

## COMPETITION BOARD

**Communiqué<sup>1</sup> on the Procedures and Principles to be  
Pursued in Pre-Notifications and  
Authorization Applications to be Filed with the  
Competition Authority in order for Acquisitions  
via Privatization to Become Legally Valid, Amended by the Competition Board  
Communiqué No. 1998/5**

**Communiqué No: 1998/4**

### **Purpose**

**Article 1- (Amended: the Competition Board Communiqué No. 1998/5; OG - 18.11.1998; 23527)** The purpose of this Communiqué is to determine the procedures and principles to be pursued in pre-notifications and authorization applications to be filed with the Competition Authority in order for acquisitions to be carried out by the Presidency of Privatization Administration and the other public institutions or organizations to become legally valid, in accordance with Articles 7 and 27/f of the Act on the Protection of Competition dated 07.12.1994 and numbered 4054<sup>2</sup>.

### **Scope**

**Article 2-** Excluding the cases listed below, any transfers such that all or a part of the partnership shares or the other rights and instruments

Cases not caught by this Communiqué are as follows:

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<sup>1</sup> OG - 12.09.1998, 23461.

<sup>2</sup> The former version of this article: *"The purpose of this Communiqué is to determine the procedures and principles to be pursued in pre-notifications and authorization applications to be filed with the Competition Authority in order for acquisitions to be carried out by the Presidency of Privatization Administration to become legally valid, in accordance with Articles 7 and 27/f of the Act on the Protection of Competition dated 07.12.1994 and numbered 4054."*

- Transfers to public institutions or organizations, including local administrations,
- Transfer of real estates not aimed at producing goods or services,
- Sales at capital markets abroad,
- Public offering,
- Provided that provisions in the legislation regarding capital markets are reserved, block sales including delayed public offering whose duration does not exceed 3 years,
- Transfers to employees,
- Normal sales and/or sales upon special order that do not create a change in the control of an undertaking in the stock market,
- Sales to investment funds of securities and/or investment partnerships of securities.

In the practice of this Communiqué, transfers via granting the joint venture and other organizations, where the control is expressly held by the employees and/or pensioners of the undertaking to be privatized, the right to sell, lease and operate, establishing the property rights other than ownership, and among the revenue sharing method and the other legal savings methods in compliance with the requirement of the business, implementing any one of them or several of them jointly are considered as a transfer to employees.

### **Acquisitions via Privatization Subject to Pre-notification**

**Article 3-** For procedures of acquisition via privatization under the scope of this Communiqué, in the case where the market share of the undertaking to be privatized or the unit aiming at producing goods and services at the relevant market exceed 20% or where the turnover of the same undertaking or unit exceed 20 trillion Turkish Liras or eventhough the aforesaid limits are not exceeded, but where the undertaking to be privatized does have judicial or de facto privilidges, it is necessary to make a pre-notification to the Competition Authority before tender conditions are

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announced to the public in order to evaluate the results of such privatization in the relevant market, the condition of judicial or de facto privileges –if any- of the undertaking to be privatized after privatization and it is necessary to take the view of the Competition Board which shall be taken as the basis in the preparation of tender conditions document. In the calculation of market share and turnover, sales on the basis of a provision of legislations by the undertaking to be privatized or by the unit aiming at producing goods and services to public institutions or organizations, including the local governments as well, shall not be taken into account.

In the meaning of this Communiqué, providing that the provisions regarding privileged rights and shares had by the State, formed by Privatization High Council are reserved judicial or de facto privilege signify all privileges including the monopoly rights not had or expected to be able to be not had by other undertakings operating in the relevant product market; appeared as a result of the undertaking being a public organization; being based on a law or other judicial regulation or formed as de facto. However, in the case that these privileges disappear naturally as a result of privatization or are removed by Privatization Administration and in both cases if the situation is certified to the Competition Authority before the tender conditions are announced to public and positive view of the Authority is taken within 10 work days, these points are not accepted as privilege. At the end of this period if Competition Authority does not make any statements of view, this shall mean that Competition Authority's view regarding the subject is positive.

### **Procedure to be Pursued in Pre-notifications**

**Article 4-** Under the scope of this Communiqué and for acquisitions via privatization that is subject to pre-notification, before announcing to public the tender conditions regarding the privatization of an undertaking or the unit aiming at producing good or service, Privatization Administration shall pre-notify the Competition Authority in order to take the Authority's views.

The Competition Authority forms its view within 40 work days as of the pre-notification's entry into the records of the Competition Authority, and notifies it to the Privatization Administration.

In addition to its professional department view formed within 24 work days, the Competition Authority shall take into consideration the view of Privatization Administration, which is taken within 6 work days as a reply to Authority's view, and form its view within 10 work days. These aforesaid periods of 24 and 10 work days and 6 work days can be increased by maximum half of these periods, respectively by the Competition Authority's decision and at the disposal of Privatization Administration, depending on the features of the undertaking or the unit (regarding good and service production) to be privatized and the relevant product market. In this case, the period of total 40 work days, stated in paragraph 2 shall be considered to have be extended by the additional period or periods.

Before the notification of the Competition Authority's view to Privatization Administration, in case a modification is made on the method of privatization regarding acquisition, pre-notification application shall be considered to be renewed. In the case where this notification is made after Authority's view is notified to the Privatization Administration, abovementioned periods shall be implemented as half decreased. If the modification regarding privatization method has any feature which takes the acquisition out of the scope of this Notification, this situation shall at once be notified to the Competition Authority.

### **Acquisitions via Privatization Subject to Application for Authorization**

**Article 5-** In acquisition via privatization transactions where pre-notification to the Competition Authority is compulsory in accordance with this Communiqué, and in case the total market shares, in the relevant product market, of the parties to the acquisition via privatization transaction caught by this Communiqué, though not subject to pre-notification, exceeds 25 % or their turnover exceeds 25 trillion Turkish

Liras, it is compulsory to receive the authorization of the Competition Board in order for acquisition transactions to gain legal validity.

### **Procedure to be Pursued in Applications for Authorization**

**Article 6-** Application for authorization shall be filed with the Competition Authority after the tender transaction has been concluded and but before the decision of the Privatization High Board regarding the final transfer transaction of the undertaking, or the unit aiming at the production of goods and services, which shall be privatized, in the form of independent files for each bidder to take place in the draft resolution of the Privatization High Board, to be submitted by the Presidency of Privatization Administration to the Privatization High Board. It is such that in case the number of bidders in the draft resolution is more than three, authorization application for the other bidders cannot be made before giving a notice, to the Presidency of Privatization Administration, on the Competition Board Decisions regarding the acquisition transaction in respect of the first three bidders.

In order to provide that the examination regarding the authorization application is concluded in a fast and sound manner, the Presidency of Privatization Administration forwards to the Competition Authority the information and documents received by it regarding all undertakings or associations of undertakings bidding for the tender, without waiting for the conclusion of the tender.

### **Other Provisions**

**Article 7-** In respect of the provisions of the Communiqué on the Mergers and Acquisitions Calling for the Authorization of the Competition Authority No. 1997/1, which was issued based on article 7 of the Act on the Protection of Competition No. 4054 and which entered into force after having been published in the Official Gazette dated 12.08.1997 and numbered 23078, those not contrary to this Communiqué shall continue to be applied for acquisition via privatization transactions.

**(Supplement: the Competition Board Communiqué No. 1998/5; OG - 18.11.1998, 23527)** In case transfers via privatization are carried out by the other public institutions or organizations other than the Presidency of Privatization Administration, the provisions of this Communiqué shall also be applied. In this case, those obligations, provided for in this Communiqué, to be fulfilled by the Presidency of Privatization Administration shall be fulfilled by the public institution or organization to carry out the transfer.

### **Entry into Force**

**Article 8-** This Communiqué shall enter into force on the date it is published.

### **Execution**

**Article 9-** The provisions of this Communiqué shall be executed by the President of the Competition Authority.