

COMPETITION LAW
(Law No. 36/2009 and 42/2010 and 3/2012)

Notification under Article 6 (2)

Competition Board shall issue the following Notification in accordance with the power vested to it under Article 6 (2) (c) of Competition Law:

Short Title 1. This Notification shall be named as “Notification on Below Cost Sales”.

CHAPTER ONE
General Provisions

Definitions 2. (1) Unless otherwise required by this Notification;
 “Board” shall mean the Competition Board established under the Competition Law.

36/2009
42/2010
3/2012

 “Law” shall mean Competition Law.

 (2) Any other word, definition or statement used in this Notification and defined in the Law shall bear the meaning given in the related Law unless otherwise required.

Aim 3. This Notification aims to determine the assessment principles of unfair restraint by more powerful enterprises on their smaller or weaker competitors through using their market position, and of particularly below cost sales.

Scope 4. This Notification shall cover the procedures and assessment principles of “Below Cost Sales” under the paragraph (2) of Article 6 of the Law.

CHAPTER TWO
Below Cost Sales

Prohibition of Below Cost Sales 5. Unfair direct or indirect restraint imposed by stronger establishments from the market on smaller or much weaker competitors, or provision of goods or services by enterprises below variable cost prices or except the occasional events, provision of goods or services below cost price without any valid reason, in other words the predatory pricing shall be prohibited.

Assessment Principles for Below Cost Sales 6. Under the circumstance of when any pricing behaviour of enterprise or enterprises comprise the following complementary criteria, such behaviours shall be considered within the scope of prohibition foreseen under the paragraph 2 of Article 6 of this Law.

 (1) When enterprise or enterprises are at dominant position or at least have superior market power;
 Even they are not at dominant position, having more market share and/or financial power compared with micro and/or small and/or medium sized competitors operating in the same product market or

markets.

(2) Below cost predatory price practices;

Pricing below the average variable costs shall be no doubt assessed within the scope of below cost predatory pricing. Additionally, good or service sales with average total cost practising with the purpose of exclude other enterprises from the market shall be considered with the scope of below cost predatory price practise.

(3) Frequent realization of below cost predatory price; the rare realization of below cost predatory price practices are based on the period and continuity of practice. Although the interpretation of rare or not practice depends on the assessment of Competition Board, this in no way shall not be more than three weeks at once, and shall not be applied more than twice in one calendar year.

(4) Non-objective justification for below cost predatory price practices; The below cost predatory sale price shall be justified to sound reasons. The enterprise applying such practice shall have the obligation to prove the objective, right justifications. However, under the circumstances when enterprises at dominant position or at least having a superior market power have the intend to exclude the competitor firms from the market and/or there is a permanent threat against the competition conditions of market, regardless the objective justification of applied below cost predatory sale price, the practice shall be considered as having no objective justification.

Penalties

7. The Board may impose administrative and/or relative administrative fines to incompliant part or parties in case of incompliance to the provisions of Law and this Notification, pursuant to the Article 31 and/or 32 of Law.

CHAPTER THREE

Final provisions

Publication of Decision

8. The Board shall notify its final decision to the parties and publish in Turkish Republic of Northern Cyprus Official Gazette and website of Board in accordance with the Article 26 of Law.

Enforcement Power

10. Competition Board shall enforce this Notification.

Entry Into Force

11. This Notification shall enter into force on the date of its publication in Official Gazette.