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Turkey

CARTELS

Contributing firm

ELIG Gürkaynak Attorneys-at-Law

Gönenç Gürkaynak

Founding Partner | gonenc.gurkaynak@elig.com

Harun Gündüz

Counsel | harun.gunduz@elig.com

This country-specific Q&A provides an overview of cartels laws and regulations applicable in Turkey.

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TURKEY
CARTELS

1. What is the relevant legislative framework?

The relevant legislation on cartel regulation is the Law on Protection of Competition No. 4054 of 13 December 1994 (the 'Competition Law'). The applicable provision for cartel-specific cases is Article 4 of the Competition Law. The provision is akin to, and closely modelled on, Article 101(1) of the Treaty on the Functioning of the European Union ('TFEU'). It 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 within a product or services market in Turkey or a part thereof. The provision does not give a definition of 'cartel', its scope extends beyond cartel activity. The Competition Law applies to all industries, without exception. There are sector-specific block exemptions regarding certain agreements such as; motor vehicle sector and in the insurance sector. In 2020, the Competition Law was subject to essential amendments which passed through the Grand National Assembly of Turkey (the 'Turkish Parliament') on 16 June 2020, and entered into force on 24 June 2020 ('Amendment Law') – on the day of its publication on Official Gazette No. 31165. The Amendment Law seeks to add the Turkish Competition Authority's (the 'Authority') experience of more than 20 years of enforcement to the Competition Law and bring it closer to European Union law.

2. To establish an infringement, does there need to have been an effect on the market?

Article 4 prohibits any form of agreement that aims or has the 'potential' to prevent, restrict or distort competition. This specific feature grants broad discretionary power to the Turkish Competition Board (the 'Board'). Additionally, Article 4 brings a nonexhaustive list which provides examples of possible restrictive agreements. After the Amendment Law and the Communiqué No. 2021/3 which sets forth the recently introduced de minimis exception, certain agreements and practices below certain market share thresholds benefit from the de minimis principle. However, de minimis principle is not applicable to 'hard core' violations including price fixing, territory or customer sharing and restriction of supply. In other words, cartels do not benefit from the de minimis principle.

3. Does the law apply to conduct that occurs outside the jurisdiction?

Turkey is one of the 'effect theory' jurisdictions, where what matters is the effect that a cartel activity has produced on the markets in Turkey, regardless of (i) the nationality of the cartel members, (ii) where the cartel activity took place, or (iii) whether the members have a subsidiary in Turkey. See; Rail Cargo Logistics, 15-44/740-267, 16.12.2015; Güneş Ekspres/Condor, 11-54/1431-507, 27.10.2011; Imported Coal, 10-57/1141-430, 02.09.2010; Refrigerator Compressor, 09-31/668-156, 01.07.2009; Sisecam/Yioula, 07-17/155-50, 28.02.2007 and Gas Insulated Switchgears 04-43/538-133, 24.06.2004. It should be noted that however, the Board has yet to enforce monetary fines or other sanctions against undertakings 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).

4. Which authorities can investigate cartels?

The national competition authority for enforcing the cartel prohibition and other provisions of the Competition Law in Turkey is the Authority. As the competent body, a cartel matter is primarily adjudicated by the Board that is responsible for, inter alia, investigating and condemning cartel activity. Administrative enforcement is also supplemented with private lawsuits. In private suits, cartel members are adjudicated before regular courts. If a cartel activity

amounts to a criminally prosecutable act such as bid rigging in public tenders, it may separately be adjudicated and prosecuted by Turkish penal courts and public prosecutors.

5. What are the key steps in a cartel investigation?

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 the preliminary investigation stage, unless the Authority decides to conduct a dawn raid or apply other investigatory tools (i.e. formal information request letters), the undertakings concerned are not notified about the preliminary investigation. The preliminary investigation report of the Authority's case handlers will be submitted to the Board within 30 days after the Board's preliminary investigation decision. The Board will then decide within 10 days whether to launch a full-fledged investigation. If the Board decides to initiate a full-fledged investigation, it will send a notice to the undertakings concerned within 15 days. The investigation will be completed within six months once the Authority serves the investigation report to the undertakings. If deemed necessary, this period may be extended by the Board only once, for an additional period of up to six months. The investigated undertakings have 30 calendar days as of the formal service of the investigation notice to prepare and submit their first written defences. Subsequently, the investigation report is issued by the Authority. Once the investigation report is served on the defendants, they have 30 calendar days to submit their second written defence, extendable for up to 30 days. The investigation committee will then have 15 days to prepare an additional opinion concerning the second written defence, which is extendable for up to 15 days. The defending parties will have another 30-day period to submit their third written defence to the additional opinion, which is also extendable for up to 30 days. Once the defendant's written defences are submitted to the Authority, the written phase of the investigation will be completed. An oral hearing may be held upon request by the parties. The Board may also ex officio decide to hold an oral hearing. Oral hearings are held within at least 30, and at the most, 60 days following the completion of the written defence process under the provisions of Communiqué on Oral Hearings before the Board No. 2010/2. The Board will render its final decision within: (i) 15 calendar days from the hearing, if an oral hearing is held; or (ii) 30 calendar days from the completion of the investigation process, if no oral hearing is held. It usually takes around three to six months (from the announcement of the final decision) for the Board to serve a reasoned decision on the counterpart.

6. What are the key investigative powers that are available to the relevant authorities?

The Authority may request information it deems necessary from all public institutions and organisations, undertakings and trade associations. They are obliged to provide the necessary information within the period determined by the Authority. Article 15 of the Competition Law also authorises the Authority to conduct on-site investigations. Accordingly, the Authority 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; and examine records of computers and company mobile devices, including but not limited to deleted items access to company's servers and cloud systems (including those located outside Turkey). The Competition Law provides huge powers to the Authority on dawn raids. Only if the undertaking concerned refuses to allow the dawn raid, a court order may be obtained. Other than that, the Authority does not need to obtain judicial authorisation to use its powers. While the wording of the Law is such that employees can be compelled to give verbal testimony, in practice, employees can avoid providing answers on issues that are uncertain to them, provided that a written response is submitted within a mutually agreed time.

In addition to the above, the Amendment Law also includes an explicit provision that during on-site inspections, the Authority can inspect and make copies of all information and documents in companies' physical records as well as those in electronic spaces and IT systems, which the Authority already does in practice.

Similarly, the Authority published its Guidelines on Examination of Digital Data During On-site Inspections on 8 October 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in the electronic media and information systems, during the on-site inspections ('Guidelines on Examination of Digital Data'). According to the Guidelines on Examination of Digital Data, the Authority can inspect portable communication devices (mobile phones, tablets, etc.) if, as a result of a quick review, it is understood that they include digital data about the undertaking. The inspection of the digital data obtained from mobile phones must be completed at the premises of the undertaking, hence the data cannot be copied for the continuation of the inspection at the Authority's premises.

7. On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?

According to recent İstanbul Custom Consultants Association (19-22/352-158, 20.06.2019), Warner Bros Turkey (19-04/36-14, 17.01.2019), Enerjisa (16-42/686-314, 06.12.2016) and Dow Turkey (15-42/690-259, 02.12.2015) decisions, the attorneyclient protection covers the correspondences made in relation to the client's right of defence and documents prepared in the scope of an independent attorney's legal service. However, the correspondence between the undertaking concerned, its employees and internal lawyers does not benefit from the attorney–client privilege [regardless of whether the outside counsel is copied or the correspondence is related to legal matters (Huawei 07.08.2019, 19-28/433-M), Çiçek Sepeti (2.07.2020, 20-32/405-186)]. Correspondences that are not directly related to use of the client's right of defence and/or that aim to facilitate/conceal a violation are not protected, even when they are related to a preliminary investigation, investigation or inspection process. While an independent attorney's legal opinion on whether an agreement violates the Competition Law can be protected under the attorney-client privilege, the correspondences on how the Competition Law can be violated between an independent attorney and client do not fall within the scope of this privilege. That said, the Eighth Administrative Chamber of the Ankara Regional Administrative Court issued a unique decision on attorney-client privilege in 2018 (Enerjisa, 2018/1236, 10 October 2018). The decision concerned an internal review report of outside counsel for competition law compliance purposes, which had been prepared before the authority opened an investigation against Enerjisa. The report was taken by the case handlers during a dawn raid conducted in the scope of the investigation against this company at a later stage. The court held that although the document was correspondence "between an independent attorney and the undertaking", it was not protected under attorney-client privilege given that "it was not directly related to the right to defence", due to its preparation prior to an investigation. In a similar vein, in Warner Bros (17.01.2019, 19-04/36-14), the Board decided that documents produced before the date that pre-investigation was made are not directly related to the right to defence and would not benefit from the privilege. Communications with in-house counsel are not covered by this privilege (Çiçek Sepeti, 2.07.2020, 20-32/405-186).

8. What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?

The Regulation on Active Cooperation for Discovery of Cartels ('Regulation on Leniency') provides that the leniency programme is only available for cartelists. It does not apply to other forms of antitrust infringements. A cartel member may apply for leniency until the investigation report is officially served. Depending on the timing and quality of the application, the applicant may benefit from full immunity or fine reduction. The immunity or reduction includes both the undertaking and its employees/managers, with the exception of the 'ringleader' which can only benefit from a second degree reduction of a fine. The first one to file an appropriately prepared application for leniency before the investigation report is officially served may benefit from full immunity. However, there are also several other conditions provided as follows; the applicant: shall submit information and documents in respect of the alleged cartel, including the products affected, the duration of the cartel, the names of cartel participants, and specific dates, locations and participants of cartel meetings; shall not conceal or destroy information or evidence related to the alleged cartel; shall end its involvement in the alleged cartel except when otherwise is requested by the assigned unit on the ground that detecting the cartel would be complicated; shall keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit; and shall maintain active cooperation until the Board's final decision on the investigation.

9. What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?

The rules explained in Question 8 apply to subsequent cooperating parties as well. Also, the Board may consider the parties' active cooperation after the immunity application as a mitigating factor as per the provisions of the Regulation on Fines. The second undertaking to file an appropriately prepared application would receive a fine reduction of between 33 and 50 per cent. Employees or managers of the second applicant that actively cooperate with the Authority would benefit from a reduction of between 33 and 100 per cent. The third applicant would receive a 25 per cent to 33 per cent reduction. Employees or managers of the third applicant that actively cooperate with the Authority would benefit from a reduction of 25 per cent up to 100 per cent. Subsequent applicants would receive a 16 per

cent to 25 per cent reduction. Employees or managers of subsequent applicants would benefit from a reduction of 16 per cent up to 100 per cent.

10. Are markers available and, if so, in what circumstances?

Although the Regulation on Leniency does not provide detailed principles on the 'marker system', pursuant to the relevant legislation, a document (showing the date and time of the application and request for time (if such a request is in question) to prepare the requested information and evidence) will be given to the applicant by the authorized division. For the applicant to be eligible for a grace period, it must provide minimum information concerning the affected products, duration of the cartel and names of the parties.

11. What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?

Articles 6 and 9 of the Regulation on Leniency provide that unless stated otherwise by the authorised division, the principle is to keep leniency applications confidential until the service of the investigation report. Nevertheless, to the extent the confidentiality of the investigation will not be harmed, the applicant undertakings could provide information to other competition authorities or institutions, organisations and auditors. As per paragraph 44 of the Guidelines on the Clarification of Regulation on Leniency, if the employees or personnel of the applicant undertaking disclose the leniency application to the other undertakings and breach the confidentiality principle, the Board will evaluate the situation on a case-by-case basis based on the criteria of whether the person at issue is a high-level manager, and whether the Board was notified promptly after the breach. The applicant is in any case obliged to maintain active cooperation until the final decision is taken by the Board following the conclusion of the investigation.

12. Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?

While the Turkish cartel regime is administrative and civil in nature, certain antitrust violations such as bid rigging in public tenders may also trigger criminal consequences under Sections 235 et seq. of the Turkish Criminal Code. Illegal price manipulation (i.e. manipulation through disinformation or other fraudulent means) may also be punished buy up to two years' imprisonment and civil monetary fine under Section 237 of the Turkish Criminal Code. Immunity or leniency does not close the door on leveraging criminal procedures on the basis of a Board decision. Therefore, employees/managers of an offending company may face criminal liability, even in cases where the company benefits from immunity or leniency.

13. Is there an 'amnesty plus' programme?

Amnesty Plus is regulated under Article 7 of the Regulation on Fines. According to Article 7 of the Regulation on Fines, the fines imposed on an undertaking which cannot benefit from immunity provided by the Regulation on Leniency will be decreased by one-fourth, if it provides the information and documents specified in Article 6 of the Regulation on Leniency (see above) prior to the Board's decision of preliminary investigation in relation to another cartel.

14. Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?

The Amendment Law introduced a settlement procedure. Relevant provision was added to Article 43 concerning investigations of anticompetitive conduct in general (not limited to cartels but also to 'other infringements' under Article 4 and abuse of dominance cases under Article 6). The Board, ex officio or upon a party's request, could initiate a settlement procedure. Unlike the commitment procedure, settlement could only be offered in full-fledged investigations. In this respect, parties that admit an infringement can apply for the settlement procedure until the official service of the investigation report. The Board will set a deadline for the submission of the settlement letter and if settled, the investigation will be closed with a final decision including the finding of a violation and administrative monetary fine. If the investigation ends with a settlement, the Board can reduce the administrative monetary fine by up to 25 per cent.

15. What are the key pros and cons for a party that is considering entering into settlement?

If the investigated party decides to settle, a discount from 10% up to 25% will be applied to the administrative monetary fine by the Authority Regulation on the

Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position. Settlement mechanism requires the acceptance of the alleged infringements. If investigated party submits the settlement letter, it will not be able to bring the final decision to the judicial review. However, it still remains possible for third parties who suffered damages to initiate a lawsuit for compensation. Once the settlement negotiations have started and then abandoned, another settlement request cannot be submitted to the Authority. The acknowledgement of an infringement could be used as evidence in the potential damages actions against the settling undertakings and weaken their defences in those legal battles. This is particularly important as claimants of such cases, if successful, are allowed to recover three times their losses as compensation pursuant to Article 58 of Competition Law. It is not clear yet how the courts in these cases will view the settlement decisions, and whether they will consistently render decisions to the detriment of settling undertakings in the future. Reasoned settlement decision of the Board will be publicly announced on Authority's website as is the case with other reasoned decisions of the Board.

16. What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?

Article 43 of Decision No. 1/95 of the EC-Turkey Association Council authorises the Authority to notify and request the European Commission (Directorate General for Competition) to apply relevant measures if the Board believes that cartels organised in the territory of the European Union adversely affect competition in Turkey. The provision grants reciprocal rights and obligations to the EU and Turkey, and thus the European Commission has the authority to request the Board to apply relevant measures to restore competition in relevant markets. There are also a number of bilateral cooperation agreements between the Authority and the competition agencies in other jurisdictions on cartel enforcement matters. The Authority has close ties with the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, the World Trade Organization, the International Competition Network and the World Bank. The research department of the Authority makes periodic consultations with relevant domestic and foreign institutions/organisations about the protection of competition, and submits its recommendations to the Board.

17. What are the potential civil and criminal sanctions if cartel activity is established?

The undertakings concerned will be separately subject to fines of up to 10 per cent of their Turkish turnover generated in the financial year prior to the date of the fining decision (if this is not calculable, the Turkish turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Employees or members of the executive bodies of the undertakings or association of undertakings that had a determining effect on the creation of the violation may also be fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In addition to that, the Board could 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. The Amendment Law grants the Board the power to order structural remedies for anti-competitive conduct provided that behavioural remedies are first applied and failed. Either way, both behavioural and structural remedies should be proportionate to and necessary to end the infringement effectively. Furthermore, 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, in case there is a possibility of serious and irreparable damages. Bid-rigging activity may be criminally prosecutable under Sections 235 et seq. of the Turkish Criminal Code. Illegal price manipulation (i.e. manipulation through disinformation or other fraudulent means) may also be punished by up to two years' imprisonment and a civil monetary fine under Section 237 of the Turkish Criminal Code. That said, there have been cases where the matter had to be referred to a public prosecutor after the competition law investigation was completed.

18. What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?

The Competition Law makes reference to Article 17 of the Law on Minor Offences to require the Board to take into consideration factors 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 their commitments, etc., in determining the monetary fine. In terms of the highest monetary fines imposed by the Board as a result of a cartel investigation, Retail decision regarding pricing activities of the market chains and the undertakings at the manufacture or wholesale level that are suppliers to the market chains (21-53/747-360, 28.10.2021) stands out in two aspects: first it is the one where the highest monetary fine imposed on a single undertaking (BİM Birleşik Mağazalar A.Ş.) as TL 958,129,194.39 (around EUR 91.95 million at the time of decision, in 2021) and second, where the highest monetary fine imposed for an entire case (imposed on 6 undertakings active in the fast moving consumer goods sector) was TL 2,671,434,094.38 TL (approximately EUR 256.4 million at the time of decision, in 2021).

19. Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?

Article 16 of the Competition Law makes a reference to the term “undertaking” when it identifies the entity which the monetary fine is to be imposed on. Therefore, for instance, in the Board’s Waste Paper decision (13-42/538-238, 08.07.2013) the Board found the parent companies liable instead of the joint venture. However, this is an exceptional case and the Board has a consistent approach to fine the legal entity which was involved in cartel behaviour (the actual infringing legal entity / infringing subsidiary) rather than fining the parent company as a whole (the whole group’s, i.e. the undertaking’s, revenue) (e.g. Automotive decision, (11-24/464-139, 18.04.2011); Cement decision, (12-17/499-140, 06.04.2012); Financial Institutions decision (17-39/636-276, 28.11.2017)).

20. Are private actions and/or class actions available for infringement of the cartel rules?

Article 57 et seq. of the Competition Law entitle any person injured in his or her business or property by reason of anything forbidden by the antitrust laws to sue the violators for three times their damages plus litigation costs and attorney fees. Turkish procedural law does not allow for class actions or procedures. While Article 73 of Law No. 6502 on the Protection of Consumers allows class actions by consumer organisations, these actions are limited to violations of Law No. 6502, 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 suits under Article 57 et seq. of the Competition Law.

21. What type of damages can be recovered by claimants and how are they quantified?

Article 58 of the Competition Law determines how to calculate the amount of any damages suffered. Parties that suffer as a result of the prevention, distortion or restriction of competition may claim as damages the difference between the cost that they paid and the cost that they would have paid if competition had not been restricted. Pursuant to Article 58, in determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well.

22. On what grounds can a decision of the relevant authority be appealed?

Board decisions, including decisions on interim measures and fines can be appealed before the administrative courts under the appeal process. Administrative litigation cases are subject to judicial review before the newly established regional courts (appellate courts), creating a three-level appellate court system consisting of Administrative Courts, regional courts (appellate courts) and the Council of State. The judicial review of the Board’s decisions before the administrative courts is conducted pursuant to administrative law principles. Ankara administrative courts examine whether the Board’s decision complies with the law in terms of subject matter, form, purpose, jurisdiction and reason. On the other hand, the regional courts will go through the case file both on procedural and substantive grounds. The regional courts’ decisions are considered as final in nature. In exceptional circumstances laid down in Article 46 of the Administrative Procedure Law, the decision of the regional court will be subject to Council of State’s review and therefore will not be considered as a final decision. In such a case, the Council of State may decide to uphold or reverse the regional courts’ decision. If the decision is reversed, it will be remanded back to the deciding regional court, which will in turn issue a new decision to take account of the Council of State’s decision.

23. What is the process for filing an appeal?

As per Law No. 6352, the administrative sanction decisions of the Board can be submitted for judicial review before the Administrative Courts in Ankara by the filing of an appeal case within 60 days upon receipt by the parties of the reasoned decision of the Board. As per Article 27 of the Administrative Procedural Law, filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request by the plaintiff, the court, providing its justifications, may grant stay of execution if such execution is likely to cause serious and irreparable damage; and if the decision is highly likely to be against the law (i.e. the showing of a prima facie case). The judicial review period before the Ankara Administrative Courts usually takes about 12 to 24 months. After exhausting the litigation process before the Administrative Courts of Ankara, the next step for the judicial review is to initiate an appeal against the Administrative Court's decision before the regional courts. The appeal request for the Administrative Courts' decisions will be submitted to the regional courts within 30 calendar days of the official service of the reasoned decision of the Administrative Court. The final step for the judicial review is to file an appeal against the regional court' decision before the High State Court as the final degree court in the appeal process. Similar to the appeal process before the regional courts, an appeal request against the regional court' decision will be submitted within 30 calendar days of the official service of the reasoned decision of the regional court.

24. What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?

The Board recently issued a reasoned decision which concludes imposition of an administrative monetary fine against chain markets engaged in retail food and cleaning products and their supplier for their cartel arrangement (21-53/747-360, 28.10.2021). The Board found that 5 chain markets directly or through their supplier indirectly and their supplier (i) coordinated their prices or price transitions, (ii) shared competition sensitive information, (iii) colluded on and heightened prices through retailers against the good of consumer (iv) observed and maintained said collusion with using sanction strategies. Thus, the Board decided that the relevant undertakings violated Article 4 of the Competition Law. In this respect, the Board imposed administrative monetary fine of over 2,6 billion TL to the undertakings in total. Furthermore, the Board decided that Novartis Sağlık Gıda ve Tarım Ür. San. ve Tic. A.Ş. ('Novartis') and Roche Müstahzarları San. A.Ş. ('Roche') violated Article 4 of the Competition Law (21 January 2021, 21-04/52-21) in relation to the drugs Lucentis and Altuzan, both of which are used for the treatment of age-related macular degeneration eye diseases. The Board determined that Novartis and Roche had agreed to shift market demand towards Lucentis in intraocular treatment and discourage the use of Altuzan by providing misleading information to administrative and judicial authorities, highlighting Altuzan's side effects and the risk of endophthalmitis. Ultimately, the Board determined that Novartis and Roche had been engaged in cartel activity and acquiring unlawful profits by seeking to shift demand towards the more expensive medication, Lucentis. The Board concluded that the actions of Novartis and Roche constituted a violation of Article 4 of the Competition Law and it imposed an administrative fine of 165,464,716.48 TL on Novartis and 112,972,552.65 TL on Roche.

25. What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, impact of COVID-19 in enforcement practice etc.)?

The annual statistics of the Authority for 2021 provide that the Board finalised a total of 74 cases relating to competition law violations. Among the 74 cases, 40 were subject to Article 4 of the Competition Law (anticompetitive agreements) only and 11 cases were subject to both Article 4 and Article 6 (abuse of dominant position). The sectors that were scrutinized most were equally (i) food industry (including packaged goods production, wholesale/retail sales, etc.) with (ii) information technologies and platform services which were followed by (iii) machine industry (including household appliances, electronics, etc.). Finally, the Board issued monetary fines amounting to a total of 4,355,666,696.86 TL in 2021. In terms of COVID-19 impact on the competition law enforcement in Turkey, the Authority initiated several investigations to review price increases after COVID-19 outbreak.

26. What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?

As elaborated in previous sections, the Amendment Law introduced new provisions related to the de minimis principle, on-site inspection powers, behavioural and structural remedies, and commitment and settlement mechanisms. Inter alia other provisions, the Amendment

Law replaced dominance test taken into consideration in merger control assessments under Article 7 with the "significant impediment of effective competition" (SIEC) test, clarified the self-assessment procedure applied to individual exemption cases under Article 5 and also granted the Authority with 15 more days for preparation of its additional opinion in response to the undertakings' second written defence in a full-fledged investigation. The Authority published its Guidelines on Examination of Digital Data during On-site Inspections on October 8, 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in the electronic media and information systems, during the on-site inspections. Besides, in March 2021, the Authority published its Communiqué No. 2021/2 on Commitments Offered During Preliminary Investigations and Investigations on Restrictive Agreements, Concerted Practices, Decisions and Abuse of Dominance along with its Communiqué No. 2021/3 on the Agreements, Concerted Practices and Decision and Practices of Associations of Undertakings which Do Not Restrict Considerably Competition. Moreover, in July the Authority also published its Regulation on the Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position. Thus, while there are limited examples of these newly introduced mechanisms to date, it is expected to see the impact, the reflection and the limitation of the mechanism in practice.

Contributors

Gönenç Gürkaynak
Founding Partner
gonenc.gurkaynak@elig.com

Harun Gündüz
Counsel
harun.gunduz@elig.com