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Türkiye: Law & Practice

Gönenç Gürkaynak and Harun Gündüz
ELIG Gürkaynak Attorneys-at-Law

TÜRKİYE

Law and Practice

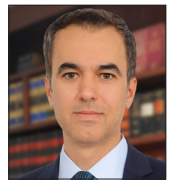
Contributed by:
Gönenç Gürkaynak and Harun Gündüz
ELIG Gürkaynak Attorneys-at-Law

Contents

ELIG Gürkaynak Attorneys-at-Law is committed to providing high-quality legal services, combining a solid knowledge of Turkish law with a business-minded approach to develop legal solutions to meet the ever-changing needs of clients in their international and domestic operations. The competition law and regulatory department is led by the founding partner, Dr Gönenç Gürkaynak, along with six other partners, eight counsel and 42 associates. In addition to unparalleled experience in merger control issues, the firm has vast experience in defending companies before the Turkish Competition Board in all phases of antitrust investigations, abuse of dominant position cases, and leniency applications, and before the courts on issues of private enforcement of competition law, along with appeals of administrative decisions of the Turkish Competition Authority. The firm represents multinational corporations, business associations, investment banks, partnerships and individuals in a wide variety of competition law matters while collaborating with many international law firms.

Authors

Gönenç Gürkaynak is the founding partner of ELIG Gürkaynak Attorneys-at-Law, a leading law firm of 95 lawyers based in Istanbul, Turkiye. Dr Gürkaynak graduated from Ankara University, Faculty of Law in 1997 and was called to the Istanbul Bar in 1998. Dr Gürkaynak received his LLM degree from Harvard Law School, and he has received his Doctor of Philosophy in Law (PhD) degree from University College London (UCL) Faculty of Laws. Before founding ELIG Gürkaynak Attorneys-at-Law in 2005, Dr Gürkaynak worked as an attorney at the Istanbul, New York and Brussels offices of a global law firm for more than eight years.



Harun Gündüz joined ELIG Gürkaynak Attorneys-at-Law in 2021 as counsel, after 16 years at the Turkish Competition Authority, most recently as chief legal counsel. Having graduated from Ankara University Faculty of Law, Mr Gündüz received his LLM degree in Competition Law from King's College London and an MA degree in Administrative Law from Ankara University. Drawing on his extensive experience in competition law matters, he has written a book titled "Investigations and Fines on Infringements of Competition Law: 20-Year Balance Sheet of Turkish Competition Board". In addition to his thesis on competition law, he has also published numerous papers in national and international periodicals.

ELIG Gürkaynak Attorneys-at-Law

Çitlenbik Sokak, No 12
Yıldız Mahallesi 34349
Beşiktaş
İstanbul
Turkiye

Tel: +90 212 327 17 24
Fax: +90 212 327 17 25
Email: gonenc.gurkaynak@elig.com
Web: www.elig.com

1. Basic Legal Framework

1.1 Statutory Bases for Challenging Cartel Behaviour/Effects

Primary Legislation

The main legislation prohibiting cartel activity in Turkiye is the Law on Protection of Competition No 4054 (the "Competition Law") as amended by Law No 7246 Amending the Law on the Protection of Competition (the "Amendment Law").

Article 4 of the Competition Law provides the main principles related to cartels and is essentially modelled on Article 101(1) of the Treaty on the Functioning of the European Union (TFEU). As a general provision, Article 4 prohibits all restrictive agreements, including any form of cartels. It also sets forth a non-exhaustive list of anti-competitive practices that potentially violate the Competition Law, including the most common types of cartels, such as price fixing, market division and concerted control of output or input. It also prohibits any form of agreement that has the potential to prevent, restrict or distort competition. This is a specific feature of the Turkish cartel regulation system, recognising the broad discretionary powers of the Turkish Competition Board (the "Board").

Secondary Legislation

The secondary legislation of the Turkish Competition Authority (the "Authority") includes specific provisions on cartels. The Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (the "Fine Regulation") provides the range of base fines for cartels (see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**).

Under the Regulation on Active Co-operation for Detecting Cartels (the Leniency Regulation, parties that actively co-operate with the Authority to reveal a cartel may be granted full immunity or a discount, depending on the timing of their leniency application and the level of their co-operation with the Authority throughout the investigation. On 16 December 2023, the revised Leniency Regulation was published on the Official Gazette No. 32401, replacing the previous regulation that had been in effect since 15 February 2009 (see **1.9 Changes in the Regulatory Environment Affecting Competition Regulation**).

1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards

The authority enforcing competition law is the Turkish Competition Authority, a legal entity with administrative and financial autonomy, consisting of the Board and case units. The Board is the decision-making body and is responsible for deciding whether agreements, concerted practices and decisions of undertakings active in various markets restrict competition. The Board has seven members and is seated in Ankara. The Authority has six case units, each focusing on all types of competition cases (ie, Article 4 cases, mergers and abuse of dominance) in certain industries.

Penalties

Penalties imposed under the Competition Law are administrative in nature – therefore, the Competition Law can lead to administrative fines (and civil liability) but not criminal penalties. That said, when anti-competitive conduct such as bid rigging in public tenders or price manipulation is also criminally prosecutable, potential legal liability extends to criminal fines as well as imprisonment.

Fines

The Fine Regulation provides the range of the initial rates for cartels: for undertakings/association of undertakings, it is between 2% and 4% of turnover for the latest financial year before the date of the Authority's decision. The initial rate is increased by half if the duration of the infringement is between one and five years; if the duration is more than five years, the rate is increased by one-fold. After calculating the base rate by following the methodology above, the Authority applies aggravating and mitigating factors to calculate the final fine for the relevant undertaking or association of undertakings.

The Authority's fine for cartels cannot exceed 10% of the relevant undertaking's turnover generated in Turkiye in the financial year preceding the date of the decision to impose a fine.

Article 43 of the Competition Law regulates that the Board, ex officio or upon the investigated parties' request, can settle with the investigated parties that concede the existence and scope of an infringement, until the official service of the investigation report. As a result of the settlement procedure, the Board can reduce the administrative monetary fine amount by up to 25%. Subsequently, the administrative monetary fine and the matters included in the settlement letter cannot be made subject to an appeal before the court by the investigated parties.

Liability

In addition to legal entities, executives or employees of undertakings may be held liable for cartel activity. Under the Competition Law, employees or members of executive bodies or associations of undertakings that had a determining effect on a violation may be fined between 3% and 5% of the fine imposed on the relevant undertaking or association of undertakings. This, however, is unusual in practice. There are only two examples of this in the history of the Board – Poultry Producers (25 November 2009, 09-57/1393-362) and Sodium Sulphate Producers (3 May 2012, 12-24/711-199). Both cases concerned a cartel type of violation.

Civil Awards

Regarding civil awards, under Article 57 of the Competition Law, persons and companies harmed by anti-competitive conduct have a right to claim treble damages, plus litigation costs and attorneys' fees.

1.3 Private Challenges to Cartel Behaviour/Effects

Under Article 57 of the Competition Law, persons and companies harmed by anti-competitive conduct have the right to claim treble damages, litigation costs and attorneys' fees. Claims for damages arising from the Competition Law are ultimately subject to the general tort rules, ie, the Turkish Code of Obligations. Accordingly, for a private tort claim to be accepted by the court, the following four conditions must be cumulatively met:

- existence of an illegal act;
- fault;
- damage; and
- causal link.

1.4 Definition of "Cartel Conduct"

The general provision regarding cartels is Article 4 of the Competition Law, which prohibits all forms of "restrictive agreement", including any form of cartels. In line with the TFEU, Article 4 includes price fixing, market allocation and refusal-to-deal agreements as examples of restrictive agreements consistently deemed to be anti-competitive.

Cartels are explicitly defined by the secondary legislation of the Authority, namely the Fine Regulation and the Leniency Regulation. According to these regulations, "competition-limiting agreements and/or concerted practices concluded between competitors concerning the subjects of price fixing, allocation of customers, suppliers, regions or commercial channels, introduction of supply amount restrictions or quotas, and collusive bidding in tenders" are prohibited as cartels.

Like the TFEU, the Board can decide not to launch a full-fledged investigation into agreements, concerted practices and/or decisions of associations of undertakings which do not significantly restrict competition in the market under certain conditions (ie, the de minimis application). However, the de minimis principle is not applicable to hardcore violations such as price fixing, territory or customer sharing, and restriction of supply.

The secondary legislation determining the rules and procedures of the de minimis application is Communiqué No 2021/3 on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings That Do Not Significantly Restrict Competition, which came into force on 16 March 2021.

Exemptions

In Turkiye, no sector or activity is entirely exempt from the Competition Law, apart from limited exceptions granted to certain transactions in the field of merger control.

The prohibition on restrictive agreements and practices does not apply to agreements that benefit from a block exemption or an individual exemption (or both) issued by the Board. The applicable exemption rules are parallel to those applicable in the EU. That said, given that cartels fail to fulfil the conditions for exemption under Article 5(1) of the Competition Law and relevant block exemption regulations, this type of conduct does not benefit from an exemption from the prohibition of Article 4.

Under Article 3 of the Fine Regulation and Leniency Regulation, the following practices are classified as cartel activity:

- price fixing;
- allocation of customers, providers, territories or trade channels;

- restricting the amount of supply or imposing quotas; and
- bid rigging.

Bid rigging is also prohibited under Article 235 of the Turkish Criminal Code, and perpetrators of this offence may face imprisonment. Furthermore, price manipulation in capital markets is specifically punishable with imprisonment, as per Article 106 of the Turkish Capital Market Law.

1.5 Limitation Periods

In the Turkish Competition Law regime, the effects theory is taken into account to determine the geographic scope of the Board's jurisdiction. Article 2 of the Competition Law provides that the relevant law covers all restrictive agreements, decisions, transactions and practices to the extent that they affect markets for goods and services in Turkiye, regardless of where the conduct takes place.

The nationality of the cartel members, where the cartel took place or whether the cartel members have a subsidiary in Turkiye will not factor into the assessment of the Board's jurisdiction.

The Board's Attitude Regarding Jurisdiction

The Board has decided in the past that it has jurisdiction over non-Turkish cartels or cartel members, as long as the cartel has had an effect on Turkish markets. That said, the specific circumstances surrounding indirect sales are not tried under Turkish cartel rules. Article 2 of the Competition Law would, at least, support an argument that the Turkish cartel regime does not extend to indirect sales because the cartel activity that takes place outside of Turkiye does not in and of itself produce effects in Turkiye.

Additionally, export cartels do not fall within the scope of jurisdiction of the Competition Authority, as per Article 2 of the Competition Law.

The Board found that export cartels are not sanctioned as long as they do not affect the markets of the host country (Aegean Region Cement Producers 2016, (14 January 2016, 16-02/44-14)). Although other decisions (Paper Recycling, (8 July 2013; 13-42/538-238); Poultry Producers (25 November 2009; 09-57/1393-362)) suggest that the Authority might sometimes be inclined to claim jurisdiction over export cartels, it is fair to assume that an export cartel would fall outside of the Authority's jurisdiction if and to the extent that it does not have an impact on Turkish markets.

1.6 Extent of Jurisdiction

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1.7 Principles of Comity

Article 43 of Decision 1/95 of the European Commission-Turkiye 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 in the EU have adversely affected competition in Turkiye. The provision grants reciprocal rights and obligations to the parties; thus, the European Commission has the authority to request that the Board applies the necessary measures to restore competition in the relevant markets.

Upon receipt of such a request, the notified party will consider whether or not to initiate any enforcement action and, if such action is initiated, advise the notifying party of the outcome of the relevant action. This article, however, does not limit the discretion of the Authority and the European Commission under their respective competition laws.

There are a number of bilateral agreements between the Authority and the competition agencies of other jurisdictions (eg, Romania, Korea, Bulgaria, Portugal, Bosnia and Herzegovina, Russia, Croatia, Kosovo, Macedonia and Mongolia) on cartel enforcement matters. The Authority also has close ties with the Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO), the International Competition Network and the World Bank.

As a recent example of inter-agency cooperation of the Authority with its counterparts, on 17 October 2023, the European Commission officially announced that certain unannounced inspections at the premises of companies active in the construction chemicals sector were carried out in coordination with the UK Competition and Markets Authority and the Turkish Competition Authority, on the very same day.

1.8 Changes in the Regulatory Environment Affecting Competition Regulation

The Amendment Law introduced a settlement mechanism that may be utilised in a cartel investigation, according to which a fine may be reduced by up to 25%. Where the process is concluded with a settlement, the parties to the settlement may not take the administrative fine and the provisions of the settlement text to court. The recent amendments introduced in 2021 also include de minimis and commitment mechanisms. Pursuant to the new regulations on de minimis, the Board can decide not to launch a full-fledged investigation for agreements, con-

certed practices and/or decisions of association of undertakings which do not significantly restrict competition in the market under certain conditions (ie, the de minimis application). On the other hand, the commitment mechanism makes it possible for the undertakings and trade associations to offer commitments during an ongoing preliminary investigation or a full-fledged investigation process, to eliminate potential competition concerns under Articles 4 and 6 of the Competition Law. However, de minimis and commitment mechanisms are not applicable to hard-core violations such as price fixing, territory or customer sharing, and restriction of supply.

Additionally, the Authority focused on hub and spoke-type of cartel arrangements in the last five years. The most recent decisions include Eczacıbaşı (9 March 2023, 23-13/212-68), Sunny (18 May 2022, 22-23/371-156), Retailers-II (15 December 2022, 22-55/863-357), Retailers-I (28 October 2021, 21-53/747-360), Profil (23 October 21-44/646-323), Aral Oyun (7 November 2016, 16-37/628-279), and Tires (16 December 2015, 15-44/731-266).

The recently amended Leniency Regulation has broadened the scope of full immunity, now extending it to parties involved in hub-and-spoke cartels or other cartel facilitators. These parties can now benefit from active cooperation and submit leniency applications.

An essential change introduced by the amendment is the requirement to provide documents that offer significant value to the investigation. These documents, defined as those strengthening the Board's ability to prove the cartel, differentiate between the active cooperation and settlement procedures. If an application is rejected due to insufficiently valuable documents, the information provided will not be considered in the final decision.

Furthermore, the Leniency Regulation allows applicants to receive exemptions or reductions in fines under the leniency mechanism, even if the initially reported violation does not qualify as a cartel. This provision addresses concerns of undertakings hesitant to utilise the leniency programme due to uncertainties about their infringement's nature.

2. Procedural Framework for Cartel Enforcement – Initial Steps

2.1 Initial Investigatory Steps

Investigation and First Defence

The Authority may initiate an investigation into an alleged cartel ex officio or upon a complaint. If the Board finds the complaint credible, the first step is a pre-investigation. At this preliminary stage, the undertakings concerned are not notified that they are under investigation unless there is a dawn raid.

After completing the pre-investigation in 30 calendar days, the case handlers submit their findings ("pre-investigation report") to the Board. The Board will decide whether or not to launch an in-depth investigation within ten days of receiving the pre-investigation report. If the Board decides to initiate an in-depth investigation, it will notify the undertakings concerned in 15 days.

In exceptional situations, the Board may also initiate an in-depth investigation directly without a preliminary investigation. The Board has opened a direct investigation in only a few instances (Turk Telekom Infrastructure (5 January 2006, 06-02/47-8); Facebook (11 March 2021, 21-13/162-69)).

The investigation must be completed within six months. If deemed necessary, the Board can extend this period once for another six months. The relevant parties then have 30 days from the formal service of the notice to submit their first written defence.

Responding to the Report and Second and Third Defences

After receiving the parties' first written defence, the Authority issues an "investigation report" (the equivalent of the European Commission's statement of objections). After receiving the investigation report, the parties have 30 days to respond (the second written defence), which is extendable for a further 30 days. The case team has 15 days to respond to the parties' second written defence (the "additional opinion"), with an option to double the period for the submission of the Authority's additional opinion. Again, the parties have 30 days to reply to the additional opinion (the third written defence) which is extendable for a further 30 days.

With the submission of the parties' third written defence to the Authority, the in-depth investigation process is completed.

Oral Hearings

An oral hearing may be held upon the parties' request or at the Board's decision. Oral hearings are held between 30 and 60 days after completing the investigation process.

The Board renders its final decision 15 days after oral hearings (if held) or 30 days from the completion of the investigation process. It usually takes six to eight months from the announcement of the final decision for the Board to issue a reasoned decision.

2.2 Dawn Raids

Article 15 of the Competition Law authorises the Board to conduct dawn raids. The firm and individuals are obliged to co-operate with the Board during the dawn raid. Refusal to grant the case handlers access to business premises can lead to an administrative fine. The fine is fixed at 0.5% of the relevant undertaking's turnover generated in the financial year preceding the date of the Authority's decision to impose the fine (or if that cannot be calculated, the turnover generated at the end of the fiscal year which is closest to the date of the final decision will be taken into account). Each day the party does not allow the case handlers to carry out an on-site inspection will incur an additional penalty of 0.05% per day.

The relevant fine cannot be lower than a specific amount recalculated periodically by the Authority; the minimum fine for 2024 is TRY167,473 (currently approximately USD5,150 or EUR4,837).

Restrictions on Dawn Raids

During a pre-investigation and in-depth investigation, the Authority can do the following:

- examine the books and documents of undertakings and trade associations;
- request undertakings and trade associations to provide written or verbal explanations on specific topics;
- conduct on-site investigations with regard to any asset of an undertaking; and
- examine computers and other electronic devices of the undertaking, including emails and portable devices that include digital data pertaining to the relevant undertaking.

The Authority cannot seize documents but can make copies. The Authority may take digital copies deemed as evidence, and inspection of

those digital copies may continue in Ankara at the Authority's office.

Procedure of Dawn Raids

The Authority may request all information it deems necessary from private and public institutions, undertakings and trade associations, and such information must be provided within the period determined by the Board. Failure to comply may lead to a fine of 0.1% of Turkish turnover generated in the financial year preceding the date of the fining decision. The same penalty applies to incorrect or incomplete information.

Similarly, refusal to grant the Authority access to business premises may also result in a fine (see **2.3 Spoliation of Information**).

The Authority's case handlers can interview employees and officers of undertakings, but if the requested information cannot be provided during the interview, the case handlers may grant additional time to respond to such a request. Therefore, in practice, employees and officers can delay responding to questions when they are not in a position to provide accurate or complete information, provided that a written response is submitted within the timeframe agreed upon with the case handlers.

Companies and interviewees have a legal right to request copies of the documents furnished to the enforcement agency regarding these interviews. Moreover, they can request that the copies of documents delivered by the case handlers are stamped as confidential for those that include commercial secrets.

In addition, the Authority recently published its Guidelines on Examination of Digital Data during On-Site Inspections which set forth the general principles with respect to the examination, processing and storage of data and documents held in electronic media and information systems, during the on-site inspections to be conducted by the Authority. The guidelines essentially (i) clarify the procedures to be abided by when the data on the electronic media or information systems is required to be examined by the case handlers during on-site inspections, and (ii) introduce a new method for the examination of digital data, which is akin to the methodology and principles set forth within the European Commission's Explanatory Note on Commission inspections.

2.3 Spoliation of Information

As mentioned in **2.2 Dawn Raids**, for each day the Authority cannot access the relevant information/document, the undertaking will be subject to an additional fine of 0.05% of its turnover generated in the financial year preceding the date of the fining decision.

Spoliation of potentially relevant information would be considered obstructing or preventing a dawn raid, resulting in an administrative fine on the undertaking of 0.5% of its turnover. In UNMAŞ On-Site Inspection (20 May 2021, 21-26/327-152), an UNMAŞ employee deleted the contents of his WhatsApp correspondence, and the Board imposed a fine of 0.5% of UNMAŞ's turnover. Similarly, in an on-site inspection at Siemens (17 November 2019, 19-38/581-247), the case handlers were not granted access to certain servers at Siemens and were not able to conduct the inspection for 12 days. Accordingly, Siemens was fined 0.05% for each day of delay. In a recent case (Turkish Pharmacists Association (7 November 2019, 19-38/582-248)), the Board imposed a turnover-based fine at the rate of 0.1% and a separate turnover-based fine at the rate of 0.05% for each day of delay in submitting the requested infor-

mation and documents until the date of compliance (which was 20 days after the deadline).

Imprisonment and Further Charges

Apart from the monetary fine imposed by the Board, if the cartel conduct also falls under criminal law (eg, bid rigging in public tenders), individuals who destroy, delete, hide or change evidence may face imprisonment for a period of between six months and five years under Article 281 of the Turkish Criminal Code.

Moreover, the individuals could also be charged with forgery and resistance to public officers if the conditions set out under Articles 205 and 265 of the Turkish Criminal Code are met.

2.4 Role of Counsel

Officers or employees have a legal right to counsel. An attorney-at-law can be present to supervise the inspection. The lawyer can be a company lawyer and/or an independent lawyer.

The case handlers conducting the dawn raid are not obliged to wait for the undertaking's counsel to proceed. Indeed, in a recent decision (Çekok Gıda (8 February 2018, 18-04/56-31)), where the Board imposed a fine on an undertaking for obstructing a dawn raid, the Board dismissed the defence that the delay was due to waiting for external counsel.

Counsel may present and advise and speak during interviews, and interfere if the interview leads to any potential violation of the company's rights (particularly, the prohibition against self-incrimination, requests for information exceeding the scope of the current investigation, or requests for documents protected by attorney-client privilege).

Requirement to Obtain Separate Counsel

Turkish law does not prevent counsel from representing the investigated corporation and its employees, as long as there is no conflict of interest.

Initial Steps Taken by Defence Counsel

An attorney-at-law can be present to supervise the inspection. During the initial phase of an enforcement effort, a defence counsel should only assist their client (the undertaking accused of cartel behaviour), without obstructing the inspection rights of case handlers.

In addition, a defence counsel should supervise and interfere in the inspection in question, as necessary, where case handlers exceed the scope of their authorisation during the dawn raid. The most common incidents requiring intervention from a defence counsel during a dawn raid involve preventing the case handlers from obtaining documents protected by attorney-client privilege and/or outside the scope of the investigation.

2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony

As explained in **2.2 Dawn Raids**, the Board may obtain certain documents and testimonies in the course of investigating an alleged cartel.

Pursuant to Article 15 the Competition Law, case handlers must carry with them an authorisation certificate when they conduct on-site inspections showing the subject matter and purpose of the inspection and explaining that an administrative fine will be imposed if incorrect information is provided. The case handlers' authorisation for dawn raids is, therefore, limited to the scope written in this certificate.

Procedure for Obtaining Other Types of Information

See **2.2 Dawn Raids**, Procedure of Dawn Raids.

2.6 Obligation to Produce Documents/ Evidence Located in Other Jurisdictions

Pursuant to Article 44 of the Competition Law, the Board "may request the provision of any documents and information it deems necessary from the parties and other places concerned". Even if relevant documents or other evidence are located in another jurisdiction, the company or individual is obliged to produce it, as long as the cartel has an actual or potential effect on Turkish markets.

2.7 Attorney-Client Privilege

Correspondence with an independent attorney (ie, an attorney without an employment relationship with the relevant undertaking) may benefit from attorney-client privilege, provided that it is related to the right of defence; communications with in-house counsel are not covered by this privilege ((Trendyol (29 April 2021, 21-24/287-130)).

If a document includes correspondence between the undertaking and external counsel (who is not an employee) and is related to the use of the right of defence of the undertaking, this document will be protected under attorney-client privilege (Dow (2 December 2015, 15-42/690-259); Enerjisa (6 December 2016, 16-42/686-314); Warner Bros (17 January 2019, 19-04/36-14); Istanbul Department of Customs Association (20 June 2019, 19-22/352-158); Çiçeksepeti (2 July 2020, 20-32/405-186)). If, however, the document includes counsel's advice regarding how to infringe the competition law or how to cover an infringement, this will not be protected by this principle. Furthermore, the Board has recently decided that an internal email exchange among company employees would not be covered by attorney-client privilege simply because the company's independent counsel was copied throughout the email chain, if the emails did not include any statement addressed to or from such independent counsel (Huawei, 14 November 2019, 19-40/670-288).

In another recent decision, the Eighth Administrative Chamber of the Ankara Regional Administrative Court recognised that attorney-client privilege would be available to the documents related to an ongoing investigation or trial (Enerjisa, 10 October 2018; E: 2018/658) and that any document not directly related to the right to defence (ie, not linked to a pre-investigation, an investigation or a legal action against a decision of the Board) would not be afforded attorney-client privilege. On the other hand, in its recent decision (Transorient and Tunaset, 26 May 2022, 22-24/390-161), the Board concluded that documents produced before the date of the pre-investigation benefit from the privilege.

Other Relevant Privileges

Article 38 of the Turkish constitution provides that "no one shall be compelled to make a statement that would incriminate themselves or their legal next of kin, or to present such incriminating evidence".

Given that the ambit of the Board's power to request information is not determined under the Competition Law or secondary legislation, execution of this power raises objections from time to time on the basis of the privilege against self-incrimination. That said, such objections have thus far been rejected by court appeal.

2.8 Non-cooperation With Enforcement Agencies

Requests for information by the Authority are not resisted, with very few exceptions, since refusal to provide the information requested by the Authority may result in an administrative fine. See **2.3 Spoliation of Information** and **2.2 Dawn Raids**.

2.9 Protection of Confidential/Proprietary Information

Competition Law and Communiqué No 2010/3

The main legislation regarding the protection of commercially sensitive information is found in Article 25(4) of the Competition Law and Communiqué No 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets ("Communiqué No 2010/3"). Communiqué No 2010/3 places the burden of identifying commercial secrets and justifying such classification on the undertaking. Therefore, undertakings must request confidentiality from the Board and justify their reasoning in writing.

Communiqué 2010/3, Article 15(2)

Under Article 15(2) of Communiqué 2010/3, the Authority may not take confidentiality requests into consideration that are related to information and documents that are indispensable to proving the infringement of competition. In such cases, the Authority can disclose such information and documents that could be considered trade secrets by taking into account the balance between public and private interest, in accordance with the principle of proportionality.

Right of Access

The right of access to the file has two legal grounds in the Turkish competition law regime: Law No 4982 on the Right to Information and Communiqué No 2010/3. Article 5/1 of Communiqué No 2010/3 provides that the right of access to the case file will be granted on the written requests of the parties (the investigated undertakings) within the due period during the investigations.

Access to the case file grants the applicant access to information and documents in the case file that do not qualify as internal documents of the Authority or trade secrets of other firms or trade associations. Third parties cannot request access to the file as per Communiqué No 2010/3, but can apply for information as per Law No 4982.

2.10 Procedure for Defence Counsel to Raise Arguments Against Enforcement

The defence counsel can raise legal and factual arguments during the first, second and third legal defences and the oral hearing. Additionally, if the Authority issues any information requests during a pre-investigation and investigation, the defence counsel may advocate against cartel allegations where appropriate.

2.11 Leniency and/or Immunity Regime

Pursuant to the Leniency Regulation, full immunity may be granted to the first applicant (its employees and officers) which provides all the required information before the investigation report is officially served.

Several conditions must be met to receive full immunity from all charges. One condition is that the applicant must not be the coercer of the cartel. If this is the case (ie, if the applicant has forced other cartel members to participate in the cartel), while the applicant may only receive a reduction of between 33% and 50%, its employees may receive between 33% and 100%.

Other conditions are:

- the applicant is to submit information and evidence in respect of the alleged cartel, including the products affected, information on the geographical scope, the duration of the cartel, the names and addresses of the cartelists and cartel facilitators, and specific dates, locations and participants of cartel meetings;
- the applicant must not be the coercer of the cartel;
- the applicant is not to conceal or destroy information or evidence related to the alleged cartel;
- the applicant must end their involvement in the alleged cartel, except when advised by the assigned unit on the ground that to do so would complicate the revealing of the cartel;
- the applicant must keep the application confidential until the end of the investigation, unless otherwise requested by the assigned unit; and
- the applicant must maintain active co-operation until the Board takes the final decision after the investigation has been completed.

Marker

Under the Turkish leniency regime, it is possible to apply for a marker. Although the Leniency Regulation does not provide detailed principles on the "marker system", the Authority can grant additional time for applicants to submit the necessary information and evidence. 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 cartelists and cartel facilitators (if any).

Eligibility

The rules explained above are applicable to both the first applicant and the subsequent ones. Additionally, the Board may take into account the active cooperation of parties post-immunity application as a mitigating factor, in accordance with the provisions outlined in the Regulation on Fines.

For the first applicant seeking a fine reduction, the reduction falls within the range of 25% to 50%. Furthermore, employees or managers of this applicant who actively cooperate with the Authority may be eligible for a fine reduction ranging between 20% and 100%.

Similarly, the second applicant seeking a fine reduction may receive a reduction ranging between 20% and 40%. Employees or managers of this second applicant who actively cooperate with the Authority may also benefit from a reduction ranging between 20% and 100%. Subsequent applicants are eligible for a reduction ranging between 15% and 30%, with their employees or managers potentially enjoying a reduction of between 15% and 100%.

2.12 Amnesty Regime

Amnesty Plus, governed by Article 7 of the Regulation on Fines, outlines a provision for undertakings not eligible for immunity under the Leniency Regulation. As per this article, fines imposed on such undertakings will be reduced by one-fourth if they furnish the information and documents outlined in Article 6 of the Leniency Regulation (as mentioned earlier), prior to the Board's preliminary investigation decision regarding another cartel.

3. Procedural Framework for Cartel Enforcement – When Enforcement Activity Proceeds

3.1 Obtaining Information Directly From Employees

See **2.2 Dawn Raids**.

3.2 Obtaining Documentary Information From the Target Company

As explained in **2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony** and Procedure for Obtaining Other Types of Information, pursuant to Article 44 of the Competition Law, the Board "may request the provision of any documents and information it deems necessary from the parties and other places concerned". As an investigating authority, the Board is entitled to seek and obtain any relevant evidence and/or documents related to the cartel activity directly from the target company or other companies and third parties concerned. The Board can either issue information requests to the relevant party or conduct dawn raids to obtain documentary evidence.

3.3 Obtaining Information From Entities Located Outside This Jurisdiction

As explained in **1.6 Extent of Jurisdiction**, the jurisdiction of the Authority is determined on the basis of the "effects theory". Thus, as mentioned in **2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony**, the Authority is able to request information directly from any company involved in a cartel that affects Turkish markets. Companies located outside Turkiye are also required to provide these documents.

3.4 Inter-agency Co-operation/Co-ordination

The Board may request information that it deems necessary from public institutions and organisations, undertakings and trade associations. Officials from these bodies are obliged to provide such information within the period fixed by the Board. The Board also has co-operation agreements with various government agencies, including the Public Tenders Authority.

Accordingly, when certain conduct potentially violates both the Competition Law and other laws (such as regulations on public tenders), the Authority co-operates with the relevant authority (and the public prosecutor's office when the conduct falls under criminal law) to exchange information.

Previous Examples of Co-operation

In Medical Consumables (19 December 2008; 08-74/1180-455), the Authority opened a pre-investigation regarding bid-rigging allegations against medical consumable suppliers. During the pre-investigation, the Authority conducted dawn raids but could not find evidence proving a violation of the Competition Law. However, the Authority took note of a parallel criminal investigation of the public prosecutor's office and co-operated with the public prosecutor to collect evidence. Accordingly, the public prosecutor shared its indictment with the Authority, which included numerous recordings of communications regarding price fixing and allocation of tenders among the relevant companies. The Authority imposed administrative fines on 11 companies involved in the cartel.

In a more recent decision (Naos, 6 October 2022; 22-45/659-283), the Authority co-operated with the Information and Communication Technologies Authority to assess whether the mobile devices inspected during the on-site inspection were indeed used for work or were changed by re-locating the SIM card. In the end, the Authority found that the employee whose mobile device

was being inspected, took the SIM card out of the device used for work and inserted it into another mobile device that was not being used at all and provided such device for the inspection of the Authority, which clarified the situation with the help of the IMEI information provided by the Information and Communication Technologies Authority.

3.5 Co-operation With Foreign Enforcement Agencies

See **1.7 Principles of Comity**.

3.6 Procedure for Issuing Complaints/ Indictments in Criminal Cases

As indicated in **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**, the sanctions that can be imposed under the Competition Law are administrative in nature, although bid-rigging activity may be criminally prosecutable under Article 235 et seq of the Turkish Criminal Code. For price manipulation in capital markets, the defendant may also be sentenced to imprisonment for two to five years or incur a criminal fine under Article 106 of the Capital Market Law.

The crimes mentioned above are litigated before criminal courts in Turkiye, which are also responsible for acting as the finder of facts alongside the prosecution office. In an investigation process, the accused are entitled to access information in the possession of the enforcement agencies unless the judge decides not to allow access to the information upon the request of the prosecutor.

3.7 Procedure for Issuing Complaints/ Indictments in Civil Cases

Under Article 57 of the Competition Law, persons and companies harmed by anti-competitive conduct have a right to claim treble damages plus litigation costs and attorneys' fees.

Private damages claims must be brought before civil courts in Turkiye. In practice, the courts do not usually analyse whether there is an anti-competitive agreement or concerted practice and defer to the Board's opinion, thus treating the issue as a prejudicial question. Since the courts usually wait for the Board to render its decision, the court decision can be obtained in a shorter period in follow-on actions.

As per Article 195 of the Civil Procedure Code, the parties can request that the court collect certain evidence to support their claim. At the request of the relevant party, the court may issue a request for information to official institutions as well as third parties.

The parties themselves may seek information based on the right to information. The right of access to the file has two legal bases in the Turkish competition law regime: Law No 4982 and Communiqué No 2010/3 on the Regulation of the Right to Access the File and Protection of Trade Secrets. Article 5/1 of Communiqué No 2010/3 ensures that the right of access to the case file will be granted upon the written request of the parties within the due period during the investigations. Access to the file can be requested until the end of the period for submitting the last written defence.

Preserving Confidentiality and Evidence

In order to preserve the confidentiality of the investigation and prevent the destruction of evidence, the Authority may delay any access to the file until after the Investigation Report is delivered to the relevant parties (Article 8/2 of Communiqué No 2010/3). The right to access can only be used once unless new evidence is

obtained during the investigation. Access to the case file enables the applicant to access information and documents not specified as internal documents of the Authority or trade secrets of other companies or trade associations.

Law No 4982 has more exceptions to accessing the file, including:

- information or documents regarding state secrets, intelligence or administrative actions that are not subject to judicial review;
- information or documents that may harm Turkiye's economic interest if disclosed from the scope of the right to information; or
- information related to administrative investigations that may harm individuals' right to privacy, risk their life or safety, risk the security of the investigation or that may jeopardise revealing information/documents relevant to the investigation.

3.8 Enforcement Against Multiple Parties

As an enforcement agency in Turkiye, the Authority is entitled to take action against multiple parties in a single proceeding, and in practice, the Authority usually opts for this method. Although the parties could request that the Authority separate the proceedings, the Authority is likely to continue the proceeding with multiple parties for procedural efficiency, among other things.

If the Board decides to hold an oral hearing at the end of the investigation, all relevant undertakings involved in the investigation are entitled to attend the hearing (although they may request individual sessions if they need to reveal trade secrets or other confidential information).

3.9 Burden of Proof

The standard of proof adopted by the Board is frequently criticised as being too low. In order to prove an undertaking's participation in cartel activity, the Authority must demonstrate that such activity took place or that the particular undertaking was a participant. The Board has established an low standard of proof concerning cartel activity with a broad interpretation of the Competition Law and, especially, the "object or effect of which..." part of Article 4.

Parallel Behaviour

The standard of proof is even lower as far as concerted practices are concerned. If parallel behaviour is established, a concerted practice might readily be inferred, and the undertakings concerned might be required to prove that the parallel behaviour is not the result of a concerted practice but based on economic and rational business decisions. The Competition Law provides a "presumption of concerted practice", which enables the Board to bring an Article 4 case where price changes in the market, supply-demand equilibrium or fields of activity of enterprises bear a resemblance to those in the markets where competition is obstructed, disrupted or restricted. Recently, the competent court of the first instance confirmed with an annulment decision, where the Board's Sahibinden decision was being reviewed (1 October 2018, 18-36/584-285), that the High State Court, the highest court for administrative law matters, requires the Board to prove Competition Law infringements "beyond reasonable doubt with clear and precise evidence" (Ankara 6th Administrative Court's Sahibinden decision, dated 18 December 2019 numbered 2019/946 E and 2019/2625 K).

That said, in the majority of decisions, the Board recognised that companies might consciously follow the commercial strategies of their competitors and, in the absence of communication between competitors regarding collusion or

exchange of commercially sensitive information, parallel conduct alone will not be sufficient to meet the standard of proof for a cartel.

3.10 Finders of Fact

In civil proceedings, the burden is on the plaintiff to prove the facts of the case, whereas the criminal court is responsible for acting as the finder of facts in criminal litigation. Nevertheless, as mentioned, criminal proceedings are rare in the Turkish competition law regime and are limited to bid rigging in public tenders and price manipulation.

3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings

Any information or document collected through the use of investigative powers is discoverable in court, including emails, telephone calls and an exchange of letters. Legal privilege (confidentiality between associates and clients) constitutes an exception for discoverability in court. Civil courts are not authorised to collect evidence independently in antitrust damage actions. The parties must bring all evidence to the attention of the court.

As regards evidence provided to the Authority within a leniency application, the leniency reward does not protect the applicant from liability in other (civil and criminal) proceedings. Pursuant to Article 6 of the Leniency Regulation, information or documents provided by the parties can still be used as evidence before the courts.

As regards proceedings before the Authority, according to Communiqué No 2010/3, no one other than the undertakings under investigation has a right to access the information and documents submitted within the scope of a leniency application. In addition, those undertakings being investigated may refer to such information and documents only for their defence in relation to the case file and for their applications before the administrative courts.

3.12 Rules of Evidence

The parties must bring all evidence to the attention of the court in civil proceedings. In criminal proceedings, the court collects the evidence to prove a crime.

3.13 Role of Experts

In proceedings before the Authority, the parties can submit the analyses and opinions of independent experts, including economists. Although the Authority does not rely solely on economic analyses in cartel cases, it increasingly recognises the added value of such analyses. The Authority itself has a dedicated department for economic analysis and research (the "Economic Analysis and Research Department"), which assists the case teams where relevant.

In civil law proceedings, depending on the course of the proceeding of the trial, the judge may assign an expert, who could be an economist or part of another discipline, to review the case and evidence from the point of view of an expert. The parties may also bring in a consultant to submit an opinion to the court, who could be an expert in a specific area.

3.14 Recognition of Privileges

See **2.7 Attorney-Client Privilege**.

3.15 Possibility for Multiple Proceedings Involving the Same Facts

As mentioned in **3.4 Inter-agency Co-operation/ Co-ordination**, multiple administrative authorities and criminal courts may initiate proceedings in parallel regarding the same activity.

4. Sanctions and Remedies in Government Cartel Enforcement

4.1 Imposition of Sanctions

Imposition of Sanctions

It is possible for the Board to impose sanctions itself without bringing suits against companies and/or undertakings in court. Administrative fines are regulated in the Competition Law, along with civil liability. Criminal sanctions are not included in the Competition Law, excluding prosecutions on conduct such as bid rigging in public tenders and price manipulation.

The Authority's fine for cartel activity cannot exceed 10% of the relevant undertaking's turnover generated in Turkiye in the financial year preceding the date of the decision to impose a fine (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).

Although there is no explicit provision in law on this front, in the latest decisions of the Board, the turnover generated from export sales has not been taken into account in calculating the amount of the fine (see decisions of Numil, 30 June 2022, 22-29/483-192; Retail Markets 28 October 2021, 21-53/747-360; Unilever 18 March 2021, 21-15/190-80; Google Android 19 September 2018, 18-33/555-273; Booking 5 January 2017, 17-01/12-4; Consumer Electronics 7 November 2016, 16-37/628-279).

4.2 Procedure for Plea Bargaining or Settlement

The Amendment Law introduced a settlement mechanism that may be utilised in a cartel investigation. It is inspired by the EU law and aims to enable the Board to end investigations without going through the entire investigation procedure. The Board may now come to a settlement with the undertakings and associations of undertakings under investigation, which acknowledge the existence and scope of the infringement before notification of the investigation report.

As a result of a settlement, a fine may be reduced by up to 25%. Where the process is concluded by a settlement, the parties to the settlement may not take the administrative fine and the provisions of the settlement text to court. With regard to the secondary legislation, the Authority enacted on 15 July 2021 the "Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position" (the "Settlement Regulation"). The settlement negotiations may be initiated by the undertaking's acceptance of the ex officio invitation of the Authority or by the Authority's acceptance of the undertaking's request to initiate the settlement negotiations. The Settlement Regulation provides that if the Authority ex officio invites the investigation parties to settlement negotiations, the parties should declare whether they accept the invitation to initiate settlement negotiations with the Authority within 15 days.

The settlement negotiations will start as soon as the Board accepts the request to initiate the settlement negotiations, or the parties involved in the investigation duly accept the Board's invitation.

After the interim decision is issued, if the settlement parties agree on the matters set forth therein, they will submit a settlement letter which must include, inter alia, an express declaration of admission as to the existence and scope of the violation.

If there are deficiencies in the submitted settlement letter, the Board will grant, for one time only, an additional period of seven days and notify the parties that the settlement procedure will be brought to an end if the parties fail to correct the deficiencies.

The Settlement Regulation states that the Board must set out the reasons for its decisions:

- to terminate the procedure for the reasons stated under Article 4/6; or
- to reject the settlement request as per Article 5/1 in its final settlement decision.

Pursuant to Article 4/4 of the Settlement Regulation, a reduction of 10–25% may be applied to the administrative fines as a result of the settlement procedure.

4.3 Collateral Effects of Establishing Liability/Responsibility

Private Damages Claims

As explained in **3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases**, private damages claims must be brought before the civil courts in Turkiye. The Board's finding of a cartel is not considered prima facie evidence. In practice, the courts do not usually analyse whether there is an anti-competitive agreement or concerted practice and defer to the Board to render its opinion on the matter, thus treating the issue as a prejudicial question.

Since the courts usually wait for the Board to render its decision rather than decide on the matter themselves, the court decision can be obtained in a shorter period in follow-on actions.

Plea Bargaining and Settlement

As regards plea bargaining and settlement (see **4.2 Procedure for Plea Bargaining or Settlement**), a new settlement mechanism has been introduced to the Turkish competition law practice, inspired by the EU practice.

As mentioned in **2.11 Leniency and/or Immunity Regime**, pursuant to the Leniency Regulation and the Leniency Guidelines, full immunity may be granted to the first applicant who applies for leniency in accordance with the conditions under the Leniency Regulation before the investigation report is officially served. Employees or managers of the first applicant can also benefit from full immunity.

4.4 Sanctions and Penalties Available in Criminal Proceedings

See **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards** and **1.4 Definition of "Cartel Conduct"** for bid rigging in public tenders and price manipulation.

According to Article 235 of the Turkish Criminal Code, individuals involved in bid rigging will incur a monetary fine or be sentenced to imprisonment for three to seven years. Furthermore, according to Article 106 of the Turkish Capital Market Law, individuals who are involved in price manipulation in the capital markets will incur a monetary fine or be sentenced to imprisonment for two to five years.

4.5 Sanctions and Penalties Available in Civil Proceedings

See **1.3 Private Challenges of Cartel Behaviour/Effects**.

4.6 Relevance of "Effective Compliance Programmes"

In its precedent, the Board has acknowledged the importance of compliance programmes for undertakings (see, eg, Frito Lay, 29 August 2013, 13-49/711-300; and Kraft Gıda, 7 July

2015, 15-28/345-115) and considered the existence of a compliance programme as an indication of good faith (Unilever, 28 August 2012, 12-42/1258-410). However, the Board has also found that a compliance programme does not constitute a mitigating factor when calculating a fine for anti-competitive conduct and has rejected such defences (see, eg, Linde Gaz, 29 August 2013, 13-49/710-297; Consumer Electronics, 7 November 2016, 16-37/628-279; and BTMU, 28 November 2017, 17-39/636-276).

That being said, in a recent decision, the Board took note of the companies' comprehensive compliance efforts, which appear to have factored in the fine calculation (Mey İçki, 16 February 2017, 17-07/84-34).

4.7 Mandatory Consumer Redress

Sanctions in government proceedings for cartel activities are limited to administrative monetary fines. Thus, consumer redress would not be a mandatory proceeding based on sanctions, but it is the consumers' initiative to obtain remedies.

4.8 Available Forms of Judicial Review or Appeal

Decisions of the Board are administrative acts, therefore, legal actions against them are to be pursued in accordance with the Turkish Administrative Procedural Law, which is a common procedure against the Board's decisions. The judicial review comprises both procedural and substantive review.

Administrative Courts

As per Law No 6352, the relevant parties can appeal against the final decisions of the Board, including on interim measures and fines, before the administrative courts in Ankara within 60 calendar days of the official service of the reasoned decision.

As stated in Article 27 of the Administrative Procedural Law, filing an administrative action does not automatically cease the execution of the decision of the Board. However, at the request of the plaintiff, the court may decide on a stay of execution if the execution of the decision is likely to cause serious and irreparable damages and if the decision is highly likely to be reversed (ie, showing of a prima facie case).

If the challenged decision is annulled in full or in part, the administrative court will remand it to the Board for review and reconsideration.

The judicial review of the administrative court usually takes about eight to 24 months. The relevant parties can appeal against the decisions of the administrative courts before the regional courts within 30 calendar days of the official service of the reasoned decision of the administrative court.

Administrative Litigation

As of 20 July 2016, administrative litigation cases have been 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 High State Court.

Regional Courts

The regional courts review the case on both procedural and substantive grounds, and their decisions are considered final. In certain circumstances, however, as laid down in Article 46 of the Administrative Procedure Law, the parties can appeal against the decision of the regional court before the High State Court and the decision will not be considered final. In such a case, the High State Court may decide to uphold or reverse the regional courts' decision. If the deci-

sion 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 High State Court's decision.

The judicial review of the administrative courts and appeal usually take about 24 to 30 months.

5. Private Civil Litigation Involving Alleged Cartels

5.1 Private Right of Action

See **1.3 Private Challenges of Cartel Behaviour/ Effects**. There is no threshold requirement for private actions under Turkish law; any person who has been harmed by a competition law violation may claim damages.

In terms of the differences in standards for relief in a private civil action, in the Authority's proceedings, the purpose or intent to restrict competition is considered adequate to prove an infringement of the Competition Law. In civil actions, however, the plaintiff has to demonstrate the wrongful act, fault, damages and the causal link altogether.

As regards the forms of relief most commonly sought or obtained, since private action arising from competition law violations is a rather new concept in Turkish competition law, there is no publicly available court decision that has exhausted all appeal stages.

5.2 Collective Action

Turkish procedural law does not allow class actions or procedures. Group actions are permitted under Turkish Procedure Law No 6100 and can be initiated by associations and other legal entities aiming to protect the interests of their members, or determine their members' rights, remove the illegal situation, or prevent any future breach. Group actions do not cover actions for damages. A group action can be brought before a court as one single lawsuit. The court decision covers all individuals within the group.

5.3 Indirect Purchasers and "Passing-On" Defences

Indirect purchaser claims or "passing-on" defences have not yet been tested in the Turkish courts. See **3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases**.

5.4 Admissibility of Evidence Obtained from Governmental Investigations/ Proceedings

See **3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings**.

5.5 Frequency of Completion of Litigation

As explained in **4.2 Procedure for Plea Bargaining or Settlement**, the Settlement Regulation introduced a settlement procedure into Turkish cartel enforcement. Also, as mentioned in **5.1 Private Right of Action**, private action arising from competition law violations is a new concept in Turkish competition law, and there is no publicly available court decision that has exhausted all appeal stages. Therefore, it is not yet possible to comment on how often claims of this type proceed to completed litigation as opposed to dismissal or settlement.

5.6 Compensation of Legal Representatives

The amount of attorneys' fees is based on the value of the claim. Under Article 330 of the Code of Civil Procedure, the court will determine the attorneys' fee based on the Minimum Attorneyship Fee Tariff. The fee generally ranges from 1% to 16% depending on the value of the claim.

Furthermore, under Article 329 of the Code of Civil Procedure, a malevolent defendant or a complainant who takes legal action, without having any legal ground to take such action, could be obliged to compensate the other party's contractual attorneys' fees, in addition to the amount determined pursuant to the Minimum Attorneyship Fee Tariff.

5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees

As stated under Article 329 of the Code of Civil Procedure, a complainant who takes legal action, without having a right to do so, could be obliged to compensate the other party's contractual attorneys' fees, in addition to the amount determined pursuant to the Minimum Attorneyship Fee Tariff, along with the litigation costs. However, the amount of the cost (defence costs and/or attorneys' fees) depends on the nature of the case.

As mentioned in **5.2 Collective Action**, class actions have not yet been adopted by Turkish law.

5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation

As a general rule, according to the Turkish law of procedure, plaintiffs or defendants can appeal the decision of the general civil courts before the regional courts of civil chambers within two weeks of the reasoned general civil court's decision. Parties to a lawsuit can also appeal the decision of the regional courts of civil chambers within two weeks of the reasoned appealable decision before the High Court of Appeal.

6. Supplementary Information

6.1 Other Pertinent Information

There is no other information that is pertinent to an understanding of the process, scope and adjudication of claims involving alleged cartel conduct in Turkiye.

6.2 Guides Published by Governmental Authorities

The Authority has published two important guidelines regarding cartel conduct:

- Guidelines on the Explanation of the Regulation on Active Co-operation for Detecting Cartels; and
- Guidelines on Horizontal Co-operation Agreements.

There is also an "application guideline" on the Authority's website that provides basic information on Article 4 infringements and the leniency procedure.

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