

Issuer:	Riigikogu
Type:	act
In force from:	05.06.2017
In force until:	29.12.2017
Translation published:	01.06.2017

# Competition Act<sup>1</sup>

Passed 05.06.2001  
 RT I 2001, 56, 332  
 Entry into force 01.10.2001

Amended by the following acts

Passed	Published	Entry into force
14.11.2001	RT I 2001, 93, 565	01.02.2002
19.06.2002	RT I 2002, 61, 375	01.08.2002
19.06.2002	RT I 2002, 63, 387	01.09.2002
18.09.2002	RT I 2002, 82, 480	24.10.2002
09.10.2002	RT I 2002, 87, 505	23.10.2002, see § 2 of the amending Act. (1) The Ministry of Economic Affairs and the Ministry of Transport and Communications shall be reorganised and merged into the Ministry of Economic Affairs and Communications as of 1 November 2002.
20.11.2002	RT I 2002, 102, 600	26.12.2002
11.02.2003	RT I 2003, 23, 133	08.03.2003
24.03.2004	RT I 2004, 25, 168	01.05.2004
28.06.2004	RT I 2004, 56, 401	01.08.2004, partially01.01.2005
10.05.2006	RT I 2006, 25, 186	01.07.2006
24.01.2007	RT I 2007, 13, 69	15.03.2007
08.11.2007	RT I 2007, 60, 384	01.01.2008, partially01.01.2009
22.11.2007	RT I 2007, 66, 408	01.01.2008
20.01.2010	RT I 2010, 8, 34	27.02.2010
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13.07.2010 (OJ L 196, 28.07.2010, pp. 24-26).
27.01.2011	RT I, 23.02.2011, 3	01.01.2012
06.06.2012	RT I, 27.06.2012, 3	07.07.2012
19.06.2013	RT I, 05.07.2013, 1	15.07.2013, partially01.01.2014
19.02.2014	RT I, 13.03.2014, 4	01.07.2014
05.06.2014	RT I, 29.06.2014, 1	01.07.2014
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the titles of ministers replaced on the basis of subsection 107 <sup>3</sup> (4) of the Government of the Republic Act.

## Chapter 1 GENERAL PROVISIONS

### § 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, as well as the processing of and liability for claims arising from damages.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

(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.

(3<sup>1</sup>) The provisions of the Code of Civil Procedure apply to the civil proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

(4) The provisions of the Administrative Procedure Act apply to the administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

[RT I 2002, 61, 375 - entry into force 01.08.2002]

### § 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 the state, local governments, legal persons in public law and other persons performing administrative duties if they participate in a goods market.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(3) For the purposes of this Act, undertakings which are connected to each other through control may be deemed to be one undertaking.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(4) Control is the opportunity for one undertaking or several undertakings jointly or for one natural person or several natural persons jointly, by purchasing shares and on the basis of a 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, voting or decision-making of the management bodies of the other undertaking, or to

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

[RT I 2006, 25, 186 - entry into force 01.07.2006]

### § 3. Goods market

(1) A goods market is an area covering, inter alia, 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.

[RT I 2004, 56, 401 - entry into force 01.08.2004]

(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 UNDERTAKINGS

## § 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 the entry into agreements subject to acceptance by third parties of supplementary obligations which have no connection with the subject of such agreements.
- [RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) The prohibition provided for in subsection (1) of this section shall apply to agreements and practices, and decisions of agricultural producers, their associations and federations of such associations, which concern the production or sale of agricultural products or the use of joint facilities, only to the extent determined on the basis provided for in Article 42 of the Treaty on the Functioning of the European Union.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

## § 5. Agreements, practices or decisions of minor importance

(1) The provisions of clauses 4 (1) 4)–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) 15 per cent for each party of in the case of a vertical agreement, practice or decision;
- 2) 10 per cent in total for all parties of a horizontal agreement, practice or decision;
- 3) 10 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.

[RT I 2004, 56, 401 - entry into force 01.08.2004]

## § 6. Exemption

(1) The prohibition provided in subsection 4 (1) of this Act shall not be imposed concerning an agreement, activity or decision which:

- 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.

(2) An undertaking which makes use of the conditions arising from this section is required to provide proof concerning compliance with all the conditions set forth in section (1) of this section.  
[RT I 2006, 25, 186 - entry into force 01.07.2006]

### **§ 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 responsible for the area 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.  
[RT I 2002, 87, 505 - entry into force 23.10.2002]

(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) [Repealed – RT I 2004, 56, 401 - entry into force 01.08.2004]

### **§ 8. Nullity of agreements or decisions**

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

Any agreement or decision or a part thereof which has as its object or effect the consequences specified in § 4 of this Act is void unless it is permitted on the basis of §§ 5–7 of this Act.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

## **Chapter 3**

§ 9.–§ 12. [Repealed -RT I 2006, 25, 186 - entry into force 01.07.2006]

## **Chapter 4**

### **UNDERTAKING IN DOMINANT POSITION ON MARKET**

[RT I 2004, 56, 401 - entry into force 01.08.2004]

#### **§ 13. Undertaking in dominant position on market**

(1) For the purposes of this act, an undertaking in a dominant position is an undertaking or several undertakings operating in the same market whose position enables it/them to operate in the market to an appreciable extent independently of competitors, suppliers and buyers. Dominant position is presumed if an undertaking accounts for at least 40 per cent of the turnover in the market or several undertakings operating in the same market account for at least 40 per cent of the turnover in the market.

(2) Undertakings in control of essential facilities specified in § 15 of this Act are also undertakings in a dominant position.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

#### **§ 14. Special or exclusive rights**

For the purposes of this Act, special or exclusive rights are rights granted to one undertaking or several undertakings by the state or a local government which limit the number of undertakings to whom the permission to operate in a specific geographical area has been granted or which give advantages to one undertaking or several undertakings which significantly influence the opportunities of other undertakings to operate in the same geographical area.

[RT I, 05.07.2013, 1 - entry into force 01.01.2014]

#### **§ 15. Undertaking in control of essential facility**

An undertaking is deemed to be in control of an essential facility 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**

Any direct or indirect abuse by an undertaking or several undertakings of the dominant position in the goods market is prohibited, including:

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

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

2) limit 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;

[RT I 2006, 25, 186 - entry into force 01.07.2006]

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

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

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.

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

[Repealed - RT I 05.07, 2013, 1 - entry into force 15.07.2013]

## **§ 18. Obligations of undertakings in control of essential facilities**

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(1) An undertaking in control of an essential facility is required to 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) An undertaking 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.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

## **§ 18<sup>1</sup>. Special requirement concerning accounting**

An undertaking with special or exclusive rights or in control of an essential facility is required to keep separate accounting of revenue and expenditure related to each product or service on the basis of consistently applied and objectively justified accounting principles which shall be clearly specified in the internal rules of the undertaking. The accounting of revenue and expenditure must enable to assess whether the ratio between the price of a product or service of the undertaking and the value of the product or service is reasonable.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

# **Chapter 5 CONTROL OF CONCENTRATIONS**

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 19. Concentration**

(1) Concentration is deemed to arise where:

- 1) previously independent undertakings merge within the meaning of the Commercial Code or parts of undertakings are merged;
- 2) an undertaking acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 3) undertakings jointly acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 4) a natural person already controlling at least one undertaking acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 5) several natural persons already controlling at least one undertaking jointly acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof.

(2) The joint creation, by persons specified in clauses (1) 3) and 5) of this section, of a new undertaking 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) 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 or plant which constitutes a basis for business activities and to which turnover on the goods market can be clearly attributed.

(4) The following is not deemed to be concentration:

- 1) transactions specified in subsection (1) of this section if they are carried out as an internal restructuring of a group of undertakings;
- 2) if credit institutions, financial institutions or insurers temporarily acquire, for their own account or for the account of others, 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 or the undertaking or a part thereof and that any such sale takes place within one year of the date of acquisition;
- 3) if control is acquired by a duly authorised person in accordance with the Acts which relate to liquidation, compulsory dissolution, insolvency or other similar proceedings;
- 4) if the actions specified in clauses (1) 2) or 3) of this section are carried out by undertakings whose sole business objective is to acquire and take possession of holdings in other undertakings in order to maintain the value of the investment, provided that the voting rights connected to the holdings are, above all, used in matters related to the appointment of the members of the management and supervisory bodies of such undertakings and not in order to determine, directly or indirectly, the behaviour of the undertakings which influences competition.

(5) If, based on the principle of reasonableness, the sale specified in clause (4) 2) of this section is not possible within one year, the Competition Authority may extend the term by a decision on the basis of a reasoned application made by the person.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

## **§ 20. Parties to concentration**

The following are parties to a concentration:

- 1) the merging undertaking or the undertaking whose part is merged;
- 2) the natural person or undertaking who acquires control of an undertaking or a part thereof or several undertakings or parts thereof;
- 3) the natural persons or undertakings who jointly acquire control of an undertaking or a part thereof or several undertakings or parts thereof;
- 4) the undertaking which is the subject of the acquisition of control or whose part is the subject of the acquisition of control.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 21. Application of control of concentration**

(1) A concentration shall be subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6,000,000 euros and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2,000,000 euros.

[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(2) A concentration is not controlled by the Competition Authority if the concentration is subject to control pursuant to Council Regulation 139/2004/EC on the control of concentrations between undertakings (OJ L 24, 29.01.2004, pp. 1–22), unless the European Commission appoints, pursuant to Article 9 of such Regulation, the Competition Authority as the authority competent to exercise control over the concentration.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 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 and 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 consumers.

(2) If the concentration specified in subsection clauses 19 (1) 1), 3) or 5) or subsection 19 (2) of this Act has as its object or effect the co-ordination of the behaviour of undertakings which influences or is likely to influence competition, compliance of such activity with the conditions provided in subsection 4 (1) and subsection 6 (1) shall also be appraised. The appraisal shall be based, above all, on the following:

- 1) whether two or more undertakings who have created a joint venture will continue, to a material extent, their activities in the same goods market as the joint venture, or in the previous or following affected market, or in another market connected to such goods market;
- 2) whether the co-ordination of behaviour which is the direct result of the creation of the joint venture gives the undertakings which created the joint venture an opportunity to eliminate competition in the goods market or a significant part thereof.

(3) The Competition Authority shall prohibit a concentration if it is likely to significantly restrict competition in the goods market above all, by creating or strengthening a dominant position.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(4) The Competition Authority shall prohibit a concentration specified in subsection (2) based on subsection (3) of this section, or in the event the concentration does not meet the conditions provided in subsection 6 (1) of this Act.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

### **§ 23. Turnover of parties to concentration**

(1) The turnover of a party to a concentration is comprised of the returns on the goods sold by the party to the concentration during the financial year preceding the concentration, calculated pursuant to the guidelines for calculating turnover established on the basis of subsection 24 (8) of this Act.

(2) The turnover in Estonia of a party to a concentration is obtained as a result of sale of goods to buyers within the territory of Estonia.

(3) 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;
- 2) income from financial investments;
- 3) income from service charges;
- 4) income from financial operations;
- 5) other operating income.

(4) The turnover in Estonia of credit and financial institutions consists of the income earned by a credit or financial institution established in Estonia, or an Estonian branch of a foreign credit or financial institution.

(5) The turnover of an insurer is deemed to comprise the value of the gross insurance premiums which includes all insurance premiums received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums after deduction of the taxes and other fees and payments to be paid on individual insurance premiums or the total volume of insurance premiums.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

### **§ 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 totalling the turnovers of the following undertakings:

- 1) the party to the concentration;
- 2) an undertaking or undertakings controlled by the party to the concentration;
- 3) an undertaking or undertakings controlling the party to the concentration;
- 4) an undertaking or undertakings controlled by an undertaking specified in clause 3) of this subsection;
- 5) an undertaking or undertakings jointly controlled by two or more of the undertakings specified in clauses 1)-4) of this subsection.

(2) If control over an undertaking is acquired in the 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 that undertaking and the turnovers of the undertakings controlled by the undertaking.

(3) If control over a part of an undertaking is acquired in the 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 the part of the undertaking which is the subject of the transaction.

(4) If control over an undertaking is acquired in the manner provided by subsection 19 (2) of this section, the turnovers of the undertakings which jointly create a new undertaking shall be taken account of upon calculating the turnover.

(5) The turnover of a party to a concentration does not include the sale of goods effected between undertakings which belong to the same group.

(6) If a concentration comprises acquisition of control by the same natural persons or undertakings of parts of one or several undertakings through two or several transactions conducted within a period of two years, such transactions are deemed to be one and the same concentration and the date of the last transaction is deemed to be the date of such concentration. Upon calculation, in the case of such concentration, of the turnover of the parts over which control is being acquired, the turnover of all the parts which were the objects of the transactions during the preceding two years shall be taken into account but at the same time, the turnover of the corresponding parts shall not be taken account of upon calculation of the turnover of the natural persons or undertakings acquiring control.

(7) If, within the preceding two years one and the same undertaking or an undertaking belonging to the same group has acquired control of parts of an undertaking or undertakings which operate within one and the same sector of economy in Estonia, the turnover of the undertaking over which control is acquired shall include the turnover of the undertakings over which control has been acquired within the two years preceding concentration.

(8) The guidelines for the calculation of turnover shall be established by a regulation of the minister responsible for the area. The regulation shall provide the procedure for the calculation of the turnover and may prescribe different methods for calculation of the turnover of parties to a concentration which operate in different sectors of economy.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 25. Notification of concentrations**

(1) The Competition Authority shall be notified of a concentration subject to control before the entry into force of the concentration in adherence to the terms provided in §§ 26 and 27 of this Act, and after:

- 1) entry into a merger agreement or performance of a transaction or other act for acquisition of parts of the undertaking;
- 2) performance of a transaction or other act for acquisition of control;
- 3) performance of a transaction or other act for acquisition of joint control;
- 4) announcement of a public bid for securities.

(2) The Competition Authority may be notified of a planned concentration subject to control pursuant to subsection 21 (1) of this Act also before a transaction or act for merger or acquisition of control is performed or a public bid is announced, if the parties to the concentration prove their intention to perform such act or transaction or if, in the case of a public bid, the parties to the concentration have notified of their intention to organise such bid in public.

(3) The following shall notify of a concentration, based on subsection 19 (1) of this Act:

- 1) the undertakings jointly if previously independent undertakings merge within the meaning of the Commercial Code or parts of undertakings are merged;
- 2) the undertaking who acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 3) the undertakings jointly who acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 4) the natural person who acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that the natural person is already controlling at least one undertaking;
- 5) the natural persons jointly who acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that such natural persons are already controlling at least one undertaking.

(4) Credit institutions, financial institutions and insurers shall notify of a concentration after obtaining permission from the supervisory authority of the corresponding field.

(5) Before notification of a concentration, a state fee for processing the notice of concentration shall be paid pursuant to the procedure provided by the State Fees Act.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 26. Notice of concentration**

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

- 1) information concerning each party 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 each party to the concentration during the preceding financial year;
- 4) information concerning control exercised or holdings owned in other undertakings by the undertakings belonging to the same group as the parties to the concentration and specified in clauses 24 (1) 1)–5) of this Act;



- 5) information concerning goods markets, including information concerning the market shares, main competitors, buyers and the market shares of the competitors and buyers 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 obligations directly related to the concentration;
  - 10) list of competition authorities of other states who have been or will be notified of the concentration.
- [RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) A notice of concentration may be submitted to the Competition Authority in an abbreviated form, leaving out, from the requisite information set forth in subsection (1) of this section, the additional information on goods markets required by clause 5) of this section, provided that one of the following conditions has been met:

- 1) a party to the concentration or an undertaking belonging to the same group with the party does not operate within the same goods market as another party to the concentration or an undertaking belonging to the same group with the party (there is no horizontal overlap of the goods markets) or in the previous or following affected market, in which the other party to the concentration or an undertaking belonging to the same group with the party operates (there is no vertical relationship between the goods markets);
- 2) at least two parties to the concentration or undertakings belonging to the same group with the parties operate within the same goods market and their joint market share will not exceed 15 per cent after concentration, or one or several two parties to the concentration or undertakings belonging to the same group with the parties operate in the previous or following affected market, in which another party to the concentration or an undertaking belonging to the same group with the party operates, unless the individual market share of a party to the concentration or the joint market share of the parties to the concentration does not exceed 25 per cent;
- 3) the parties to the concentration jointly establish a new undertaking within the meaning of subsection 19 (2) of this section and the new undertaking does not operate and has no intention to operate in Estonia;
- 4) a party to the concentration acquires control over an undertaking over which the party, together with another undertaking, is already exercising joint control.

(3) The following original documents or certified copies thereof shall be annexed to a notice of concentration:

- 1) registry extracts concerning the parties to the concentration who have been entered in the registers of other countries;
- 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) analyses, reports, researches, reviews and other documents for evaluation or analysis of the concentration in relation to market shares, competition conditions, possible increase in sales or expansion into other markets, or general market conditions;
- 7) a list of the documents annexed to the notice of concentration.

(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 responsible for the area.

(6) If the notice does not conform to the requirements provided by subsections (1)–(4) of this section or the guideline specified in subsection (5) of this section, the Competition Authority shall set a term for elimination of the deficiencies of the notice of concentration.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(7) If the Competition Authority sets a term for elimination of the deficiencies contained in a notice of concentration, the terms provided for in subsection 27 (1) of this Act begin to run as of the elimination of the deficiencies.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(8) If the parties to a concentration fail to eliminate the deficiencies by the due date, the notice is deemed not to have been submitted.

(9) The Competition Authority may release a party to a concentration from the obligation to submit some of the documents or information specified in subsection (1) or (3) of this section if such documents or information are not necessary for the proceedings concerning the concentration.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(10) 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.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 27. Proceedings concerning concentration**

(1) Within thirty calendar days as of the submission of a notice of concentration, the Competition Authority shall:

[RT I 2007, 66, 408 - entry into force 01.01.2008]

- 1) make a decision to grant permission to concentrate if the concentration subject to control does not involve circumstances specified in subsections 22 (3) or (4) 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 subsections 22 (3) or (4) of this Act;
- 3) make a decision 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;
- 4) terminate the proceedings by a decision if the parties to the concentration decide not to concentrate.

(2) In the course of supplementary proceedings, the Competition Authority shall make one of the following decisions within four months of the beginning of the supplementary proceedings:

[RT I 2007, 66, 408 - entry into force 01.01.2008]

- 1) to grant permission to concentrate if the concentration subject to control does not involve circumstances specified in subsections 22 (3) or (4) of this Act;
- 2) to prohibit the concentrate if the concentration subject to control involves circumstances specified in subsections 22 (3) or (4) of this Act;
- 3) terminate the proceedings if the parties to the concentration decide not to concentrate.

(3) In order to avoid restriction of competition, the Competition Authority may grant permission to concentrate, provided that the parties to the concentration take upon themselves to perform the obligations which they have assumed.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(4) Based on a reasoned written application of a party to a concentration, the Competition Authority may amend the conditions for performance of the obligations specified in subsection (3) of this section contained in the decision to grant permission to concentrate or to revoke such conditions if the situation on the goods market affected by the concentration has changed to a significant extent or another good reason exists therefor.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(5) A concentration is permitted if the Competition Authority 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.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(6) A concentration subject to control pursuant to § 21 of this Act shall not be given effect before a decision to permit concentration has been made or if concentration is permitted pursuant to subsection (5) of this section.

(6<sup>1</sup>) The parties to a concentration must give effect to the concentration within six months from entry into force of the decision to grant permission to concentrate. Based on a reasoned application of a party to the concentration, the Competition Authority may extend the specified term once for up to one year.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(6<sup>2</sup>) Restrictions on competition which are directly related to and necessary for giving effect to the concentration shall also be deemed to be permitted by the decision to grant permission to concentrate.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(7) The provisions of subsection (6) of this section do not prohibit the last public bid of securities or performance of transactions with securities as a series, including securities interchangeable with other securities admitted to be traded on a securities market, whereby control is acquired from different sellers within the meaning of § 19 of this Act, provided that:

- 1) the Competition Authority is immediately informed of the concentration pursuant to § 25 of this Act;
- 2) the acquirer of the securities does not use the voting rights related to the acquired securities or uses such rights only with the aim to maintain the value of the investments.

(8) Based on a reasoned application of the parties to a concentration, the Competition Authority may make an exception to the requirements specified in subsections (6) and (7) of this section and give permission to perform acts. In reviewing the application, the Competition Authority shall, among other, take into account the effect of the requested acts on one or several of the parties to the concentration or to a third party, and any dangers to competition resulting from the concentration. Upon giving permission, the Competition Authority may impose obligations related to the performance of acts on the parties to the concentration.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(9) This section does not influence the validity of transactions with securities, including transactions with securities interchangeable with other securities admitted to be traded on a securities market, unless the buyer or seller knew or should have known that the transaction was performed in violation of the provisions of subsection (6) of this section.

(10) If deficiencies in a notice of concentration become evident within the term specified in subsection (1) or (2) of this section, the Competition Authority shall inform the person who submitted the notice of concentration thereof in writing. The running of the term specified in subsection (1) or (2) of this section shall be suspended as of the day following the date on which the Competition Authority sent the letter until the time the deficiencies are eliminated.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(11) If the parties to a concentration fail to submit necessary or additional information or materials within the term set by the Competition Authority, the running of the term specified in subsection (1) or (2) of this section shall be suspended as of the day following the date on which the Competition Authority sent the letter until the time the information or materials are submitted.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(12) The Competition Authority shall publish a notice concerning receipt of a notice of concentration and the decisions made based on subsection (1) or (2) of this section in the publication *Ametlikud Teadaanded*. The notice to be published shall set forth the names and business names of the parties to the concentration, their countries of residence and the manner of concentration pursuant to the appropriate clause of subsection 19 (1) of this Act.

(13) Interested parties have the right to submit opinions and objections to the Competition Authority within seven calendar days as of publication of a notice concerning receipt of a notice of concentration specified in subsection (12) of this section.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **§ 28. Assumption of obligation by party to concentration**

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(1) If the Competition Authority finds that the circumstances specified in subsections 22 (3) or (4) of this Act exist in relation to a concentration subject to proceedings, the parties to the concentration shall be informed thereof in writing promptly but not later than one month before the termination of the term of the supplementary proceeding. The notice shall indicate the term for submission of objections, or for making a proposal for assumption of the obligations provided in subsection 27 (3).

(2) The parties to a concentration must describe the obligations assumed thereby in sufficient detail to enable the Competition Authority to determine the suitability of the assumed obligations in order to avoid restriction of competition on the goods market.

(3) The Competition Authority shall prohibit a concentration based on subsection 22 (3) of this Act if, in the opinion of the Competition Authority, the assumed obligations are not suitable in order to avoid restriction of competition on the goods market and the parties to the concentration do not agree to change those obligations, or if the parties to the concentration have not made a proposal on assuming obligations within the term provided for in subsection (1) of this section.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(3<sup>1</sup>) If the obligations assumed on the basis of subsection (3) of this section require an additional analysis or the parties to the concentration agree to change or supplement the assumed obligations, the running of the term specified in subsection 27 (2) of this Act shall be suspended. Proceedings shall be suspended from the day following the day on which the Competition Authority sends a respective notice and the term provided for in subsection 27 (2) of this Act shall continue running from the date of receipt of the proposal for assumption of the obligation.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(3<sup>2</sup>) Proceedings may be suspended once for up to two months on the basis provided for in subsection (3<sup>1</sup>) of this section.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(4) The parties to a concentration are required to inform the Competition Authority of performance of the assumed obligations within ten calendar days after the date of performance of the obligations or after the expiry of the term for performance of the obligations referred to in the decision concerning grant of permission to concentrate.

(5) [Repealed - RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 28<sup>1</sup>. Oral hearing**

At the request of a party to a concentration or the Competition Authority, a meeting shall be held for the oral hearing of the party to the concentration at the time and place determined by the Competition Authority. The person to be heard shall be notified of the meeting at least ten calendar days before the hearing. On the basis of a reasoned written request of the person summoned to the meeting, the Competition Authority may change the term or the place of the meeting. Upon agreement between the Competition Authority and the person to be heard, notification may be given orally.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 29. Nullity of concentration**

(1) The Competition Authority may decide to revoke a decision to grant permission to concentrate if:

[RT I 2007, 66, 408 - entry into force 01.01.2008]

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.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

## **Chapter 6 STATE AID**

### **§ 30. State aid**

(1) State aid shall be deemed to be the aid laid down in Article 107(1) of the Treaty on the Functioning of the European Union.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(2) State aid shall be granted for the elimination of market failures during a specified term and to the extent necessary to achieve the objective specified in Article 107(2) and (3) of the Treaty on the Functioning of the European Union. State aid must have an incentive effect.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(3) The provisions of this Chapter, except the provisions of subsections 49 (3<sup>1</sup>) and (5) and § 49<sup>2</sup> shall not apply to:

[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

1) aid granted to the transport sector;

2) aid related to the production, processing or marketing of agricultural products or forestry, the grant of which is regulated by the Rural Development and Agricultural Market Regulation Act or the European Union Common Agricultural Policy Implementation Act;

3) aid related to the production, processing or marketing of fishery products, the grant of which is regulated by the Fisheries Market Organisation Act.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

### **§ 30<sup>1</sup>. Grantor of state aid**

(1) The grantor of state aid shall be the state, local government or other body, including a foundation, non-profit association, legal person in public law, or public undertaking specified in subsection 31 (3<sup>1</sup>) of this Act, which directly or indirectly uses the resources of the state or a local government for granting state aid.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(1<sup>1</sup>) Where it is not possible to clearly determine the grantor of state aid or the institutions which grant aid fail to reach an agreement with respect to the performance of obligations related to granting of state aid, the grantor of state aid shall be appointed by the Government of the Republic, by an order, based on the purpose of the aid, the field of grant of aid or other circumstances which affect the performance of obligations related to granting aid.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

(2) The grantor of state aid is required to ensure the transparency and efficiency of the grant of state aid and, after the grant of state aid, to inspect the purposefulness of use of state aid.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(2<sup>1</sup>) The grantor of state aid has no right to start granting state aid before the European Commission has made or is deemed to have made a permitting decision with respect to the notice on state aid specified in § 34<sup>1</sup> of this Act. The prohibition does not apply if state aid covered by group exemption is granted pursuant to the provisions of § 34<sup>2</sup>.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

(2<sup>2</sup>) If the grantor of state aid has submitted a notice to the European Commission to obtain legal certainty, the grantor of state aid shall not start granting state aid before the European Commission has made or is deemed to have made a permitting decision with respect to the notice pursuant to subsection 30<sup>1</sup>(2<sup>1</sup>) of this Act or a decision that there is no state aid. The provisions of § 34<sup>1</sup> of this Act shall apply to the notice.  
[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(3) The Ministry of Finance has the right to request from the grantor of state aid information about the performance of the duties specified in subsection (2) of this section.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

### **§ 31. Public undertaking and undertaking providing services of general economic interest**

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(1) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

(2) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

(3) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

(3<sup>1</sup>) A public undertaking is an undertaking 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.

(3<sup>2</sup>) An undertaking providing services of general economic interest is an undertaking to which the state or a local government has assigned the duty to provide a service of general economic interest which is not available on the market and the provision of which the state or the local government considers necessary. Services of general economic interest shall be defined and the duty to provide such services shall be established by legislation or a contract.  
[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

(5) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

(6) [Repealed – RT I 2004, 25, 168 - entry into force 01.05.2004]

### **§ 32. [Repealed - RT I 2004, 25, 168 - entry into force 01.05.2004]**

### **§ 33. De minimis aid**

(1) De minimis aid shall be deemed to be the aid specified in Article 3 of Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1–8) and Article 2 of Commission Regulation (EU) No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.04.2012, p. 8–13).  
[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(2) It is not necessary to submit the notice on state aid specified in § 34<sup>1</sup> of this Act to the European Commission, in order to grant de minimis aid.

(3) De minimis aid shall be granted pursuant to the procedure provided for in Commission Regulations (EU) No 1407/2013 and (EU) No 360/2012.  
[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(4) [Repealed RT I 2007, 60, 384 - entry into force 01.01.2008, in force until 31.12.2011]

(4<sup>1</sup>) Upon the grant of de minimis aid, the grantor is required, before adopting the decision to grant de minimis aid, to notify the beneficiary of the aid of the planned grant of de minimis aid.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4<sup>2</sup>) [Repealed - RT I 27.06, 2012, 3 - entry into force 07.07.2012, in force until 31.12.2012]

(4<sup>3</sup>) [Repealed - RT I 27.06, 2012, 3 - entry into force 07.07.2012, in force until 31.12.2012]

(4<sup>4</sup>) Upon the grant of de minimis aid, the grantor is required to indicate in the decision to grant de minimis aid that the aid granted is de minimis aid within the meaning of Article 3 of Commission Regulation (EU) No 1407/2013 or Article 2 of Commission Regulation (EU) No 360/2012.

[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(5) A grantor shall check that the de minimis ceiling will not be exceeded by the new de minimis aid.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

### **§ 34. [Repealed - RT I 2007, 60, 384 - entry into force 01.01.2008]**

#### **§ 34<sup>1</sup>. Submission of notice on state aid to the European Commission**

(1) The grantor of state aid shall submit the notice on state aid complying with the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, pp. 1–134) together with all necessary information in writing and by electronic means through the web-application prescribed by the European Commission to the Ministry of Finance for review.

(2) If the notice on state aid complies with the requirements, the grantor of state aid shall forward this together with all necessary information through the web-application prescribed by the European Commission to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(3) The Ministry of Finance has the right to request the submission of additional information from the grantor of state aid or to make a proposal to supplement the notice on state aid within 10 working days as of the receipt of the notice if:

- 1) in the opinion of the Ministry of Finance, the notice on state aid does not comply with the requirements;
- 2) the grantor of state aid has failed to submit the required information in the notice on state aid; or
- 3) there are deficiencies in the submitted information.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) The grantor of state aid shall submit the additional information requested by the European Commission in the course of processing the notice on state aid by electronic means via the Ministry of Finance to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

(5) If the grantor of state aid decides to withdraw the notice on state aid submitted to the European Commission, the grantor shall submit an application to the Ministry of Finance, which shall forward it to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

#### **§ 34<sup>2</sup>. State aid covered by group exemption**

(1) State aid covered by group exemption shall be deemed to be the aid specified in Article 1 of Council Regulation (EU) 994/98 on the Implementation of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1–4), with regard to which the European Commission has adopted the corresponding group exemption regulation.

[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(2) It is not necessary to submit the notice on state aid specified in § 34<sup>1</sup> of this Act to the European Commission, in order to grant state aid covered by group exemption.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

(2<sup>1</sup>) Upon the grant of state aid covered by block exemption, the grantor of state aid is required to indicate in the decision to grant aid that the aid granted is state aid covered by block exemption within the meaning of the block exemption regulation of the European Commission.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(3) Upon the grant of state aid covered by block exemption, the grantor of state aid shall submit, not later than 10 working days before granting the individual state aid or implementation of the aid scheme, a summary information sheet concerning the grant of state aid covered by block exemption (hereinafter *notice on block exemption*) complying with the requirements set by the European Commission in writing and by electronic

means through the web-application prescribed by the European Commission to the Ministry of Finance for review. The legislation or the draft legislation on the basis of which individual state aid is granted or an aid scheme is implemented and, if necessary, description of the aid proving the compliance of the planned state aid with the conditions prescribed in the block exemption regulation of the European Commission shall be submitted to the Ministry of Finance together with the notice on block exemption.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) [Repealed – RT I 2007, 60, 384 - entry into force 01.01.2008]

(5) [Repealed – RT I 2007, 60, 384 - entry into force 01.01.2008]

(6) [Repealed – RT I 2007, 60, 384 - entry into force 01.01.2008]

(7) If the notice on group exemption complies with the requirements, the grantor of state aid shall forward this to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

(7<sup>1</sup>) The Ministry of Finance has the right to request the submission of additional information from the grantor of state aid or to make a proposal to supplement the notice on block exemption within 10 working days as of the receipt of the notice on block exemption if:

- 1) in the opinion of the Ministry of Finance, the notice on block exemption does not comply with the requirements;
- 2) the grantor of state aid has failed to submit the required information in the notice on block exemption; or
- 3) there are deficiencies in the submitted information.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(8) The notice on group exemption shall be forwarded to the European Commission not later than within 20 days of granting individual state aid or the commencement of implementation of a state aid scheme.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

**§ 35.–§ 41.**[Repealed - RT I 2004, 25, 168 - entry into force 01.05.2004]

#### **§ 42. Recovery of unlawful state aid or misused state aid**

(1) The aid defined in Article 1.f of the Council Regulation (EU) No 659/1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.03.1999 p. 1–9) is deemed to be unlawful state aid.

[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

(2) The activity specified in Article 1(g) of the Council Regulation (EC) No 659/1999 is deemed to be misuse of state aid.

(3) If the European Commission or the European Court of Justice has forwarded a decision that unlawful state aid or misused state aid has to be recovered by the beneficiary of the state aid, this decision shall be forwarded to the grantor of unlawful state aid or misused state aid. The grantor of state aid is required to demand recovery of the state aid with interest pursuant to the decision of the European Commission or the European Court of Justice.

[RT I 2007, 60, 384 - entry into force 01.01.2008]

**§ 43.–§ 48.**[Repealed - RT I 2004, 25, 168 - entry into force 01.05.2004]

#### **§ 49. Reporting on state aid**

(1) The Ministry of Finance shall forward the pre-completed reporting tables of state aid sent by the European Commission by electronic means to the grantors of state aid by 31 March each year. A grantor of state aid is required to check the pre-completed reporting table of state aid with regard to the aid granted by the grantor of state aid, to amend or supplement and return the reporting tables by electronic means to the Ministry of Finance by 30 April each year.

(2) If the European Commission has established an obligation with its decision to the grantor of state aid to submit an additional report on the relevant state aid to the Commission or if the Commission requires additional reporting concerning the granted state aid from the grantor of state aid, the grantor of state aid shall submit this to the Ministry of Finance by 30 April each year or not later than 10 working days before the due date specified in the decision of the European Commission.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(3) [Repealed RT I 2007, 60, 384 - entry into force 01.01.2008, in force until 31.12.2011]

(3<sup>1</sup>) Grantors of de minimis aid are required to ensure access to information concerning de minimis aid granted in the previous calendar year to the Ministry of Finance by 30 April each year.  
[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) The Ministry of Finance shall forward the reports specified in subsections (1) and (2) of this section by electronic means to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward these to the European Commission not later than by 30 June or the due date established by the Commission.

(5) The Ministry of Finance shall submit an overview of state aid and de minimis aid granted in Estonia to the Government of the Republic once a year.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

#### **§ 49<sup>1</sup>. Co-operation with European Commission as regards supervision and on-site inspections**

(1) The Ministry of Finance shall provide assistance; if necessary, to the European Commission as regards supervision over the state aid and on-site inspections.

(2) In the case provided for in Article 22 (6) of Council Regulation (EC) No 659/1999, the minister responsible for the area or a person authorised by him or her for such purpose shall submit a written application to the Administrative Court of Tallinn for permission to the officials authorised by the European Commission to conduct inspection. An authorisation specifying the reason and purpose of the inspection shall also be submitted to the Administrative Court of Tallinn together with the application for permission.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

(3) The grant of permission specified in subsection (2) of this section shall be decided pursuant to the provisions of the Code of Administrative Court Procedure concerning the grant of permission to take administrative measures.  
[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

#### **§ 49<sup>2</sup>. Register of state aid and de minimis aid**

(1) The register of state aid and de minimis aid (hereinafter *register*) is a national register established by the Government of the Republic in which records of the grant and use of state aid and de minimis state aid shall be maintained.

(2) The statutes for maintenance of the register shall be established and the authorised processor shall be appointed by the Government of the Republic on the proposal of the Minister of Finance.

(3) Grantors of state aid and de minimis aid are required to submit information concerning all the state aid and de minimis aid granted by them to the register.  
[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) The provisions of subsection (3) of this section shall not apply to the state aid specified in clauses 30 (3) 2) and 3) of this Act, unless such aid is granted in the cases specified in §§ 34<sup>1</sup> and 34<sup>2</sup> of this Act.  
[RT I, 30.12.2014, 2 - entry into force 01.01.2015]

## **Chapter 7 UNFAIR COMPETITION**

#### **§ 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 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 AND ADMINISTRATIVE SUPERVISION**

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

#### **§ 54. Organisation of state and administrative supervision**

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

The Competition Authority shall exercise state and administrative supervision over implementation of this Act, except implementation of the provisions of Chapters 6 and 7.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

#### **§ 54<sup>1</sup>. Special state supervision measures**

In order to exercise state supervision provided for in this Act, the Competition Authority may apply the specific state supervision measures provided for in §§ 30, 31, 32, 49, 50, and 51 of the Law Enforcement Act on the basis of and pursuant to the procedure provided for in the Law Enforcement Act.

[RT I, 13.03.2014, 4 - entry into force 01.07.2014]

#### **§ 55. Competence of Competition Authority**

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

(2) The Competition Authority 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 between Competition Authority and the European Union**

(1) The Competition Authority is a competition authority who is responsible for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union within the meaning of Article 35 of Council Regulation 1/2003/EC on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 04.01.2003, p. 1–25) and shall, if necessary, assist the European Commission in competition supervision and performance of on-site inspections.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) The Competition Authority shall co-operate with the competition authorities of the Member States of the European Union (hereinafter *Member States*) and the European Commission in the application of the European Union competition rules pursuant to the conditions and procedure established by the legislation of the European Union.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(3) In hearing a matter related to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union, the national court shall involve the Competition Authority in the proceedings to provide an opinion.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) The Competition Authority shall, on the basis of a reasoned written request and in the interests of the competition authority of another Member State, perform procedural acts prescribed in this Act and the Administrative Procedure Act in order to establish a possible violation of the provisions of Articles 101 and 102 of the Treaty on the Functioning of the European Union, and apply the state supervision measures provided for in the Law Enforcement Act. An official of the competition authority of another Member State may participate in procedural acts performed by the Competition Authority if necessary.

[RT I, 29.06.2014, 1 - entry into force 01.07.2014]

#### **§ 57. Right of Competition Authority to request information**

(1) The Competition Authority 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) [repealed - RT I, 05.07.2013, 1 - entry into force 15.07.2013]
  - 5) monitoring the activities of an undertaking in a dominant position;
  - 6) monitoring a concentration or compliance with the conditions of a permission to concentrate;
- [RT I 2006, 25, 186 - entry into force 01.07.2006]
- 7) [repealed - RT I 2002, 82, 480 - entry into force 24.10.2002]
  - 8) [repealed - RT I 2002, 82, 480 - entry into force 24.10.2002]
  - 9) exercising state supervision over the implementation of this Act.

(2) The information provided for in subsection (1) of this section shall be demanded in a request in writing or in a format which can be reproduced in writing 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 at least ten calendar days.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(3) [Repealed - RT I, 13.03.2014, 4 - entry into force 01.07.2014]

#### **§ 57<sup>1</sup>. Penalty payment rate**

Upon failure to comply with a precept, the maximum rate of the penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is up to 6400 euros for natural persons and up to 9600 euros for legal persons.

[RT I, 13.03.2014, 4 - entry into force 01.07.2014]

#### **§ 58. Summoning to Competition Authority**

[Repealed - RT I 13.03, 2014, 4 - entry into force 01.07.2014]

#### **§ 59. Right of Competition Authority to request submission of materials**

(1) The Competition Authority 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 Authority 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 Authority after completion of the supervisory operations.

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

[Repealed - RT I 13.03, 2014, 4 - entry into force 01.07.2014]

#### **§ 61. Making of recommendations**

(1) The Competition Authority may make recommendations to state agencies, local governments and natural and legal persons as to the improvement of the competitive situation.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) A person who has been given a recommendation by the Competition Authority must, at the request of the Competition Authority, notify the Competition Authority of measures taken in order to follow the recommendation or reasons why measures are not taken.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 61<sup>1</sup>. Finding prohibited acts committed and issue of precepts**

If the Competition Authority has found that an act prohibited under Chapters 2 or 4 of this Act or under Articles 101 or 102 of the Treaty on the Functioning of the European Union (hereinafter *prohibited act*) has been committed, the finding of the commitment of the prohibited act must be contained in the conclusion of the precept issued to the undertaking which committed the prohibited act.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 62. Precepts and imposition of penalty payment**

[Repealed - RT I 13.03, 2014, 4 - entry into force 01.07.2014]

### **§ 63. Obligation to maintain business secrets**

(1) Information concerning the business activities of an undertaking the communication of which to other persons is likely to harm the interests of such undertaking, above all, technical and financial information relating to know-how, information concerning the methodology of validation of expenditure, production secrets and processes, sources of supply, volumes of purchase and sales, market shares, clients and distributors, marketing plans, expenditure and price structures and sales strategy are deemed to be business secrets. Information subject to disclosure or disclosed to the public, decisions and precepts made by the Competition Authority and documents prepared by the Director General of the Competition Authority or any other official of the Competition Authority from which business secrets have been excluded are not deemed to be business secrets.

[RT I 2007, 66, 408 - entry into force 01.01.2008]

(2) Unless otherwise provided by this Act, an official of the Competition Authority does not have the right without the consent of the undertaking to communicate to other persons or disclose to the public the business secrets, including information subject to banking secrecy, of the undertaking which have become known to the Competition Authority in the course of performance of its official duties. An undertaking shall determine and indicate any such information which the undertaking considers, with good reason, to be a business secret of the undertaking. If the Competition Authority so requests, an undertaking is required to indicate information which is considered to be a business secret and provide reason for classifying information as a business secret. Other information is not deemed to be a business secret except for information which, pursuant to legislation, is not subject to disclosure. If the Competition Authority so requests, an undertaking is required to prepare a review of a document which does not include business secrets.

[RT I, 29.06.2014, 1 - entry into force 01.07.2014]

(3) An official of the Competition Authority may disclose and use a business secret of an undertaking if this is necessary for establishing an offence related to competition, or a violation of this Act or Article 101 or Article 102 of the Treaty on the Functioning of the European Union. An official of the Competition Authority may submit documents containing a business secret only to a court for preparation of the hearing of a criminal, civil, administrative or misdemeanour matter, or for the hearing of or making a court decision in such matter.

[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(4) For the purpose of applying Articles 101 and 102 of the Treaty on the Functioning of the European Union, the Competition Authority shall have the right to exchange with the European Commission and the competition authorities of the Member States, and to use in evidence, any matter of fact or of law, including business secrets of undertakings and other confidential information, pursuant to the conditions specified in Article 12 of Council Regulation 1/2003/EC.

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(5) The Competition Authority shall exclude business secrets and other confidential information from the texts of decisions and precepts subject to disclosure.

[RT I 2006, 25, 186 - entry into force 01.07.2006]

### **§ 63<sup>1</sup>. Application**

(1) An application filed with the Competition Authority for the commencement of administrative proceedings or an application submitted to the Competition Authority during the administrative proceedings (hereinafter *application*) shall be in writing and shall set out the information specified in subsection 14 (3) of this Act.

(2) An application shall be signed by the person filing the application or by the representative of the person. An application filed on behalf of a legal person or an association which is not a legal person shall be signed by the person who has the corresponding authorisation. The representative of a person submitting the application shall annex a document certifying his or her authorisation to the application. Documentation available to the person submitting the application shall be annexed to the application.

(3) On the basis of a reasoned request from the person submitting the application, the name of the person may, by a decision of the Competition Authority, be declared not to be subject to disclosure to other persons.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 63<sup>2</sup>. Refusal to review application**

(1) The Competition Authority shall refuse to review an application if:

- 1) the application is clearly unjustified;
- 2) an action concerning the same matter has been filed with the European Commission or a decision of the European Commission concerning the same matter has entered into force;
- 3) it is not possible to identify the applicant on the basis of information contained in the application;
- 4) the application contains deficiencies and the applicant has failed to eliminate the deficiencies by the term set by the Competition Authority.

(2) The Competition Authority may refuse to review an application if an action concerning the same matter has been filed with the competition authority of another Member State or a decision of the competition authority of another Member State concerning the same matter has entered into force.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 63<sup>3</sup>. Suspension of proceedings**

(1) The Competition Authority may, by a decision, suspend the proceedings if administrative proceedings, administrative court proceedings, civil proceedings, misdemeanour proceedings or criminal proceedings are pending that are relevant for making a decision in the matter and are related to the matter.  
[RT I 2007, 66, 408 - entry into force 01.01.2008]

(2) The Competition Authority may, by a decision, reopen the proceedings upon entry into force of a court decision or administrative act in the proceedings specified in subsection (1) of this section.  
[RT I 2007, 66, 408 - entry into force 01.01.2008]

### **§ 63<sup>4</sup>. Termination of proceedings**

(1) The Competition Authority may terminate proceedings if:

- 1) in the activities of the undertaking there are no indications of a violation of this Act;
- 2) competition has not been significantly restricted;
- 3) the undertaking has significantly improved competition in the goods market;
- 4) misdemeanour or criminal proceedings have commenced concerning the same matter;
- 5) the applicant has withdrawn the application and the termination of the proceedings does not infringe the rights of third parties;
- 6) the same matter has been filed with the competition authority of another Member State or a decision of the competition authority of another Member State concerning the same matter has entered into force;
- 7) the addressee of the administrative act is deceased or dissolved;
- 8) the Competition Authority has approved the obligation assumed on the basis of § 63<sup>7</sup> of this Act;
- 9) the undertaking has terminated the activities which were the subject of the proceedings and there is no need to issue a precept;
- 10) the content of the facts described in the application refer to a civil dispute and there is no obvious risk of restriction of competition.

(2) The Competition Authority shall terminate the proceedings if an action concerning the same matter has been filed with the European Commission or a decision of the European Commission concerning the same matter has entered into force.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 63<sup>5</sup>. Permission of court to carry out inspections**

(1) The Competition Authority shall submit a reasoned written application concerning the grant of permission for exercising control to the European Commission under the conditions and pursuant to the procedure provided by Articles 20 and 21 of Council Regulation 1/2003/EC on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 04.01.2003, pp. 1–25) and Article 13 of Council Regulation 139/2004/EC to the Chairman of Tallinn Administrative Court or an administrative judge of that court appointed by him or her.  
[RT I 2007, 66, 408 - entry into force 01.01.2008]

(2) Before grant of the permission, the national judge shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the

seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. In considering the grant of permission, the national judge may not call into question the necessity for the inspection.

(3) In assessing the proportionality of the coercive measures envisaged, the national judge may ask the Commission, directly or through the Competition Authority for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged. The national judge may not demand that it be provided with information in the Commission's file.

(4) The grant of permission specified in this section shall be decided pursuant to the provisions of the Code of Administrative Court Procedure concerning the grant of permission to take administrative measures.  
[RT I 2006, 25, 186 - entry into force 01.07.2006]

### **§ 63<sup>6</sup>. Precept in case of risk of restriction of competition**

(1) In cases of urgency, the Competition Authority may at its own initiative impose, by a precept, an obligation on a natural or legal person to perform the act required by the precept or refrain from a prohibited act if, to the knowledge of the Competition Authority, there is a risk of significant and irreparable damage to competition due to violation of the provisions of Article 101 or 102 of the Treaty on the Functioning of the European Union.

(2) The term of the precept specified in subsection (1) of this section is up to three months. The Competition Authority may extend the term of the precept, if necessary, but not more than for up to one year.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

### **§ 63<sup>7</sup>. Assumption of obligation, application for assumption of obligation and approval of assumption of obligation**

(1) An undertaking, the activities of which may mean the commitment of a prohibited act and on whom the Competition Authority considers imposing, by a precept, an obligation to eliminate the violation, may submit to the Competition Authority a written application for assumption of its obligation (hereinafter application for assumption of obligation).  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

(2) The obligation must be directed at improving the competitive situation and be suitable for eliminating the damaging effects of the violation.

(3) The application for assumption of an obligation must be sufficiently detailed in order to enable the Competition Authority to assess the suitability of the suggested obligations and their improving effect on the competitive situation.

(4) If the Competition Authority approves an obligation, the Competition Authority may, by its decision, make the approved obligation binding for the undertaking and terminate the proceedings.

(5) An obligation is assumed for a specified term. An undertaking is required to notify the Competition Authority of performance of the obligation at the time previously determined by the Competition Authority.

(6) The Competition Authority may, at its own initiative or on the basis of an application of a person, resume the proceedings terminated on the basis of subsection (4) of this section if:

- 1) the circumstances which are the basis for the proceedings have significantly changed;
  - 2) the undertaking fails to perform the assumed obligation;
  - 3) the obligation was approved or the proceedings were terminated on the basis of incomplete, incorrect or misleading information submitted by the undertaking.
- [RT I, 05.07.2013, 1 - entry into force 15.07.2013]

**§ 64.–§ 73.**[Repealed - RT I 2002, 82, 480 - entry into force 24.10.2002]

## **Chapter 9 LIABILITY**

### **§ 73<sup>1</sup>. Interference with exercise of state supervision**

[Repealed - RT I 12.07.2014, 1 - entry into force 01.01.2015]

§ 73<sup>2</sup>. [Repealed - RT I 2004, 25, 168 - entry into force 01.05.2004]

§ 73<sup>3</sup>. [Repealed - RT I 2002, 82, 480 - entry into force 24.10.2002]

§ 73<sup>4</sup>. [Repealed - RT I 2004, 56, 401 - entry into force 01.08.2004]

#### **§ 73<sup>5</sup>. Abuse of dominant position**

(1) A person who establishes unfair trading conditions, or who limits production, services, goods market, technical development or investments, or engages in activities involving abuse of the dominant position on the market by the enterprise is punishable by a fine of up to 300 fine units or by detention.  
[RT I 2007, 13, 69 - entry into force 15.03.2007]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.  
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

#### **§ 73<sup>6</sup>. Enforcement of concentration without permission to concentrate and concentration which damages competition**

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(1) Enforcement of concentration without permission to concentrate, as well as violation of a prohibition on concentration or the terms of the permission to concentrate is punishable by a fine of up to 300 fine units or by detention.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.  
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

#### **§ 73<sup>7</sup>. Non-performance of obligations of undertakings in control of essential facilities**

[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(1) A person who denies other undertakings access to a network, infrastructure or other essential facility under reasonable and non-discriminatory conditions, or engages in other activities which create violation of the obligations provided by law for undertakings in control of essential facilities is punishable by a fine of up to 300 fine units or by detention.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.  
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

#### **§ 73<sup>8</sup>. Failure to comply with special requirement concerning accounting**

(1) Failure to comply with the special requirement concerning accounting provided for in this Act is punishable by a fine of up to 300 fine units or by detention.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.  
[RT I, 05.07.2013, 1 - entry into force 15.07.2013]

#### **§ 73<sup>9</sup>. Proceedings**

(1) The limitation period of misdemeanours provided for in §§ 73<sup>5</sup>–73<sup>8</sup> of this Act is three years.  
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 73<sup>5</sup>–73<sup>8</sup> of this Act shall be conducted by the Competition Authority.  
[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 74.–§ 77.[Repealed - RT I 2002, 63, 387 - entry into force 01.09.2002]

#### **§ 78. Compensation for damages caused by commitment of prohibited acts**

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

(1) Everyone has the right to receive compensation for proprietary damage caused to them by the commitment of a prohibited act.

(2) Agreements or coordinated activity between competitors with the aim to coordinate their competitive behaviour on the market or to affect appropriate competition parameters, or anti-competitive activities targeted at other competitors are assumed to cause damage.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 78<sup>1</sup>. Leniency application**

(1) For the application of § 205<sup>1</sup> of the Code of Criminal Procedure, a participant in a criminal offence provided for in § 400 of the Penal Code may submit a leniency application to the Competition Authority by means which allow written reproduction and fixation of the date and time of receipt of the application by the Competition Authority.

(2) A leniency application shall contain the following information:

1) the name, personal identification code, date of birth or registration number, address and other contact details of the applicant;

2) data allowing identification of other persons participating in a criminal offence provided for in § 400 of the Penal Code;

3) a detailed description of a criminal offence provided for in § 400 of the Penal Code, including information on affected goods, geographical scope of the violation and the time and manner of the violation;

4) all evidence available and known to the leniency applicant on a criminal offence provided for in § 400 of the Penal Code. If the submission of evidence together with the application is not technically possible, the same may be submitted in any other manner immediately. If the immediate submission of evidence is not possible, the submission of the description of the evidence together with the notification of the location of the evidence shall be deemed to be sufficient;

5) information on other competition authorities or other authorities to whom the leniency applicant has submitted or intends to submit a leniency application.

(3) If a leniency application is submitted by a natural person on his or her own name, that person shall be deemed to be the leniency applicant. If a leniency application is submitted by a representative of a legal person on behalf of the legal person, that legal person together with the natural persons associated with that legal person shall be deemed to be the leniency applicant. For the purposes of this section, a natural person associated with a legal person is a representative, member or shareholder of a legal person, a member and an employee of a governing or supervisory body, including in cases where the relationship of the natural person with the legal person has been terminated. Leniency shall not be applied to a natural person, associated with a legal person, who fails to comply with the conditions provided for in clauses (5) 2)–6) of this section or to whom the legal person, who is the leniency applicant, has reasonably precluded the application of leniency in the leniency application.

(4) The Competition Authority shall confirm the receipt of a leniency application to the leniency applicant immediately by indicating the exact time of the receipt by the Competition Authority and forward the application with its annexes to the Prosecutor's Office.

(5) For the application of leniency, the following conditions shall be met:

1) a leniency application has been submitted on the initiative of the applicant and complies with the requirements provided for in subsections (1) and (2) of this section;

2) the leniency applicant shall terminate with the approval of the Prosecutor's Office participation in committing an act with elements of a criminal offence provided for in § 400 of the Penal Code, unless he or she is involved in surveillance activities;

3) on the conditions established by the Prosecutor's Office, the leniency applicant shall disclose and, if possible, make fully and openly available without distortions all evidence known to him or her on a criminal offence provided for in § 400 of the Penal Code;

4) the leniency applicant shall co-operate at his or her own expense fully and in good faith with investigative bodies and the Prosecutor's Office until the termination of the proceedings of a criminal offence provided for in § 400 of the Penal Code;

5) the leniency applicant has not induced other persons to commit a criminal offence provided for in § 400 of the Penal Code or conducted the preparation for or commission of a criminal offence;

6) the leniency applicant has not, before or after the submission of a leniency application, destroyed or hidden in bad faith relevant evidence in the proceedings of a criminal offence provided for in § 400 of the Penal Code or disclosed facts relating to the leniency application or criminal proceedings without the permission of the Prosecutor's Office.

[RT I 2010, 8, 34 - entry into force 27.02.2010]

## **§ 78<sup>2</sup>. Passing on to indirect purchaser of actual loss caused by commitment of prohibited acts**

(1) If an indirect purchaser has proven that it has acquired goods that were the object of a prohibited act or goods containing them or derived therefrom, it is assumed that the indirect purchaser has proven the passing on of actual loss caused to it by the commitment of the prohibited act by the direct purchaser.

(2) Direct purchaser is a person who acquires from an undertaking committing a prohibited act goods that are the object of the prohibited act.

(3) Indirect purchaser is a person who acquires from a direct purchaser or a subsequent purchaser specified in subsection (2) of this section goods that are the object of a prohibited act or goods containing them or derived therefrom.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

## **§ 78<sup>3</sup>. Passing on to indirect provider of actual loss caused by commitment of prohibited acts**

(1) If an indirect provider has proven that it has transferred goods that were the object of a prohibited act or goods containing them or derived therefrom, it is assumed that the indirect provider has proven the passing on of actual loss caused to it by the commitment of the prohibited act by the direct purchaser.

(2) Direct provider is a person who transfers to an undertaking committing a prohibited act goods that are the object of the prohibited act.

(3) Indirect provider is a person who transfers to a direct provider or a subsequent provider specified in subsection (2) of this section goods that are the object of a prohibited act or goods containing them or derived therefrom.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

## **§ 78<sup>4</sup>. Defences and mutual relations of solidary obligors committing prohibited acts**

(1) If a solidary obligor who commits a prohibited act is a small or medium-sized undertaking then it is only required to perform obligations to its direct and indirect purchaser and to its direct and indirect provider if:

1) its market share in the relevant market was below 5 per cent during the commitment of the prohibited act; and

2) the application of subsection 65 (1) would render it permanently insolvent.

(2) For the purpose of this section, a small or medium-sized undertaking is a person engaged in business or professional activities with fewer than 250 employees and whose annual turnover is up to 50 million euros, or whose annual balance sheet total is up to 43 million euros.

(3) The exception prescribed in subsection (1) of this section shall not apply if:

1) the small or medium-sized undertaking has led the commitment of the prohibited act or coarsed other undertakings to participate therein;

2) the small or medium-sized undertaking has previously been found to have committed a prohibited act; or

3) obligees, who are not the direct or indirect purchasers nor direct or indirect providers of a small or medium-sized undertaking, cannot satisfy their claim against other solidary obligors.

(4) If the Office of the Prosecutor General has, based on subsection 205<sup>1</sup>(1) or (2) of the Code of Criminal Procedure, or if a competition authority of another Member State or the European Commission has applied leniency to the solidary obligor who committed a prohibited act (hereinafter *solidary obligor released from punishment*), the solidary obligor who has been released from its punishment must perform its obligation only to its direct and indirect purchaser and direct or indirect provider. The solidary obligor who has been released from punishment is required to perform its obligation to other obligees only if the obligees cannot satisfy the claim against other obligors.

(5) In relations between solidary obligors the solidary obligor who has been released from punishment is only required to perform its obligation to the extent for which it is liable to its direct and indirect purchaser and its direct and indirect provider. If the commitment of a prohibited act causes damages to other market participants in addition to the direct and indirect purchasers and direct and indirect providers of solidary obligors, the solidary obligor who is released from punishment in mutual relations is liable for the damage caused to other market participants pursuant to the procedure provided for in subsection 69 (1) of the Law of Obligations Act.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

## **§ 78<sup>5</sup>. Compromise agreement between solidary obligor who committed prohibited act and obligee**

(1) As a result of a compromise agreement between a solidary obligor who committed a prohibited act and the obligee, the solidary obligation of the solidary obligor to the obligee remains in force, except in cases where the parties of the compromise agreement have expressly agreed on the expiration of the solidary obligation.



(2) If there is no expressly stated agreement as specified in subsection (1) of this section, the party of the compromise agreement who is a solidary obligor is liable to perform the obligation of other obligors only if the party of the compromise agreement who is the obligee cannot satisfy the claim against other obligors.  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

#### **§ 78<sup>6</sup>. Start of calculation of penalty for late payment for claims arising from commitment of prohibited acts**

For claims resulting from the commitment of prohibited acts the penalty for late payment on the money owed shall be calculated as of the moment when the claim falls due.  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

#### **§ 78<sup>7</sup>. Limitation period for claims arising from commitment of prohibited acts**

(1) The limitation period for a claim arising from the commitment of a prohibited act is five years as of the moment the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage, but not before the commitment of the prohibited act has ceased.

(2) The limitation period for a claim arising from the commitment of a prohibited act is suspended with a procedural act by a person exercising state or administrative supervision over the prohibited act or by the body conducting extra-judicial or pre-trial proceedings of the prohibited act concerning the commitment of the first prohibited act. The suspension of the limitation period shall end one year after the passing of the term for the contestation of the precept terminating the proceedings which caused the suspension if no complaint has been submitted, or after the proceedings based on which the suspension took effect is terminated following the entry into force of a corresponding judgment, or after terminating the proceedings in another manner.  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

## **Chapter 9<sup>1</sup>** **PROCEDURAL PROVISIONS**

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

#### **§ 78<sup>8</sup>. Collection of evidence in proceedings of claims arising from commitment of prohibited acts**

(1) A court may refuse to collect evidence in the proceedings of a claim arising from the commitment of a prohibited act if such evidence contain business secrets or other confidential information, primarily concerning third parties which the court does not find to be proportionate in proving the facts of the claim.

(2) A court may collect the following evidence in the proceedings of a claim arising from the commitment of a prohibited act only if the person exercising state or administrative supervision over the prohibited act or the body conducting extra-judicial or pre-trial proceedings of the prohibited act or the court conducting the proceedings regarding the prohibited act (hereinafter *person conducting the proceedings*) has terminated its proceedings:

- 1) evidence that the person has drawn up for the proceedings of the prohibited act;
- 2) evidence that the person conducting the proceedings has drawn up in the proceedings and sent to the participants in the proceedings;
- 3) settlement submissions in the proceedings of the prohibited act which have been withdrawn.

(3) For the purposes of this Act, a settlement submission is a voluntary presentation by, or on behalf of, an undertaking to the European Commission or to a competition authority of a Member State, describing the undertaking's acknowledgement of its participation in an infringement of provisions provided in Articles 101 or 102 of the Treaty on the Functioning of the European Union or in the infringement of such a provision of law of a Member State the main objective of which is the same as Articles 101 and 102 of the Treaty on the Functioning of the European Union and which are applied to the same matter parallel to Article 101 or 102 as prescribed by Article 3(1) of regulation (EC) No 1/2003; or the undertaking's renunciation to dispute its participation and its responsibility for that infringement, which has been drawn up specifically to enable the European Commission or a competition authority of a Member State to apply a simplified of expedited procedure.

(4) A court shall not organise the collection of the following evidence in the proceedings of a claim arising from the commitment of a prohibited act:

- 1) leniency applications specified in § 78<sup>1</sup> of this Act submitted to the Competition Authority in the proceedings of the prohibited act, including the record of interrogation of the leniency applicant, or leniency applications submitted to a competition authority of another Member State or to the European Commission in the proceedings of the prohibited act;

2) settlement submissions in the proceedings of the prohibited act as provided in subsection (3) of this section, except in the case provided for in clause (2) 3) of this section.  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 78<sup>9</sup>. Admissibility of evidence in proceedings of claims arising from commitment of prohibited acts**

(1) Until such a time that the person conducting the proceedings has terminated its proceedings, the court shall refuse to accept evidence in the proceedings of a claim arising from the commitment of a prohibited act and returns submitted evidence if it is evidence specified in subsection 78<sup>8</sup>(2) of this Act, which the person submitting the evidence has acquired through personal examination of or by means of a third party examining the evidence contained in the file on the prohibited act of the person conducting the proceedings.

(2) A court refuses to accept evidence in the proceedings of a claim arising from the commitment of a prohibited act and returns submitted evidence if it is evidence provided in subsection 78<sup>8</sup>(4) of this Act, which the person submitting the evidence has acquired through personal examination of or by means of a third party examining the evidence contained in the file on the prohibited act of the person conducting the proceedings.

(3) If the participant in the proceedings submits to the court in the proceedings of a claim arising from a commitment of a prohibited act evidence, which it has acquired through personal examination of the evidence contained in the file on the prohibited act of the person conducting the proceedings, and which is not part of the evidence provided in subsections (1) and (2) of this section, the court has the right to accept the said evidence. The court has the right to accept evidence specified in the first sentence of this section also in the case where it is submitted by a legal successor of a participant in the proceedings who has personally examined the evidence contained in the file on the prohibited act of the person conducting the proceedings, including by a person who has taken over its claim.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 78<sup>10</sup>. Organisation of collection of evidence in proceedings of claims arising from commitment of prohibited acts**

(1) A court shall forward the request for the collection of evidence submitted in the proceedings of a claim arising from the commitment of a prohibited act to the person conducting the proceedings of the prohibited act if such evidence is also contained in the file on the prohibited act of the person conducting the proceedings. The person conducting the proceedings may submit its opinion on the request for the collection of evidence specified in the first sentence of this section within the term set by the court.

(2) If it is necessary to collect evidence in order to examine a piece of evidence in the proceedings of a claim arising from the commitment of a prohibited act, a court shall organise the collection of evidence from the person conducting the proceedings of the prohibited act only if it is not reasonably possible to organise such a collection of evidence from any other participant in the proceedings or from third parties.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 78<sup>11</sup>. Suspension of proceedings of claims arising from commitment of prohibited acts at a joint request of parties**

A court may suspend the proceedings of a claim arising from the commitment of a prohibited act at the joint request of parties for up to two years if it can be assumed that it is expedient due to ongoing compromise negotiations.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

### **§ 78<sup>12</sup>. Consequences of judgments which have entered into force and issued precepts finding prohibited acts**

(1) The commitment of a prohibited act established in the judgment by the Competition Authority in a misdemeanour matter, which has entered into force, or in a court judgment, which has entered into force, is binding for the court conducting the proceedings of a claim arising from the commitment of the prohibited act.

(2) The commitment of a prohibited act established in the conclusion of a precept issued by the Competition Authority is binding for the court conducting the proceedings of a claim arising from the commitment of the prohibited act if the term for filing a complaint to contest the precept has passed and the precept has not been contested or a court judgment has entered into force according to which the precept shall remain in force.

[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

## **Chapter 10**

## IMPLEMENTING PROVISIONS

§ 79.–§ 86.[Omitted from this text.]

### § 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 into conformity with this Act within three months after the entry into force of this Act.

(5) Subsections 33 (4) and 49 (3) of this Act shall be in force until 31 December 2011.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

(6) Subsections 33 (4<sup>2</sup>) and (4<sup>3</sup>) of this Act shall be in force until 31 December 2012.  
[RT I, 27.06.2012, 3 - entry into force 07.07.2012]

(7) The provisions of §§ 78<sup>8</sup>–78<sup>12</sup> of this Act apply to a civil matter which has been accepted after the entry into force of the specified sections.  
[RT I, 26.05.2017, 1 - entry into force 05.06.2017]

**§ 88. [Repealed - RT I 2004, 25, 168 - entry into force 01.05.2004]**

### § 89. Repeal of Act

[Omitted from this text.]

### § 90. Entry into force of Act

(1) This Act enters into force on 1 October 2001.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

(2) Section 49<sup>2</sup> of this Act enters into force on 1 January 2009.  
[RT I 2007, 60, 384 - entry into force 01.01.2008]

<sup>1</sup>Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 05.12.2014, p. 1–19). [RT I, 26.05.2017, 1 - entry into force 05.06.2017]