INFORMATION EXCHANGE 2019 KNOW HOW

Turkey

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GCR INSIGHT

1 Describe the principal competition rules governing information exchange in your jurisdiction.

The main legislation that applies to information exchange is article 4 of Law No. 4054 on the Protection of Competition (Law No. 4054). It prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices that have (or may have) as their object or effect the prevention, restriction or distortion of competition within a Turkish product or services market or a part thereof.

Article 4 provides a non-exhaustive list of conduct that are deemed as agreements, concerted practices and/or decisions restricting competition, which is, to some extent, similar to article 101 of the Treaty on the Functioning of the European Union (TFEU). Examples of problematic conduct are as follows:

- fixing the purchase or sales price, price parameters such as cost and profit, and any terms of purchase or sale of products/services;
- dividing markets and dividing or controlling all sources of supply;
- controlling the amount of supply or demand or determining these parameters outside the market;
- obstructing and restricting competitors, or excluding undertakings from a market by boycotts or other types of behaviour, or preventing potential new entrants to the market;
- except for exclusive dealing, applying different terms to persons or undertakings with equal status; and
- contrary to the nature of the agreement or common business practices, requiring purchase of a certain product/service together with another product or service, or tying a product or service demanded by a purchaser acting as an intermediary to the condition of displaying another product or service, or forcing certain terms as to resupplying a product or service.

The Turkish Competition Board (the Board) also published the Guidelines on Horizontal Cooperation Agreements in 2013, which contains general principles regarding application of articles 4 and 5 (regulating exemptions from article 4) of Law No. 4054, and explains competition concerns on, inter alia, information exchanges. Pursuant to the Guidelines on Horizontal Cooperation Agreements, the restrictive effects of information exchange are assessed on the basis of their adverse impact on at least one of the parameters of competition in the market, such as price, output, quality, product variety or innovation.

According to the Guidelines, the Board takes into account the following criteria to analyse information exchanges: whether information is (i) strategic, (ii) aggregated or individualised, (iii) historic or related to current or future strategies, (iv) frequent or sporadic, (v) public, and (vi) whether the total share of competitors exchanging information amounts to a majority of the market.

Apart from the legislation mentioned above, the Board has an extensive precedent on information exchanges which provides guidance for companies on enforcement. Landmark cases such as the Banking decision, Automotive decision and Advertisement market decision are elaborated on below.

2 Which bodies are responsible for enforcing competition rules on information exchange in your jurisdiction?

The authority enforcing competition law in Turkey is the Competition Authority (Authority), a legal entity with administrative and financial autonomy. The Authority consists of the Board and case units. The Board is responsible for, inter alia, deciding on whether agreements, concerted practices and decisions restrict competition. The Board has seven members and is seated in Ankara. The Authority has five case units, each of which focuses on all types of competition cases in certain industries.

3 Describe the types of information exchanges that may be caught under the competition rules in your jurisdiction.

The Board categorises information exchange mainly under three groups: information exchange (i) directly among parties, (ii) via third parties, or (iii) via publicly available platforms (see, eg, the Board's PETDER II (22 November 2011; 11-48/1215-428) decision).

The exchange of information between competitors is the most common type of conduct in practice (through horizontal relations). However, even if there is no direct exchange of information between competitors, indirect information exchange may also raise competition law concerns. In this respect, information may be directly exchanged among undertakings, or indirectly via associations of undertakings such as trade associations, research

companies and other third parties or via the supply or distribution network of undertakings (as set out in paragraph 40 of the Guidelines on Horizontal Cooperation Agreements).

The nature of the information exchanged is of vital importance for the Authority's analysis on whether the conduct is unlawful. Only exchange of strategically valuable information that may affect the market behaviour of undertakings is caught by competition rules. The question of whether certain information is strategic depends mostly on the characteristics of a given market and the circumstances of a case. However, there are a number of usual suspects that appear often in the Board's decisions such as information exchange related to prices, sales targets, stocks, prospective business strategies and any other strategically valuable commercial information.

4 Are some information exchanges regarded as more serious breaches of the competition rules than others?

Exchange of information raises serious competition law concerns if the information is related to competitively sensitive parameters such as price, sales volume or future commercial strategies. Exchange of information on market shares, production volumes, capacity utilisation rates or terms of sales also has the potential to distort competition depending on the market conditions and characteristics of the information (ie, whether it is historic or forward-looking, aggregated or individualised, etc). In particular, if the information exchange leads to collusion on future prices and the amount of supply, it would be considered as a cartel and prohibited under Law No. 4054. Similarly, information exchange that is used to monitor whether competitors comply with the cartel arrangement, in other words those facilitating cartels, are assessed as a part of the cartel arrangement.

Direct information exchanges between competitors relating to future pricing and output decisions are usually considered to be risky. In a recent decision, the Board decided that a number of auto gas distributors violated article 4 by information exchange on future prices in a meeting held in Adıyaman Chamber of Commerce and Industry. In this decision, the Board stated that, in principle, the competitors may attend meetings organised by associations of undertakings or unions. However, when competitively sensitive information is shared with competitors at these meetings, such information exchange may raise competitive concerns regardless of the initial purpose of the meeting. Furthermore, participants of these meetings may be held liable for a competition law infringement unless they immediately and explicitly take a stand against the exchange of information (Adıyaman Auto gas Distributors (29 March 2018; 18-09/180-85) decision). In the same vein, in another decision, the Board held that exchanging information to facilitate, monitor or execute collusion has a greater chance of falling under the Authority's scrutiny compared to mere exchange of information, because in the former case information exchange may lead to a cartel or concerted practice (Aegean Cement Producers (14 January 2016; 16-02/44-14) decision). It is, therefore, imperative for parties to expressly object to such an exchange of information (ie, to "publicly distance themselves" from the problematic conduct) regardless of the nature or the number of exchanges between the undertakings. Moreover, the Board does not take into account the effects of such conduct on competition while finding a violation.

Both decisions mentioned above show the Board's inclination to assess information exchanges as a facilitator of cartel. The Board held that exchanges of commercially sensitive information were part of an existing cartel in a number of other decisions (see MPS Metal, Bekap Metal (30 October 2012; 12-52/1479-508), White Meat Industrialists (25 November 2009; 09-57/1393-362), Ceramics II (3 August 2007; 07-64/794-291), (3 November 2006; 06-80/1034-299), (24 April 2006; 06-29/355-87), (2 February 2006; 06-08/121-30), Ceramics (24 February 2004; 04-16/123-26), Wood Board I (6 September 2002; 02-53/685-278) and Wood Board II (25 February 2003; 03-12/135-63) and Fertiliser (8 February 2002; 02-07/57-26) decisions).

The Board may also consider exchange of competitively sensitive information as an infringement in and of itself (Corporate Loans decision (28 November 2017; 17-39/636-276), 12 Banks decision (8 March 2013; 13-13/198-100). Indeed, in the Board's landmark decision related to automotive distributors (Automotive Market, 18 April 2011; 11-24/464-139) the Board found that automotive distributors exchanged commercially sensitive information, either through email exchanges or during trade association meetings, related to future prices, targeted sales and stocks, in particular around the time when there was a sector-wide development (such as a remarkable increase in EUR/TRY exchange rate or reduction in taxes applicable to automobiles). The Board also analysed the prices of these distributors following such communications and found significant price increases, which may have not happened but for such communications. In its detailed analysis, the Board distinguished information exchanges on future prices and trade strategies from those related to historic sales information and cumulative sector-wide data that do not allow distributors to identify specific information related to a certain competitor.

5 To what extent is it necessary for an information exchange to have a negative effect on competition to prove a competition infringement in your jurisdiction?

As mentioned above, the relevance of the effect of information exchange depends on the nature of the information and market conditions. In this respect, any information exchange with the objective of restricting competition will be considered as a restriction of competition regardless of its effects. In such cases, the Board considers the information exchange as a restriction of competition by its very nature. For instance, if the information is related to future prices, it is unlikely for the Board to analyse whether this information exchange did or may potentially effect competition. Similarly, factors such as the degree of concentration, transparency and stability of the market and the similarity of competitors are taken into account in the assessment whether such information exchange may easily enable the competitors to collude (paragraph 43 of the Guidelines on Horizontal Cooperation Agreements).

6 What types of information exchanges are not caught by the competition laws in your jurisdiction? For example, are certain types of information exchanges viewed as pro-competitive?

The Guidelines on Horizontal Cooperation Agreements recognises that some information exchanges may generate efficiency gains. For instance, information exchange may eliminate information asymmetries between parties. Certain information exchanges between market players may offer them reliable benchmarks against which they can compare their effectiveness. Sharing information may also help undertakings to better micromanage their inventories, ensure quicker delivery of products to consumers, or lower their perception of market volatility. This may result in direct benefits for the consumers who would in turn benefit from reduced search costs, increased choice and better overall quality of service. These potential efficiencies depend on the nature of the information and market conditions. For instance, aggregated and historic data are more likely to be considered pro-competitive relative to individualised and future data, in particular those related to prices and trade strategies (see EBS Otomotiv (30 March 2016; 16-12/194-88), OSD (20 September 2012; 12-44/1350-455), ODD (15 April 2004; 04-26/287-65).

In a recent decision, the Board has granted individual exemption to an agreement on information exchange on the ground that this information exchange would decrease the operational costs of the parties, increase the quality of their services, and lead to a more comprehensive understanding of the consumer needs, which could make better consumer campaigns possible (Migros/Boyner/BNR Teknoloji, 3 May 2018, 18-13/238-111).

7 To what extent can public information be caught under the competition rules governing information exchange in your jurisdiction?

In general, exchanges of public information are not expected to constitute an infringement under article 4 of Law No. 4054. Public information is defined in the Guidelines on Horizontal Cooperation Agreements as information that is equally accessible to all competitors and customers in terms of the cost of access.

Some markets such as banking, insurance and advertisement rely greatly on availability of reliable and accurate data. The data cannot be considered public if the cost of collecting the relevant data that is frequently exchanged among competitors is deterring new players from entering the market (paragraph 72 of the Guidelines on Horizontal Cooperation Agreements). A possibility to obtain the necessary information from the market does not necessarily mean that such information constitutes market data readily accessible to competitors.

Exchange of information readily available to the public may decrease the likelihood of distortion of competition in the market, to the extent that cooperative effects of the exchange of information can be constrained by other undertakings, potential competitors and customers (EBS Otomotiv (30 March 2016; 16-12/194-88)). However, the fact that information is publicly exchanged would not mean that the possibility of a collusive outcome in the market is completely eliminated (paragraph 74 of the Guidelines on Horizontal Cooperation Agreements). The Board elaborated on this distinction in its Petroleum Industry Association decision (21 November 2013; 13-64/904-384), where it held that circulating price lists on a monthly basis among petroleum industry members would likely raise competition law concerns as it would greatly increase the price transparency in the market. Additionally, in a more recent decision, the Board scrutinised a survey to be conducted by an independent third party for the members of the Turkish Construction Industrialists Employers Union. The purpose of this survey was to track the change in input prices affecting construction costs and achieving cost efficiency. The result of the survey was to be announced on the website of the Union, but the information to be exchanged was not publicly available. The Board ultimately decided not to grant an individual exemption to the relevant survey as the Board

found no causal link between the alleged cost efficiency and sharing aggregated input prices, and this information exchange would facilitate coordination among Union members (Turkey Construction Industrialists Employers Union, 18 January 2018; 18-03/31-18).

Furthermore, certain information exchanges may bolt the Authority's sanctions if these exchanges contribute to the public welfare. For example, the Block Exemption Communiqué No. 2008/3 Concerning the Insurance Sector allows insurance-related databases pooling risk information of multiple insurers. These databases are exempted from the general rule even though they may contain strategic and valuable information.

8 Are there any specific competition rules in place for certain types of information exchange or certain sectors?

Certain markets may facilitate coordination among undertakings due to their characteristics and market structure. Exchanges of information in such markets may lead to more restrictive effects compared to markets that do not have such characteristics. On the other side of the coin, certain information exchanges may be exempted from article 4 in some sectors, whereas these exchanges are prohibited in some others. Code sharing agreements in air transport are allowed to a certain extent due to the characteristic of the market. Banks are capable of exchanging customer credit risk information as long as they adhere to the specifications in article 73 of the Banking Law No. 5411. The insurance sector was assigned specific competition rules based on the nature of the service offered and the structuring of the sector. The Block Exemption Communiqué Sector No. 2008/3 Concerning Insurance sets the prerequisite conditions for the exemption of certain agreements in the insurance sector such as pooling insurance-related risk information into databases or exchanging the same information between different players in the insurance market. Moreover, the cement market and recently energy market is also examined carefully in terms of sharing information (Akdeniz Elektrik (20 February 2018; 18-06/101-52), İzmir Ready-mix Concrete (22 August 2017; 17-27/452-194), Aegean Cement (14 January 2016; 16-02/44-14) decisions).

9 Have public bodies in your jurisdiction published any guidance on the competition rules governing information exchange?

The Authority has published the Guidelines on Horizontal Cooperation Agreements on 30 April 2013. Section 2 of the guidelines deals with the competitive assessment of information exchange.

10 What defences are available for information exchanges caught by the competition laws in your jurisdiction.

Most prominently, defendants may seek to dispute the strategic or transparency increasing effects of the information exchanged. The Board has consistently distinguished current information from historic one (the Fertiliser Producers (8 August 2002; 02-47/586-M), the Automotive Distributors Association (ODD, 15 April 2004; 04-26/287-65), Turkey Construction Industrialists Employers Union, EBS Otomotiv, ODD decisions).

Pursuant to the case law, exchange of current information or future plans risk changing the competitive landscape of the market and are harmful from a competition law perspective. On the other hand, the Board finds that historic data that are no longer relevant to current or future commercial strategies may be exchanged in certain circumstances without invoking competition law repercussions. Similarly, parties may argue that the information exchange is not problematic if it is aggregated, sporadic, publicly available or publicly exchanged, and not related to strategic competition parameters such as prices and amount of supply. For example, in its Diye Danışmanlık decision (12 December 2014; 14-51/900-410), the Board considered, inter alia, the date, nature and frequency of the exchanged information through the Media Barometer System in terms of its assessment on the anticompetitive nature of the information.

11 What is the standard of proof and on whom does the burden of proof fall in information exchange cases? Are there any scenarios in which the burden of proof is or could be reversed?

The standard of proof typically rests with the Authority to substantiate its case. The Board's review of information exchange cases is twofold: the information exchange may be a stand-alone conduct or be the means of a much dire competition law violation such as a cartel (the Aegean Cement Producers (14 January 2016; 16-02/44-14) decision). The applicable standard of proof varies according to this distinction and on the specifics of the market in

question. According to the Board's past decisions, an oligopolistic market with high levels of transparency invokes different competition law concerns than a highly competitive market with low entry thresholds (the Automotive Market (18 April 2011; 11-24/464-139) decision). In exchange of information cases, the Board looks for factual, structural and/or behavioural evidence that information is exchanged between the parties (the Petroleum Industry Association (21 November 2013; 13-64/904-384) and the Flat Steel (16 June 2009; 09-28/600-141) decisions). Frequency, relevancy and the level of details contained in the information exchanged are also pertinent to the analysis.

The burden of proof may not be reversed at the outset in information exchange cases; the initial burden is on the Authority to demonstrate its case. It then falls on the defendant to prove that the alleged information exchange did not take place or that the information exchanged was not competitively sensitive.

However, once the Authority has proved that the parties exchanged commercially sensitive information that meets the conditions above, the "presumption of concerted practice" is applicable and the Authority no longer needs to prove that this exchange restricted competition (ie, the anticompetitive effect of the information exchange). Similar to the EU competition law regime, a concerted practice is defined as a form of coordination between undertakings that, without having reached the stage where an agreement has been properly concluded, knowingly substitutes practical cooperation between them for the risks of competition. The allegation of concerted practice is common in cases concerning exchange of information.

12 What are the sanctions for anticompetitive information exchanges in your jurisdiction?

The Board imposes administrative fines for anticompetitive information exchanges. However, certain types of competition law violation such as bid rigging may also fall under criminal law and trigger criminal sanctions in addition to administrative monetary fines and subsequent civil liability.

For companies and association of undertakings that were involved in anticompetitive information exchange, the Board may impose a fine up to 10 per cent of the Turkish turnover generated in the financial year preceding the date of the Board's decision. Employees or executives of undertakings or association of undertakings that had a determining effect on the violation would also be fined up to 5 per cent of the fine imposed on the relevant undertaking or association of undertaking. The base fine for anticompetitive information exchange ranges from 2 per cent to 4 per cent of the turnover for cartels, and from 0.5 per cent to 3 per cent for other types of collusion. The minimum fine is currently 26,027 Turkish liras.

In addition to the monetary sanction, the Board is authorised to take all necessary measures to terminate the restrictive agreement, to remove all de facto and legal consequences of every action that has been taken unlawfully and to take all other necessary measures in order to restore the level of competition as before the infringement. Furthermore, such a restrictive agreement shall be deemed legally invalid and unenforceable with all its legal consequences. Similarly, the Board may take interim measures until the final resolution on the matter if there is a possibility of serious and irreparable damages.

13 Describe any recent cases in the area of information exchange of note in your jurisdiction, how they were decided and which sections they concerned.

There have been a few information exchange cases in recent years.

For Turkish Construction Industrialists Employers Union, see question 7.

In Leasing, Factoring and Financing Companies Union (15 February 2018; 18-05/79-43), the Board assessed an individual exemption application which concerns the Union's initiative to collect financial data from its members related to leasing, factoring and financing services market and share them as retrospective data with all of its members. The Board conducted a rule of reason analysis and held that (i) exchange of retrospective data such as the data on the turnover reports or account receivables reports for the past financial periods would not infringe article 4 of Law No. 4054, however, (ii) exchange of current data such as the data on the turnover reports or account receivables reports for recent financial periods, the data on the number of the existing customers or the number of the contracts would infringe Law No. 4054 and did not benefit from an individual exemption under article 5 of Law No. 4054, and iii) exchange of current data on the financing amount or currently issued financing credits would benefit from a conditional individual exemption under article 5 of Law No. 4054.

In Başkent Gaz (5 July 2018, 18-22/374-182), the Board granted negative clearance to Başkent Doğal Gaz Dağıtım Gayrimenkul Yatırım Ortaklığı AŞ's (Başkent Gaz) initiative to announce its list of Performance/ Success Evaluation of Certified Firms on its website. Başkent Gaz is an institution which certifies the firms applied for construction of natural gas service lines and interior installation on behalf of the Energy Market Regulatory

Authority under article 8 of Law No. 4054. The Board stated that as the concerned list contains information related to the service quality of the undertakings active in natural gas sector, it would eliminate the problem of information asymmetry between customers and undertakings active in the sector and thereby lead to pro-competitive effects on the market. The Board also held that since the information contained in the list reflects only the objective criteria on the firms rather than the subjective evaluations about them and it does not contain data about the firms' prices or costs, the initiative would not lead to any breach of competition law.

In IQVIA Health (12 June 2018, 18-19/330-164), the Board conducted a preliminary investigation against IQVIA Health Tıbbi İstatistik Tic ve Müşavirlik Ltd Şti (IQVIA Health) upon a complaint of Aymed İlaç Sanayi ve Tic Ltd Şti (Aymed) that IQVIA Health had violated articles 4 and 6 of Law No. 4054 by sharing competitively sensitive information related to the market for drugs with Aymed's competitors. The Board decided not to launch a full-fledged investigation against IQVIA Health on the ground that exchanging information regarding the drug prices is not strategic given that IQVIA Health calculates the prices in accordance with the profit margins determined by the Council of Ministers. In other words, IQVIA Health was using the information that is publicly available.

In Migros, Boyner and BNR Teknoloji, the Board granted individual exemption to a cooperation agreement executed between Migros Ticaret AŞ (Migros), Boyner Holding AŞ (Boyner) and BNR Teknoloji A.Ş (BNR). HOPİ is a mobile application developed by BNR which provides its users with personalised campaigns and the opportunity to gain money points from their transactions. Accordingly, HOPİ users would gain money points by shopping at the retailers that are members of the HOPİ's system and be able to spend those money points at Migros. Also, HOPİ and Migros would organise promotions and campaigns together and for doing this, they would exchange information on the customers' personal data to the extent permitted by applicable law. In its assessment, the Board decided that a certain level information exchange (eg, the information on the consumers' names, surnames, mobile phone numbers and etc) is indispensable for the implementation of the cooperation agreement. By way of the information exchange; discounts, gift cards, free products and services would be available to the consumers to be used in their shopping at HOPİ's members. In addition, the exchange of information provided by the agreement would decrease the operational costs, increase the quality of the services, and lead to more comprehensive understanding of the consumer needs, thereby making better consumer campaigns possible, which would ultimately result in consumer benefit.

For Adıyaman Autogas Distributors, see question 4.

In Corporate Loans, the Board launched an investigation against 13 financial institutions active in corporate and commercial banking in Turkey. The investigation started with Bank of Tokyo-Mitsubishi UFJ Turkey AŞ (BTMU)'s leniency application on an alleged cartel on loan conditions. The Board ultimately found that some of the parties violated article 4 of Law No. 4054 by way of exchanging competitively sensitive information such as price, amount and maturity of loans, however, did not declare the violation as a cartel. The Board imposed an administrative monetary fine on ING Bank AŞ and The Royal Bank of Scotland Plc. in the amount of 21.1 million liras and 66.4,000 liras respectively. Contrary to its decisional practice and the explicit rule in the Leniency Regulation that the leniency regime only applies to cartel cases, the Board granted BTMU full immunity.

In 12 Banks, the Board investigated whether 12 banks violated article 4 of Law No.4054 by colluding on their trade terms for cash deposit interests, credits, and credit card fees. The Board found that sharing information with competitors on pricing strategy reduces the uncertainty regarding competitors' future behaviour and provides a basis for future cooperation. In other words, sharing such strategic information that affect pricing decisions of the banks would restrict competition. The Board assessed the information exchanges as a facilitator of the cartel by emphasising the continuity of the exchange. The Board ultimately imposed administrative fines on 12 banks ranging between 0.3 per cent and 1.5 per cent.

In Travel Agencies (21 November 2017; 16-40/662-296), the Board investigated whether travel agencies violated article 4 of Law No. 4054 by restricting activities of a competitor, Biblio Globus. The Board held that travel agencies exchanged information on Biblio Globus's activities as well as contractual relations with hotels and agencies, and used such information against hotels and other undertakings that work with Biblio Globus to pressure them into terminating their agreements with this company. The Board found that travel agencies also exchanged information to collude on boycotting hotels that work with Biblio Globus. The Board decided that the hotels' choice of refraining from working with Biblio Globus could not have been an independent commercial decision and fined the relevant travel agencies.

In Forex (24 December 2016; 16-41/667-300), the Board launched a preliminary investigation against several banks in order to determine whether traders of competing banks who are responsible for buying and selling different currencies exchanged commercially sensitive information in Bloomberg and Reuters chat rooms between 2009 and 2013. Owing to the nature of the market, traders could be competitors and customers of each other at the same time, and thus constantly exchanged information. Although most of the exchanges could be

considered as common business practice, the Board identified 24 documents including confidential information related to customers' purchase and sales amounts as well as traders' positions on certain currencies. The Board decided not to initiate a full-fledged investigation on the grounds that, despite being commercially sensitive, the information exchange was isolated, sporadic, and unable to restrict competition. The Board further held that the purpose of the information exchange was essentially to increase the profit from a specific customer, and thus it was more of a manipulation than a competition infringement.

In Aral Oyun (7 November 2016; 16-37/628-279), the Board held that nine undertakings active in the markets for computer and console games and consumer electronics violated article 4 of Law No. 4054. The Board found that Aral, a supplier of computer and console games, and some of its retailers, exchanged commercially sensitive information such as future pricing strategies with regards to competing retailers. The Board did not find a "hub-and-spoke" agreement. However, the Board held that complaints received by Aral from its retailers with regard to the prices of competing retailers may lead to an indirect horizontal information exchange amounting to a horizontal agreement between retailers. That said, the Board concluded that, none of the retailers communicating with Aral (except one) were aware that Aral's intervention resulted from information provided by competing retailers. As a result, the Board held that there was no indirect communication between retailers through a common supplier, amounting to a horizontal cooperation. The Board concluded that Aral was involved in separate anticompetitive agreements with five of its retailers, which had the object to determine the prices of computer and console games and thus, imposed a monetary fine on Aral and the relevant retailers.

In EBS Automotive (30 March 2016; 16-12/194-88), the Board granted negative clearance to EBS Automotive's initiative to share new and second-hand vehicle sales data with the market and third parties through its website. The Board emphasised in its decision that the data to be shared is already public and easily accessible on public records and evaluated the information exchange aspect of the case under article 4 of the Law No. 4054.

In Aegean Cement Producers (14 January 2016; 16-02/44-14), the Board concluded that six cement producers active in the Aegean region of Turkey violated article 4 of Law No. 4054 by allocating regions and increasing resale prices. The fines ranged between 3 per cent and 4.5 per cent of each company's 2014 annual income, which are above the average of the Board's fines in similar cases. Exchange of information has been an important part of the case. The Board found that these companies exchanged information on stock, cost, future business strategies, and accordingly, facilitated collusion in the relevant market, which is an oligopolistic and exceedingly stable market.

In Diye Danışmanlık (12 December 2014; 14-51/900-410), the Board assessed whether information exchange among advertisement companies on the Media Barometer System was unlawful. The Media Barometer System is a platform where detailed information on advertisement prices, payment terms and future prices per date, hour and TV channel gathered from advertisement companies is aggregated into statistical data and shared with these companies. Among other concerns, the Board assessed whether the frequency of the information exchange through the Media Barometer System could harm competition. The Board ultimately decided not to open a full-fledged investigation but ordered termination of these exchanges. On appeal, the Council of State annulled the Board decision (the Council of State's 13th Chamber, decision dated 28 February 2017 numbered 2016/4373 E, 2017/472 K). Following the annulment decision, the Board opened an investigation in June 2016 and rendered another decision (Diye Danışmanlık (24 April 2018; 18-12/228-103) decision. In this second decision, the Board found that as the market concentration level on the side of advertisers was low and the market structure was complex, the information exchange was unlikely to create a restrictive effect on the existing competition. The Board also underlined that following the first decision of the Board, the information regarding the predictions and analysis on the future prices were removed from the system which reduced the potential risks that may arise from a competition law perspective. In addition, the Board considered that Diye Danışmanlık does not hold a dominant position in the market within the scope of article 6 of Law No. 4054 owing to its low market share. The Board concluded that the information exchange between advertisers did not violate article 4 of Law No. 4054.

14 Describe any recent changes to legislation in your jurisdiction that may have an impact on information exchanges.

There is no recent change to legislation in Turkey that may affect the analysis of information exchange.

15 Are there any proposals to reform the rules governing information exchange in your jurisdiction?

The most significant development regarding Turkish competition law is the draft proposal for the amendment of the Law No. 4054 (the Draft Law). It was submitted to the Grand National Assembly of the Turkish Republic on 23 January 2014. In 2015, the Draft Law became obsolete after the general elections in June 2015. In its 2017 Annual Report, the Authority has indicated that its work with regard to the Draft Law still continues.

Another legal reform expected in Turkish competition law is the Draft Regulation on Administrative Monetary Fines for the Infringement of Law No. 4054, which is set to replace the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuse of Dominance (Regulation on Fines). There is no anticipated date for the enactment of the Draft Regulation on Fines. The draft regulation is heavily inspired by the EC's guidelines on the method of setting fines imposed pursuant to article 23(2)(a) of Regulation 1/2003. Thus, introduction of the draft regulation clearly demonstrates the Authority's intention to bring the secondary legislation in line with the EU competition law during the harmonisation process. This draft regulation was sent to the Turkish parliament on 17 January 2014, but no enactment date has been announced as yet.

16 Are there any other noteworthy characteristics or practical examples specific to your jurisdiction?

Development of competition law in Turkey closely follows the EU competition law while adding its own connotations to match the circumstances of the Turkish market. The Turkish Competition Authority is a very active and innovative competition authority.

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Mr 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 EC competition law topics.

Mr Gürkaynak frequently speaks at conferences and symposia on competition law matters. He has published more than 150 articles in English and Turkish by 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.

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Ms 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 has also obtained her LLM degree from Harvard Law School and 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 her 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.

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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 everchanging needs of our clients in their international and domestic operations. Our competition law and regulatory department is led by our partner, Mr Gönenç Gürkaynak, along with four partners, two 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. Over 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 in a wide range of business transactions that almost always contain antitrust law issues, including distributorship, licensing, franchising and toll manufacturing issues.

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