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EUROPE, MIDDLE EAST AND AFRICA

ANTITRUST REVIEW 2021

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ANTITRUST REVIEW 2021

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This article was first published in July 2020
For further information please contact Natalie.Clarke@lbresearch.com

Published in the United Kingdom
by Global Competition Review
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL

www.globalcompetitionreview.com

To subscribe please contact subscriptions@globalcompetitionreview.com

ISBN: 978-1-83862-260-2

Printed and distributed by Encompass Print Solutions
Tel: 0844 2480 112

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Preface

Global Competition Review is a leading source of news and insight on competition law, economics, policy and practice, allowing subscribers to stay apprised of the most important developments around the world.

GCR's Europe, Middle East and Africa Antitrust Review 2021 is one of a series of regional reviews that deliver specialist intelligence and research to our readers – general counsel, government agencies and private practitioners – who must navigate the world's increasingly complex competition regimes.

Like its sister reports covering the Americas and the Asia-Pacific region, this book provides an unparalleled annual update from competition enforcers and leading practitioners on key developments in both public enforcement and private litigation. In this edition, Sweden is a new jurisdiction alongside updates from the European Commission (including a new article on the abuse of dominance), Cyprus, Denmark, France, Germany, Greece, Norway, Portugal, Russia, Spain, Switzerland, Turkey, the United Kingdom, Ukraine, COMESA, Angola, Israel, Mauritius and Mozambique.

In preparing this report, Global Competition Review has worked with leading competition lawyers and government officials. Their knowledge and experience – and above all their ability to put law and policy into context – give the report special value. We are grateful to all the contributors and their firms for their time and commitment to the publication.

Although every effort has been made to ensure that all the matters of concern to readers are covered, competition law is a complex and fast-changing field of practice, and therefore specific legal advice should always be sought. Subscribers to Global Competition Review will receive regular updates on any changes to relevant laws during the coming year.

If you have a suggestion for a topic to cover or would like to find out how to contribute, please contact insight@globalcompetitionreview.com.

Global Competition Review
London
June 2020

Turkey: Dominance

Gönenç Gürkaynak and Burcu Can
ELIG Gürkaynak Attorneys-at-Law

In summary

Unilateral conduct of a dominant undertaking is restricted as per article 6 of the Law on the Protection of Competition (Law No. 4054) and secondary legislation. The article provides guidance on the definition of dominance, factors taken into account in the substantive analysis and a non-exhaustive list of abusive conduct that can be considered illegal with references to the Turkish Competition Board's precedent. The article also covers recent enforcement trends and landmark decisions.

Discussion points

- In 2019, the Authority held 69 decisions concerning anticompetitive conduct and the Board found an article 6 violation in 26 of these 69 decisions
- Between 2015 and 2019, the Board found an article 6 violation in 136 cases in total, and an infringement of both articles 4 and 6 in 76 cases
- In 2019, the administrative fines the Board imposed amounted to a total of 282,015,491 lira
- Highest fine to date for abuse of dominance: 412 million lira in the *Tüpraş* case

Referenced in this article

- Most recent cases include: *Unilever* (2019); *Maysan* (2019); *Sony Eurasia* (2019); *Sahibinden.com* (2018); *Enerjisa* (2018); *Türkiye Petrol Rafinerileri* (2018); *Daichii Sankyo* (2018); *Zeyport Zeytinburnu* (2018); *Çiçek Sepeti* (2018); *Mars Media* (2018); *Frito-Lay* (2018); *Radontek Medikal* (2018); *Trakya Cam* (2017); *Ulusoy/UN Ro-Ro* (2017); *Tuborg* (2017); *Luxottica* (2017); *Kardemir Karabük* (2017).
- Law on the Protection of Competition (Law No. 4054); Guidelines on the Definition of Relevant Market; Block Exemption Communiqué No. 2002/2 on Vertical Agreements; Turkish Criminal Code; Law No. 5326 on Misdemeanours; Regulation on Fines No. 27142.
- Turkish Competition Authority (including the Turkish Competition Board).

Unilateral conduct of a dominant undertaking in Turkey is restricted by article 6 of the Law on the Protection of Competition (Law No. 4054), which provides that 'any abuse on the part of one or more undertakings, individually or through joint venture agreements or practices, of a dominant position in a market for goods or services within the whole or part of the country is unlawful and prohibited'. Although article 6 of Law No. 4054 does not define what constitutes 'abuse' per se, it provides five examples of forbidden abusive behaviour, which is a non-exhaustive list and is akin to article 102 of the Treaty on the Functioning of the European Union:

- directly or indirectly preventing entries into the market or hindering competitor activity in the market;
- directly or indirectly engaging in discriminatory behaviour by applying dissimilar conditions to equivalent transactions with similar trading parties;
- making the conclusion of contracts subject to acceptance by the other parties of restrictions concerning resale conditions, such as the purchase of other goods and services, or acceptance by the intermediary purchasers of displaying other goods and services or maintenance of a minimum resale price;
- distorting competition in other markets by taking advantage of financial, technological and commercial superiorities in the dominated market; and
- limiting production, markets or technical development to the prejudice of consumers.

The article 6 prohibition applies only to dominant undertakings. Dominance itself is not prohibited; only the abuse of dominance is outlawed. Thus, article 6 does not penalise an undertaking that has captured a dominant share of the market because of superior performance.

Dominance provisions apply to all companies and individuals to the extent that they qualify as an 'undertaking', which is defined as a single integrated economic unit capable of acting independently in the market to produce, market or sell goods and services. Notably, state-owned and state-affiliated entities also fall within the scope of the application of article 6 (eg, *General Directorate of State Airports Authority*, 15-36/559-182, 9 September 2015).

Dominance

The definition of dominance can be found under article 3 of Law No. 4054 as 'the power of one or more undertakings in a certain market to determine economic parameters such as price, output, supply and distribution independently from competitors and customers'.

Dominance in a market is the primary condition for the application of article 6 (see above). To establish a dominant position, the relevant market must be defined first and then the market position must be determined. The relevant product market includes all goods or services that are substitutable from a customer's point of view. The Turkish Competition Board (the Board) issued Guidelines on the Definition of Relevant Market (the Guidelines) on 10 January 2008, with the aim of minimising the uncertainties that undertakings may face and to state the method used by the Board in its decision-making practice for defining a relevant product and geographical market. The Guidelines are closely modelled on the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03) and apply to both merger control

and dominance cases. The Guidelines consider the demand-side substitution as the primary standpoint of market definition, and the supply-side substitution and potential competition as secondary factors.

Under Turkish competition law, the market share of an undertaking is the primary step for evaluating its position in the market. In theory, there is no market share threshold above which an undertaking will be presumed to be dominant. Although not directly applicable to dominance cases, the Guidelines on Horizontal Mergers confirm that companies with market shares in excess of 50 per cent may be presumed to be dominant. However, pursuant the Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings published by the Turkish Competition Authority (the Authority) on 29 January 2014 and the Board's respective precedent, an undertaking with a market share of 40 per cent is a potential candidate for dominance, whereas a firm with a market share of less than 25 per cent would not generally be considered dominant (see also, for example, *UNMAS*, 16-07/136-61, 2 March 2016).

In assessing dominance, although high market shares are considered as the most indicative factor of dominance, the Board also takes other factors into account, such as legal or economic barriers to entry, the market structure, the competitors' market positions, portfolio power and financial power of an incumbent firm. Thus, domination of a given market cannot be defined solely on the basis of the market share held by an undertaking or of other quantitative elements; other market conditions as well as the overall structure of the relevant market should be assessed in detail.

In addition, while mergers and acquisitions, by way of which an undertaking attempts to establish dominance or strengthen its dominant position, are regulated by the merger control rules established under article 7 of Law No. 4054, if the Board comes to the conclusion that 'a restriction of effective competition' element is present in the transaction at hand, the relevant transaction is deemed illegal and thus prohibited. Therefore, the principles laid down in merger decisions can also be applied to cases involving the abuse of dominance. For instance, in 2017, the Board rejected the acquisition of Ulusoy Ro-Ro by UN Ro-Ro as it concluded that the transaction would strengthen UN Ro-Ro's dominant position in the market for Ro-Ro transport between Turkey and Europe; UN Ro-Ro, therefore, would be in a dominant position in the market for port management concerning Ro-Ro ships upon the consummation of the transaction, making the decision the third rejection decision of the Board at that time (*Ulusoy Ro-Ro/UN Ro-Ro*, 17-36/595-259, 9 November 2017).

Collective dominance

Collective dominance is also covered by Law No. 4054, as indicated in the aforementioned definition provided in article 6. However, the Board's precedent concerning collective dominance is not abundant and mature enough to allow for a clear inference of a set of minimum conditions under which collective dominance should be alleged. That said, the Board has considered it necessary to establish an economic link for a finding of abuse of collective dominance (eg, *Turkcell/Telsim*, 03-40/432-186, 9 June 2003).

Abuse

As mentioned above, the definition of abuse is not provided under article 6 of Law No. 4054; this provision contains only a non-exhaustive list of certain forms of abuse. Moreover, article 2 of Law No. 4054 adopts an effects-based approach for identifying anticompetitive conduct, with the result that the determining factor in assessing whether a practice amounts to an abuse is the effect produced on the market, regardless of the type of conduct at issue. Notably, the concept of abuse covers exploitative, exclusionary and discriminatory practices.

Theoretically, a causal link must be shown between dominance and abuse. The Board does not yet apply a stringent test of causality, and has inferred abuse from the same set of circumstantial evidence employed in demonstrating the existence of dominance.

Furthermore, abusive conduct on a market different from that which is subject to dominant position is also prohibited under article 6. Accordingly, the Board has found that incumbent undertakings had infringed article 6 by engaging in abusive conduct in markets that were neighbouring the dominated market (ie, *Türk Telekom*, 16-20/326-146, 9 June 2016; *Volkan Metro*, 13-67/928-390, 2 December 2013).

Specific forms of abuse

Exclusionary abuses

Exclusionary pricing

Predatory pricing may amount to a form of abuse, as evidenced by several decisions of the Board (eg, *UN Ro-Ro*, 12-47/1413-473, 1 October 2012; *Tüpraş*, 14-03/60-24, 17 January 2014). That said, complaints on this basis are frequently dismissed by the Authority owing to its reluctance to intervene in companies' pricing behaviour. High standards are usually observed for bringing forward predatory pricing claims.

Furthermore, in line with the EU jurisprudence, price squeezes may amount to a form of abuse in Turkey and recent cases involved an imposition of monetary fines on the basis of price squeezing. The Board is known to closely scrutinise price-squeezing allegations (*TTNet*, 07-59/676-235, 9 October 2007; *Doğan Dağıtım*, 07–78/962–364, 9 October 2007).

In one decision, the Board concluded its preliminary investigation of Çiçek Sepeti (18-07/111-58, 8 March 2018), an online retailer active in the sale of flowers, edible flowers (Bonnyfood) and gifts (Bonnygift) and cleared Çiçek Sepeti of charges laid out in a complaint in respect of:

- applying predatory prices;
- spending significant amounts on advertising (and thus raising its rivals' marketing costs); and
- initiating unfair lawsuits against its rivals.

Moreover, in another decision, the Board rejected allegations relating to Sony Eurasia (19-06/47-16, 7 February 2019), the licensor of PlayStation, in respect of:

- predatory prices,
- selling certain products at higher prices and causing an increase in the costs of licence applicants, and
- abusing its dominant position by pushing other players out of the market.

Exclusive dealing

Although exclusive dealing, non-compete provisions and single branding normally fall within the scope of article 4 of Law No. 4054, which governs restrictive agreements, concerted practices and decisions of trade associations, these types of practices could also be reviewed under article 6 (see, for example, *Mey İçki*, 14-21/410-178, 12 June 2014). Indeed, in a number of decisions, the Board has already found infringements of article 6 on the basis of exclusive dealing arrangements (*Karbogaz*, 05-80/1106-317, 1 December 2005).

On a separate note, the Block Exemption Communiqué No. 2002/2 on Vertical Agreements no longer exempts exclusive vertical supply agreements of an undertaking holding a market share above 40 per cent. Thus, a dominant undertaking is an unlikely candidate to engage in non-compete provisions and single branding arrangements.

That said, if a vertical agreement qualifies for the block exemption under Communiqué No. 2002/2, conducting exclusive dealing is one of the privileges from which the supplier can automatically benefit. Provisions that extend beyond what is permissible under an appropriately defined exclusive distribution system, such as restriction of passive sales and restriction on the sales of customers of the buyers, cannot benefit from the block exemption provided under Communiqué No. 2002/2 (*Novartis*, 12-36/1045-332, 4 July 2012).

Accordingly, in its *Tuborg* decision of 9 November 2017 (17-36/583-256), the Board evaluated whether the individual exemption granted to the exclusive distribution agreements of *Tuborg* with its decision of 18 March 2010 (No. 10-24/331-119) should be revoked. The Board has evaluated the current market structure and determined that the dynamics in the market differ from those in 2010, effectively altering the competitive landscape. To that end, the Board concluded that even though Tuborg's market share at the end of 2016 was below 40 per cent, the relevant agreements no longer satisfy the condition of 'not eliminating competition in a significant part of the relevant market' and, thus, the individual exemption granted to Tuborg in 2010 should be revoked.

Additionally, although article 6 does not explicitly refer to rebate schemes as a specific form of abuse, rebate schemes may also be deemed to constitute a form of abusive behaviour. The Board, in its *Turkcell* decision (09-60/1490-37, 23 December 2009), condemned the defendant for abusing its dominance by, *inter alia*, applying rebate schemes to encourage the use of the Turkcell logo and refusing to offer rebates to buyers that work with its competitors. In addition, with its *Doğan Yayın Holding* decision (11-18/341-103, 30 March 2011), the Board condemned Doğan Yayın Holding for abusing its dominant position in the market for advertisement spaces in the daily newspapers by also applying loyalty-inducing rebate schemes.

Furthermore, in its *ABBOTT* decision (13-08/88-49, 31 January 2013), the Board concluded that for any rebate scheme to be deemed a violation of Law No. 4054, it should be primarily analysed whether the relevant undertaking subject to allegations is dominant in the relevant product market or not. The Board has further decided that the relevant rebate scheme should be evaluated within the scope of aspects as increasing proportionality, retroactivity, among other things, and it should be determined whether the applied rebate scheme actually has loyalty-inducing and foreclosure effects.

In its *Luxottica* decision (17-08/99-42, 23 February 2017), the Board fined Luxottica for its activities in the wholesale of branded sunglasses by obstructing competitors' activities through its rebate systems. In a decision of 12 June 2018 (*Frito Lay*, 18-19/329-163), the Board conducted a preliminary investigation against Frito Lay Gıda San Tic AŞ to examine whether Frito Lay abused its dominant position through, *inter alia*, rebate schemes and ultimately concluded that there were no grounds or factors leading the Board to initiate a full investigation against Frito Lay in connection with its rebate systems.

Leveraging

Tying and leveraging are among the specific forms of abuse listed in article 6 of Law No. 4054. The Board has investigated many tying, bundling and leveraging allegations against dominant undertakings and has ordered certain behavioural remedies against incumbent telephone and internet operators in some cases, to ensure they avoid tying and leveraging (*Türk Telekomünikasyon AŞ*, 16-20/326-146, 9 June 2016).

Refusal to deal

Refusals to deal and access to essential facilities are the forms of abuses that are brought before the Authority frequently. Therefore, there are several decisions by the Board concerning this matter (*Congresium Ato*, 16-35/604-269, 27 October 2016; *BOTAŞ*, 17-14/207-85, 27 April 2017).

Discrimination

Both price and non-price discrimination may amount to abusive conduct under article 6 of Law No. 4054. The Board has in the past found incumbent undertakings to have infringed article 6 by engaging in discriminatory behaviour concerning prices and other trade conditions (*MEDAŞ* 16-07/134-60, 2 March 2016).

Exploitative abuses

Exploitative prices or terms of supply may be deemed to be an infringement of article 6 of Law No. 4054, although the wording of the Law does not contain a specific reference to this concept. The Board has condemned excessive or exploitative pricing by dominant firms in a number of decisions (including *Tüpraş*, 14-03/60-24, 17 January 2014; *Belko*, 01-17/150-39, 6 April 2001).

In *Soda Sanayii* (16-14/205-89, 20 April 2016), the Board evaluated excessive pricing allegations against Soda by applying a two-stage economic value test. The Board initially found that Soda had maintained a strong and steady market share over the years despite there being no barriers to entry to the market. While the Board found that Soda's products cost more than competing products and that Soda's domestic prices and profits were higher than its export prices and profits, the Board stated that the stable market power of Soda may be explained by the fact that its products are more qualified than competing products. The Board thus rejected the allegations against Soda and decided not to initiate a full investigation. The *Soda Sanayii* decision is important because it gives a glimpse of the Board's approach to excessive pricing cases. The Board held, *inter alia*, that prohibiting excessive pricing may deter the ability of dominant undertakings to determine prices for the purposes of profit maximisation and that interference should be limited to markets with

major barriers to entry and where competitive structure is not expected to be established in the long run. That said, complaints on this basis are frequently dismissed by the Authority because of its welcome reluctance to micromanage pricing behaviour.

In a 2018 decision concerning Sahibinden.com (*Sahibinden*), a multisided online platform, the Board investigated allegations that Sahibinden abused its dominant position in the markets for online advertisement services for real estate and vehicles through excessive pricing (18-36/584-285, 1 October 2018). The Board found Sahibinden in violation of article 6 and imposed an administrative monetary fine in the amount of 10,680,425.98 lira. The *Sahibinden* decision was thereafter overturned by the 6th Administrative Court in Ankara. The Court concluded that the Board could not prove (1) its claim that the relevant markets were not able to correct themselves in the short, medium or long term, (2) whether the determination of excessive pricing solely through analysis of high pricing behaviour constitutes a reasonable approach (particularly in multisided platform economies), and (3) that suppressing prices through an intervention outside the market mechanisms could possibly have positive outcomes. The Court's annulment decision signals a higher standard of proof in excessive pricing cases, especially in respect of multisided online platforms.

Sector-specific abuse

Law No. 4054 does not recognise any sector-specific abuses or defences; therefore, a number of sectorial independent authorities have competence to regulate certain activities of the dominant firms in their relevant sectors. For instance, according to the secondary legislation issued by the Turkish Information and Telecommunication Technologies Authority, firms with a significant market power are prohibited from engaging in discriminatory behaviour between companies seeking access to their network and, unless justified, rejecting requests for access, interconnection or facility sharing. Similar restrictions and requirements are also applicable in the energy sector. Likewise, a new law entered into force in April 2020 in response to the covid-19 outbreak, which prohibits excessive price increases and supply restriction in the retail industry (regardless of whether the relevant company is dominant or not). The sector-specific rules and regulations bring about structural market remedies for the effective functioning of the free market but they do not imply any dominance control mechanisms and the Authority remains the exclusive regulatory body that investigates and condemns abuses of dominance.

Enforcement

The authority for enforcing competition law in Turkey is the Turkish Competition Authority, a legal entity with administrative and financial autonomy. The Authority consists of the Board, presidency and service departments. As the decision-making body of the Authority, the Board is responsible for, *inter alia*, investigating and condemning abuses of dominance. The Board has seven members and is seated in Ankara. Technical departments of the Authority consist of five main units, all of which have a mandate to investigate abuse of dominance cases (among other competition law cases). There is a 'sectoral' job definition of each main unit. A research department, a leniency unit, a decision unit, an information management unit, an external relations unit and a strategy development unit assist the five technical divisions and the presidency in the completion of their tasks.

The Board has relatively broad investigative powers. It may request all information it deems necessary from all public institutions and organisations, undertakings and trade associations. Officials of these bodies, undertakings and trade associations are obliged to provide the necessary information within the period fixed by the Board. Failure to comply with a decision ordering the production of information or failure to produce in a timely manner may lead to a fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision. If incorrect or misleading information has been provided in response to a request for information, the same penalty may be imposed.

The Authority is authorised to conduct on-site investigations. Accordingly, the Authority can examine the records, paperwork and documents of undertakings and trade associations and, if need be, take copies of the same, request undertakings and trade associations to provide written or verbal explanations on specific topics, and conduct on-site investigations with regard to any asset of an undertaking.

The Authority is also authorised to conduct dawn raids. A judicial authorisation is obtained by the Board only if the subject undertaking refuses to allow the dawn raid. Computer records and email accounts used for business purposes are fully examined by the Authority's experts, including deleted items.

Officials conducting an on-site investigation need to be in possession of a deed of authorisation from the Board, which must specify the subject matter and purpose of the investigation. Inspectors are not entitled to exercise their investigative powers (such as copying records or recording statements by company staff) in relation to matters that do not fall within the scope of the investigation (ie, written on the deed of authorisation).

Refusing to grant Authority staff access to business premises may lead to a turnover-based fine of 0.5 per cent. The minimum amount of such a fine is set at 31,903 lira for 2020. It may also lead to a daily fine of 0.05 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account) for each day of the violation.

In a 2018 case (*Mosaş*, 18-20/356-176, 21 June 2018), the Board imposed an administrative monetary fine upon Mosaş Akıllı Ulaşım Sistemleri AŞ's (Mosaş) for obstructing an on-site inspection in the scope of a cartel investigation regarding alleged bid rigging. During the on-site inspection conducted at the undertaking's premises, Mosaş's employees cut off the electricity and internet connection, deleted emails, denied access to computers and also prevented case handlers from making copies of the reviewed documents. The Board imposed two separate administrative monetary fines on Mosaş: a fixed fine for obstructing the on-site inspection, in the amount of 0.5 per cent of Mosaş's 2017 turnover, and a proportional fine of 0.05 per cent of Mosaş's 2017 turnover for each day that the violation continued (ie, until Mosaş invites the Authority for another on-site inspection). In a 2019 case (*Unilever*, 19-38/584-250, 7 November 2019), the Board imposed a turnover-based fine at the rate of 0.5 per cent on Unilever for hindering an on-site inspection after access to Unilever's email system was not granted for a keyword-based review via eDiscovery software for approximately eight hours during the on-site inspection.

Sanctions and remedies

The sanctions that might be imposed for abuses of dominance under Law No. 4054 are administrative in nature. In the case of a proven abuse of dominance, the undertakings concerned shall be (each separately) subject to fines of up to 10 per cent of their Turkish turnover generated in the financial year preceding the date of the fining decision. Employees or members of the executive bodies of the undertakings or association of undertakings (or both) that had a determining effect on the creation of the violation are also fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In this respect, Law No. 4054 makes reference to article 17 of Law No. 5326 on Misdemeanours.

There is also a Regulation on Fines (Regulation No. 27142 of 16 February 2009). Accordingly, when calculating fines, the Board takes into consideration a number of factors in determining the magnitude of the monetary fine, such as the level of fault and amount of possible damage in the relevant market, the market power of the undertakings within the relevant market, the duration and recurrence of the infringement, the cooperation or driving role of the undertakings in the infringement, the financial power of the undertakings, compliance with the commitments, among other things.

In addition to a monetary sanction, the Board is authorised to take all necessary measures to terminate the abusive conduct, to remove all *de facto* and legal consequences of every action that has been taken unlawfully, and to take all other necessary measures to restore the level of competition and status as before the infringement. Additionally, contracts that give way to or serve as a vehicle for abusive conduct may be deemed invalid and unenforceable because of violation of article 6.

The highest fine to date in relation to abuse of a dominant position was imposed on Tüpraş, a Turkish energy company, which incurred an administrative monetary fine of 412 million lira, equal to 1 per cent of its annual turnover for the relevant year (*Tüpraş*, 14-03/60-24, 17 January 2014).

Availability of damages

Article 57 et seq. of Law No. 4054 entitle any person who is injured in their business or property by reason of anything forbidden in the antitrust laws to sue the violators to recover up to three times their personal damage, plus litigation costs and attorney fees. In private suits, the incumbent firms are adjudicated before regular civil courts. Because the triple-damages principle allows litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the article 6 enforcement arena.

Recent enforcement action

The recent enforcement trend at the Authority shows that it has directed its attention towards refusal to supply and exclusive dealing cases; it has conducted several pre-investigations and investigations with regard to refusal to supply. These cases include *Daichii Sankyo* (18-15/280-139, 22 May 2018), *Türkiye Petrol Rafinerileri* (18-19/321-157, 12 June 2018) pre-investigations, and *Zeyport Zeytinburnu* (18-08/152-73, 15 March 2018), *Kardemir Karabük Demir Çelik* (17-28/481-207, 7 September 2017) and *Radontek Medikal* (18-38/617-298, 11 October 2018) investigations.

As for exclusive dealings, the Authority has conducted several pre-investigations, including *Mars Media* (18-03/35-22, 18 January 2018) and *Frito Lay* (18-19/329-163, 12 June 2018). Furthermore, the Board imposed a fine of 17.5 million lira following an investigation of Trakya Cam for *de facto* application of the exclusive distribution agreements of 2016, which were found in violation of articles 4 and 6 of Law No. 4054 through the Board's decision no. 15-42/804-258, dated 14 December 2017.

The continuing investigations involving abuse of dominance allegations include the high-profile investigations against:

- Unilever (initiated on 24 July 2019): allegations concern the creation of *de facto* exclusivity by preventing the sales of competitor ice cream products at the final sales point;
- Biletix (initiated on 22 July 2019): it is alleged that Biletix infringed Law No. 4054 by applying additional costs in excessive amounts to its ticket prices and via its exclusive agreements with event organisers;
- Mey İçki (initiated on 2 July 2019): the investigation has started after the Board's decision was annulled by the Council of State and is based on exclusionary behaviour allegation against competitors and exclusive arrangements with sales points; and
- Ortadoğu Antalya Port Operator (initiated on 10 May 2019): allegations concern a breach of article 6 of Law No. 4054 through excessive pricing in loading and unloading services.

The more recent landmark decisions regarding abuse of dominance issued by the Board include the following:

- In *Enerjisa* (18-27/461-224, 19 August 2018), the Board concluded its full investigation against Enerjisa and its subsidiaries, who were deemed to be in a dominant position in their respective distribution areas, were in breach of article 6 of Law No. 4054 for preventing consumers from switching to independent supply companies, and were impeding market transparency through incorrect meter readings to mislead consumers who are already eligible for supply from independent supply companies.
- In *Sony Eurasia* (19-06/47-16, 7 February 2019), the Board cleared Sony Eurasia of the allegation that it had applied predatory prices to digital games sold online.
- In *Maysan* (19-22/353-159, 20 June 2019), the Board concluded that Maysan did not abuse its dominant position by refusing to supply, as its products were not essential for reselling automotive spare parts.

The following noteworthy investigations were closed with a no-fine decision:

- *Türk Telekom* (20-12/153-83, 27 February 2020);
- *Turkcell & Vodafone* (20-06/67-36, 23 January 2020);
- *Red Bull* (19-45/767-329, 19 January 2019);
- *Meram Elektrik* (19-40/669-287, 14 November 2019); and
- *Tirsan/Tiryakiler* (19-19/283-121, 23 May 2019).

Gönenç Gürkaynak
ELIG Gürkaynak Attorneys-at-Law

Gönenç Gürkaynak is a founding partner of ELIG Gürkaynak Attorneys-at-Law, a leading law firm of 90 lawyers based in Istanbul, Turkey. Mr Gürkaynak graduated from Ankara University, Faculty of Law in 1997 and was called to the Istanbul Bar in 1998. Mr Gürkaynak received his LLM degree from Harvard Law School and is qualified to practise in Istanbul, New York, Brussels, and England and Wales (currently a non-practising solicitor). Before founding ELIG Gürkaynak Attorneys-at-Law in 2005, Mr Gürkaynak worked as an attorney at the Istanbul, New York and Brussels offices of a global law firm for more than eight years.

Mr Gürkaynak heads the competition law and regulatory department of ELIG Gürkaynak Attorneys-at-Law, which currently consists of 45 lawyers. He has unparalleled experience in Turkish competition law counselling issues with more than 20 years of competition law experience, starting with the establishment of the Turkish Competition Authority. Every year, Mr Gürkaynak represents multinational companies and large domestic clients in more than 35 written and oral defences in investigations of the Turkish Competition Authority, about 15 antitrust appeal cases in the high administrative court and over 85 merger clearances of the Turkish Competition Authority, in addition to coordinating various worldwide merger notifications, drafting non-compete agreements and clauses, and preparing hundreds of legal memoranda concerning a wide array of Turkish and European Commission competition law topics.

Mr Gürkaynak frequently speaks at conferences and symposia on competition law matters. He has published more than 200 articles in English and Turkish with various international and local publishers. Mr Gürkaynak also holds teaching positions at undergraduate and graduate levels at two universities, and gives lectures in other universities in Turkey.

Burcu Can
ELIG Gürkaynak Attorneys-at-Law

Burcu Can is a partner at ELIG Gürkaynak Attorneys-at-Law. She graduated from Ankara University, Faculty of Law in 2008. With close to 10 years of competition law experience, Burcu relocated from Brussels to Istanbul to join ELIG Gürkaynak in 2018.

While more than half of this time, over five years, was devoted to the Turkish Competition Authority as a competition expert case handler, Burcu also worked for many years at the Brussels office of one of the top international law firms as a competition lawyer.

During her years at the Turkish Competition Authority, Burcu took part in leading antitrust and merger cases concerning banking, finance, motor vehicle and transportation sectors, contributed to the preparation of secondary legislation for competition law and several International Competition Network projects.

In addition to obtaining an LLM degree from Harvard Law School, Burcu also has a master's degree in commercial law from Gazi University in Turkey. Burcu is a member of the New York Bar and the Istanbul Bar Association.

ELIG Gürkaynak Attorneys-at-Law is committed to providing its clients with high-quality legal services. We combine a solid knowledge of Turkish law with a business-minded approach to develop legal solutions that meet the ever-changing needs of our clients in their international and domestic operations. Our competition law and regulatory department is led by partner Gönenç Gürkaynak, with three partners, four counsel and 40 associates.

In addition to unparalleled experience in merger control issues, ELIG Gürkaynak has vast experience in defending companies before the Turkish Competition Board in all phases of antitrust investigations, abuse of dominant position cases, leniency handlings, and before courts on issues of private enforcement of competition law, along with appeals of the administrative decisions of the Turkish Competition Authority.

ELIG Gürkaynak represents multinational corporations, business associations, investment banks, partnerships and individuals in the widest variety of competition law matters, while also collaborating with many international law firms.

During the past year, ELIG Gürkaynak has been involved in over 85 merger clearances by the Turkish Competition Authority, more than 35 defence projects in investigations, and over 15 antitrust appeals before the administrative courts. ELIG Gürkaynak also provided more than 75 antitrust education seminars to employees of its clients.

ELIG Gürkaynak has an in-depth knowledge of representing defendants and complainants in complex antitrust investigations concerning all forms of abuse of dominant position allegations, and all forms of restrictive horizontal and vertical arrangements, including price-fixing, retail price maintenance, refusal to supply, territorial restrictions and concerted practice allegations.

In addition to significant antitrust litigation expertise, the firm has considerable expertise in administrative law, and is well equipped to represent clients before the High State Court, both on the merits of a case and for injunctive relief. ELIG Gürkaynak also advises clients on a day-to-day basis on a wide range of business transactions that almost always involve antitrust law issues, including distributorship, licensing, franchising and toll manufacturing issues.

Çitlenbik Sokak No:12
Yıldız Mahallesi
Beşiktaş
34349 Istanbul
Tel: +90 212 327 17 24
Fax: +90 212 327 17 25

www.elig.com

Gönenç Gürkaynak
gonenc.gurkaynak@elig.com

Burcu Can
burcu.can@elig.com

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ISBN: 978-1-83862-260-2