

COMPETITION LAW
(Law numbers 36/2009, 42/2010 and 3/2012)

Notification under Article 6 (4)

The Competition Board shall announce the following Notification by the authority granted under paragraph (4) of Article 6, Competition Law:

Short title 1. This Notification shall be cited as ‘Criteria in Determining Dominant Position’.

SECTION ONE
General Provisions

Definitions 2. (1) Unless the text otherwise requires;
36/2009 “Board” shall mean the Competition Board established by the Law
42/2010 on Competition.
3/2012 “Law” shall mean the Law on Competition.
 “Undertaking” shall mean units which are engaged in economical
 or commercial activities, economically integrated and may decide
 independently, regardless of their legal and financial status.
 “Relevant Product Market” shall mean a market consists of goods
 or services which are substitutable for consumers, by means of
 price, intended use and characteristics.
 “Relevant Geographical Market” shall mean geographical regions
 where undertakings are engaged in activities related to supply
 and/or demand of goods and services, in which the conditions of
 competition are sufficiently homogeneous and particularly,
 competition conditions are considerably different than the neighbor
 regions.
 (2) Unless the text otherwise requires, any other word, definition or
 expression which is defined in the Law and used in this
 Notification shall bear meaning as it is stated in the Law.

Purpose 3. This Notification aims to identify the criteria to be used in determination of dominant position.

Scope 4. This Notification shall cover the criteria in determining dominant position, under paragraph 4 of Article 6 of this Law.

SECTION TWO
Dominant Position and its Determination

Dominant Position 5. When one or more undertakings have a market power which enables them to prevent effective competition being maintained on the relevant market of a particular product, in the whole country or a part of it, by affording them the power to behave to an appreciable extent independently of their competitors, customers and ultimately of their consumers shall be considered in dominant position.

- Identification of the Relevant Market
6. The Board shall initially identify the relevant product and relevant geographical market in determining the dominant position.
- Criteria in Determining Dominant Position
7. The Board specially shall consider the following criteria in determining dominant position:
- (1) Position of the undertaking whose displayed the behaviour under investigation and its competitors in the market;
 - (a) Market share of the undertaking, that is claimed to be in dominant position, in the relevant market or markets; the Board shall consider 40% and above market share as an indication of dominant position.
 - (b) Variation of market shares in the course of time,
 - (c) Market shares of the competitors and their competitive power.
 - (2) Presence of barriers in entering and growing in the market;
 - (a) Legal barriers such as tariffs, quotas, standard conditions and licenses,
 - (b) Prerogatives of the undertaking in dominant position, such as economy of scale and scope, prerogative access to main input or natural resources, important technologies, established distribution and sales network,
 - (c) Costs and other barriers that the customers experience when changing the supplier, due to network effects,
 - (d) Practices of the undertaking, such as long-term exclusivity agreements that have market foreclosure effect.
 - (3) Weakness of purchasing power;
 - (a) Commercial importance and size of customers from the point of the undertaking concerned
 - (b) Ability of customers to switch quickly to competing suppliers, to promote new entry or to vertically integrate or threaten to do so.
- Criteria in Determining Joint Dominant Position
8. The Board shall consider the following criteria in determining joint dominant position:
- (1) Effective presence of competition between the undertakings that are claimed to be in joint dominant position and the other undertakings shall be examined in accordance with the criteria laid down in Article 7 of this Notification. However, market share that is stated in paragraph 1(a) of Article 7 shall be applied as 70% in determining joint dominant position.
 - (2) In examining effective competition between the undertakings that are claimed to be in joint dominant

position, consideration shall be given whether those undertakings are following each other by taking similar restricting measures particularly against other undertakings, by avoiding competition between themselves or acting in a parallel way.

SECTION THREE

Final Provisions

Enforcement
Power

9. This Notification shall be enforced by the Competition Board.

Entry into Force

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