

## Competition Act

Passed 5 June 2001

(RT<sup>1</sup> I 2001, 56, 332),

entered into force 1 October 2001,

amended by the following Acts:

10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186;

28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401;

24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168;

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

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

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

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

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

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

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

## Chapter 1

### General 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.

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

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

(4) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act. (19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

## § 2. Undertaking

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

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

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

(4) Control is the opportunity for one undertaking or several undertakings jointly or for 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.

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

## § 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.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

(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.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

- (3) Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be vertical if the undertakings operate at different levels of the production or distribution chain (for example the production of raw materials or finished goods, or retail or wholesale distribution). Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be horizontal if the undertakings operate as competitors at the same level of the production or distribution chain.
- (4) Agreements, practices or decisions are deemed to be of minor importance if the conditions provided for in subsection (2) of this section are fulfilled during the whole period of effect of the agreement, practice or decision.

## § 6. Exemption

- (1) 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.

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

#### § 7. Block exemption

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

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

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

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

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

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

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

(3) (Repealed - 28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

#### § 8. Invalidity of agreements or decisions

Any agreement or decision or a part thereof which has as its object or effect the consequences specified in § 4 of this Act and with regard to which general permission

has not been granted on the basis of § 7 of this Act is void unless it complies with §§ 5 and 6 of this Act.

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

### Chapter 3

(Repealed -10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

### Chapter 4

#### Undertaking in dominant position on market

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

#### § 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 or accounts for at least 40 per cent of the turnover in the market or several undertakings operating in the same market if it/they account for at least 40 per cent of the turnover in the market.

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

#### § 14. Undertaking with special or exclusive rights

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

(2) The procedure for the organisation of public competitions for granting special or exclusive rights shall be established by the Government of the Republic. If legislation on the basis of which special or exclusive rights are granted does not

provide the procedure for the grant of a special or exclusive right, a public competition for the grant of such right shall be organised pursuant to the procedure established by the Government of the Republic.

§ 15. Undertaking controlling essential facility

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

§ 16. Abuse of dominant position

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 imposing unfair purchase or selling prices or other unfair trading conditions;
- 2) limiting production, service, goods markets, technical development or investment;
- 3) offering or applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing some of them at a competitive disadvantage;  
(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)
- 4) making entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement;
- 5) forcing an undertaking to concentrate, enter into an agreement which restricts competition, engage in concerted practices or adopt a decision together with the undertaking or another undertaking;
- 6) unjustified refusal to sell or buy goods.  
(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

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

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

2) maintain separate records on revenue and expenditure related to each product or service on the basis of consistently applied and objectively justified principles of calculation which shall be clearly specified in the internal rules of the undertaking. The calculation of revenue and expenses must enable to assess whether the price of a product or service is in a reasonable ratio with the value of the product or service.

(28.06.2004 entered into force 01.01.2005 - RT I 2004, 56, 401)

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

- 1) the safety and security of the equipment connected with the network, infrastructure or other essential facility or the efficiency and security of the operation of such network, infrastructure or facility are endangered;
- 2) maintenance of the integrity or the inter-operability of the network, infrastructure or other essential facility is endangered;
- 3) equipment to be connected to the network, infrastructure or other essential facility is not in conformity with the established technical standards or rules;
- 4) the undertaking applying for access lacks the technical and financial capability and resources to provide services efficiently and safely to the necessary extent through or with the assistance of the network, infrastructure or other essential facility;
- 5) the undertaking applying for access does not hold the permit prescribed by law for the corresponding activity;
- 6) as a result of such access, data protection provided by law is no longer ensured.

## Chapter 5

### Control of Concentrations

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

#### § 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 Director General of the Competition Board or his or her deputy may extend the term by a decision on the basis of a reasoned application made by the person.

#### § 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.

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

(1) A concentration shall be subject to control by the Competition Board if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 100 million kroons and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 30 million kroons.

(2) A concentration is not controlled by the Competition Board 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 Board as the authority competent to exercise control over the concentration.

#### § 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 Director General of the Competition Board or his or her deputy 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.

(4) The Director General of the Competition Board or his or her deputy 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.

#### § 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 of a credit or financial institution in Estonia 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 charged on individual insurance premiums or the total volume of insurance premiums.

#### § 24. Calculation of turnover

- (1) The turnover of a party to a concentration specified in subsection 21 (1) of this Act shall be calculated by totalling the turnovers of the following undertakings:
- 1) the party to the concentration;
  - 2) the undertaking or undertakings controlled by the party to the concentration;
  - 3) the undertaking or undertakings controlling the party to the concentration;
  - 4) the undertaking or undertakings controlled by the undertaking specified in clause 3) of this subsection;
  - 5) the 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 of Economic Affairs and Communications. 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.

## § 25. Notification of concentrations

(1) The Competition Board 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 Board 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 if they are jointly acquiring control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 4) a 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) natural persons jointly if they are jointly acquiring 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.

§ 26. Notice of concentration

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

- 1) information concerning 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) restraints of trade clauses, 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) a list of competition authorities of other states who have been or will be notified of the concentration.

(2) An notice of concentration may be submitted to the Competition Board 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 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 of Economic Affairs and Communications.

(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 Director General of the Competition Board or the deputy of the Director General shall set a term for elimination of the deficiencies of the notice of concentration.

(7) If the Director General of the Competition Board or his or her deputy sets a term for elimination of the deficiencies contained in a notice of concentration, the terms provided for in subsection 27 (1) of this Act begin to run as of the elimination of the deficiencies.

(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 Director General of the Competition Board or his or her deputy may release a party to a concentration from the obligation to submit some of the documents or information specified in subsection (1) or (3) of this section if such documents or information are not necessary for the proceedings concerning the concentration.

(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.

#### § 27. Proceedings concerning concentration

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

1) make a decision to grant permission to concentrate if the concentration subject to control does not involve circumstances specified in 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 Director General of the Competition Board or his or her deputy shall make one of the following decisions within four months of the beginning of the supplementary proceedings:

- 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 does involves circumstances specified in subsections 22 (3) or (4) of this Act;
- 3) to terminate the proceedings if the parties to the concentration decide not to concentrate.

(3) In order to avoid restriction of competition, the Director General of the Competition Board or his or her deputy may grant permission to concentrate, provided that the parties to the concentration take upon themselves to perform the obligations which they have assumed.

(4) Based on a reasoned written application of a party to a concentration, the Director General of the Competition Board or his or her deputy 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.

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

(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.

(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 Board 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 Director General of the Competition Board or his or her deputy 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 Board 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 Board may impose obligations related to the performance of acts on the parties to the concentration.

(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 Director General of the Competition Board or his or her deputy 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 Director General of the Competition Board or his or her deputy sent the letter until the time the deficiencies are eliminated.

(11) If the parties to a concentration fail to submit necessary or additional information or materials within the term set by the Director General of the Competition Board or his or her deputy, 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 Director General of the Competition Board or his or her deputy sent the letter until the time the information or materials are submitted.

(12) The Competition Board 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 Board within seven calendar days as of publication of a notice

concerning receipt of a notice of concentration specified in subsection (12) of this section.

§ 28. Explanation obligation and oral hearings

(1) If the Competition Board 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 Board to determine the suitability of the assumed obligations in order to avoid restriction of competition on the goods market.

(3) The Director General of the Competition Board or his or her deputy shall prohibit a concentration based on subsection 22 (3) of this Act if, in the opinion of the Competition Board, 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 in subsection (1) of this section.

(4) The parties to a concentration are required to inform the Competition Board 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) At the request of the parties to a concentration or on the initiative of the Competition Board, a meeting may be held for the oral hearing of the parties to the concentration. A meeting shall be held at the time and place specified by the Director General of the Competition Board or his or her deputy, and the persons to be heard shall be notified of the hearing in the manner prescribed in § 26 of the Administrative Procedure Act at least ten calendar days before the hearing. On the basis of a reasoned written request of a person summoned to a meeting, the Director General of the Competition Board or his or her deputy may change the term or the place of the meeting.

§ 29. Nullity of concentration

- (1) The Director General of the Competition Board or his or her deputy may decide to revoke a decision to grant permission to concentrate if:
- 1) the parties to the concentration submitted false, misleading or incomplete information which was a determining factor for the decision;
  - 2) the concentration was effected in violation of a term or other condition or obligation specified in this Act or the decision to grant permission to concentrate.
- (2) Revocation of permission to concentrate does not deprive the parties to the concentration of the right to apply for new permission to concentrate.
- (10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

Chapter 6

State Aid

§ 30. State Aid

- (1) State aid shall be deemed to be the aid laid down in Article 87(1) of the Treaty establishing the European Community (hereinafter referred to as “the Treaty”).
- (2) State aid shall be granted for a specified term and to the extent necessary to achieve the objective specified in articles 87(2) and (3) of the Treaty.
- (3) The provisions of this Chapter shall not apply to aid granted to the transport sector or aid related to the production, processing or marketing of the products listed in Annex I of the Treaty.
- (24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

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

- (1) The grantor of state aid shall be the state, local government or other body such as 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 use the resources of the state or a local government for granting state aid.(2) Upon the grant of state aid the grantor of state aid is required to ensure the transparency and efficiency of the grant and use of state aid and to inspect the purposefulness of use of state aid.

(3) The Minister 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.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 31. Public undertaking and undertaking providing services of general interest

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(1) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(2) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(3) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(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.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(3<sup>2</sup>) An undertaking providing services of general interest is an undertaking to which the state or a local government has assigned the duty to provide a service of general interest which is not available on the market and the provision of which the state or the local government considers necessary. Services of public interest shall be defined and the duty to provide such services shall be established by legislation or a contract.

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

(4) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(5) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

(6) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 32. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 33. De minimis aid

(1) De minimis aid shall be deemed to be the aid specified in Article 2 of Commission Regulation No 69/2001/EC on the application of Articles 87 and 88 of the EC Treaty on de minimis aid (OJ L 10, 13.01.2001, p.30-32).

(2) It is not necessary to apply for the permission of the European Commission to grant state aid, as provided in Article 88(3) of the Treaty and § 34 of this Act, in order to grant de minimis aid.

(3) De minimis aid shall be granted pursuant to the procedure provided for in Commission Regulation No 69/2001/EC.

(4) Upon the grant of de minimis aid the grantor shall be obliged to request, before adopting the decision of granting de minimis aid, from the beneficiary a notice concerning de minimis aid granted to the beneficiary within previous three years. The format and the procedure for submission of the notice concerning de minimis aid shall be established by the Minister of Finance.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

#### § 34. Permission to grant state aid

(1) State aid shall be granted only with the prior written permission of the European Commission.

(2) The grantor of state aid shall not commence the grant of state aid before the European Commission has granted permission to grant state aid or deemed the state aid to be permitted pursuant to Article 4(6) of Council Regulation No 659/1999/EC laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community (OJ L 83, 27.3.1999, p. 1–9).

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

#### § 34<sup>1</sup>. Submission of application to the European Commission for permission to grant state aid

(1) The grantor of state aid shall submit an application for permission to grant state aid (hereinafter application for permission), which is in conformity with the requirements set by the European Commission, to the Minister of Finance together with all necessary information.

(2) The Minister of Finance shall review the application for permission and submit this together with all necessary information to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(3) If the application for permission is not complete, the Minister of Finance shall have a right within one month after the date of receipt of the application for permission, to request the submission of additional information or to return the application to the grantor of state aid with the proposal to supplement it.

(4) The grantor of state aid shall submit the additional information requested by the European Commission in the course of processing the application for permission via the Minister of Finance to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 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 994/1998/EC on the Implementation of Articles 92 and 93 of the Treaty establishing the European Community 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.

(2) It is not necessary to apply for the permission of the European Commission to grant state aid, as provided in Article 88(3) of the Treaty and § 34 of this Act, in order to grant state aid covered by group exemption.

(3) Upon the grant of state aid covered by group exemption the grantor of state aid shall be obliged to submit, before granting the state aid, to the Minister of Finance the draft of notice (hereinafter in this Chapter the draft), which is in conformity with the requirements set by the European Commission, together with the description of the individual state aid or state aid scheme proving the conformity of the planned state aid with the conditions laid down in the relevant group exemption regulation. When reviewing the draft, the Minister of Finance has the right to request additional information, if necessary.

(4) The Minister of Finance shall within one month as of receipt of the draft adopt a position concerning the conformity of the planned state aid with the conditions laid down in the relevant group exemption regulation.

(5) The grantor of state aid has no right to start granting state aid before receiving the position adopted by the Minister of Finance.

(6) Upon starting the implementation of the individual state aid or state aid scheme, the grantor of state aid shall immediately submit to the Minister of Finance a

notice concerning the grant of state aid covered by group exemption, if necessary corrected in accordance with the position adopted by the Minister of Finance.

(7) The Minister of Finance shall forward the notice referred to in subsection (6) of this section to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(8) The notice referred to in subsection (6) of this section shall be forwarded to the European Commission not later than within 20 days of commencement of implementation of the individual state aid or state aid scheme.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 35. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 36. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 37. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 38. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 39. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 40. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 41. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

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

(1) Unlawful state aid shall be deemed to be the aid laid down in Article 1(f) of Council Regulation 659/1999/EC.

(2) Misuse of state aid shall be deemed to be the activities specified in Article 1(g) of Council Regulation 659/1999/EC.

(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, the Minister of Finance shall forward this decision 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 pursuant to the decision of the European Commission or the European Court of Justice.

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 43. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 44. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 45. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 46. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 47. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 48. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 49. Reporting on state aid and de minimis aid

(1) Grantors of state aid are required to submit by 1 March each year a report on state aid granted in the previous calendar year. The report shall be made in writing and submitted electronically in accordance with the requirements set by the European Commission.

(2) Grantors of de minimis aid are required to submit by 1 March each year a report on de minimis state aid granted in the previous calendar year. The report shall be made in writing and submitted electronically. The format and the procedure for submission of the report on de minimis aid shall be established by the Minister of Finance.

(3) The Minister Finance shall forward the reports on state aid submitted to him/her to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward these to the European Commission

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 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 No 659/1999/EC, the Minister of Finance or a person authorised by him/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.

The grant of permission specified in subsection (2) of this section shall be decided pursuant to the procedure provided for in Chapter 4 of the Code of Administrative Court Procedure (RT I 1999, 31, 425; 33 correction notice; 40, correction notice; 96, 846; 2000, 51, 321; 2001, 53, 313; 58, 355; 2002, 29, 174; 50, 313; 53, 336; 62, 376; 2003, 13, 67; 23, 140).

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

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

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

- (1) Misleading information is incorrect information which, given ordinary attention on the part of the buyer, may leave a misleading impression of an offer or which harms or may harm the reputation or economic activities of another undertaking
- (2) Publication, or presentation or ordering for publication, of misleading information concerning either oneself or another undertaking participating in a goods market or concerning the goods or work equipment of such undertaking is prohibited, except in cases where publication of such information has been ordered from the publisher of the information or the publisher is not responsible for the correctness of the information presented thereto.
- (3) Information specified in subsection (1) of this section primarily refers to information concerning the origin, qualities, method of production, means or sources of supply, prices, tariffs, discounts, awarding as a prize, reasons for sale and the size of the stock of the goods offered, as well as the preferential rights, financial status and other qualities of the undertaking.

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

- (1) Misuse of confidential information is the use of confidential information regarding a competitor where the corresponding information was obtained illegally.
- (2) Misuse of an employee or representative of a competitor is the exertion of influence on him or her to act in the interests of the influencing party or a third party.

§ 53. Ascertainment of unfair competition

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

Chapter 8

State Supervision

§ 54. Organisation of state supervision

- (1) The Competition Board shall exercise state supervision over implementation of this Act, except implementation of the provisions of Chapters 6 and 7.
- (2) (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 55. Competence of Competition Board

- (1) The Competition Board is competent to perform all acts assigned to it by this Act and to take measures to protect competition.
- (2) The Competition Board shall analyse the competitive situation, propose measures to promote competition, make recommendations to improve the competitive situation, make proposals for legislation to be passed or amended, and develop co-operation with the competition supervisory authorities of other states and associations of states.

§ 56. Co-operation between Competition Board and the European Union

- (1) The Competition Board is an authority dealing with questions concerning competition who is responsible for the application of Articles 81 and 82 of the Treaty establishing the European Community (hereinafter Treaty) within the meaning of Article 35 of Council Regulation 1/2003/EC on the implementation of the rules of 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.
- (2) The Competition Board 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 Community competition rules pursuant to the conditions and procedure established by the legislation of the European Union.
- (3) In hearing a matter related to the application of Article 81 or Article 82 of the Treaty, the national court shall involve the Competition Board in the proceedings to provide an opinion.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

§ 57. Right of Competition Board to request information

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

- 1) analysing the competitive situation;
- 2) defining a goods market;
- 3) inspecting an agreement, activity or decision;
- 4) deciding on the grant of exemptions;
- 5) monitoring the activities of an undertaking in a dominant position;

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

6) monitoring a concentration or compliance with the conditions of a permission to concentrate;

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

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

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

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

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

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

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

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

§ 58. Summoning to Competition Board

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

- 1) the name or official title of the person summoned;
- 2) the reason and legal basis for summoning the person;
- 3) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)
- 4) the place and time of appearance;
- 5) the rights of the person summoned, including the right to submit a written explanation;
- 6) the obligation to give notice of good reasons for failure to appear.

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

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

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

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

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

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(3) At the seat of the undertaking or the location of the place of business of an undertaking under inspection, the person conducting such inspection shall present to the undertaking, its representative or employee the directive issued by the Director General of the Competition Board or his or her deputy concerning the authorisation of the person conducting the inspection.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480; 28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

- 1) immediately examine documents relating to the activities of the undertaking, drafts thereof and other materials and to obtain, at the expense of the person under inspection, copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;
- 2) immediately examine data or databases kept in electronic form on computer at the seat or place of business of the undertaking under inspection and electronic data media held at the seat or place of business and to make printouts and electronic copies thereof at the expense of the undertaking under inspection, the authenticity of which shall be certified by the signature of the person under inspection or the representative thereof or employee on the printout or on a separate page;

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

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

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

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

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

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

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

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

4) a description of the course of the inspection;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 61. Making of recommendations

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

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

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

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

- 1) fails to submit information or materials within the term specified in a written request of the Competition Board;
- 2) interferes with an inspection at the seat or place of business of the undertaking;
- 3) fails to appear at an oral hearing or when requested to provide explanations;
- 4) puts into effect a concentration which is subject to control but concerning which a decision has not been made on the basis of clause 27 (1) 1) or (2) 1) of this Act or if a decision prohibiting the concentration has been made on the basis of clause 27 (2) 2) of this Act or the permission for the concentration has been revoked by the Director General of the Competition Board or his or her deputy, or violates the conditions of the permission for the concentration or did not comply with the conditions of the permission or did not comply with the notification obligation arising from 28 (4) of this Act;

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

- 5) abuses a dominant position;
- 6) violates a prohibition against agreements, practices or decisions restricting competition;
- 7) did not comply with the obligations of undertakings with special or exclusive rights or in control of essential facilities.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

- (2) An obligation to perform the following may be imposed by a mandatory precept provided for in subsection (1) of this section:
  - 1) perform the act required by the precept;
  - 2) refrain from a prohibited act;
  - 3) terminate or suspend activities which restrict competition;
  - 4) restore the situation prior to the offence.
- (3) In the case of failure to comply with a precept, the Director General of the Competition Board or his or her deputy may impose, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act, a penalty payment of up to 50 000 kroons on natural persons and up to 100 000 kroons on legal persons.

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

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

- (1) 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 Director General of the Competition Board or his or her deputy and documents prepared by the Director General of the Competition Board or his or her deputy or any other official of the Competition Board from which business secrets have been excluded are not deemed to be business secrets.
- (2) Unless otherwise provided by this Act, an official of the Competition Board does not have the right to communicate to other persons or disclose to the public the

business secrets, including information subject to banking secrecy, of an undertaking which have become known to the Competition Board in the course of performance of its official duties to other persons nor publish them without the consent of the undertaking. 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 Boards so requests, an undertaking is required to 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 Boards so requests, an undertaking is required to prepare a review of a document which does not include business secrets.

(3) An official of the Competition Board 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 81 or Article 82 of the Treaty. An official of the Competition Board 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. (10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

#### § 63<sup>1</sup>. Application

(1) An application filed with the Competition Board for the commencement of administrative proceedings or an application submitted to the Competition Board 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 Director General of the Competition

Board or his or her deputy, be declared not to be subject to disclosure to other persons.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(1) An application shall be returned without review, 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.

(2) An application may be returned to the applicant without review, if an action concerning the same matter has been filed with a competition authority of another Member State or a decision of a competition authority of another Member State concerning the same matter has entered into force.

(3) An application shall not be accepted if it is not possible to identify the applicant which means that the name or important contact details of the applicant are not specified in the application.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(1) The Director General of the Competition Board or his or her deputy 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.

(2) The Director General of the Competition Board or his or her deputy 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.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(1) Proceedings of a matter may be terminated by a decision of the Director General of the Competition Board or his or her deputy, 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, or
- 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 or freedoms of third parties;
- 6) an action concerning the same matter has been filed with a competition authority of another Member State or a decision of a competition authority of another Member State concerning the same matter has entered into force.

(2) The proceedings shall be terminated 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.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(1) The Director General or his or her deputy or a person authorised thereby 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.

(10.05.2005 entered into force 01.07.2006 - RT I 2006, 25, 186)

(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 Board 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 (RT I 1999, 31, 425; 33, correction notice; 40, correction notice; 96, 846; 2000, 51, 321; 2001, 53, 313; 58,

355; 2002, 29, 174; 50, 313; 53, 336; 62, 376) concerning the grant of permission to take administrative measures.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

(24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 73<sup>2</sup>. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 73<sup>3</sup>. (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 73<sup>4</sup>. (Repealed - 28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

## Chapter 9

### Liability

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

(1) A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person, who establishes unfair trading conditions, or who limits production, services, goods market, technical development or investments to the prejudice of buyers, or engages in activities involving abuse of the dominant position in the market shall be punished 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 500,000 kroons.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

§ 73<sup>6</sup>. Failure to report concentration and concentration which restricts competition

(1) A member of the management board, of a body substituting for the management board or of a supervisory board of a legal person who fails to give notice of a concentration within the specified term or who violates a prohibition on concentration or the conditions of permission to concentrate shall be punished by a fine 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 500,000 kroons.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

§ 73<sup>7</sup>. Non-performance of obligations of undertakings with special or exclusive rights or essential facilities

(1) A member of the management board, of a body substituting for the management board or of the supervisory board of a legal 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 legal persons with special or exclusive rights or essential facilities shall be punished 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 500,000 kroons.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

§ 73<sup>8</sup>. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612; 2003, 4, 22; 83, 557; 90, 601; 2004, 7, 40) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654; 2003, 26, 156; 83, 557; 88, 590; 593) apply to the misdemeanours provided for in §§ 73<sup>1</sup> and 73<sup>5</sup>–73<sup>7</sup> of this Act.

(2) The Competition Board shall conduct proceedings in matters of misdemeanours provided for in §§ 73<sup>1</sup> and 73<sup>5</sup>–73<sup>7</sup> of this Act.

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

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

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

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

§ 78. Compensation for damage

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

## Chapter 10

### Implementing Provisions

§ 79. Amendment of Criminal Code

Sections 148<sup>16</sup>–148<sup>19</sup> are added to the Criminal Code (RT 1992, 20, 288; RT I 1999, 38, 485; 57, 595, 597 and 598; 60, 616; 97, 859; 102, 907; 2000, 10, 55; 28, 167; 29, 173; 33, 193; 40, 247; 49, 301 and 305; 54, 351; 57, 373; 58, 376; 84, 533; 92, 597; 104, 685; 2001, 21, 115 and 116; 31, 174) in the following wording:

“§ 148<sup>16</sup>. Abuse of dominant position

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

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

(28.06.2004 entered into force 01.08.2004 - RT I 2004, 56, 401)

§ 148<sup>17</sup>. Agreements, practices or decisions restricting competition

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

§ 148<sup>18</sup>. Failure to perform obligations relating to concentration

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

§ 148<sup>19</sup>. Failure to draw clear distinction between primary and secondary activities in accounts of legal person with special or exclusive rights or in control of essential facilities

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

§ 80. Amendment of Price Act

Sections 9 and 10 of the Republic of Estonia Price Act (ENSV ÜVT<sup>3</sup> 1989, 39, 610; RT 1992, 30, 400; RT I 1996, 49, 953; 1997, 52, 833; 1998, 60, 951) are repealed.

§ 81. Amendment of Geographical Indications Protection Act

Clause 49 1) of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336; 63, 387; 2003, 88, 594; 2004, 20, 141) is repealed.

§ 82. Amendment of Trade Marks Act

Clause 36<sup>4</sup> (1) 1) of the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 91/93, 1500; 1999, 93, 834; 102, 907; 2001, 27, 151; 56, 332; 335; 2002, 63, 387) is repealed.

§ 83. Amendment of State Fees Act

The State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316; 57, 358; 58, 361; 61, 375; 62, 377; 82, 477; 90, 519; 102, 599; 105, 610; 2003, 4, 20; 13, 68; 15, 84; 85; 20, 118; 21, 128; 23, 146; 25, 153; 154; 26, 156; 160; 51, 352; 66, 449; 68, 461; 71, 471; 78, 527; 79, 530; 81, 545; 88, 589; 591; 2004, 2, 7; 6, 31; 9, 52; 53; 14, 91; 92; 18, 131; 132; 20, 141; 24, 165; 25, 170) is amended as follows:

1) clause 20<sup>1</sup> is added to subsection 3 (2) worded as follows:

“20<sup>1</sup>) acts performed by the Competition Board;”;

2) Division 13<sup>1</sup> is added to Chapter 7 of the Act worded as follows:

“Division 13<sup>1</sup>

Acts of Competition Board

§ 147<sup>20</sup>. Proceedings concerning concentration

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

§ 147<sup>21</sup>. Proceedings concerning application for exemption

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

§ 84. Amendment of Consumer Protection Act

Clause 11 (2) 1<sup>1</sup>) of the Consumer Protection Act (RT I 1994, 2, 13; 1999, 35, 450; 102, 907; 2000, 40, 252; 59, 379; 2001, 50, 283; 289; 56, 332; 2002, 13, 81; 18, 97; 35, 214; 53, 336; 61, 375; 63, 387) is repealed.

§ 85. Amendment of Commercial Code

The Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100; 78, 523; 88, 591) is amended as follows:

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

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

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

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

§ 86. Amendment of Rural Municipality and City Budgets Act

Subsection 11 (3) of the Rural Municipality and City Budgets Act (RT I 1993, 42, 615; 1995, 17, 234; 1997, 40, 619; 2000, 7, 40; 2001, 56, 332; 2002, 64, 393; 2003, 88, 588) is amended and worded as follows:

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

§ 87. Implementation of Act

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

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

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

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

§ 88. (Repealed - 24.03.2004 entered into force 01.05.2004 - RT I 2004, 25, 168)

§ 89. Repeal of Act

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

§ 90. Entry into force of Act

This Act enters into force on 1 October 2001.

<sup>1</sup> RT = *Riigi Teataja* = *State Gazette*

<sup>2</sup> *Ametlikud Teadaanded* = *Official Notices*

<sup>3</sup> ENSV ÜVT = *ENSV Ülemnõukogu ja Valitsuse Teataja* = *ESSR Supreme Council and Government Gazette*

