications for Appointment

Article 23- The Chairman and members of the Board shall be appointed from among those who had a four-year higher education in law, economics, engineering, management or finance, either at home or abroad, possess a sufficient degree of professional knowledge and experience, and have worked in the public or private sector for at least 10 years, in line with their professions. Furthermore, it is compulsory that the members bear the qualifications mentioned in article 48 paragraph (A) sub-paragraphs 1, 4, 5, 6 and 7 of the Civil Servants Act No. 657.

Term of Office

Article 24- The term of office of the Chairman, Deputy Chairman and members of the Board is six years. The member whose term has expired is eligible for re-election. One third of the members of the Board is renewed every two years. During renewal, numbers and ratios in the provisions concerning the organization of the Board are taken into account. Should the Chairmanship and memberships be vacated before the expiration of the term of office, due to any reason other than renewal, election and appointment are carried out within one month for the vacated seats. The one appointed in such a case completes the term of the person he replaces.

"The offices of the Chairman and members of the Board cannot be terminated due to any reason prior to the completion of their term. However, the offices of the Chairman and members of the Board shall be terminated where, by the decision of the Board, they are found to have lost the qualifications required for their appointment or their position is found to be contrary to article 25 of this Act, or where their offence with regard to the duty vested in them by the Act is proven by a court decision".

Prohibitions

Article 25- The Chairman and members of the Board may not undertake any official or private mission, engage in commerce, be shareholders in partnerships, unless it is based on a special Act.

The Chairman and members of the Board are, prior to assuming office, obliged to dispose of all kinds of securities in their possession within the meaning of the capital market legislation, apart from securities issued by the Treasury in connection with borrowing, by means of selling or transferring them to persons other than their kin by blood up to the third degree and their kin by marriage up to the second degree. Those members who do not act in conformity with this provision within 30 days shall be deemed to have resigned from membership.

Positions in associations and foundations which aim at social assistance and education, and partnership in non-profit cooperatives fall outside this provision.

The members and staff of the Board may not disclose and use in their own or others' interests the confidential information as to the Authority, and trade secrets of undertakings and associations of undertakings that they learned during the implementation of this Act, even if they have left their office.

Oath

Article 26- Before the First Presidential Court of the Supreme Court of Appeal, the members of the Board take an oath that during their term of office, they shall carry out the tasks of the Board with full attention and honesty, and they shall not act or allow others to act contrary to the provisions of the Act.

The application made for the oath is deemed to be among the urgent business by the Supreme Court of Appeal. The Chairman and members of the Board may not assume office before taking an oath.

Duties and Powers of the Board

Article 27- The duties and powers of the Board are as follows:

- a)** To carry out, upon application or on its own initiative, examination, inquiry and investigation about the activities and legal transactions prohibited in this Act; to take the necessary measures for terminating infringements upon establishing that the provisions provided in this Act are infringed, and to impose administrative fines on those responsible for them,
- b)** To evaluate the requests of those concerned for exemption and negative clearance, and to grant an exemption and negative clearance certificate to the appropriate agreements,
- c)** To constantly follow up the markets to which exemption decisions and negative clearance certificates are related, and to re-evaluate the applications of those concerned in case changes are established in these markets or in the positions of the parties,
- d)** To permit mergers and acquisitions,
- e)** To elect the Deputy Chairman of the Board,
- f)** To issue communiqués and make the necessary regulations as to the implementation of this Act,
- g)** To opine, directly or upon the request of the Ministry, concerning the amendments to be made to the legislation with regard to the competition law,
- h)** To monitor legislations, practices, policies and measures of the other countries, concerning agreements and decisions limiting competition,
- i)** To determine and observe the implementation of the personnel policies of the Authority, to perform the appointment transactions of the personnel, to approve the annual budget, final account of revenues and expenses, and annual work schedules of the Authority, which are prepared by the Presidency, and to decide for transfers among the accounts in the budget if needed,
- j)** To determine the candidates to be nominated by the Authority for the vacated Board memberships,
- k)** To issue an annual report on its works, and the situation and developments in its fields of duty,
- l)** To negotiate and resolve the suggestions about purchases such as the procurement of movable and real property and fixtures, and about sales and leasings, and to make the necessary regulations therein,
- m)** To decide on any kind of transactions about credits, rights and obligations of the Authority concerning third parties,
- n)** To fulfil the other duties assigned by the Act.

Functioning Principles of the Board

Article 28- The Board is chaired and represented by the Chairman, and by the Deputy Chairman in cases of leave, sickness, traveling and in other cases where the Chairman is not present.

Meeting is chaired by the Chairman of the Board, or by the Deputy Chairman in his absence, and prior to the meeting, he determines the agenda to be resolved, and advises it to the members of the Board.

The members of the Board may not take part in negotiations and votings in events concerning themselves, and their kin by blood up to the third degree and their kin by marriage up to the second degree.

CHAPTER TWO

Presidency

Article 29- The Presidency is composed of the Chairman of the Board, the Deputy Chairman and the Vice-Chairmen of the Board.

The Chairman of the Board is the highest ranking chief of the Authority, and is responsible for the overall management and representation of the Authority.

This responsibility encompasses the duties and powers as to the regulation, supervision, evaluation of the works of the Authority within a general framework, and their announcement to the public when necessary.

Duties and Powers of the Presidency

Article 30- The duties and powers of the Presidency are as follows:

- a)** To ensure the organization and coordination at the highest level that the Competition Board which is the decisive body of the Authority and the service units work in harmony, efficiently, in a disciplined and orderly manner, and to solve the problems likely to occur between the service units of the Authority with respect to duties and powers,
- b)** To determine the agenda, date and time of the Board meetings, and to run the meetings,
- c)** To ensure the fulfilment of what is required by the Board decisions, and to monitor the implementation of these decisions,
- d)** To finalize and submit to the Board suggestions received from the service units,
- e)** To prepare and submit to the Board the annual budget, final account of revenues and expenses, and annual work reports of the Authority, and to ensure the implementation of the budget of the Authority, the collection of revenues and the carrying out of expenses,
- f)** To opine about decisions to be taken as to the competition policy, and the relevant legislation,
- g)** To arrange for and conduct the relations of the Authority with the Ministry and other organizations,
- h)** To represent the Authority in the presence of official and private organizations,
- i)** To ensure that final decisions of the Board, and communiqués and Regulations to be prepared by the Authority are published,
- j)** To determine the scope of duty and power of the personnel authorized to sign on behalf of the Chairman of the Board.

Vice-Presidents (Vice-Chairmen)

Article 31- Two Vice-Presidents may be commissioned for purposes of assisting the President in conducting the Presidential services. Vice-Presidents are obliged to fulfil duties and carry out instructions given by the President, and to ensure harmony and cooperation between the levels of the organization and the service units concerned.

Service Units

Article 32- The service units of the Competition Authority are composed of the main service units organized as Department Head Offices, advisory units and auxiliary service units.

Supervision

Article 33- Accounts of the Authority are subject to the supervision of the State Audit Court.

CHAPTER THREE

Status of the Personnel of the Authority

Article 34- The essential and permanent duties required by the services of the Authority are conducted via the personnel employed on a contractual basis with an administrative service contract. Adequate number of expert professional staff and specialized non-career personnel may be employed at the disposal of the Authority.

The personnel of the Authority is subject to the Civil Servants Act No. 657, apart from the salary and financial rights. The Board is free in arranging the statuses of establishment and staff in compliance with the needs. The cancellation and creation of posts are carried out by the Board.

Those services calling for temporariness or a particular expertise are determined by the Presidency. Proxy or job contract provisions are applicable to personnel to be employed in such tasks. For those to be employed pursuant to this paragraph, salaries they receive from social security organizations shall not be cut off.

Foreign experts may also be employed pursuant to the principles of the Regulations which shall be prepared by the Presidency and which shall take effect upon the approval of the Board.

Appointment as Assistant Experts on Competition

Article 35- The following qualifications are sought for enabling appointment as assistant experts on competition:

- a)(Amended sub-paragraph: 02.07.2005-5388/Article 4)10** *To be a graduate of at least four-year higher education from faculties of law, economics, political sciences, management, economic and administrative sciences, or from management engineering or industrial engineering departments, or of higher education institutions abroad which are deemed equivalent to them,*
- b)(Amended sub-paragraph: 02.07.2005-5388/Article 4)11** *To succeed in the examination to be held jointly or separately for the branches listed in the sub-paragraph above,*
- c)** To succeed in the foreign language examination to be held in one of the English, French and German languages,
- d)** Not to be over thirty years of age as of the first day of January of the examination year.

Other necessary requirements are determined in the examination Regulations to be issued by the Board.

Experts on Competition

Article 36- Those appointed as assistant experts on competition pursuant to article 35 are awarded the title of "Expert on Competition" in case their expertise thesis which they shall prepare or have already prepared concerning their topics is approved by the Board, provided that they have worked for at least three years and received a positive record.

Experts and assistant experts on competition bear the title and possess the power of professional staff.

Salary and Other Financial Rights

Article 37- Monthly salaries of the Chairman and members of the Board are determined by the Council of Ministers upon the proposal of the Ministry of Industry and Trade, provided that they do not exceed twice the salary of the highest ranking civil servant, including all payments. Those which are not subject to the income tax among the payments made to the highest ranking civil servant shall also not be subject to the income tax pursuant to this Act.

Salaries and other financial rights of the Authority personnel are determined by the Board upon the proposal of the Presidency, under the principles in the first paragraph with regard to salaries and making changes thereto.

Considering the Retirement and Service Periods

Article 38- The Chairman and members of the Board, and the other personnel are subject to the Pensioner's Fund Act. From among the persons who are subject to the Civil Servants Act No. 657, those appointed to the Chairmanship or memberships of the Board, and those employed in the Authority return to the position as a civil servant, and are appointed to an office compatible with their status, in case their term of office expires. In such a case, the periods they served in the Authority are considered in their services pursuant to the provisions of the Act they are subject to.

These provisions are also applicable to the Chairman and members, experts or the other personnel who come from universities, with reserving the necessary requirements for receiving academic titles.

With regard to retirement, the Chairman of the Board, the members of the Board and the Heads of Departments are considered to be at the same level with the Undersecretary of the Ministry, the Deputy Undersecretaries of the Ministry, and the General Managers of the Ministry respectively. The status of the other personnel as to retirement shall be indicated in the Regulations which shall be prepared by the Presidency and which shall be put into force upon the approval of the Board.

Revenues of the Authority

Article 39- Revenues of the Authority set up the budget of the Authority, and they are made up of the following items of revenues:

- a) The subsidy to be allocated in the budget of the Ministry,
- b) **(Annulled: 01.08.2003-4971/Article 25-B)12**
- c) **(Supplement: 17/9/2004-5234/Article 29)** *Payments to be made by four per ten thousand of the capitals of all partnerships to be newly established with the status of an incorporated and limited company, and that of the remaining portion in case of capital increase,13*
- d) Publication and other revenues.

Revenues belonging to the Authority are collected in an account to be opened in the Central Bank of the Republic of Turkey or a state bank. **(Annulled last sentence: 01.08.2003-4971/Article 25-B)14**

SECTION FOUR

Procedure in Examinations and Inquiries of the Board

Preliminary Inquiry

Article 40- On its own initiative or upon the applications filed with it, the Board decides to open a direct investigation, or to conduct a preliminary inquiry for determining whether or not it is necessary to open an investigation.

Should it be decided to conduct a preliminary inquiry, the Chairman of the Board assigns one or more of the experts among the professional staff as reporters.

The reporter who is entrusted with the task of conducting a preliminary inquiry notifies the Board in writing within 30 days of the information and any evidence obtained by him, and his comments about the issue.

Conclusion of Preliminary Inquiry

Article 41- Within 10 days following the submission of the preliminary inquiry report to the Board, the Board convenes in order to evaluate the information obtained and make a decision, and decides on whether or not to open an investigation.

Notification of Applicants

Article 42- In case the Board deems the claims put forward in applications for informing or complaint serious and sufficient, informers or complainants are notified in writing that the claims put forward have been deemed serious and that an inquiry has been initiated.

In cases where the Board either expressly rejects applications, or is deemed to have rejected them by means of failure to notify within due period, anyone who documents to have a direct or indirect interest may resort to jurisdiction against the rejection decision of the Board.

Commencement of Investigation by the Board

Article 43- (Amended first sentence: 02.07.2005-5388/Article 5)15 *If an investigation is decided to be performed, the Board designates the reporter or reporters who shall conduct the investigation under the supervision of the head of department concerned.* The investigation shall be concluded within 6 months at the latest. In cases where it is deemed necessary, an additional period of up to 6 months may be granted by the Board on a one-time only basis.

The Board notifies the parties concerned of investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation, and requests that the parties submit their first written pleas within 30 days. In order to enable the commencement of the first written reply period granted to the parties, it is required that the Board forwards to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims.

The decision of the Board to initiate an investigation is final.

Collecting Evidence and Informing the Parties

Article 44- A delegation acting on behalf of the Board and composed of **(Annulled phrase: 02.07.2005-5388/Article 5)16 (...)** reporters designated and commissioned by the Board may, during the investigation stage, exercise the powers to request information and carry out an on-the-spot inspection as provided in articles 14 and 15 of this Act respectively. Within this period determined, it may request from the parties and the other places concerned the forwarding of paperwork and the provision of any information which are deemed necessary by it. During the investigation stage of the Board, the person or persons claimed to have infringed this Act may, at all times, submit to the Board any information and evidence likely to influence the decision.

Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any paperwork drawn up within the Authority in connection with themselves, and if possible, a copy of any evidence obtained.

The Board may not base its decisions on issues about which the parties have not been informed and granted the right to defense.

Notice and Reply

Article 45- The report prepared at the end of the investigation stage is notified to all members of the Board and the parties concerned.

Those determined to have infringed this Act are notified to submit their written pleas to the Board within 30 days. Those charged with conducting the investigation declare an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Board and the parties concerned. The parties may reply to such opinion within 30 days. In case the parties provide justifiable grounds, these periods may be extended only once and by one fold at the most.

The pleas of the parties not submitted within due period shall not be taken into account.

Hearing

Article 46- Hearing is held upon the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defense. Furthermore, the Board may decide on its own initiative to hold a hearing.

Hearing is held within at least 30 days and at most 60 days from the end of the investigation stage. Invitations for the hearing are forwarded to the parties at least 30 days before the day of the hearing.

Principles Concerning the Hearing

Article 47- Hearings are held publicly. The Board may decide to hold the hearing in camera on grounds of protecting the general morals and trade secrets.

Hearings are chaired by the Chairman of the Board, or by the Deputy Chairman of the Board in his absence. The meeting is held with the participation of the Chairman of the Board or the Deputy Chairman, and at least **(Amended phrase: 02.07.2005-5388/Article 5)17** four members of the Board.

Hearings are completed in no longer than 5 consecutive sessions, and various meetings held within the same day are deemed as one session.

The parties are obliged to notify, 7 days before the hearing at the latest, the Board of the means of proof they shall utilize in the hearing. The parties may not utilize the means of proof not notified within due period.

During the hearing, the parties concerned may utilize any evidence and means of proof provided in the Part Two Chapter Eight of the Code of Civil Procedure. The parties claimed to have infringed this Act, or their representatives, and those who prove to the Board prior to the session that they have direct or indirect interests, or their representatives may participate in sessions.

Final Decision

Article 48- The decision is made on the same day after the hearing, or if not possible, within 15 days, together with its grounds.

In cases where a hearing is not requested by the parties, and the Board does not decide to hold a hearing on its own initiative, the final decision is made within 30 days following the end of the investigation stage, pursuant to the examination to be performed on the file.

In case the parties concerned fail to attend the hearing despite the decision to hold a hearing, the decision is made within one week following the date of the meeting determined, pursuant to the examination to be performed on the file.

Confidentiality of Meetings

Article 49- Decisions of the Board are taken as a result of confidential meetings and are communicated publicly. No member of the Board may cast an abstention vote. Except for the ones having an excuse, members who have been present at the hearing are obliged to participate in meetings.

Procedure in the Meeting

Article 50- The meeting is chaired by the Chairman of the Board, or in his absence, by the Deputy Chairman, and he determines matters to be resolved. After such matters are discussed freely, the Chairman collects the votes and casts his own vote finally.

Meeting and Decision Quorum

Article 51- In its final decisions, the Board convenes with the participation of at least a total of **(Amended phrase: 02.07.2005-5388/Article 5)18** *five* members including the Chairman or the Deputy Chairman, and it decides via the parallel votes of at least **(Amended phrase: 02.07.2005-5388/Article 5)19** *four* members.

Where the necessary quorum for the decision cannot be attained in the first meeting, the Chairman ensures that all members participate in the second meeting. However, if not possible, the decision is made via the absolute majority of the participants in the meeting. In this case, the quorum for the meeting may also not be less than the one mentioned in the first paragraph. In case of a tie vote in the second meeting, the vote of the side of the Chairman is deemed preponderant.

For decisions except the final decision, and particularly for decisions and transactions having the nature of measures and recommendations, it is required that at least one third of the members of the Board convenes and that the absolute majority of the participants in the meeting makes a decision.

Points Required in Decisions

Article 52- Decisions involve the following points:

- a)** Names and surnames of the members of the Board who made the decision,
- b)** Names and surnames of those who carried out the examination and inquiry,
- c)** Names, titles, residences and distinguishing characteristics of the parties,
- d)** Summary of the claims of the parties,

- e) Summary of the examination and of the economic and legal issues discussed,
- f) Opinion of the reporter,
- g) Evaluation of all evidences and pleas submitted,
- h) Grounds, and the legal basis of the decision,
- i) Conclusion,
- j) If any, writings about the dissenting votes.

Duties imposed on and rights granted to the parties with the decision made have to be written explicitly such that they do not pave the way for doubts and hesitations.

Taking the Decisions to Writing

Article 53- The decision is written by the Chairman of the Board or a member to be commissioned by him. Decisions are signed by the members participating in the meeting. Those members against the decision may take to writing dissenting votes individually or jointly. The original of the decision is kept in the archives of the Board. A copy of it is submitted to the parties in return for signature. Another copy is forwarded to the Publication Department of the Competition Authority for publication purposes.

(Annulled phrase: 01.08.2003-4971/Article 25)20 (...) Decisions of the Board are published **(Amended phrase: 17.09.2004-5234/Article 29)21** *on the internet page of the Authority* in such a way not to disclose the trade secrets of the parties.

Commencement Date of Periods

Article 54- In decisions of the Competition Board, periods commence as of the date the reasoned decision is communicated to the parties.

Appealing Against Decisions of the Board

Article 55- (Amended Article: 23.1.2008-5728/Article 474)22 Nullity suits against final decisions, measure decisions and administrative fine decisions of the Board shall be heard at the Council of State as the court of first instance.

Appealing against decisions of the Board shall not cease the implementation of decisions, and the follow up and collection of administrative fines.

SECTION FIVE

Private Law Consequences of Limiting Competition

Legal Nature of Agreements and Decisions Contrary to This Act

Article 56- Any agreements and decisions of associations of undertakings contrary to article 4 of this Act are invalid. The performance of acts arising out of such agreements and decisions may not be requested. In case a request is made for reclamation due to the invalidity of previous acts fulfilled, the return obligation of the parties is subject to articles 63 and 64 of the Code of Obligations.

The provision of article 65 of the Code of Obligations is not applicable to disputes arising out of this Act.

Right to Compensation

Article 57- Anyone who prevents, distorts or restricts competition via practices, decisions, contracts or agreements contrary to this Act, or abuses his dominant position in a particular market for goods or services, is obliged to compensate for any damages of the injured. If the damage has resulted from the behaviour of more than one people, they are responsible for the damage jointly.

Compensation for the Damage

Article 58- Those who suffer as a result of the prevention, distortion or restriction of competition, may claim as a damage the difference between the cost they paid and the cost they would have paid if competition had not been limited. Competing undertakings affected by the limitation of competition may request that all of their damages are compensated by the undertaking or undertakings which limited competition. In determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well.

If the resulting damage arises from an agreement or decision of the parties, or from cases involving gross negligence of them, the judge may, upon the request of the injured, award compensation by three fold of the material damage incurred or of the profits gained or likely to be gained by those who caused the damage.

Burden of Proof

Article 59- Should the injured submit to the jurisdictional bodies proofs such as, particularly, the actual partitioning of markets, stability observed in the market price for quite a long time, the price increase within close intervals by the undertakings operating in the market, which give the impression of the existence of an agreement, or the distortion of competition in the market, then the burden of proof is for the defendants that the undertakings are not engaged in concerted practice.

The existence of agreements, decisions and practices limiting competition may be proved by any kind of evidence.

SECTION SIX

Final Provisions

Offences Committed on the Funds, Paperwork and Properties of the Authority

Article 60- (Amended Article: 23.1.2008-5728/Article 475)23 The funds, paperwork and any properties of the Authority have the force of state property. The Chairman and members of the Board, and its personnel who commit offences about their offices shall be deemed public officers in respect of responsibility for penalty. Those offences committed against the chairman and members of the Board and its personnel ex officio shall be deemed to have been committed against a public officer.

Against such persons, the provisions of the Act dated 2/12/1999 and numbered 4483 shall not be applicable due to offences committed by them in association with their offices.

Notice

Article 61- Notifications to be made to the parties concerned in accordance with this Act are performed pursuant to the provisions of the Notice Act No. 7201.

Regulations

Article 62- Apart from those mentioned in this Act, principles on the exercise of the powers by the Authority, its management and working principles, procedures and principles to be applied in the collection of its revenues, carrying out of its expenses and supervision of these transactions, principles of changes to be made to monthly salaries, principles as to employing foreign experts, regulations concerning the purchase and tender procedure of the movables and immovables to be purchased by the Authority, and provisions with regard to the accounting system of the Authority are provided in the Regulations to be prepared by the Board and put into force via the resolution of the Council of Ministers.

Regulations to be issued pursuant to this Act shall be issued within one year from the date of publication of this Act.

Inapplicable Provisions²⁴

Article 63- The Authority is not subject to the General Accounting Act No. 1050, the State Tender Act No. 2886, the Allowances Act No. 6245, and to their annexes and amendments.

Revenues of the Authority are exempt from the Corporation Tax, and from the Inheritance and Transfer Tax due to donations and aids to be granted; interests to accrue in favor of the Authority due to any transactions to be performed are exempt from the Banking and Insurance Transactions Tax; revenues of the Authority and all transactions concerning these revenues are exempt from any kind of taxes, duties and charges in the purchase and sale of immovable goods; vehicles to be purchased for the Authority are exempt from the Vehicle Purchase Tax and Stamp Duty.

Temporary Article 1- The first appointment to the Competition Board is made pursuant to the principles of article 22. It is such that the provisions as to the candidates to be nominated by the Competition Board are not applicable.

In the first appointment, the Prime Minister and the Minister of Industry and Trade each nominate two candidates for membership, instead of the Board.

The members of the Board to be renewed by the end of the second and fourth years are determined by drawing names in the last meetings of the Board within such period. For the first term, the Chairman of the Board is appointed by the Council of Ministers from among the two candidates to be nominated by the Minister of Industry and Trade, and the Chairman and the Deputy Chairman of the Board complete their terms within six years without participating in the lot.

Temporary Article 2- The Competition Board to be appointed under the principles mentioned in the Temporary Article 1 announces that situation with a communiqué after the completion of the organization of the Competition Authority. Any agreements and decisions existing on the date of announcement are notified to the Board within 6 months from this date.

Temporary Article 3- Within one year from the date of entry into force of this Act, the Competition Board may appoint sufficient number of experts from public and private

organizations to work in the Authority, without seeking the qualifications in articles 35 and 36 of the Act, provided that it is for once.

It is such that those to be appointed as experts are required to possess the qualifications listed in sub-paragraphs (a) and (c) of the first paragraph of article 35, have at least a five-year professional experience, and be under forty-one years of age. For those who shall be appointed as experts from public organizations, the requirement of having taken up their profession by a competitive and proficiency exam is sought as well.

Until the organization of the Competition Authority is completed, the personnel of the related Ministry may be temporarily commissioned in the fulfillment of the tasks of the Authority.

(Supplement: 02.07.2005-5388/Article 6) Temporary Article 4- *Election and appointment shall not be made for the memberships vacated until the number of Board members is reduced to seven.*

(Supplement: 01.07.2006-5538/Article 13) Temporary Article 5- *The Board can convene and take a decision with a maximum of seven members. In case the number of members of the Board is more than seven, the Chairman shall determine which member would be made not to participate in a meeting in turn.*

Entry Into Force

Article 64- Articles 16 and 17 of this Act concerning administrative fines shall enter into force one year after its publication, while the other articles on the date of its publication.

Execution

Article 65- The provisions of this Act shall be executed by the Council of Ministers.

[1] The phrase of "*upon the request of those concerned*", which was involved in the paragraph has been deleted from the text of the article.

[2] The Former Version of the Amended Paragraph: "Exemption decisions may be granted for a maximum of five years. Granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. If the terms of exemption still continue when the exemption period granted by the Board has expired, the exemption decision may be renewed upon the application of the parties concerned."

[3] With article 2 of the Act dated 2/7/2005 and numbered 5388, the phrase of "Agreements" that was involved in between has been deleted from the title of the article.

[4] The Former Version of the Annulled Paragraph: "Those agreements, concerted practices and decisions falling under article 4 shall be notified to the Board within one month of their conclusion. Exemption provisions are not applicable to agreements not notified. In case exemption is granted to notifications not made on time, the exemption shall be valid as of the date of the notification."

[5] The Former Version of the Amended Article:

Fines

Article 16- The Board may impose on natural and legal persons having the nature of undertakings and on associations of undertakings and/or the members of such associations the following fines;

a) hundred million liras in case misleading or incorrect information is provided in applications for exemption, negative clearance and permission as to mergers or acquisitions, and in notifications and applications in relation to agreements concluded before the entry into force of this Act,

b) hundred million liras in case (**Supplementary phrase: 02.07.2005- 5388/Article 2**) *no information is provided at all*, incomplete, incorrect or misleading information is provided where there is a request for information by the decision of the Board, or an on-the-spot inspection,

c) fifty million liras in case (**Amended phrase: 02.07.2005-5388/ Article 2**) *merger or acquisition transactions subject to authorization are committed without the authorization of the Competition Board*,

d) sixty million liras in case the obligations in exemption decisions taken by the Board in accordance with article 5 paragraph three of this Act are not fulfilled.

Provided that it is not less than two hundred million liras for those proven, by the Board decision, to have committed behaviour prohibited in articles 4 and 6 of this Act, and for those who commit behaviour written in article 11 sub-paragraph (b) of this Act, fine is imposed up to ten percent of the annual gross revenue of natural and legal persons having the nature of undertakings to be imposed a penalty, and of associations of undertakings and/or the members of such associations, which generated by the end of the preceding financial year and which shall be determined by the Board.

In case undertakings and associations of undertakings having legal personality are subjected to fines mentioned in paragraph one, natural persons employed in managerial bodies of this legal personality are also fined personally up to ten percent of the fine imposed.

When deciding on fines, the Board shall take into account factors such as the existence of intent, the severity of fault, the market power of the undertaking or undertakings upon which a penalty is imposed, and the severity of potential damage.

Fines are not applicable to agreements and decisions notified within due time, for the period until the final decision by the Board, in case they do not expressly violate the provisions of this Act.

6 The Former Version of the Amended Article:

Periodic Fines

Article 17- The Board may impose on undertakings and associations of undertakings the following periodic fines per day, which shall commence from the date to be mentioned in the decision;

a) fifty million liras for failure to comply with the decision taken pursuant to article 9, concerning the termination of infringement, and other measures,

b) twenty-five million liras for failure to fulfil the decisions and measures of the Board provided for in article 11 sub-paragraph (b),

c) twenty-five million liras for performance of the behaviour prohibited pursuant to article 13 paragraph one,

d) twenty million liras for prevention of on-the-spot inspection by experts of the Board in accordance with article 15.

7 The Former Version of the Eliminated Article:

Any fines provided in this Act are of an administrative nature. Fines or periodic fines are separately applied to each party acting contrary to this Act.

In case a decision as to imposing a periodic fine is appealed, the periodic fine is not applicable as of the date of the appeal if a decision for the suspension of execution is issued about the periodic fine.

8 The Former Version of the Eliminated Article:

The power of the Board to impose fines and periodic fines is subject to the following periods of prescription:

a) three years for the infringement of provisions related to the application or notification of undertakings or associations of undertakings, provision of information, or on-the-spot inspection,
b) five years in other cases.

The period commences to run from the day of occurrence of the infringement. If continuous or repeated infringements are in question, it commences from the day the infringement ends or is repeated last.

Any action to be taken by the Board with regard to this infringement for purposes of examination or inquiry interrupts the prescription as of the notification of this action to one of the parties concerned.

That an appeal has been made against the decision interrupts the period of prescription.

9 The Former Version of the Amended Article: The Competition Board is composed of a total of 11 members, one being the Chairman and the other being the Deputy Chairman.

The Council of Ministers elects and appoints the members from among the two candidates apiece, to be nominated from inside or outside the following institutions for each vacant membership:

four members from the Competition Board, two members from the Ministry of Industry and Trade, one member from the Ministry of State with which the Undersecretariat of State Planning Organization is affiliated, and one member apiece from the Supreme Court of Appeal, Council of State, Inter-University Board, and Turkish Union of Chambers and Commodity Exchanges.

It is compulsory that at least half of the candidates to be nominated by the Competition Board be elected from among the professional staff of the Competition Authority who have been awarded the title of expert.

The Council of Ministers shall commission one of the three candidates to be nominated by the Board as the Chairman. The Deputy Chairman is elected by the members of the Board from among themselves.

10 The Former Version of the Amended Sub-paragraph: "To be a graduate of economics and management departments of faculties of Law, Economics, Political Sciences, Management, Economic and Administrative Sciences, or industrial engineering or management engineering departments of faculties of Engineering, or higher education institutions abroad which are deemed equivalent to them,"

11 The Former Version of the Amended Sub-paragraph: "To succeed in the competitive examination to be held,"

12 The Former Version of the Eliminated Sub-paragraph: "Twenty-five percent of fines imposed by the Board pursuant to articles 16 and 17 of this Act,"

13 With article 29 of the Act dated 17/9/2004 and numbered 5234, sub-paragraph (c) has been added to this article, and the existing sub-paragraph (c) has been made to follow uninterruptedly as sub-paragraph (d).

14 The Former Version of the Eliminated Sentence: "Revenues mentioned in sub-paragraph (b) are deposited in the relevant account of the Authority during the deposit of the fine in the cashier's office of the Treasury after the fines become final."

15 The Former Version of the Amended Sentence: "If it is decided to perform an investigation, the Board also designates the member or members of the Board who shall conduct the investigation together with the reporter or reporters commissioned."

16 The phrase of "the member of the Board and" included in between has been deleted from the text of the article.

17 The phrase of "7" included in this paragraph has been amended, and it has been inserted in the text.

18 The phrase of "8" included in this paragraph has been amended, and it has been inserted in the text.

19 The phrase of "6" included in this paragraph has been amended, and it has been inserted in the text.

20 The phrase of "after finalization" included in this paragraph has been eliminated.

21 The phrase of "in the Official Gazette" included in this paragraph has been amended, and it has been inserted in the text.

22 The Former Version of the Amended Article:

Appeal may be made to the Council of State within due period against the final decisions, measure decisions, fines and periodic fines of the Board, as of communicating the decision to the parties. **(Amended sentence: 01.08.2003-4971/Article 25-D)[6]** *Appealing against decisions of the Board does not cease the implementation of decisions, and the follow-up and collection of fines.*

(Amended sentence: 01.08.2003-4971/Article 25-D)[6] *Fines are paid* **(Amended phrase: 17.09.2004-5234/Article 29-c)[6]** *within three months as of the date of communicating the final decision of the Board to the one concerned.* The enforcement of the decision of the Board imposing fines or periodic fines is subject to the provisions of the Act on the Procedure of Collection of Public Credits No. 6183.

23 The Former Version of the Amended Article:

The funds, paperwork and any properties of the Authority have the force of State Property. The Chairman and members of the Board, and its personnel who commit offences about their offices are punished in the same way like Civil servants. Those offences committed against the members and the personnel of the Board are deemed to have been committed against a Civil servant. Prosecutions in this respect are conducted pursuant to general provisions.

24 See article 81 of the Act dated 10/12/2003 and numbered 5018, and article 37 of the FY 2005 Budget Act dated 28/12/2004 and numbered 5277 with regard to the application of this article.