Competition Act

- Chapter 1. General Provisions
- Chapter 2. Prohibition on Agreements, Concerted Practices and Decisions by Associations of Undertakings
- Chapter 3. Procedure for Grant of Exemptions
- Chapter 4. Undertaking in Dominant Position
- Chapter 5. Control of Concentrations
- Chapter 6. State Aid
- Chapter 7. Unfair Competition
- Chapter 8. State Supervision
- Chapter 9. Liability
- Chapter 10. Implementing Provisions

Passed 5 June 2001

(RT1 I 2001, 56, 332),

entered into force 1 October 2001,

amended by the following Acts:

11.02.2003 entered into force 08.03.2003 - RT I 2003, 23, 133;

20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600;

09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505;

18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480;

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375;

14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565.

Chapter 1. General ProvisionsÂ Â Â

§ 1. Scope of application of Act

(1) The scope of application of this Act is the safeguarding of competition in the interest of free enterprise upon the extraction of natural resources, manufacture of goods, provision of services and sale and purchase of products and services (hereinafter goods), and the preclusion and elimination of the prevention, limitation or restriction (hereinafter restriction) of competition in other economic activities.

(2) This Act also applies if an act or omission directed at restricting competition is committed outside the territory of Estonia but restricts competition within the territory of Estonia.

(3) This Act does not regulate relationships in the labour market.

(4) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 2. Undertaking

(1) For the purposes of this Act, an undertaking is a company, sole proprietor, any other person engaged in economic or professional activities, an association which is not a legal person, or a person acting in the interests

of an undertaking.

(2) The provisions concerning undertakings apply to persons who perform functions in public law and to the state and local governments if they participate in a goods market. The provisions of Chapter 9 of this Act do not extend to the state, local governments or the Bank of Estonia.

(3) For the purposes of this Act, undertakings which operate in the same goods market and belong to the same group of companies or other undertakings which are connected through control may be deemed to be one undertaking if there is no competition between such undertakings.

(4) Control is the opportunity for one undertaking or several undertakings jointly or for a natural person, by purchasing shares and on the basis of a contract, transaction or articles of association or by any other means, to exercise direct or indirect influence on another undertaking which may consist of a right to:

1) exercise significant influence on the composition, work or decision-making of the management bodies of the other undertaking;

2) use or dispose of all or a significant proportion of the assets of the other undertaking.

§ 3. Goods market

(1) A goods market is an area covering the whole of the territory of Estonia or a part thereof where goods which are regarded as interchangeable or substitutable (hereinafter substitutable) by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated.

(2) In order to define a goods market, the turnover of substitutable goods shall, as a rule, be assessed in money. If this is not possible or expedient, the market size and the market shares of the undertakings participating in the goods market may be assessed on the basis of other comparable indicators.

Chapter 2. Prohibition on Agreements, Concerted Practices and Decisions by Associations of UndertakingsÂ Â Â

§ 4. Prohibition on agreements, concerted practices and decisions by associations of undertakings which restrict competition

(1) The following are prohibited: agreements between undertakings, concerted practices, and decisions by associations of undertakings (hereinafter agreements, practices and decisions) which have as their object or effect the restriction of competition, including those which:

1) directly or indirectly fix prices or any other trading conditions, including prices of goods, tariffs, fees, mark-ups, discounts, rebates, basic fees, premiums, additional fees, interest rates, rent or lease payments applicable to third parties;

2) limit production, service, goods markets, technical development or investment;

3) share goods markets or sources of supply, including restriction of access by a third party to a goods market or any attempt to exclude the person from the market;

4) exchange information which restricts competition;

5) agree on the application of dissimilar conditions to equivalent agreements, thereby placing other trading parties at a competitive disadvantage;

6) make entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement.

(2) Clauses (1) 2)–6) of this section do not apply to agreements and practices of agricultural producers or to decisions by associations of agricultural producers, which concern the production or sale of agricultural products or the use of joint facilities, unless competition is substantially restricted by such agreements, practices or decisions.

§ 5. Agreements, practices or decisions of minor importance

(1) The provisions of clauses 4 (1) 2)–6) of this Act do not apply to agreements, practices and decisions of minor importance.

(2) Agreements, practices or decisions are considered to be of minor importance if the combined market share of the total turnover of the undertakings which enter into the agreement, engage in concerted practices or adopt the relevant decision does not exceed:

1) 10 per cent in the case of a vertical agreement, practice or decision;

2) 5 per cent in the case of a horizontal agreement, practice or decision;

3) 5 per cent in the case of an agreement, practice or decision which includes concurrently the characteristics of both vertical and horizontal agreements, practices or decisions.

(3) Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be vertical if the undertakings operate at different levels of the production or distribution chain (for example the production of raw materials or finished goods, or retail or wholesale distribution). Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be horizontal if the undertakings operate as competitors at the same level of the production or distribution chain.

(4) Agreements, practices or decisions are deemed to be of minor importance if the conditions provided for in subsection (2) of this section are fulfilled during the whole period of effect of the agreement, practice or decision.

§ 6. Exemption

(1) An exemption is permission granted at the request of an undertaking by a decision of the Director General of the Competition Board or his or her deputy to enter into an agreement, engage in concerted practices or adopt a decision specified in § 4 of this Act.

(2) The permission specified in subsection (1) of this section may be granted if the agreement, practice or decision:

1) contributes to improving the production or distribution of goods or to promoting technical or economic progress or to protecting the environment, while allowing consumers a fair share of the resulting benefit;

2) does not impose on the undertakings which enter into the agreement, engage in concerted practices or adopt the decision any restrictions which are not indispensable to the attainment of the objectives specified in clause 1) of this subsection;

3) does not afford the undertakings which enter into the agreement, engage in concerted practices or adopt the decision the possibility of eliminating competition in respect of a substantial part of the goods market.

(3) In order to obtain the permission specified in subsection (1) of this section, all the conditions provided for in subsection (2) must be fulfilled.

§ 7. Block exemption

(1) A block exemption is general permission granted by a regulation of the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications to enter into a certain category of agreements, engage in a certain category of concerted practices or adopt a certain category of decisions which complies with the conditions provided for in § 6 of this Act and restricts or may restrict competition.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

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

1) the name of the category of agreements, practices or decisions to which the block exemption applies;

2) restrictions or conditions which shall not be included in such agreements, practices or decisions;

3) conditions which must be included in such agreements, practices or decisions, and restrictions and conditions which may be included in such agreements, practices or decisions;

4) other conditions which such agreements, practices or decisions must comply with.

(3) A block exemption established on the basis of subsection (1) of this section does not apply:

1) to an undertaking in a dominant position;

2) if competition is virtually non-existent in the goods market affected by the agreement, practices or decision.

§ 8. Invalidity of agreements or decisions

Any agreement or decision or a part thereof which has as its object or effect the consequences specified in § 4 of this Act and with regard to which permission has not been granted on the basis of § 6 or 7 of this Act is void unless it complies with § 5 of this Act.

Chapter 3. Procedure for Grant of ExemptionsÂ Â Â

§ 9. Submission of applications for exemption

(1) In order to obtain an exemption provided for in § 6 of this Act, an application for exemption shall be submitted to the Competition Board before entry into the relevant agreement, commencement of the concerted practices or adoption of the relevant decision. An application for exemption may also be submitted within six months after entry into an agreement or adoption of a decision which requires an exemption, and the corresponding agreement or decision or a part thereof which restricts competition shall be void until the grant of the exemption.

(2) An application for exemption with regard to an agreement, decision or a part thereof or practices which was not in conflict with this Act upon entry into the agreement, commencement of the practices or adoption of the decision shall be submitted within three months as of the appearance of circumstances due to which the agreement or decision or a part thereof or the practices becomes contrary to this Act or within three months as of the time such circumstances should have become evident. Such agreement or decision or a part thereof is invalid from the appearance of the circumstances until the grant of the exemption.

(3) An application for exemption shall be submitted jointly by the undertakings which entered into an agreement, engaged in concerted practices or adopted a decision, or by one of the undertakings.

(4) Persons specified in subsection (3) of this section may withdraw an application for exemption jointly or separately at any time before the grant of the exemption by submitting a corresponding written petition, and the person submitting the petition need not be the same as the person who submitted the application for exemption.

§ 10. Requirements for applications for exemption

(1) The requirements for applications for exemption, the requirements for applications for extension of the term of an exemption, and the procedure for submission of applications shall be established by a regulation of the Minister of Economic Affairs and Communications. At the request of the Competition Board, an applicant for an exemption shall provide explanations and submit for examination original documents or true copies or transcripts thereof, certified by the signature of the person submitting the copies or transcripts.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(2) If information contained in an application for an exemption or information relating to the application is incorrect, incomplete or misleading, the Competition Board shall set a deadline for the applicant to eliminate the deficiencies. After elimination of the deficiencies, the Competition Board shall send corresponding confirmation to the applicant for the exemption, and the running of the terms provided for in subsections 11 (2) and (3) of this Act shall commence as of the date on which the confirmation is sent.

(3) The person for whose benefit an exemption is granted and the person who applies for a decision on the grant of the exemption shall immediately give written notice to the Competition Board of any substantial changes in the information presented in the application for the exemption.

(4) An applicant for exemption or the other party to the agreement shall indicate any information which the applicant or other party deems to be a business secret.

§ 11. Processing of applications for exemption

(1) The Director General of the Competition Board or his or her deputy shall make one of the following decisions

concerning an application for an exemption:

1) to grant the exemption if he or she finds that the agreement, practice or decision which is the basis for the application complies with the conditions provided for in § 6 of this Act;

2) to refuse to grant the exemption if he or she finds that the agreement, practice or decision which is the basis for the application does not comply with the conditions provided for in § 6 of this Act;

3) to terminate the proceedings if the application for the exemption has been withdrawn, or if the applicant for the exemption has failed to eliminate the deficiencies in the application within the term specified by the Competition Board or to submit the information requested by the Competition Board;

4) to terminate the proceedings without granting the exemption and to declare that the agreement, practice or decision does not require an exemption as it does not fall within § 4 of this Act or does not require an exemption on the bases specified in § 5 of this Act or requires a group exemption;

5) to initiate supplementary proceedings concerning the application for the exemption if he or she finds that it is doubtful whether the agreement, practice or decision which is the basis for the application qualifies for an exemption pursuant to § 6 of this Act and if it is necessary to obtain additional information or conduct a supplementary examination in order to make the decision.

(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)–4) of this section within two months after receiving all the information.

(3) If the Director General of the Competition Board or his or her deputy decides to initiate supplementary proceedings on the basis of clause (1) 5) of this section, he or she shall have a corresponding written notice delivered to the applicant for the exemption and make one of the decisions provided for in clauses (1) 1)–3) within six months after receiving all the information.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

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

§ 12. Decision to grant exemption

(1) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) A decision to grant an exemption may contain conditions or obligations applicable to the undertakings which enter into the agreement, engage in the concerted practices or adopt the decision.

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

(4) An application for extension of the term of an exemption shall be submitted according to the regulation specified in subsection 10 (1) of this Act at least six months before the expiry of the term of the exemption specified in the decision.

(5) The Director General of the Competition Board or his or her deputy shall revoke a decision to grant an exemption or shall amend the decision depending on the competitive situation in each specific case if:

1) substantial changes have occurred in the information or conditions which were the basis for granting the exemption;

2) the conditions or obligations attached to the decision to grant the exemption have not been complied with;

3) the exemption was granted on the basis of incomplete or incorrect information and the agreement, practice or decision concerning which the exemption was granted does not comply with the conditions provided for in § 6 of this Act.

(6) The Competition Board shall make public all decisions made pursuant to clause 11 (1) 1) or subsection 11 (3) of this Act or subsection (5) of this section by publishing a corresponding notice in the official publication Ametlikud Teadaanded2.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

Chapter 4. Undertaking in Dominant PositionÂ Â Â

§ 13. Definition of undertaking in dominant position

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

(2) Undertakings with special or exclusive rights or in control of essential facilities specified in §§ 14 and 15 of this Act are also undertakings in a dominant position.

§ 14. Undertaking with special or exclusive rights

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

(2) The procedure for the organisation of public competitions for granting special or exclusive rights shall be established by the Government of the Republic. If legislation on the basis of which special or exclusive rights are granted does not provide the procedure for the grant of a special or exclusive right, a public competition for the grant of such right shall be organised pursuant to the procedure established by the Government of the Republic.

§ 15. Undertaking controlling essential facility

An undertaking is deemed to control essential facilities or to have a natural monopoly if it owns, possesses or operates a network, infrastructure or any other essential facility which other persons cannot duplicate or for whom it is economically inexpedient to duplicate but without access to which or the existence of which it is impossible to operate in the goods market.

§ 16. Abuse of dominant position

The following are prohibited: any direct or indirect abuse by an undertaking in a dominant position of his or her position in the goods market, including:

1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2) limiting production, service, goods markets, technical development or investment;

3) offering or applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing some of them at a competitive disadvantage;

4) making entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement;

5) forcing an undertaking to concentrate, enter into an agreement which restricts competition, engage in concerted practices or adopt a decision together with the undertaking or another undertaking;

6) unjustified refusal to sell or buy goods;

7) failure by an undertaking with special or exclusive rights or in control of essential facilities to perform the obligation specified in clause 18 (1) 1) of this Act.

§ 17. Restrictions on activities of undertakings with special or exclusive rights or in control of essential facilities

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

(2) A state agency prescribed by law, the Government of the Republic or, in the case of an undertaking in control of essential facilities which provides services within the territory of a local government, the local government may designate the prices to be used by an undertaking in control of essential facilities or impose other conditions or obligations on the undertaking so that the buyers of the goods of such undertaking or sellers of goods to such undertaking are not placed in a substantially worse situation than they would be if competition were present in the corresponding area of activity.

(3) If the procedure for price regulation applicable to undertakings with certain categories of special or exclusive rights or in control of essential facilities has not been established by an Act or legislation established on the basis thereof, the Government of the Republic may establish the corresponding procedure.

(4) If the procedure for price regulation applicable to undertakings with special or exclusive rights or in control of essential facilities which provide services within the territory of a local government has not been established by an Act or legislation established on the basis thereof or if the procedure does not extend to such undertakings, the local government may establish the corresponding procedure.

§ 18. Obligations of undertakings with special or exclusive rights or in control of essential facilities

(1) An undertaking with special or exclusive rights or in control of an essential facility shall:

1) permit other undertakings to gain access to the network, infrastructure or other essential facility under reasonable and non-discriminatory conditions for the purposes of the supply or sale of goods;

2) draw a clear distinction in its accounts between primary and secondary activities (for example production, transportation, marketing and other activities of the undertaking), thereby ensuring accounting transparency.

(2) An undertaking with special or exclusive rights or in control of an essential facility may refuse to grant other undertakings access to the network, infrastructure or other essential facility if the refusal is based on objective reasons, including cases where:

1) the safety and security of the equipment connected with the network, infrastructure or other essential facility or the efficiency and security of the operation of such network, infrastructure or facility are endangered;

2) maintenance of the integrity or the inter-operability of the network, infrastructure or other essential facility is endangered;

3) equipment to be connected to the network, infrastructure or other essential facility is not in conformity with the established technical standards or rules;

4) the undertaking applying for access lacks the technical and financial capability and resources to provide services efficiently and safely to the necessary extent through or with the assistance of the network, infrastructure or other essential facility;

5) the undertaking applying for access does not hold the permit prescribed by law for the corresponding activity;

6) as a result of such access, data protection provided by law is no longer ensured.

Chapter 5. Control of ConcentrationsÂ Â Â

§ 19. Concentration

(1) Concentration is deemed to arise where:

1) previously independent undertakings merge within the meaning of the Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100);

2) an undertaking acquires control of the whole or part of another undertaking;

3) undertakings jointly acquire control of the whole or part of a third undertaking;

4) a natural person already controlling at least one undertaking acquires control of the whole or part of another undertaking;

5) several natural persons already controlling at least one undertaking jointly acquire control of the whole or part of another undertaking.

(2) The creation, by persons specified in clauses (1) 3) and 5) of this section, of a joint venture performing on a lasting and independent basis is also deemed to be acquisition of control within the meaning of clauses (1) 3) and 5) of this section.

(3) If the creation of a joint venture specified in subsection (2) of this section has as its object or effect the co-ordination of the competitive behaviour of the founders amongst themselves or if the joint venture does not perform on a lasting and independent basis, the provisions of § 4 of this Act apply to the creation of the joint venture.

(4) For the purposes of this Chapter, a part of an undertaking is the assets of the undertaking or an organisationally independent part of the undertaking, including an enterprise which constitutes a basis for business activities and to which market turnover can be clearly attributed.

(5) Transactions specified in subsection (1) of this section are not deemed to be a concentration if the transactions are carried out as an internal restructuring of a group of undertakings.

§ 20. Parties to concentration

The following are parties to a concentration:

1) the merging undertakings;

2) the natural person or undertaking who acquires control of the whole or part of another undertaking;

3) the natural persons or undertakings who jointly acquire control of the whole or part of a third undertaking;

4) the undertaking or a part thereof which is the subject of the acquisition of control.

§ 21. Application of control of concentration

(1) A concentration shall be subject to control if, during the previous financial year, the aggregate worldwide turnover of the parties to the concentration exceeded 500 million kroons and the aggregate worldwide turnover of each of at least two parties to the concentration exceeded 100 million kroons and if the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control is acquired are carried out in Estonia.

(2) A concentration shall not be subject to control if credit institutions, financial institutions, insurers or securities brokers whose normal business activities include transactions and dealing in securities for their own account or for the account of others, acquire securities in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of the undertaking which issued the securities and provided that they exercise such voting rights only with a view to preparing the sale of the securities and that any such sale takes place within one year of the date of acquisition.

(3) If sale of the securities specified in subsection (2) of this section is not possible within one year, the Director General of the Competition Board or his or her deputy may extend the term by a decision on the basis of a reasoned application made by the person concerned.

§ 22. Appraisal of concentrations

(1) Appraisal of a concentration shall be based on the need to maintain and develop competition, taking into account the structure of goods markets and the actual and potential competition in the goods market, including:

1) the market position of the parties to the concentration and their economic and financial power and opportunities for competitors to access the goods market;

2) legal or other barriers to entry into the goods market;

3) supply and demand trends for the relevant goods;

4) the interests of the buyers, sellers and ultimate consumers.

(2) The Director General of the Competition Board or his or her deputy shall prohibit a concentration if it may create or strengthen a dominant position as a result of which competition would be significantly restricted in the goods market.

§ 23. Turnover of parties to concentration

(1) The turnover of a party to a concentration is comprised of the returns (net turnover) on the goods sold or services provided by the party to a concentration during the financial year preceding the concentration, calculated pursuant to the provisions of the corresponding guidelines as specified in § 34 of the Accounting Act (RT I 2002, 102, 600).

(11.02.2003 entered into force 08.03.2003 - RT I 2003, 23, 133)

(2) The turnover of a credit or financial institution is deemed to comprise the total amount of the following income items after deduction of value added tax and income tax:

1) interest income and other similar income;

2) income from securities;

3) income from holdings in undertakings;

4) commissions and service charges;

5) net profit on financial operations;

6) other operating income.

(3) The turnover of an insurer is deemed to comprise the value of gross premiums written which comprises all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums.

§ 24. Calculation of turnover

(1) The turnover of a party to a concentration specified in subsection 21 (1) of this Act shall be calculated by adding the turnovers of the following undertakings to the turnover of the party:

1) undertakings controlled by the party to the concentration;

2) undertakings controlling the party to the concentration;

3) undertakings controlled by an undertaking specified in clause 2) of this subsection;

4) undertakings jointly controlled by undertakings specified in clauses 1)–3) of this subsection.

(2) If control over an undertaking is acquired in a manner provided for in clauses 19 (1) 2)–5) of this Act, the turnover of the undertaking shall be calculated by taking into account only the turnover of such undertaking and the turnovers of the undertakings controlled by the undertaking.

(3) If control over a part of an undertaking is acquired in a manner provided for in clauses 19 (1) 2)–5) of this Act, the turnover of the undertaking shall be calculated by taking into account the turnover of only such part of the undertaking which is the subject of the transaction.

(4) If control of the whole or part of an undertaking is acquired through two or more transactions, turnover shall be calculated by taking into account the turnovers of all such parts which were subject to transactions during the preceding two years.

(5) If within the preceding two years one and the same undertaking has acquired control of undertakings which operate in Estonia in one and the same sector of the economy, the turnover of the undertaking of which control is acquired shall include the turnover of the undertakings of which control has been acquired within the two years preceding the concentration.

(6) The guidelines for the calculation of turnover shall be established by a regulation of the Minister of Economic Affairs and Communications. The guideline may prescribe different methods for calculation of the turnover of parties to a concentration which operate in different sectors of the economy.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

§ 25. Notification of concentrations

(1) A concentration subject to control shall be notified to the Competition Board within one week as of:

1) entry into the merger agreement;

2) acquisition of control;

3) acquisition of joint control;

4) announcement of the public bid for securities.

(2) Notification of a concentration shall be effected:

1) jointly by the parties to a concentration as specified in clause 19 (1) 1) of this Act;

2) by an undertaking acquiring control as specified in clause 19 (1) 2) of this Act;

3) jointly by undertakings acquiring joint control as specified in clause 19 (1) 3) of this Act;

4) by a person acquiring control as specified in clause 19 (1) 4) of this Act;

5) jointly by persons acquiring joint control as specified in clause 19 (1) 5) of this Act.

(3) Credit institutions, securities brokers and insurers shall give notification of a concentration within the term provided for in subsection (1) of this section or not later than within one week after obtaining permission from the state supervisory authority in the corresponding field of activity.

§ 26. Notice of concentration

(1) A notice of concentration shall be submitted to the Competition Board in writing and shall set out:

1) information concerning the parties to the concentration, including business names, registry codes, contact details and areas of activity;

2) a description of the concentration;

3) data concerning the turnovers of the parties to the concentration during the preceding financial year;

4) information concerning control exercised or holdings owned in other undertakings by undertakings specified in clauses 24 (1) 1)–4) of this Act which belong to the same group as the parties to the concentration;

5) information concerning the goods markets, including information concerning the market shares, main competitors, clients and the market shares of the competitors and clients of the parties to the concentration, and concerning barriers to entry into or exit from the goods market;

6) a description of the effect of the concentration on the goods market, prepared by the person submitting the notice;

7) information concerning associations of undertakings in which at least one of the parties to the concentration is a member;

8) restrictions on competition, if any, which are directly related to and necessary for giving effect to the concentration, and the reasons for applying such restrictions;

9) information concerning other circumstances, if any, relating to the concentration, including proposals concerning the conditions and obligations directly related to the concentration.

(2) The following shall be annexed to a notice of concentration:

1) copies of the registration documents of the parties to the concentration who are entered in foreign registers from such registers;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

2) the documents on the basis of which the concentration is put into effect;

3) the annual reports and annual accounts of the parties to the concentration for the financial year preceding the concentration;

4) a document certifying the authority of the person submitting the notice;

5) a document certifying payment of the state fee;

6) a list of the documents annexed to the notice of concentration.

(3) Documents annexed to a notice of concentration shall be originals or certified copies thereof.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(4) A notice shall contain the date of submission of the notice and the signature of the person submitting the notice.

(5) The guidelines for the submission of notices of concentration shall be established by a regulation of the Minister of Economic Affairs and Communications.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(6) If a notice does not meet the requirements provided for in subsections (1)–(4) of this section or the guideline specified in subsection (5) of this section, the notice shall be deemed not to have been submitted.

(7) The Director General of the Competition Board or his or deputy may establish a deadline for elimination of the deficiencies in a notice of concentration.

(8) The Director General of the Competition Board or his or her deputy may release a party to a concentration from the obligation to submit some of the documents or information specified in subsection (1) or (2) of this section if such documents or information are not necessary for the proceedings concerning the concentration.

(9) The person submitting a notice of concentration shall indicate information contained in the notice which the person deems to be a business secret. The fact of a concentration and the information provided for in clauses (1) 1) and 4) of this section shall not be deemed to be a business secret.

§ 27. Proceedings concerning concentration

(1) Within thirty calendar days as of the submission of a notice of concentration, the Director General of the Competition Board or his or her deputy shall:

1) make a decision to grant permission to concentrate if the concentration subject to control does not involve circumstances specified in subsection 22 (2) of this Act;

2) make a decision to initiate supplementary proceedings in order to ascertain whether the concentration subject to control does or does not involve circumstances specified in subsection 22 (2) of this Act;

3) have a written notice delivered to the person who submitted the notice of concentration if the concentration does not fall within the scope of subsection 19 (1) or (2) of this Act or is not subject to control pursuant to § 21 of this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(11) In the course of concentration proceedings, the Competition Board shall verify information in registers concerning the parties to the concentration who are registered in Estonia.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) In the course of supplementary proceedings, the Director General of the Competition Board or his or her deputy shall make one of the following decisions within four months:

1) to grant permission to concentrate;

2) to prohibit the concentration;

3) to terminate the proceedings if the parties to the concentration decide not to concentrate.

(3) In order to avoid restriction of competition through creation or strengthening of a dominant position, the Director General of the Competition Board or his or her deputy may, by a decision to grant permission to concentrate, attach conditions and obligations directly related to the concentration for the parties to the concentration, taking into account the proposals of the parties.

(4) A concentration is permitted if the Director General of the Competition Board or his or her deputy has not made one of the decisions provided for in subsection (1) and (2) of this section within the term specified in the same subsection.

(5) Before adoption of a decision specified in subsection (2) of this section, the parties to the concentration shall not perform any acts directed at giving effect to the concentration or do anything that would hinder execution of a decision prohibiting the concentration. Unless concentration is permitted pursuant to subsection (4) of this section, all such acts are void until permission is obtained.

(6) If the Director General of the Competition Board or his or her deputy sets a term for elimination of the deficiencies contained in a notice of concentration, the terms provided for in subsection (1) and (2) of this section begin to run as of the elimination of the deficiencies.

(7) If the parties to a concentration fail to submit the necessary information or materials within the term set by the Director General of the Competition Board or his or her deputy, the running of the terms provided for in subsections (1) and (2) of this section shall be suspended until the information or materials is submitted.

(8) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(9) The Competition Board shall publish a notice concerning receipt of a notice of concentration, a decision made on the basis of subsection (1) or (2) of this section or a written notice sent on the basis of clause (1) 3) of this section in the official publication Ametlikud Teadaanded.

(10) Interested parties have the right to submit opinions and objections to the Competition Board within seven calendar days as of publication of a notice concerning receipt of a notice of concentration specified in subsection (9) of this section.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 28. Explanation obligation and oral hearings

(1) If the Competition Board finds that a concentration subject to proceedings involves the circumstances specified in subsection 22 (2) of this Act, a corresponding notice shall be delivered to the person who submitted the notice of concentration.

(2) At the request of the parties to a concentration or on the initiative of the Competition Board, a meeting may be held for the oral hearing of the parties to the concentration. A meeting shall be held at the time and place specified by the Director General of the Competition Board or his or her deputy, and the persons to be heard shall be notified of the hearing in the manner prescribed in § 26 of the Administrative Procedure Act not later than ten calendar days before the hearing. On the basis of a reasoned written request of a person summoned to a meeting, the Director General of the Competition Board or his or her deputy may change the term or the place of the meeting.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 29. Nullity of concentration

(1) The Director General of the Competition Board or his or her deputy may decide to revoke a decision to grant permission to concentrate if:

1) the parties to the concentration submitted false, misleading or incomplete information which was a determining factor for the decision;

2) the concentration was effected in violation of a term or other condition or obligation specified in this Act or the decision to grant permission to concentrate.

(2) Revocation of permission to concentrate does not deprive the parties to the concentration of the right to apply

for new permission to concentrate.

Chapter 6. State AidÂ Â Â

§ 30. General provisions

(1) State aid is an advantage granted directly or indirectly in any form whatsoever by the state or a local government (hereinafter grantor of state aid) or from their resources which favours certain undertakings or the production or sale of certain goods or which distorts or threatens to distort competition by prejudicing trade between Estonia and the Member States of the European Union or between Estonia and other states with which Estonia has entered into an international agreement containing provisions concerning state aid. Financial aid, postponement of the payment of tax arrears, debt write-offs, the grant of loans under more favourable conditions than usually granted to other undertakings, and other forms of aid may be considered state aid.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(2) The following shall also be deemed to be grantors of state aid:

1) foundations which directly or indirectly use the resources of the state or a local government;

2) non-profit associations which directly or indirectly use the resources of the state or a local government;

3) legal persons in public law which directly or indirectly use the resources of the state or a local government;

4) companies in which the state, a local government or any other legal person in public law holds more than one-half of the share capital or votes represented by shares;

5) companies belonging to the same group as a company specified in clause 4) of this subsection.

(3) This Act does not grant the right to receive state aid but provides for the right of a grantor of state aid to grant state aid to an undertaking if the provisions of this Act are complied with.

(4) Activities of a grantor of state aid are not deemed to be state aid in cases where the person operates as a rational undertaking would usually operate in a market economy.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(5) The provisions of this Chapter do not apply to aid granted as state aid to undertakings engaged in the production, processing or marketing of goods prescribed in Article 63 (5) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part (RT II 1995, 22–27, 120). The conditions and procedure for granting such aid shall be provided by separate Acts.

§ 31. General and special conditions for granting state aid

(1) State aid may be granted only if it is compatible with the public interest and complies with the provisions of this Act and the special conditions established on the basis of subsection (6) of this Act.

(2) The following types of state aid are deemed to be compatible with the public interest:

1) state aid having a social character provided that such aid is granted without discrimination related to the origin of the goods concerned;

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

(3) In addition to the provisions of subsection (2) of this section, the following may be considered to be compatible with the public interest:

1) state aid to promote the economic development of areas where the standard of living is very low or where there is serious unemployment;

2) state aid to promote the execution of a project of common European interest or to remedy a serious

disturbance in the Estonian economy;

3) state aid to facilitate the development of certain economic activities or economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the public interest;

4) state aid to promote culture and heritage conservation;

5) state aid to public undertakings and undertakings providing services of general interest, for the provision of services of general interest.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(31) For the purposes of this Act, a public undertaking is a person specified in clauses 30 (2) 3)–5) and any other person over which the state or a local government exercises a dominant influence either directly or indirectly by virtue of right of ownership or financial participation, on the basis of the legislation applicable to the person or in any other manner.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(32) An undertaking providing services of general interest is an undertaking to which the state or a local government has assigned the duty to provide a service of general interest which is not available on the market and the provision of which the state or the local government considers necessary. Services of public interest shall be defined and the duty to provide such services shall be established by legislation or a contract.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(4) State aid shall be granted for a specified term and to the extent necessary to achieve an objective specified in subsection (2) or (3) of this section. The grant of such state aid shall be terminated if it no longer complies with the general conditions provided in subsections (2) and (3) of this section or the special conditions established on the basis of subsection (6) of this section.

(5) In calculating the total amount of state aid, state aid granted to an undertaking out of the resources of the European Communities or the Member States thereof shall also be taken into account unless otherwise provided by this Act or the special conditions established on the basis of subsection (6) of this section.

(6) The special conditions for granting state aid and the related definitions shall be established by the Government of the Republic separately for each area of activity, taking into account the provisions of subsection 63 (2) of the Europe Agreement.

§ 32. State aid relating to export activities and aid to substitute imports

(1) State aid relating to export activities (hereinafter export aid) and aid to substitute imports are not compatible with the public interest.

(2) Export aid is any aid directly linked to the quantities of goods exported, to the establishment and operation of a distribution network or to any other current expenditure linked to the export activity.

(3) Aid to substitute imports is aid granted to an undertaking for using domestic goods instead of imported goods.

(4) Aid granted to an undertaking for participating in trade fairs or for studies or consultancy services needed for the launch of a new or existing product in a new market is not deemed to be export aid.

(5) Export guarantees and credits may be deemed to be compatible with the public interest if the guarantees or credits do not contradict the Europe Agreement or any other international agreement.

§ 33. De minimis aid

(1) Aid granted during three consecutive years in an amount not exceeding 1.5 million kroons per undertaking is deemed to be de minimis aid. De minimis aid is deemed to be compatible with the public interest.

(2) The provisions of subsection (1) of this section do not apply in the case of state aid granted to transport, export aid or aid to substitute imports.

(3) It is not necessary to apply for permission to grant state aid, as provided in § 34 of this Act, in order to grant de minimis aid.

§ 34. Permission to grant state aid

(1) State aid shall be granted only with the prior written permission of the Minister of Finance and the grant of state aid shall not commence before the Minister of Finance has granted permission to grant state aid or deemed the state aid to be permitted pursuant to subsection 36 (3) of this Act or before the Government of the Republic has granted permission to grant state aid pursuant to § 48 of this Act.

(2) Applications for permission to grant state aid (hereinafter applications for permission) shall be submitted to the Minister of Finance together with the necessary information taking into account the terms in the proceedings provided for in this Act. The format(s) of applications for permission and the instructions for completing the applications shall be established by the Minister of Finance.

(3) A decision concerning an application for permission to grant state aid shall be made by the Minister of Finance pursuant to § 36 or 38 of this Act. The Minister of Finance shall make the decision by his or her directive and the applicant for permission shall be notified thereof without delay by sending an unregistered letter by post.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 35. State aid scheme and individual state aid

(1) A grantor of state aid may apply for permission to grant state aid both in the case of a state aid scheme (hereinafter aid scheme) and in the case of individual state aid.

(2) A state aid scheme is based on any legal act or contract which provides for the possibility for state aid to be granted to undertakings not previously defined by the act or contract in order to promote achievement of one and the same objective or several similar objectives.

(3) Individual state aid is state aid which is not granted on the basis of an aid scheme, or state aid which is granted on the basis of an aid scheme and for which separate permission must be applied for from the Minister of Finance.

§ 36. Proceedings concerning applications for permission to grant state aid

(1) The Minister of Finance shall examine the applications for permission submitted to him or her and make one of the following decisions:

1) to return the application if the measures set out in the application do not constitute state aid within the meaning of subsection 30 (1) of this Act;

2) to grant permission to grant state aid if the state aid specified in the application is compatible with the public interest;

3) to initiate supplementary proceedings concerning the application for permission to grant state aid if doubts are raised as to the compatibility of the state aid with the public interest.

(2) The Minister of Finance shall make one of the decisions provided for in subsection (1) of this section within two months after all the necessary information is submitted by the person applying for permission to grant state aid or the beneficiary of the state aid or a notice specified in subsection 37 (3) of this Act is received. The above term may be altered with the mutual written consent of the Minister of Finance and the applicant for permission.

(3) If, within the term provided for in subsection (2) of this section, an applicant for permission has not received a written notice concerning a decision made by the Minister of Finance pursuant to subsection (1), the person shall notify the Minister of Finance thereof. If, within fifteen working days after receipt of the abovementioned notice, the Minister of Finance has not notified the applicant for permission of a decision made pursuant to subsection (1) of this section, the grant of state aid is deemed to be permitted by the Minister of Finance.

§ 37. Requests for information

(1) The Minister of Finance has the right to request an applicant for permission to grant state aid, the beneficiary and third parties to submit information necessary for the proceedings concerning the application within two months after the date of receipt of the application or any additional information requested. The above term shall be altered according to how the term provided for in subsection 36 (2) of this Act is altered.

(2) If information set out in an application submitted pursuant to subsection 34 (2) of this Act by an applicant for

permission to grant state aid is incorrect, incomplete or misleading or if additional information is necessary in order to examine the application, the applicant for permission, the beneficiary of the aid or third parties shall be notified thereof by sending an unregistered letter by post or using electronic means and requested to eliminate the deficiencies or submit the information within a specified term.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) An application for permission shall not be reviewed if the deficiencies have not been eliminated or the applicant has not submitted all the information requested by the end of the term specified in subsection (2) of this section or if the applicant has not given notice by then that the additional information requested is not available or has already been submitted. The unavailability of information shall be reasoned. Notice of the fact that the application shall not be reviewed shall be given to the applicant by sending an unregistered letter by post or using electronic means.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) The Minister of Finance may, with good reason, extend the term specified in subsection (2) of this section on the basis of a corresponding petition from the applicant for permission.

§ 38. Termination of supplementary proceedings

(1) The Minister of Finance shall terminate supplementary proceedings initiated on the basis of clause 36 (1) 3) of this Act by making one of the following decisions:

1) to grant permission to grant state aid if the state aid is compatible with the public interest;

2) to return the application if, after amendment of the planned aid scheme or individual state aid by the applicant, the Minister of Finance finds that the measures set out in the application do not constitute state aid within the meaning of subsection 30 (1) of this Act;

3) to grant permission to grant state aid if, after amendment of the aid scheme or the planned individual state aid by the applicant, the Minister of Finance finds that the state aid is compatible with the public interest;

4) to refuse to grant permission to grant state aid if the state aid is incompatible with the public interest.

(2) The Minister of Finance may attach to a decision provided for in clause (1) 1) or 3) of this section conditions corresponding to the special conditions established on the basis of subsection 31 (6) of this Act subject to which an aid may be deemed compatible with the public interest and may lay down obligations to enable compliance with the decision to be monitored.

(3) The Minister of Finance shall make the decisions provided for in subsection (1) of this section within six months after receipt of all the necessary information. If necessary, the above term may be altered with the mutual written consent of the Minister of Finance and the applicant for the permission.

§ 39. Withdrawal of application for permission to grant state aid

(1) An applicant for permission to grant state aid provided for in subsection 34 (2) of this Act may withdraw the application before the Minister of Finance has made a decision pursuant to § 36.

(2) If supplementary proceedings have been initiated on the basis of clause 36 (1) 3) of this Act and the applicant for permission withdraws the application before the Minister of Finance makes a decision pursuant to § 38, the Minister of Finance shall, by a directive, make a decision to terminate the proceedings and to return the application.

§ 40. Publication of decisions

Decisions made by the Minister of Finance on the basis of clause 36 (1) 2) or 3), clause 38 (1) 1), 3) or 4), subsection 39 (2) or subsection 43 (1) of this Act shall be made public in the official publication Ametlikud Teadaanded.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 41. Revocation of decisions retroactively

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(1) The Minister of Finance may retroactively revoke a decision made pursuant to clause 36 (1) 1) or 2) or subsection 38 (1) of this Act if the decision was based on incorrect information submitted during the proceedings which was a determining factor for the decision. Before revoking a decision retroactively and making a new decision, the Minister of Finance shall initiate supplementary proceedings pursuant to clause 36 (1) 3) of this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) If the Minister of Finance makes a decision provided for in clause 38 (1) 4) of this Act after termination of the supplementary proceedings specified in subsection (1) of this section, he or she may demand recovery of the state aid pursuant to § 43.

§ 42. Proceedings concerning unlawful state aid and misuse of state aid

(1) Unlawful state aid is state aid which is granted after the entry into force of this Act and for which the corresponding permission has not been granted by the Minister of Finance or which is not deemed to have been permitted pursuant to subsection 36 (3) of this Act or concerning which permission to grant state aid has not been obtained from the Government of the Republic pursuant to § 48 of this Act.

(2) Misuse of state aid is the use of state aid for purposes other than the intended use or purpose specified in the information submitted concerning the state aid, or non-compliance with the conditions or obligations provided for in subsection 38 (2) of this Act.

(3) All interested parties may notify the Minister of Finance of unlawful state aid or the misuse of state aid.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) If the Minister of Finance receives information concerning alleged unlawful state aid or alleged misuse of state aid, he or she shall issue a precept:

1) to the grantor of the state aid or the beneficiary of the state aid requiring information to be submitted within a specified term;

2) to the grantor of the state aid requiring an application for permission to grant state aid to be submitted within a specified term;

3) to the grantor of the state aid requiring suspension of the grant of unlawful state aid or alleged misused state aid until the Minister of Finance has made a decision provided for in clause 36 (1) 1) or 2) or subsection 38 (1) of this Act concerning the matter.

(5) In the course of proceedings concerning unlawful state aid or the misuse of state aid, the Minister of Finance shall make a decision pursuant to § 36 of this Act. If a grantor of state aid or a beneficiary of state aid fails to comply with a precept provided for in subsection (4) of this section or to submit the additional information requested, the decision shall be made on the basis of the existing information. Supplementary proceedings initiated on the basis of clause 36 (1) 3) of this Act shall be terminated by making one of the decisions provided for in subsection 38 (1).

(6) If the Minister of Finance makes a decision provided for in clause 38 (1) 4) of this Act after termination of supplementary proceedings, he or she may demand that the state aid is recovered pursuant to § 43.

§ 43. Recovery of state aid

(1) If a decision provided for in clause 38 (1) 4) is made after supplementary proceedings conducted on the basis of § 41 or 42 of this Act, the Minister of Finance has the right to issue a precept to the grantor or beneficiary of the state aid requiring revocation of the decision to grant state aid retroactively or recovery of the state aid.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) In calculating the amount of state aid to be recovered, the size of the aid and expenses before the deduction of direct taxes shall be taken into account. If aid was granted in a form other than monetary support, the aid shall be converted into financial support of an equal value. Aid granted in instalments shall be discounted to the present value. The reference interest rate applicable to the state aid at the time when the aid was made available shall be used as the discount rate.

(3) The Minister of Finance has the right to demand recovery of state aid specified in subsections 41 (2) and 42 (1) and (2) of this Act within ten years. The term begins to run as of the date when the state aid is made available. The running of the term shall be suspended for the period during which proceedings are conducted by the Minister of Finance or the matter is heard by a court.

(4) If a beneficiary of state aid fails to comply with a precept concerning recovery of the state aid, the Minister of Finance has the right of recourse to the courts.

§ 44. Demand of interest

In each case of the recovery of state aid, the Minister of Finance has the right to demand interest to be paid on the amount of state aid recovered on the basis of subsection 43 (1) of this Act. The interest collected shall be transferred to the revenue of the state budget. Interest shall be calculated as of the date when the state aid was made available, using the average interest rate applied by Estonian banks to loans granted to undertakings in non-financial sectors during the month preceding the date of the decision to permit the grant of the state aid or, in the absence of such decision, the month preceding the grant of the state aid.

§ 45. Precepts

(1) A precept specified in subsection 42 (4) or 43 (1) of this Act shall set out:

1) the name and position of the person preparing the precept;

2) the date of issue of the precept;

3) the name and address of the recipient of the precept;

4) the bases for issuing the precept together with references to the provisions of relevant Acts;

5) in the case provided for in clause 42 (4) 1) of this Act, an indication of the information requested;

6) the term for compliance with the precept;

7) the amount of the penalty payment applied upon failure to comply with the precept;

8) the procedure and term for appeal against the precept.

(2) A precept of the Minister of Finance may prescribe obligatory acts to be performed upon suspension of the grant of the state aid.

§ 46. Imposition of penalty payment

(1) In the case of failure to comply with a precept provided for in § 45 of this Act, the Minister of Finance may impose, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act (RT I 2001, 50, 283; 94, 580), a penalty payment of up to 50 000 kroons on natural persons and up to 100 000 kroons on legal persons.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(2) A penalty payment provided for in subsection (1) of this section may be imposed several times until the corresponding precept is complied with.

§ 47. State aid committee

(1) The Government of the Republic shall form a state aid committee (hereinafter committee) whose function is to submit proposals to the Government of the Republic concerning applications for revocation of a decision of the Minister of Finance submitted on the basis of subsection 48 (1) of this Act.

(2) The procedure for the formation of and the organisation of the work of the committee shall be established by the Government of the Republic.

§ 48. Proceedings concerning disputable cases of state aid

(1) If the Minister of Finance attaches to his or her decision conditions or obligations on the basis of subsection 38 (2) of this Act or makes a decision provided for in clause 38 (1) 4) of this Act to which the applicant for

permission does not consent, the applicant for permission has the right to address the committee and apply for the decision of the Minister of Finance to be revoked and a new decision to be made, and the committee shall examine the matter and send the materials together with its proposals to the Government of the Republic for a decision.

(2) All materials submitted to the Minister of Finance by an applicant for permission, the beneficiary or third parties and the decision made by the Minister of Finance concerning the case shall be submitted to the committee.

(3) The Government of the Republic shall examine applications submitted thereto and shall make one of the following decisions:

1) to revoke the decision of the Minister of Finance and to grant permission to grant state aid by an order of the Government of the Republic;

2) to deny the application submitted to the Government of the Republic.

§ 49. Reporting on state aid

(1) The formats of a report on the grant and use of state aid and the due date for the submission of the report shall be established by the Minister of Finance. Grantors of state aid shall submit reports on the grant and use of state aid to the Minister of Finance. Reports shall also be submitted on the grant and use of de minimis aid.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(2) Within twelve months as of the end of a calendar year, the Minister of Finance shall prepare a report on all state aid granted during the given year. The report shall be submitted to the Government of the Republic for approval.

Chapter 7. Unfair CompetitionÂ Â Â

§ 50. Prohibition on unfair competition

(1) Unfair competition is taken to mean dishonest trading practices and acts which are contrary to good morals and practices, including:

1) publication of misleading information, presentation or ordering of misleading information for publication, or disparagement of a competitor or the goods of the competitor;

2) misuse of confidential information or of an employee or representative of a competitor.

(2) Unfair competition is prohibited.

(3) The provisions of the Advertising Act (RT I 1997, 52, 835; 1999, 27, 388; 30, 415; 2001, 23, 127; 50, 284; 2002, 13, 81; 53, 336; 61, 375; 63, 387) apply to misleading, offensive or denigratory information as a method of advertising.

§ 51. Publication of misleading information, presentation or ordering of misleading information for publication, or disparagement of competitor or goods of competitor

(1) Misleading information is incorrect information which, given ordinary attention on the part of the buyer, may leave a misleading impression of an offer or which harms or may harm the reputation or economic activities of another undertaking

(2) Publication, or presentation or ordering for publication, of misleading information concerning either oneself or another undertaking participating in a goods market or concerning the goods or work equipment of such undertaking is prohibited, except in cases where publication of such information has been ordered from the publisher of the information or the publisher is not responsible for the correctness of the information presented thereto.

(3) Information specified in subsection (1) of this section primarily refers to information concerning the origin, qualities, method of production, means or sources of supply, prices, tariffs, discounts, awarding as a prize,

reasons for sale and the size of the stock of the goods offered, as well as the preferential rights, financial status and other qualities of the undertaking.

§ 52. Misuse of confidential information or of employee or representative of another undertaking

(1) Misuse of confidential information is the use of confidential information regarding a competitor where the corresponding information was obtained illegally.

(2) Misuse of an employee or representative of a competitor is the exertion of influence on him or her to act in the interests of the influencing party or a third party.

§ 53. Ascertainment of unfair competition

The existence or absence of unfair competition shall be ascertained in a dispute between parties held pursuant to civil procedure.

Chapter 8. State SupervisionÂ Â Â 

§ 54. Organisation of state supervision

(1) The Competition Board shall exercise state supervision over implementation of this Act, except implementation of the provisions of Chapters 6 and 7.

(2) The Minister of Finance shall exercise state supervision over implementation of the provisions of Chapter 6.

§ 55. Competence of Competition Board

(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 shall analyse the competitive situation, propose measures to promote competition, make recommendations to improve the competitive situation, make proposals for legislation to be passed or amended, and develop co-operation with the competition supervisory authorities of other states and associations of states.

§ 56. Co-operation with European Commission

Pursuant to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part and decision No. 1/99 of the Association Council between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part adopting the necessary rules for the implementation of Article 63 (1) i), (1) ii) and (2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part (RT II 1999, 15, 94), co-operation between the European Commission and the Competition Board shall be effected pursuant to the general principles provided for in Article 1 of the above rules.

§ 57. Right of Competition Board to request information

(1) The Competition Board has the right to request all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials thereof to submit information necessary for:

1) analysing the competitive situation;

2) defining a goods market;

3) inspecting an agreement, activity or decision;

4) deciding on the grant of exemptions;

5) monitoring the activities of an undertaking in a dominant position;

6) monitoring a concentration;

7) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

8) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

9) exercising state supervision over the implementation of this Act.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(2) The information provided for in subsection (1) of this section shall be requested in a written request wherein the purpose of and the legal basis for the request for information shall be specified and the possibility of issue of a precept upon failure to provide information or provision of incomplete, incorrect or misleading information shall be referred to. The term for submission of the information shall be not less than ten calendar days.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) The Competition Board has the right to request natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments, to provide explanations at the Competition Board or on site. Explanations shall be prepared in writing and the person requesting an explanation and the person providing the explanation shall sign each page of the explanation. If a person providing an explanation refuses to sign the explanation, an entry indicating refusal to sign the explanation and the reasons for the refusal shall be made in the explanation.

§ 58. Summoning to Competition Board

(1) Natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments, shall be summoned to the Competition Board by a summons which sets out:

1) the name or official title of the person summoned;

2) the reason and legal basis for summoning the person;

3) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

4) the place and time of appearance;

5) the rights of the person summoned, including the right to submit a written explanation;

6) the obligation to give notice of good reasons for failure to appear.

(2) A summons shall be served against signature or sent by post with advice of delivery (hereinafter service) and the person summoned or his or her representative shall be granted a term of not less than ten calendar days to appear. By agreement of the parties, the term may be altered and the summons may be delivered orally.

(3) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(5) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(6) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 59. Right of Competition Board to request submission of materials

(1) The Competition Board has the right to request all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials and representatives thereof to submit the originals of documents, drafts or other materials, or true copies thereof, certified by the signature of the person submitting the copies. Upon submission of a copy, the Competition Board has the right to request submission of the original document to verify the authenticity of the copy.

(2) At the request of a person who submits materials or the representative of such person, the Competition Board shall issue confirmation concerning receipt of the materials and the person or the representative has the right to the return of the originals of the documents, drafts and other materials by the Competition Board after completion of the supervisory operations.

§ 60. Inspection of seat or place of business of undertaking

(1) In order to establish a violation or possible violation of this Act, 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 (hereinafter person conducting an investigation) has the right, without prior warning or special permission, to inspect the seat and place of business of an undertaking, including the enterprises, territory, buildings, rooms and means of transport of the undertaking, both during working hours and at any time the place of business is used. With the consent of the undertaking, the seat, place of business or enterprises of the undertaking may also be inspected at any other time.

(2) An inspection provided for in subsection (1) of this section shall be conducted with the knowledge of the undertaking, or a representative or employee thereof, and they have the right to be present during the inspection.

(3) 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 the directive issued by the Director General of the Competition Board or his or her deputy concerning the authorisation of the person conducting the inspection.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(4) During an inspection provided for in subsection (1) of this section, the person conducting the inspection has the right to:

1) 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, copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;

2) immediately examine data or databases kept in electronic form on computer at the seat or place of business of the undertaking under inspection and electronic data media held at the seat or place of business and to make printouts and electronic copies thereof at the expense of the undertaking under inspection, the authenticity of which shall be certified by the signature of the person under inspection or his or her representative or employee on the printout or on a separate page;

3) request the undertaking or a representative or employee thereof to submit explanations which shall be documented pursuant to subsection 57 (3) of this Act.

(5) The person conducting an inspection is required to prepare a report of the results of the inspection.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(6) A report specified in subsection (5) of this section shall set out:

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

1) the time and place of preparation of the report;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

2) the name and position of the person preparing the report;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

3) in the case of a natural person under inspection, the name and position of the person or his or her representative or employee or, in the case of a legal person, the name of the legal person and the name and position of the representative or employee of the legal person;

4) a description of the course of the inspection;

5) a notation concerning presentation of the directive specified in subsection (3) of this section to the undertaking under inspection or the representative or employee thereof;

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

6) a list of the explanations received from the undertaking under inspection or the representative or employee thereof;

7) a list of the materials obtained in the course of the inspection;

8) a notation concerning the participation of an interpreter or translator if one is involved;

9) the notes of the undertaking under inspection or the representative or employee thereof concerning the inspection;

10) a notation indicating that the undertaking under inspection or the representative or employee thereof has received one copy of the report.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(7) If an undertaking or the representative or employee thereof interferes with an inspection, a corresponding entry shall be made in the report indicating the reasons for such interference, if possible.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(8) A report shall be prepared in two copies which shall be signed by the person preparing the summary and the representative or employee of the undertaking under inspection. Each page of the report shall be signed and the undertaking under inspection and the Competition Board shall each receive one copy of the report. All materials obtained in the course of the inspection shall be annexed to the copy held by the Competition Board.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(9) If an undertaking under inspection or the representative or employee thereof refuses to sign the report, a corresponding entry shall be made in the report indicating the reasons for such refusal.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 61. Making of recommendations

The Director General of the Competition Board or his or her deputy may make recommendations to state agencies, local governments and natural and legal persons as to improvement of the competitive situation.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 62. Precepts and imposition of penalty payment

(1) The Director General of the Competition Board or his or her deputy has the right to issue a precept to a natural or legal person if the person:

1) fails to submit information or materials within the term specified in a written request of the Competition Board;

2) interferes with an inspection at the seat or place of business of the undertaking;

3) fails to appear at an oral hearing or when requested to provide explanations;

4) puts into effect a concentration which is subject to control but concerning which a decision has not been made on the basis of clause 27 (1) 1) or (2) 1) of this Act or if a decision prohibiting the concentration has been made on the basis of clause 27 (2) 2) of this Act or the permission for the concentration has been revoked by the Director General of the Competition Board or his or her deputy or violates the conditions of the permission for the concentratation;

5) abuses a dominant position;

6) violates a prohibition against agreements, practices or decisions restricting competition.

(2) An obligation to perform the following may be imposed by a mandatory precept provided for in subsection (1) of this section:

1) perform the act required by the precept;

2) refrain from a prohibited act;

3) terminate or suspend activities which restrict competition;

4) restore the situation prior to the offence.

(3) In the case of failure to comply with a precept, the Director General of the Competition Board or his or her deputy may impose, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act, a penalty payment of up to 50 000 kroons on natural persons and up to 100 000 kroons on legal persons.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 63. Obligation to maintain business secrets

(1) Unless otherwise provided by law, the Competition Board does not have the right to disclose the business secrets, including information subject to banking secrecy, of an undertaking which have become known to the Competition Board in the course of performance of its official duties to other persons nor publish them without the consent of the undertaking.

(2) Information subject to disclosure to the public, decisions made by the Director General of the Competition Board or his or her deputy and documents prepared by the Director General of the Competition Board or his or her deputy or any other official of the Competition Board from which business secrets have been excluded are not deemed to be business secrets.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(3) Upon preparation of a document, 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 the undertaking.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(4) The Competition Board shall exclude business secrets from the texts of decisions subject to disclosure.

[§§ 64-73 repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480]

§ 73.1. Interference with exercise of state supervision

A legal person who refuses to submit or fails to submit documents or information necessary for supervision to the Minister of Finance or the Competition Board on time, submits false information to the Minister of Finance or the Competition Board or submits documents or information to the Minister of Finance or the Competition Board in a manner which does not permit exercise of supervision shall be punished by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 73.2. Misuse of state aid

(1) Misuse of state aid is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 73.3. (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 73.4. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; RT I 2002, 86, 504; 105, 612; 2003, 4, 22) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654) apply to the misdemeanours provided for in §§ 731–732 of this Act.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(2) The Ministry of Finance shall conduct extra-judicial proceedings in the matters of the misdemeanours provided for in §§ 731 and 732 of this Act.

(3) The Competition Board shall conduct extra-judicial proceedings in the matters of the misdemeanours provided for in § 731 of this Act.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387; 18.09.2002 entered into force 24.10.2002 - RT I

2002, 82, 480)

*Chapter 9. Liability*Â Â Â 

§ 74. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 75. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 76. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 77. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 78. Compensation for damage

Proprietary or other damage caused by acts prohibited by this Act shall be subject to compensation by way of civil procedure.

*Chapter 10. Implementing Provisions*Â Â Â 

§ 79. Amendment of Criminal Code

Sections 14816–14819 are added to the Criminal Code (RT 1992, 20, 288; RT I 1999, 38, 485; 57, 595, 597 and 598; 60, 616; 97, 859; 102, 907; 2000, 10, 55; 28, 167; 29, 173; 33, 193; 40, 247; 49, 301 and 305; 54, 351; 57, 373; 58, 376; 84, 533; 92, 597; 104, 685; 2001, 21, 115 and 116; 31, 174) in the following wording:

“§ 14816. Abuse of dominant position

A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person who establishes unfair trading conditions, limits production, services, the market, technical development or investment to the prejudice of consumers or who engages in other activities causing a direct or indirect abuse of a dominant position shall be punished by a fine or up to three years’ imprisonment.

§ 14817. Agreements, practices or decisions restricting competition

A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person who violates a prohibition on an agreement, practice or decision restricting competition or who enters into an agreement, engages in practices or makes a decision requiring an exemption without obtaining such exemption or who violates the conditions of an exemption shall be punished by a fine or up to three years’ imprisonment.

§ 14818. Failure to perform obligations relating to concentration

A member of the management board, of a body substituting for the management board or of a supervisory board of a legal person who fails to give notice of a concentration within the specified term or who violates a prohibition on concentration or the conditions of permission to concentrate shall be punished by a fine or up to three years’ imprisonment.

§ 14819. Failure to draw clear distinction between primary and secondary activities in accounts of legal person with special or exclusive rights or in control of essential facilities

A member of the management board, of a body substituting for the management board or of a supervisory board of a legal person with special or exclusive rights or in control of essential facilities who engages in activities resulting in failure to draw a clear distinction between primary and secondary activities in the accounts of the legal person shall be punished by a fine or up to three years’ imprisonment.”

§ 80. Amendment of Price Act

Sections 9 and 10 of the Republic of Estonia Price Act (ENSV ÜVT3 1989, 39, 610; RT 1992, 30, 400; RT I 1996, 49, 953; 1997, 52, 833; 1998, 60, 951) are repealed.

§ 81. Amendment of Geographical Indications Protection Act

Clause 49 1) of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336; 63, 387) is repealed.

§ 82. Amendment of Trade Marks Act

Clause 364 (1) 1) of the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 91/93, 1500; 1999, 93, 834; 102, 907; 2001, 27, 151; 56, 332; 335; 2002, 63, 387) is repealed.

§ 83. Amendment of State Fees Act

The State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316; 57, 358; 58, 361; 61, 375; 62, 377; 82, 477; 90, 519; 102, 599; 105, 610; 2003, 4, 20; 13, 68; 15, 84; 85; 20, 118; 21, 128; 23, 146) is amended as follows:

1) clause 201 is added to subsection 3 (2) worded as follows:

“201) acts performed by the Competition Board;”;

2) Division 131 is added to Chapter 7 of the Act worded as follows:

“Division 131

Acts of Competition Board

§ 14720. Proceedings concerning concentration

A state fee of 20 000 kroons shall be paid for proceedings concerning a concentration.

§ 14721. Proceedings concerning application for exemption

A state fee of 10 000 kroons shall be paid for proceedings concerning an application for exemption.”

§ 84. Amendment of Consumer Protection Act

Clause 11 (2) 11) of the Consumer Protection Act (RT I 1994, 2, 13; 1999, 35, 450; 102, 907; 2000, 40, 252; 59, 379; 2001, 50, 283; 289; 56, 332; 2002, 13, 81; 18, 97; 35, 214; 53, 336; 61, 375; 63, 387) is repealed.

§ 85. Amendment of Commercial Code

The Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100) is amended as follows:

1) subsection 393 (2) is amended and worded as follows:

“(2) A merger report need not be prepared if all the shares of the company being acquired are held by the acquiring company, or if this is agreed to by all the partners or shareholders of the merging company, unless the aggregate worldwide realised net turnover of the merging companies during the previous financial year exceeded 500 million kroons and the aggregate worldwide realised net turnover of each of at least two of the merging companies exceeded 100 million kroons or if the business activities of at least one of the merging undertakings are carried out in Estonia.”;

2) clause 400 (1) 9) is amended and worded as follows:

“9) a decision of the Director General of the Competition Board or his or her deputy concerning the grant of permission to concentrate, if the aggregate worldwide realised net turnover of the merging companies during the previous financial year exceeded 500 million kroons and the aggregate worldwide turnover of each of at least two of the merging companies exceeded 100 million kroons and if the business activities of at least one of the merging undertakings are carried out in Estonia, except in cases of mergers within groups.”

§ 86. Amendment of Rural Municipality and City Budgets Act

Subsection 11 (3) of the Rural Municipality and City Budgets Act (RT I 1993, 42, 615; 1995, 17, 234; 1997, 40, 619; 2000, 7, 40; 2001, 56, 332; 2002, 64, 393) is amended and worded as follows:

"(3) Before a draft budget is presented to the council, the government shall submit an application for permission to grant state aid concerning the state aid prescribed in the draft budget to the Minister of Finance pursuant to the Competition Act."

§ 87. Implementation of Act

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

(2) Proceedings initiated before the entry into force of this Act shall be conducted pursuant to the Act in force at the time of initiation of the proceedings concerning the case.

(3) Permission granted in any form or pursuant to any procedure to an undertaking by the state or a local government before 1 October 1998 which enables the undertaking to have a competitive advantage over other undertakings in a goods market or to be the only undertaking in the market shall also be deemed to be a special or exclusive right.

(4) The Government of the Republic and its ministers shall bring the regulations passed on the basis of the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 2000, 21, 232) into conformity with this Act within three months after the entry into force of this Act.

§ 88. Proceedings concerning existing state aid

(1) Existing state aid is taken to mean aid schemes and individual state aid the grant of which commenced between 1 January 1995 and the entry into force of this Act and continued after the entry into force of this Act, state aid for the grant of which permission has been granted by the Minister of Finance or the Government of the Republic, and state aid which is deemed to be permitted pursuant to subsection 36 (3) of this Act.

(2) Existing state aid shall be assessed in accordance with the general requirements provided for in this Act and pursuant to the special requirements established on the basis of subsection 31 (6) of this Act.

(3) If the Minister of Finance finds that existing state aid is not or is no longer compatible with the public interest, he or she shall notify the grantor of the state aid in writing of his or her preliminary view and give the grantor the opportunity to submit its comments within one month. In duly justified cases, the Minister of Finance may extend the term.

(4) If the Minister of Finance, on the basis of the comments submitted by a grantor of state aid pursuant to subsection (3) of this section, makes a decision that the existing state aid is compatible with the public interest, the Minister of Finance shall notify the grantor of state aid of the decision.

(5) If the Minister of Finance, on the basis of the comments submitted by a grantor of state aid pursuant to subsection (3) of this section, makes a decision that the existing state aid is not compatible with the public interest, the Minister of Finance has the right to request substantive amendment of the aid scheme and submission of a new application for permission within a specified term or termination of the grant of the state aid within a specified term.

(6) Proceedings concerning applications for permission to grant state aid submitted on the basis of subsection (5) of this section shall be conducted pursuant to § 36 of this Act.

(7) If a grantor of state aid fails to comply with the requirements set by the Minister of Finance pursuant to subsection (5) of this section within the specified term, the state aid granted after the expiry of the term is deemed to be unlawful state aid and the Minister of Finance has the right to initiate proceedings pursuant to § 42 of this Act.

§ 89. Repeal of Act

The Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 2000, 21, 232) is repealed as of the entry into force of this Act.

§ 90. Entry into force of Act

This Act enters into force on 1 October 2001.

1 RT = Riigi Teataja = State Gazette

2 Ametlikud Teadaanded = Official Notices

3 ENSV ÜVT = ENSV Ülemnõukogu ja Valitsuse Teataja = ESSR Supreme Council and Government Gazette