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Turkey

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Overview of the law and enforcement regime relating to cartels

The national competition authority for enforcing the cartel prohibition and other provisions of the Competition Law in Turkey is the Turkish Competition Authority ("***Competition Authority***"). The Competition Authority has administrative and financial autonomy. It consists of the Competition Board ("***Board***"), Presidency and service departments. There are five divisions, with sector-specific work distribution, that handle the Competition Law enforcement work through approx. 150 case handlers. The other service units consist of the following: (i) the department of decisions; (ii) the economic analysis and research department; (iii) the information management department; (iv) the external relations, training and competition advocacy department; (v) the strategy development, regulation and budget department; and (vi) the cartel and on-site inspections support division ("***Leniency Division***").

The statutory basis for cartel prohibition and the enforcement regime is Law No. 4054 on the Protection of Competition of December 13, 1994 ("***Competition Law***"). The Competition Law finds its underlying rationale in Article 167 of the Turkish Constitution of 1982, which authorises the state to take appropriate measures to secure the functioning of the markets and to prevent the formation of monopolies or cartels. The Turkish cartel regime by nature applies administrative and civil (not criminal) law. The Competition Law applies to individuals and companies alike and even to public corporations if they act as an undertaking within the meaning of the Competition Law.

Article 4 of the Competition Law is the applicable provision for cartel-specific cases and provides the basic principles of the cartel regulation. The provision is akin to and closely modelled on Article 101(1) of the Treaty on the Functioning of the European Union ("***TFEU***"). Article 4 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have (or may have) as their object or effect the prevention, restriction or distortion of competition. Similar to Article 101(1) of the TFEU, the provision does not define the term "cartel" explicitly. However, Article 4 prohibits all kinds of restrictive agreements, including any form of cartel agreements.

Unlike the TFEU, Article 4 does not refer to additional requirements such as "appreciable effect" or "substantial part of a market", and consequently does not provide for any *de minimis* exception. Therefore, Article 4 applies even to violations with minor effects on any market. The practice of the Board has not recognised any *de minimis* exceptions either. However, the enforcement trends and proposed changes to the legislation are increasingly focusing on *de minimis* defences and exceptions.

Article 4 also prohibits any form of agreement that has the "potential" to prevent, restrict or distort competition. Again, this is a specific feature of the Turkish cartel regulation system, granting broad discretionary power to the Board. Additionally, Article 4 brings a non-exhaustive list which provides examples of possible restrictive agreements.

The prohibition on restrictive agreements and practices does not apply to agreements that benefit from a block exemption or an individual exemption issued by the Board. Vertical agreements are also caught by the prohibition laid down in Article 4, to the extent they are not covered by block exemption rules or individual exemptions.

The Board's general practice shows that horizontal restrictive agreements such as price-fixing, market allocation, collective refusals to deal (group boycotts) and bid rigging, have consistently been deemed to be *per se* illegal.

The Turkish competition regime also condemns concerted practices. The Competition Authority may apply "the presumption of concerted practice" and thus can easily shift the burden of proof for the investigated parties in connection with concerted practice allegations too. Similar to the EU Competition Law regime, a concerted practice is defined as a form of coordination between undertakings which, without having reached the stage where a so-called agreement has been properly concluded, knowingly substitutes practical cooperation between them for the risks of competition. Therefore, this is a form of coordination, without a formal "agreement" or "decision", by which two or more companies come to an understanding to avoid competing with each other. The coordination does not need to be in writing; it is sufficient if the parties have expressed their joint intention to behave in a particular way, perhaps in a meeting, via a telephone call or through the exchange of letters.

Overview of investigative powers in Turkey

The Competition Law provides vast investigative powers to the Competition Authority such as the power to conduct dawn raids and to apply other investigatory tools (e.g., formal information request letters). The Board only needs judicial authorisation if an undertaking refuses to allow the dawn raid. The prevention or hindering of a dawn raid could result in the imposition of an administrative monetary fine.

Article 15 of the Competition Law authorises the Board to conduct on-site investigations. Accordingly, the Board is entitled to:

- examine the books, paperwork and documents of undertakings and trade associations, and, if necessary, 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.

Refusal to grant the staff of the Competition Authority access to business premises may lead to the imposition of a fixed fine of 0.5% of the annual turnover. It may also lead to the imposition of a fine of 0.05% of the turnover for each day of the violation.

Although the Competition Law obliges employees to provide a verbal testimony during the dawn raid, case handlers usually allow for providing an answer after the occurrence of the dawn raid. Therefore, in practice, employees can avoid providing answers on issues that are uncertain to them, provided that a written response is submitted in a mutually agreed timeline. Case handlers of the Competition Authority may fully examine computer records, including, but not limited to, deleted mail items.

Officials conducting a dawn raid must be in possession of a deed of authorisation issued by the Board. The deed of authorisation must specify the subject matter and purpose of the investigation. The inspectors are not entitled to exceed their authorisation. Hence, the inspectors must not exercise their investigative powers in relation to matters that do not fall within the scope of the investigation specified in the deed of authorisation. Therefore, the Competition Authority officials may not copy documents or record verbal testimonies which are not related to or covered by the scope of the investigation.

At the site of a dawn raid, the Competition Authority's staff is not obliged to wait for a lawyer to arrive. However, the staff usually agree to wait for a short while for a lawyer to arrive, but may impose certain conditions (e.g., to seal file cabinets or disrupt email communications).

The Competition Authority may also 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 a fixed period of time. Failure to comply with a decision ordering the production of information may lead to the imposition of a turnover-based fine of 0.1% 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). The Board may impose the same amount of fine if an undertaking provides incorrect or incomplete information in response to the Competition Authority's request for information.

Overview of cartel enforcement activity during the last 12 months

Developments in cartel enforcement in Turkey may be illustrated with an overview of the most notable cartel cases that the Board has examined in recent years. The Board is usually reluctant to identify a violation as a cartel and prefers to use terms such as 'concerted practice', 'agreement' or 'information exchange' instead. The reasons for this approach are not totally clear; however, it appears that the Board may be aiming at avoiding the risk of having to impose astronomical monetary fines which could be deemed as disproportionate compared to the respective case at hand.

The Competition Authority's annual report for 2018 provides that the Board finalised a total of 88 cases relating to competition law violations. Among the 88 cases, 46 were subject to Article 4 (anticompetitive agreements) only and 19 cases were subject to both Article 4 and Article 6 (abuse of dominant position). The Board issued monetary fines amounting to a total of TL 19,014,529 (approximately €2.9 million at the time of writing). The monetary fine figures of 2018 for Article 4 cases show that, the Competition Board has in total imposed roughly half of the monetary fines imposed last year, while the monetary fines imposed to Article 6 cases have doubled.

In this regard, during the course of the year in review, there has not been any significant cartel decision where the Board imposed significant administrative monetary fines. On the contrary, there is a decline in the number of investigations with monetary fines. In fact, the Board imposed monetary fines totalling TL 9,201,300 (approx. €1.4 million at the time of writing) to horizontal anti-competitive arrangements in 2018 while the monetary fines for the years of 2016 and 2017 were TL 79,367,156 (approx. €12 million at the time of writing) and TL 21,279,796 (approx. €3 million at the time of writing) and TL 9,201,300 (approx. €1.4 million at the time of writing), respectively.

Similarly, in a preliminary investigation initiated against Çiğ Köfte (a traditional version of steak tartar) producers operating in the Gaziantep province of Turkey, the Board noticed that the price-fixing agreements regarding the sale price and conditions of Çiğ Köfte concluded between undertakings and acknowledged the presence of an agreement restricting competition in the relevant product market (10 January 2019, 19-03/13-5). Having said that, instead of imposing an administrative monetary fine, the Board addressed an opinion letter to the Çiğ Köfte producers pursuant to Article 9/3 of the Competition Law, ordering them to cease any behaviour which may generate competition law infringements.

Moreover, in a full-fledged investigation initiated against 16 freelance mechanical engineers on the allegation of forming a profit-sharing cartel, the Board concluded that 14 of the freelance mechanical engineers were engaged in a profit-sharing cartel and thus violated Article 4 of the Competition Law. Having said that, the leniency applicant received full immunity from fines, while also relieving one of the freelance mechanical engineers from an administrative monetary fine (14 December 2017, 17-41/640-279).

Finally, the Board has recently levied an administrative monetary fine within the investigation launched against five undertakings and one association of undertakings active in cabotage Ro-Ro transportation lines in Turkey (18 April 2019, 19-16/229-101). The Board concluded that Tramola Gemi İşletmeciliği ve Ticaret A.Ş. (Tramola), Kale Nakliyat Seyahat ve Turizm A.Ş. (Kale Nakliyat), İstanbullines Denizcilik Yatırım A.Ş. (İstanbullines), İstanbul Deniz Nakliyat Gıda İnşaat Sanayi Ticaret Ltd. Şti. (İDN) and İstanbul Deniz Otobüsleri Sanayi ve Ticaret A.Ş. (İDO) have violated Article 4 of the Competition Law by way of collectively determining prices. In this respect, the Board imposed an administrative monetary fine to (i) Tramola and İstanbullines equivalent to 4% of their annual gross income, (ii) to İDN and İDO equivalent to 0.8% of their annual gross income, and (iii) to Kale Nakliyat equivalent to 1.6% of its annual gross income as the Board did not grant full immunity to the leniency applicant. Moreover, the Board imposed an additional fine on İstanbullines for the submission of incomplete information to the Competition Authority by one per thousand of its annual gross income. Overall, the total amount of the fine imposed to all undertakings is TRY 7,404,850.77 (around $1.3 million and €1.2 million).

The investigations that have been initiated by the Competition Authority so far clearly show that it does not focus on any specific sectors when it comes to the investigation of cartel behaviour but rather aims to tackle any conduct or practice which might point to a restriction of competition among competing undertakings. It is expected that the trend will continue in its future cases.

Key issues in relation to enforcement policy

The Turkish Competition Authority places equal emphasis on all areas of enforcement. The significance of the cartel enforcement regime under the Competition Law has nonetheless been repeatedly underlined by the Presidency of the Competition Authority.

There are neither industry-specific offences nor defences which lead to a particular scrutiny. The Competition Law applies to all industries, without exception. In terms of cartel enforcement, cement, insurance, mail-cargo transportation, logistics, information and communication technology, pharmaceuticals, healthcare, medical equipment have recently been under investigation for cartel and concerted practice allegations.

It is fair to say that the Board may at times consider policies which are not directly related to the protection of competition in the markets. The Turkish paper sector investigation (13-42/538-238, 8 July 2013) marks one of the extremely rare files in Turkey where a policy concern not directly related to the Competition Law (i.e. a policy concern relating to minimising trade deficit) may have played a role in the ultimate decision, together with a state action defence of the parties concerned, as the parties' collective behaviour was influenced by a set of rules brought by the relevant ministry tackling trade deficit. The Board found that seven paper recycling companies had violated the competition laws by harmonising their commercial behaviours and colluding against wastepaper producers that aimed to export wastepaper. However, the Board did not levy turnover-based monetary fines against the defendants, and granted three-year exemptions under objective criteria.

Key issues in relation to investigation and decision-making procedures

As the competent body of the Competition Authority, the Board is responsible for, *inter alia*, investigating and condemning cartel activity. A cartel matter is primarily adjudicated by the Board.

The Board may *ex officio,* or as a result of a notice or complaint, launch a preliminary-investigation prior to initiating a full-fledged investigation. At this preliminary stage, the undertakings concerned are usually not notified that they are under an investigation, unless the Competition Authority decides to conduct a dawn raid or apply other investigatory tools (i.e., formal information request letters).

The Competition Authority experts submit a preliminary report to the Board within 30 days after the Board decides to launch a preliminary investigation. The Board then decides within 10 days whether to launch a full-fledged formal investigation. If the Board decides to initiate an investigation, it sends a notice to the undertakings concerned within 15 days. The investigation is to be completed within six months. If deemed necessary, this period may be extended by the Board only once, for an additional period of up to six months.

Once the investigation notice has been formally served, the investigated undertakings have 30 days to prepare and submit their first written defences. Subsequently, the main investigation report is issued by the Competition Authority. Once this is served on the defendants, they have 30 calendar days to respond, extendable for a further 30 days (this is the second written defence). The investigation committee will then have 15 days to prepare an additional opinion concerning the second written defence. The defending parties will have another 30-day period to reply to the additional opinion (third written defence). When this reply is served on the Competition Authority, the investigation process is to be completed (i.e., the written phase of investigation involving the claim/defence exchange will close with the submission of the third written defence).

An oral hearing may be held upon the request of the parties. The Board may also *ex officio* decide to hold an oral hearing. Oral hearings are held between 30 and 60 days following the completion of the investigation process under the provisions of Communiqué No. 2010/2 on Oral Hearings before the Board. The Board renders its final decision within 15 days from the hearing, if an oral hearing is held. Otherwise, the decision is rendered within 30 days from the completion of the investigation process. It usually takes around three to five months (from the announcement of the final decision) for the Board to serve a reasoned decision on the counterpart.

The Competition Authority's administrative enforcement is also supplemented with private lawsuits. Accordingly, in case of private suits, cartel members are adjudicated before the courts. Due to a treble damages clause allowing litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the cartel enforcement arena. Most courts wait for the decision of the Competition Authority and build their own decision on the Board's decision.

Leniency/amnesty regime

The Competition Law underwent significant amendments in February 2008. The current legislation brings about a stricter and more deterrent fining regime, coupled with a leniency programme for the undertakings. The secondary legislation specifying the details of the leniency mechanism is the Regulation on Active Cooperation for Discovery of Cartels ("***the Regulation on Leniency***"). The Guidelines on Explanation of the Regulation on Leniency were published in April 2013. With the enactment of the Regulation on Leniency, the main principles of immunity and leniency mechanisms have been set.

The Regulation on Leniency provides that the leniency programme is only available for cartelists. It does not apply to other forms of antitrust infringements. A definition of a cartel is also provided in the Regulation on Leniency for this purpose.

A cartelist may apply for leniency until the investigation report is officially served. Depending on the application order, there may be total immunity from, or reduction of, a fine. This immunity/reduction includes both the undertakings and its employees and managers, with the exception of the 'ring-leader' which can only benefit from a second-degree reduction of a fine. The conditions for benefiting from the immunity/reduction are also stipulated in the Regulation on Leniency. Both the undertaking and its employees and managers can apply for leniency. A manager or employee of a cartelist may also apply for leniency until the 'investigation report' is officially served. Such an application would be independent from applications by the cartelist itself, if there are any. Depending on the application order, there may be total immunity from, or reduction of a fine, for such manager or employee. The requirements for such individual application are the same as stipulated above.

According to the annual report of the Turkish Competition Authority, the Authority has rejected a leniency application in 2018 within the investigation launched against five undertakings and one association of undertakings active in cabotage Ro-Ro transportation lines in Turkey (18 April 2019, 19-16/229-101), as explained above. On the other hand, the Authority has accepted two leniency applications in 2017. In these two most recent Board decisions where the Board granted full immunity to the applicants, the other undertakings were fined. One of the Board's most recent and important decision concerning leniency applications is the Corporate Loans decision (28 November 2017, 17-39/636-276). The Board launched an investigation against 13 financial institutions, including local and international banks active in the corporate and commercial banking markets in Turkey with respect to whether they have violated Article 4 of Law No. 4054 by way of exchanging competitively sensitive information on loan conditions (such as interest and maturity) regarding current loan agreements and other financial transactions. The Bank of Tokyo-Mitsubishi UFJ Turkey A.Ş. ('BTMU') made a leniency application on October 14, 2015 to benefit from Article 4 of the Regulation on Leniency. After 19 months of an in-depth investigation, the Board has unanimously concluded that BTMU, ING Bank A.Ş. ('ING') and the Royal Bank of Scotland Plc. Merkezi Edinburgh İstanbul Merkez Şubesi ('RBS') have violated Article 4 of Law No. 4054. In this respect, the Board imposed an administrative monetary fine on ING and RBS in the amount of TRY21.1 million and TRY66.4 thousand, respectively, over their annual turnover in the financial year of 2016. However, the Board resolved that BTMU should not have an administrative monetary fine imposed pursuant to its leniency application, granting full immunity to BTMU while also relieving the other investigated undertakings from an administrative monetary fine.

The other leniency application concerned the mechanical engineering sector (14 December 2017, 7-41/640-279) within the Burdur region. The case largely rested on the allegation that mechanical engineers in the Burdur region pooled their revenue and shared it on the basis of predetermined percentages. One of the defendants applied for leniency and was granted immunity.

One of the Board's notable decisions where it granted full immunity is the Yeast Cartel case (14-42/783-346, October 22, 2014). As summarised above, the Board launched an investigation against four fresh yeast producers to determine whether they had violated Article 4 of the Competition Law through colluding to set prices for fresh bread yeast. It resolved that the investigated companies violated Article 4 and imposed administrative monetary fines on three of the undertakings, with a total amount of TL 14 million (approximately €2.1 million at the time of writing). The fourth undertaking, Mauri Maya, obtained full immunity, though it submitted its application for leniency after the preliminary investigation was initiated and following the dawn raids conducted at the premises of the undertakings. The Board considered the value and sufficient content of Mauri Maya's leniency application.

Overall, the Turkish leniency regime requires high standards for cooperation in the leniency procedure. For instance, in the Steel Ring Manufacturers case (12-52/1479-508, October 30, 2012), the Board stated that the undertakings, MPS Metal Plastik Sanayi Çember ve Paketleme Sistemleri İmalat Tic. A.Ş. ("***MPS***") and BEKAP Metal İnş. San. ve Tic. A.Ş., fixed the prices of steel strapping materials and were acting in collusion regarding certain tenders, and decided that both undertakings had violated Article 4 of the Competition Law. The Board considered the leniency application of MPS and imposed a fine equal to 1% of its annual gross income in 2011. The reason for the granting of partial immunity was that the documents gathered at the on-site inspection allegedly already proved a cartel. However, it could be said that in this case the Board set a high standard for cooperation within the context of the leniency programme.

Another decision where the Board sent a negative message to the business community by showing that leniency applications might not always be beneficial was the 3M case (12-46/1409-461, 27.09.2012). In the 3M case, the investigation team recommended to the Board to revoke the applicant's full immunity on the grounds that the applicant did not provide all the documents that could be discovered during a dawn raid. Unfortunately, the Board's reasoned decision did not go into the details of the matter, as the case was closed without a finding of violation. It remains to be seen whether the Board will apply this approach again in the future.

In the Sodium Sulphate case (12-24/711-199, May 3, 2012), the Board imposed fines both on the cartelists and the persons having a determining effect on the violation, but eventually offered reductions on the fines after one cartelist and its general manager filed for leniency. In its decision, the Board stated that the undertakings, Otuzbir Kimya and Sodaş Sodyum, fixed prices of sodium sulphate and shared customers between the years 2005 and 2011. Additionally, it is also stated that Alkim Alkali Kimya, Otuzbir Kimya and Sodaş Sodyum collectively determined the prices of raw salt. The Board imposed a fine on Sodaş Sodyum equal to 3% of its annual gross income in the 2011 fiscal year, and simultaneously imposed a fine on Sodaş Sodyum's general manager, who was actively engaged in the infringement, in the amount of 3% of the administrative fine applied to Sodaş Sodyum. Sodaş Sodyum and its general manager filed for leniency and eventually received reductions at the rate of one-third and 50%, respectively, of the fines to be imposed.

In the decision regarding Gaz Cartel (10-72/1503-572, November 11, 2010), the Board offered full immunity to a leniency applicant, in spite of the fact that the new evidence uncovered during the on-site inspection had shed light on the investigation. This constituted a landmark decision. Berk Gaz, who received full immunity, was the first applicant to apply for leniency. That said, Berk Gaz managed to convince the Board that it provided sufficient documents and information, while also fulfilling the other conditions set out in the Leniency Regulation.

Administrative settlement of cases

The current Turkish Competition Law regime does not provide for a settlement procedure. However, a settlement process has recently been considered and is expected to be considered again, once the reform regarding the Competition Law is included in the government's agenda.

Third party complaints

A notice or complaint may be submitted verbally or through a petition. The Competition Authority has an online system in which complaints may be submitted by the online form on the official website of the Competition Authority. In the case of a notice or complaint, the Board rejects the notice or complaint if it deems the complaint not to be serious. Any notice or complaint is deemed as rejected if the Board remains silent on the matter for 60 days. The Board will decide to conduct a pre-investigation if it finds the notice or complaint to be serious.

Investigated parties have a right to access the file (*Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets* ("***Communiqué No. 2010/3***")). The right to access the file can be exercised upon a written request at any time until the end of the period for submitting the last written statement.

Complainants and other third parties may request access to file for follow-on actions (Law No. 4982 on the Right to Access to Information). The approach of the Competition Authority is to consider not only the interests of the person requesting information, but also the personal data of other natural and legal persons, public interest as well as all other individuals' interests. This balance is regulated by way of exceptional provisions under Law No. 4982 on the Right to Access to Information. Most of the time, the Competition Authority is reluctant to grant access to the file and justifies the denial of access on the grounds that the access concerns internal documents and business secrets. Based on that, the Competition Authority usually denies access to documents such as investigation reports or information petitions submitted by the investigated parties.

A Competition Board decision (16-26/433-192, August 4, 2016) defines the parties who have the right to access the file narrowly, stipulating that Communiqué No. 2010/3 allows the access request only of those who are being investigated. In this regard, the Competition Authority did not grant the complainant permission to access the file.

Third parties can attend the oral hearing and be heard by submitting a petition and presenting information and documents that show their interest in the subject matter of the oral hearing.

Civil penalties and sanctions

In case of a proven cartel activity, the companies concerned may be subject to fines of up to 10% of their Turkish 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).

Employees and managers of the undertakings or association of undertakings that had a determining effect on the creation of the violation can also be fined up to 5% of the fine imposed on the undertaking or association of undertaking. The current minimum fine is set as TL 26,027 (approximately €3,986 at the time of writing).

The Competition Law makes reference to Article 17 of Law on Misdemeanours to require the Board to take into consideration factors such as: (i) the level of fault and the amount of possible damage in the relevant market; (ii) the market power of the undertaking within the relevant market; (iii) the duration and recurrence of the infringement; (iv) cooperation or driving role of the undertaking in the infringement; (v) the financial power of the undertaking; and (vi) compliance with the commitments in determining the magnitude of the fine. In line with this, the Turkish Competition Authority enacted the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance ("***the Regulation on Fines***"). The Regulation on Fines provides detailed guidelines regarding the calculation of monetary fines applicable in cases of antitrust violations. The Regulation on Fines applies both to cartel activity and abuse of dominance, but illegal concentrations are not covered by the Regulation on Fines.

According to the Regulation on Fines, fines are calculated by determining the basic level first, which in the case of cartels is between 2% and 4% of the company's turnover in the financial year preceding the date of the fining decision. Aggravating and mitigating factors are then factored in.

The Regulation on Fines also applies to managers or employees that had a determining effect on the violation (such as participating in cartel meetings and making decisions that would involve the company in cartel activity), and provides for certain reductions in their favour.

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 and status as before the infringement.

Furthermore, such a restrictive agreement shall be deemed as legally invalid and unenforceable with all its legal consequences. Similarly, the Competition Law authorises the Board to take interim measures until the final resolution on the matter, in case there is a possibility for serious and irreparable damages.

The sanctions that could be imposed under the Competition Law are administrative in nature. Therefore, the Competition Law leads to administrative fines (and civil liability) but no criminal sanctions. That said, there have been cases where the matter had to be referred to a public prosecutor after the Competition Law investigation has been completed. On that note, bid rigging activity may be criminally prosecutable under sections 235 *et seq* of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code. The abovementioned sanctions may also apply to individuals if they engage in business activities as an undertaking. Similarly, sanctions for cartel activity may also apply to individuals acting as the employees or board members or executive committee members of the infringing entities in case such individuals had a determining effect on the creation of the violation. There are no sanctions specific to individuals other than those mentioned above.

Right of appeal against civil liability and penalties

The Board decisions can be submitted for judicial review before the administrative courts in Ankara by filing an appeal case within 60 days upon receipt of the justified (reasoned) decision of the Board by the parties. Filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request of the plaintiff, the court, by providing its justifications, may decide for stay of the execution if the execution of the decision is likely to cause serious and irreparable damages; and if the decision is highly likely to be against the law (i.e., showing of a *prima facie* case). The judicial review period before the administrative court usually takes about 12 to 24 months. If the challenged decision is annulled in full or in part, the administrative court returns it to the Board for review and reconsideration.

After the recent legislative changes, administrative litigation cases (private litigation cases as well) are subject to judicial review before the newly established regional courts ("***regional courts***"), creating a three-level appellate court system consisting of administrative courts, regional courts and the Council of State (the Court of Appeals for private cases). The regional courts will (i) go through the case file both on procedural and substantive grounds, and (ii) investigate the case file and make their decision considering the merits of the case. The regional courts' decisions will be considered as final in nature. The decision of the regional court will be subject to the Council of State's review in exceptional circumstances, which are set forth in Article 46 of the Administrative Procedure Law. In such cases, the decision of the regional court will not be considered as a final decision and the Council of State may decide to uphold or reverse the regional court's decision. If the decision is reversed by the Council of State, it will be returned to the deciding regional court, which will in turn issue a new decision which takes into account the Council of State's decision.

Criminal sanctions

The sanctions that could be imposed under the Competition Law are administrative in nature. Therefore, the Competition Law does not lead to criminal sanctions. However, cases might be referred to a public prosecutor after the Competition Law investigation is completed. On that note, bid rigging activity may be criminally prosecutable under sections 235 *et seq.* of the Turkish Criminal Code. Illegal price manipulation (i.e., manipulation through misinformation or other fraudulent means) may also be condemned by up to two years of imprisonment and a civil monetary fine under section 237 of the Turkish Criminal Code.

Cooperation with other anti-trust agencies

Article 43 of Decision No. 1/95 of the EC–Turkey Association Council (Decision No. 1/95) authorises the Turkish Competition Authority to notify and request the European Commission to apply relevant measures if the Competition Board believes that cartels organised in the EU adversely affect competition in Turkey. The provision grants reciprocal rights and obligations to the parties (the EU and Turkey), and therefore the European Commission has the authority to request that the Competition Board apply relevant measures to restore competition in the relevant markets.

There are also a number of bilateral co-operation agreements between the Turkish Competition Authority and the competition agencies in South Korea, Bulgaria, the Russian Federation, Egypt, Ukraine, Serbia, Albania and the EU, among others. These cooperation agreements are signed and implemented for various purposes, such as:

- Enhancing cooperation in applying competition law rules to increase the efficiency of product and service markets.
- Exchanging documents and information on certain topics between authorities.
- Improving cooperation and facilitating the exchange of information between the authorities with respect to competition law enforcement and policy.

The Turkish Competition Authority also faces various issues where international co-operation is required. In this respect, there have been various decisions in which the Competition Authority has requested co-operation on dawn raids, information exchange, notifications and collection of monetary fines from the competition authorities in other jurisdictions via the Ministry of Foreign affairs and the Ministry of Justice. The Competition Authority has, however, been unsuccessful in these requests.

The research department of the Competition Authority makes periodic consultations with relevant domestic and foreign institutions and organisations about the protection of competition to assess their results, and submits its recommendations to the Competition Board. A co-operation protocol was signed on 14 October 2009 between the Competition Authority and the Turkish Public Procurement Authority to procure a healthy competition environment with regard to public tenders by co-operating and sharing information.

However, the interplay between jurisdictions does not materially affect the handling of the Competition Board in cartel investigations. The principle of comity is not an explicit provision of the Turkish Competition Law. A cartel conduct that was investigated elsewhere in the world can be prosecuted in Turkey if it has had an effect on non-Turkish markets.

Cross-border issues

Turkey is one of the "effect theory" jurisdictions where the effect that a cartel activity has produced on Turkish markets is what matters, regardless of the nationality of the cartel members, where the cartel activity took place, or whether the members have a subsidiary in Turkey. The Board refrained from declining jurisdiction over non-Turkish cartels or cartel members (e.g., the suppliers of rail freight forwarding services for block trains and cargo train services, 15-44/740-267, December 16, 2015; Güneş Ekspres/Condor, 11-54/1431-507, October 27, 2011; Imported Coal, 10-57/1141-430, September 2, 2010; Refrigerator Compressor, 09-31/668-156, July 1, 2009; Şişecam/Yioula, 07-17/155-50, February 28, 2007; Gas Insulated Switchgear, 04-43/538-133, June 24, 2004) in the past. It should be noted, however, that the Board has yet to enforce monetary fines or other sanctions against firms located outside of Turkey without any presence in Turkey, as this is mostly due to the enforcement handicaps (such as difficulties of formal service to foreign entities).

Developments in private enforcement of antitrust laws

The most distinctive feature of Turkish Competition Law regime is that it allows for lawsuits for treble damages. Hence, administrative enforcement is supplemented with private lawsuits.

Articles 57 *et seq.* of the Competition Law entitles any person who may be injured in his business or property by reason of anything forbidden in the antitrust laws to sue the violators for three times their damages plus litigation costs and attorney fees. The case must be brought before the competent general civil court. In practice, courts usually do not engage in an analysis as to whether there is an actual condemnable agreement or concerted practice, and wait for the Board to render its opinion on the matter, thereby treating the issue as a prejudicial question. Since courts usually wait for the Board to render its decision, the court decision can be obtained in a shorter period in follow-on actions.

Due to a treble damages clause allowing litigants to obtain three times their loss as compensation, private antitrust litigations increasingly make their presence felt in the cartel enforcement arena. In the 12 banks decision (March 8, 2013, 13-13/198-100), the Board had launched an investigation to determine as to whether 12 banks violated Article 4 of Law No.4054 by a reconciliation to harmonise their trade terms for cash deposit interests, credits, and credit card fees. The Board imposed administrative fines ranging between 0.3% and 1.5% to investigated undertakings involved. Moreover, the Board ruled that courts shall have absolute discretion to award treble damages in Competition Law-based damages claims, establishing a strong deterrent from cartel activity. Recently, in light of the abovementioned Board decision, Istanbul 12th Consumer Court on May 9, 2017 awarded single damages up to an intimidating total of TL 11,479.73 to a single plaintiff (approximately €1,710.84 at the time of writing).

Turkish procedural law denies any class action or procedure. Class certification requests would not be granted by Turkish courts. While Article 25 of Law No. 4077 on the Protection of Consumers allows for class actions by consumer organisations, these actions are only limited to violations of Law No. 4077 on the Protection of Consumers, and do not extend to cover antitrust infringements. Similarly, Article 58 of the Turkish Commercial Code enables trade associations to take class actions against unfair competition behaviour, but this has no reasonable relevance to private lawsuits provided under Article 57 *et seq.* of the Competition Law.

Reform proposals

Other than the recently published amended Guidelines on Vertical Agreements, there have not been any significant recent developments, including in the Turkish cartel regime. The amended Guidelines included provisions concerning internet sales and a most favoured customer (MFN) clause.

The Draft Proposal for the Amendment of the Competition Law (the draft law) issued by the Turkish Competition Authority in 2013 still remains null and void as it had not been submitted and proposed to the presidency of the Turkish parliament in the new legislative year. Currently, there are no indications as to whether or not the draft law will be renewed. However, it could be anticipated that there will be no comprehensive and significant changes to the previous draft.

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