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Preface to the June 2025 Issue

The June 2025 issue of Legal Insights Quarterly was prepared to provide an extensive look into the upcoming legal issues, as well as the foremost contemporary legal agenda in Turkiye.

The Corporate Law section focuses on the squeeze outs in case of group companies from a Turkish corporate law perspective, by examining the legal framework for the exercise of share purchase rights by parent entities.

While the Banking and Finance Law section addresses the rules and requirements for the establishment of a branch in Turkiye by a bank headquartered abroad, the Capital Markets Law section discusses the fundamental concepts regarding establishing a fund to invest exclusively in real estate projects, set out under the communique introduced by the Capital Market Board.

The Competition Law section of the June 2025 issue reviews two mergers and acquisitions cases, one of which includes an assessment of sole control in a transaction realized in the bidding market under the Turkish merger control regime, and the other examines the Turkish Competition Board's inclusive analysis of gun-jumping during a Phase II review. This section further provides insight into the Competition Board's assessment of market practices in digital markets. Furthermore, the section focuses on the Turkish Competition Board's approach regarding the impact of automatic pricing algorithms on the competition.

Moving on, the Dispute Resolution section provides a summary of a significant precedent, on whether electronic communications can constitute *prima facie* written evidence in legal proceedings.

The section on Data Protection Law offers a detailed examination of the latest Guideline on Processing of Special Categories of Personal Data with regards to recent amendments to the Law No. 6698 on the Protection of Personal Data.

The Internet Law section provides insight into the Constitutional Court's judgement regarding social media posts by employees, whereas the Telecommunications Law section examines the recent developments on the over-the-top services regulated under Electronic Communications Law. Furthermore, the White-Collar Irregularities section provides an overview on the latest amendments to laws on preventing the laundering of proceeds of crime and the financing of terrorism. The Employment Law section sheds light on a decision of the Constitutional Court which examines the employment agreements with a foreign element. Finally, the Intellectual Property Law section elaborates on a decision of the Civil Chamber of the High Court of Appeals regarding the use of visual representations of various film characters portrayed by well-known actors, under the intellectual property and personality rights.

June 2025

Corporate Law

Squeeze-Out Provisions in Group Companies: The Parent Company's Right to Purchase Minority Shares

I. Introduction

Article 208 of the Turkish Commercial Code ("***TCC***") stipulates that the parent company holding at least ninety percent of the shares and voting rights in a subsidiary company ("***Target Company***") may acquire the shares of minority shareholders in the Target Company, and lists the conditions in which such "squeeze out" can take place. These conditions refer to certain types of intolerable behaviour by the minority shareholders, which are typically deemed to be detrimental to the proper functioning of the company. Therefore, Article 208 aims to ensure the effective and conflict-free operation of the company by resolving issues arising from disputes between majority and minority shareholders in group companies, where there is just cause.

The share purchase right is compulsory and unilateral, meaning that the minority shareholders subject to the purchase right cannot refuse the transaction. Therefore, it is necessary to set out the limits for exercising this right to prevent its abuse. In this respect, it is not possible to exercise this right without the existence of specific conditions stipulated under Article 208. Furthermore, the courts are obliged to verify whether these conditions are met and also calculate the value of the shares to be acquired.

In this article, we will delve into the details of Article 208 of the TCC and provide a legal analysis on its purpose, conditions, implementation, and valuation principles.

II. Purposes of the Purchase Right

The objective of Article 208 is to safeguard internal corporate harmony by preventing the minority shareholders from hindering the company's operations. In this respect, the provision aims to eliminate behaviours that obstruct decision-making in the company, violate the principle of good faith, or create substantial disruption within the company. As a result, by exercising this right, the parent company gains the ability to manage the Target Company more effectively and without internal resistance.

Additionally, as the provision is only applicable where the Target Company is part of a corporate group, Article 208 also allows the parent company to strengthen its control over the Target Company. This ensures the alignment of the Target Company's operations with the overall objectives of the group, thereby enhancing group-wide efficiency and coherence.

III. Conditions for the Purchase Right

The purchase right under Article 208 of the TCC may only be exercised if the following conditions are met:

- The purchase right must be exercised by the parent company;
- The parent company must hold, directly or indirectly, at least ninety percent of the shares and voting rights in the Target Company;
- The Target Company must be a capital company;
- One or more of the following just causes must exist: The minority shareholder's
    - Obstruction of the company's operations,

- Conduct contrary to the principle of good faith,
- Creation of substantial disruption,
- Reckless or irresponsible conduct.

IV. Exercise of the Right

The purchase right granted to the parent company under Article 208 of the TCC is a statutory and formative right; which causes a legal change to the shareholding structure upon its exercise. Although the wording of the Article does not explicitly state that this right must be used through litigation, both the reasoning behind the Article and the prevailing view in legal doctrine state that this purchase right may only be used through litigation via a court decision. Accordingly, the parent company must initiate a lawsuit against the minority shareholders whose conduct falls under one or more of the just causes listed under Article 208. This lawsuit qualifies as a commercial dispute pursuant to Article 4 of the TCC and must be filed before the Commercial Court of First Instance in the jurisdiction where the Target Company is located. In the absence of such a court, the Civil Court of First Instance, acting in its capacity as a Commercial Court, shall have jurisdiction.

The court will rule on the matter and determine the purchase price of the shares of the minority shareholders. Under Article 208, the value of the shares to be acquired is determined according to their stock exchange value. If no such value exists, the valuation must be carried out by the court in accordance with the method stipulated in the second paragraph of Article 202 of the TCC. *i.e.*, either by actual market value or by a generally accepted valuation method based on financial statements of the Target Company closest to the date of the court decision.

V. Conclusion

Article 208 of the TCC is an important instrument for maintaining order within corporate groups, as it enables the parent company to remove obstructive minority shareholders, provided that a court confirms that just cause exists, and conducts a transparent and fair valuation process. The provision also finds a balance between the rights of the parent company and the protection of minority shareholders by ensuring that the purchase right is exercised lawfully and proportionately.

Banking and Finance Law

How to Incorporate a Branch Office of a Foreign Bank in Turkiye?

I. Introduction

Under the Banking Law No. 5411 ("***Law***") and the Regulation on Authorized Transactions of Banks and Indirect Shareholding ("***Regulation***"), foreign banks which do not have a subsidiary in Turkiye may incorporate a branch office in Turkiye to carry out their activities, without establishing a subsidiary in the form of a capital company. As per the banking legislation, a foreign bank wishing to incorporate a branch in Turkiye will be subject to the permission of the relevant regulatory authorities and certain statutory requirements, as briefly explained below.

II. Operational Requirements

a. Branch Opening Permit

In order to open a branch office in Turkiye, foreign banks must apply to Banking Regulation and Supervision Agency ("***Agency***") in accordance with Article 9 of

the Law and Article 5 of the Regulation and submit the requested documentation for review of the Agency.

The Agency will review the application within 3 (three) months and if there is a missing document or information in the application, then the review of the Agency will be finalized within 3 (three) months upon completion of the missing documents. In any case, if the deficiencies are not eliminated within 6 (six) months, the application will become invalid.

Among other conditions, the Agency takes into consideration the following and supporting documents:

(1) The foreign bank intending to open a branch in Turkiye should not be prohibited from its main activities in the country where it is headquartered. Foreign banks must provide the Agency with a document obtained from the competent authority of its home country, stating that it is not prohibited from accepting deposits and conducting banking activities. If there is a prohibition on banking activities defined under the legislation of the said home country, the foreign bank will not be permitted to open branches in Turkiye. An operating permit will not be granted for activities that conflict with local regulations in the home countries of foreign banks.

(2) The relevant competent authorities in the foreign banks' home country should not have rendered a negative opinion regarding the foreign banks' operations in Turkiye. Document stating that there is no prohibition/restriction on accepting deposits and banking activities should be obtained from the relevant authority.

(3) The foreign bank must allocate a minimum share capital of TL 30,000,000 (approximately EUR 700,000) to the branch office.

(4) Directors of the branch to be established must have professional experience and fulfil the conditions specified in the corporate governance principles and the planned activities within the scope of the Turkish banking legislation.

(5) Foreign banks should prepare and submit business plans for their fields of activities, a budget plan for the first 3 (three) years, and an annual report showing their structural organization. In addition, the shareholding structure of the group to which the branch belongs should be transparent and clear. Accordingly, the foreign bank should submit a full picture of its organizational structure in its home country and in other countries (if it has subsidiaries in other countries) to the Agency.

Branch opening permit is published in the Official Gazette of Turkiye and the Agency's bulletin. That said, a branch opening permit on its own will not be sufficient for the branch to start its operations: The branch must then be registered with the trade registry and also obtain an operating permit.

b. Registration of the Branch Office

After obtaining a branch opening permit from the Agency, an application must be made to the trade registry for incorporating the branch office of the foreign bank headquartered abroad. In order to incorporate a branch office, the foreign bank is required to appoint a fully authorized representative residing in Turkiye and register this authorized representative with the trade registry.

Trade name of the branches in Turkiye must include the title of the headquarter company, name of the home country and relevant province's name in Turkiye, as well as the phrase "headquarters". If relevant foreign bank previously opened a branch in Turkiye, it would not be necessary to include "headquarters" phrase to other branch offices' names.

Branch offices are not considered a legal entity under Turkish laws nor have separate legal personalities, therefore these branches will be deemed as part of the parent foreign bank.

c. Operating Permit

After registration of the branch office with the trade registry, it must obtain an operating permit from the Agency in order to start its activities in Turkiye.

This application must be made after the branch opening permit is obtained and registration of the branch is announced in trade registry gazette, by submitting the documents set forth under the Regulation. In any case application should be made at the latest within 9 (nine) months after publication of the branch opening permit in the Official Gazette of Turkiye.

In order to obtain an operating permit, foreign banks must have paid the entire share capital of the branch, which is at least TL 30,000,000 (approximately EUR 700,000), into the bank account of the branch office. The Banking Regulation and Supervision Board ("***Board***") will also assess whether the branch is at a sufficient level to perform and conduct its banking activities, in terms of having adequate technical equipment and sufficient personnel, whether personnel at the level of director have the qualifications specified in the corporate governance principles, and whether necessary arrangements are made to ensure that its activities will be in line with corporate governance principles. To support this assessment, the operating permit application must include the names and resumes of the appointed managers along with other supporting documents for the application as set forth under the Regulation.

Furthermore, the branch must have a board of directors consisting of at least 3 (three) board members, including the branch manager of head office (if there is a more than one branch incorporated in Turkiye). This board shall have the powers and responsibilities of the board of directors within the scope of Turkish banking legislation. Such responsibilities generally include (i) establishment of internal control, risk management and internal audit systems, (ii) ensuring their functionality, suitability, and adequacy, (iii) securing financial reporting systems, and (iv) determination of authorities and responsibilities in the bank.

The Board will grant an operating permit within 3 (three) months after the submission of the initial permit application, provided that the application meets the necessary requirements. If needed, Board may grant an additional period not exceeding 6 (six) months to

complete any deficiencies. The permit will be valid upon its publication in the Official Gazette of Turkiye.

In certain cases, the operating permit may be limited to certain specific areas of banking activity. In this case, the Board will notify the bank of the reason behind this restriction.

III. Notification Requirements

As incorporation of a branch office in Turkiye is one of the means of foreign investment in Turkiye, it is also required to notify certain other Turkish authorities as per relevant laws. In this sense, the branch of a foreign bank headquartered abroad falls within the scope of the Foreign Direct Investments Law No. 4875 and the Regulation on the Implementation of the Foreign Direct Investment Law No. 4875 ("***General FDI Legislation***").

According to the General FDI Legislation, the relevant trade registry directorate shall notify the Ministry of Industry and Technology in relation to the incorporation of the branch and share the supporting documents. In addition, foreign capitalized branch offices are also obliged to notify the Ministry of Industry and Technology's General Directorate of Incentive Practices and Foreign Capital through an online system called Electronic Incentive Practices and Foreign Capital ("***E-TUYS***") system within 1 (one) month following incorporation. In order to complete the necessary filings, branch office should appoint an authorized person to use the E-TUYS system and submit the necessary fillings electronically.

The branch office must also submit electronic filings annually through E-TUYS, as well as in case of certain events which trigger FDI filings, such as a capital increase. That said, as the General FDI legislation does not specify any sanctions for failing to notify, compliance with the notification requirement is essentially for recording and statistical purposes only.

In the event that foreign banks which already have branch opening and operating permits are acquired by another foreign bank, and the transferee bank does not have permission to open and operate a branch in Turkiye, it will need to obtain relevant permits to carry out its activities under the roof of acquired entity.

Accordingly, if a transaction involves acquisition of a banking entity with a branch office in Turkiye, the necessary filings should be completed before Turkish authorities within 6 (six) months after closing of the deal, since operating permit shall be invalid after such period. Kindly note that permits already granted to the acquired bank shall remain valid until the necessary permits are also granted to the transferee bank.

IV. Conclusion

It is possible for foreign banks to operate in the Turkish banking sector without establishing a subsidiary company in Turkiye, by way of opening a branch instead. For this, the branch must pass through a three-tier regulatory process before starting its operations: (i) obtaining an opening permit, (ii) registration with trade registry and (iii) obtaining an operating permit. In addition to the requirements of the banking legislation, the nuances of Turkish Commercial Code and General FDI Legislation should also be taken into consideration, when completing the registration requirement before trade registry and filing FDI notifications.

Capital Markets Law

Project-Based Real Estate Investment Funds

According to the Communiqué on Principles Regarding Real Estate Investment Funds (III-52.3) (the "**Communiqué No. III - 52.3**") introduced by the Capital Market Board ("**CMB**"), it is possible to establish a fund to invest exclusively in real estate projects where more than half of the total gross area of the independent units in the property is reserved for residential use (to be confirmed by a report prepared by an independent real estate appraisal institution) and this fund is referred to as "project real estate investment fund" ("**Project REIF**"). Although the Communiqué No. III-52.3 was published by the CMB on January 3, 2024, provisions related to Project REIFs were added on July 17, 2024. Such provisions essentially aim real estate funds to make investments in real estate projects bearing the foregoing qualifications.

The ordinary real estate investment funds ("**REIFs**") and Project REIFs have different characteristics. The primary distinction lies in their establishment and investment purposes. REIFs are generally established to invest in completed or income-generating real estate assets, aiming to provide investors with rental income and long-term value appreciation through a diversified portfolio that may also include capital market instruments. On the other hand, Project REIFs are specifically incorporated to contribute to the development of new residential projects, with the aim of increasing housing supply. They are designed to invest primarily in lands and real estate projects where more than half of the total gross area is dedicated to residential use.

In order for a real estate investment fund to be qualified as a Project REIF, the residential usage threshold must be verified through reports prepared by licensed independent real estate appraisal firms. Funds must include the phrase "project real estate investment fund" in their trade names, in order to distinguish them from the traditional real estate investment funds.

Project REIFs are also subject to a restricted investment scope. According to Article 18/A of the Communiqué, the fund portfolio may only consist of (i) the land on which the projects will be developed, (ii) real estate projects and (iii) certain cash and capital market instruments.

For lands registered in the name of a Project REIF in the title deed records, all legal requirements necessary to commence the construction of the real estate project must be satisfied within three years at the latest, as of the registration date.

In terms of real estate projects, a Project REIF's portfolio may involve various real estate projects which are developed on the lands owned by public institutions, or third parties which enter into revenue-sharing or flat-for-land contracts with the fund. Rights arising from the revenue sharing contracts to which the fund will be a party must be secured in favour of the fund through a mortgage, guarantee, surety, or other collateral deemed appropriate by the CMB. A Project REIF is also free to invest in real estate projects by way of establishing right of superficies or by acquiring independent residential units from ongoing projects.

In any case, the real estate projects to be included in the portfolio must have obtained all necessary permits in

accordance with the relevant legislation. The projects must be ready and approved, and it must be determined by independent real estate appraisal institutions that all documents legally required for the commencement of construction are accurate and fully in place. In addition, the project must be collateralized through at least one of the following securities: (a) building completion insurance, (b) a bank letter of guarantee, (c) a progress payment system, or (d) another method deemed appropriate by the CMB.

It is also important to note that in the cases where the counterparty of revenue sharing contracts is a public bank or entity established by laws, *i.e.*, Ziraat Bank, Halk Bank, Emlak Bank or Vakıfbank, the Savings Deposit Insurance Fund, the Housing Development Administration of Turkiye (TOKİ), İlbank, municipalities or their affiliated companies, the foregoing security requirements do not apply, as these are public institutions or private companies established by such public institutions.

All construction and other ancillary works of the real estate projects must be performed by licensed contractors under formal agreements which must cover at least the following: obligations of the contractor, payment terms, warranty terms against defects, termination of the agreement, employer's right to claim compensation.

Utilization of the cash included in the fund portfolio is also subject to certain limitations. In this regard, the cash assets of the fund portfolio may be only allocated to short term or money market investment fund units, reverse repos, lease certificates issued by the Asset Leasing Company of the Ministry of Treasury and Finance, government bonds, term deposits and participation accounts. Real estate properties that have not been completed as of the date of investment may also continue to be included in the portfolio in the periods following their completion.

Competition / Antitrust Law

Threads Unravelled: The Turkish Competition Board Concludes Abuse of Dominance Investigation Against Meta Platforms Inc. concerning Allegations of Tying and Data Combination Practices Based on Acceptance of Commitments[1]

I. Introduction

The Turkish Competition Board's (the "***Board***") decision (07.11.2024; 24-45/1053-450) is concerned with the investigation related to alleged abusive conduct by Meta Platform Inc. ("***Meta***"). The investigation, which was closed upon the acceptance of Meta's commitments, focused on allegations that Meta abused its dominant position through (i) tying its newly launched Threads application with Instagram, and (ii) combining user data from both applications. On November 7, 2024, the Board decided that Meta's commitments were sufficient to address the competition concerns. The decision is highly significant as it highlights the Turkish Competition Authority's ("***TCA***") approach concerning data combination and tying practices in digital markets and the broader concept of key competition

[1]This article first appeared in Concurrences on April 10, 2025 as "Threads Unravelled: The Turkish Competition Board Concludes Abuse of Dominance Investigation Against Meta Platforms Inc. concerning Allegations of Tying and Data Combination Practices Based on Acceptance of Commitments" (https://www.concurrences.com/en/bulletin/news-issues/preview/the-turkish-competition-authority-concludes-abuse-of-dominance-investigation).

concerns in connection to data-driven market dominance.

II. Background

The decision follows the fine against Meta[2] for non-compliance with the interim measures imposed on February 8, 2024.[3] The Board had ordered Meta to take interim measures to prevent the combining of the data obtained through Threads with the data obtained from Instagram (and vice versa). Although Meta had introduced an "account-free usage" option for Threads, the Board deemed the measure insufficient as it did not fully address the investigation's core concern regarding data combination. In response, Meta temporarily shut down its Threads service in Turkiye and started negotiations with the TCA to end the investigation and, if possible, re-launch Threads.

III. Meta's Commitments on Tying Practices

In its decision, the Board identifies tying as a manifestation of leveraging. It explores in detail the theoretical framework of both leveraging and tying as a theory of harm in digital markets. The Board does not define leveraging as a specific theory of harm on its own but rather uses the term as a category that brings together multiple different theories of harm and multiple types of conduct such as tying, self-preferencing, and margin squeeze. Leveraging relates to anti-competitive conduct of a dominant undertaking operating in overlapping multiple related markets - either vertically or horizontally - with the aim of extending its market power into related markets.

Tying practices as a form of leveraging by dominant undertakings may result in anti-competitive effects if certain conditions are met: (i) the tying and tied products must be two distinct products and (ii) the tying practice must be likely to result in anti-competitive market foreclosure. To identify anti-competitive tying the Board explores the following circumstances: (i) the existence of two separate products, (ii) the presence of force/coercion to accept the tying conduct, (iii) dominance with respect to the product market in which the tying product related to, and (iv) the elements of anti-competitive effects. The Board notes that characteristics of services in digital markets - such as economies of scale and scope, low marginal costs and network effects - make tying strategies harder to detect in digital markets.

The Board concluded that: (i) the fact that Meta does not offer the Threads product independently from Instagram (Meta requiring users to create an Instagram account to Access Threads) may lead to anti-competitive effects aimed at preserving market power in the tying product market, (ii) competition in the tied product market in which Threads operates may be restricted due to Meta's existing market power and (iii) Meta requiring users to register in Instagram in order to use the Threads application leads to a restriction of user choice.

Even though Meta introduced certain changes to its business model during the course of the investigation (the requirement to delete Instagram when deleting Threads was removed), the Board explored the necessity of having an Instagram account for the use of Threads in detail. One of Meta's primary defences revolved around the argument that Threads was built on the infrastructure of Instagram and Threads was not introduced as a

[2] The Board's decision of 14.03.2024 (24-13/256-M).
[3] The Board's decision of 08.02.2024 (24-07/125-50).

separate application, but rather a new feature to an already existing product. However, the Board considered Threads and Instagram applications as two separate products that are offered together, taking into consideration that (i) they can be downloaded independently from the app store and (ii) have distinct interfaces and icons. Also, the Board considered Threads and Instagram to operate within distinct product markets, based on (i) their differing functionalities, (ii) intended purposes, and (iii) the specific consumer demands they are designed to fulfil. Although Meta did not explicitly force users to sign-up for Threads, the requirement to have an Instagram account to sign-up for Threads was considered a form of coercion since users that wanted to use Threads had to download Instagram.

The Board addressed potential anti-competitive effects by evaluating (i) the potential of the market power to transfer to the tied product market, (ii) the exclusion of competitors in the tied product market, (iii) the preservation of market power in the tying product market, and (iv) the negative impact of tying on innovation. The Board concluded that the inability of users to access Threads without an Instagram account serves to preserve Meta's market power in the product market that the tying product relates to. On the other hand, there is also the risk that Meta may use tying practices to block entries into the market where it is already dominant. This could restrict competitors from establishing a market presence and increase the appeal of Meta's platforms, ultimately leading to exclusionary outcomes.

During the interim measures stage, the "account-free usage" option for Threads did not offer the same features to end users and was therefore not accepted by the Board. The Board concluded that since users cannot actively interact with others, this presented a limited experience that did not provide the core functionalities such as sharing content, user interactions, and following other users of the Threads application. Although this option was intended to eliminate the requirement of having an Instagram account to use Threads, the practical limitations meant that users were steered toward the full experience, which still necessitated an Instagram account. After long deliberations with the TCA, Meta re-worked the "account-free usage" option and committed to eliminating the necessity for users to create an Instagram account to use the Threads application.

The Board concluded that the commitments submitted by Meta are sufficient to address potential competition concerns arising from tying in the tied and tying markets since Threads will be available for use independently of the Instagram product and previously restricted user choice will be reinstated.

IV. Meta's Commitments on Data Combination

Products and services offered by digital platforms are generally classified as zero-priced products and services, since users benefit from these products and services without paying a monetary fee, but in exchange for the data they provide. Therefore, today, the competitive strength of undertakings is increasingly measured by the amount, diversity, and quality of the data they possess. This means that data provides a significant competitive advantage in the market. Unfair practices, or abuse of such critical input can restrict competition in the market or create barriers to entry or growth within the market.

Data combination can be assessed under both exclusionary and exploitative harm theories. The practice can be considered as an exploitative abuse under competition law, in the context of "excessive pricing" and/or "unfair commercial terms". Exploitative abuse can occur with (i) the restriction of consumers' free choice, (ii) the loss of consumer control over data, (iii) data combination without adequate information, or (iii) the disproportionate data collection. Data combination practices can also lead to the exclusion of competitors in the market where the service is offered through (i) the creation or increase of existing entry barriers, (ii) the inability of competitors to access equivalent data, and (iii) the leveraging effect of data.

In light of the above, the Board concluded that: (i) Meta's data combination mechanisms may result in the creation of entry barriers, (ii) the reinforcement of existing ones, or (iii) the use of data collected through services with market power in a manner that negatively affects competition in different markets. At the same time, this conduct raises exclusionary competition law concerns such as leveraging to maintain and further strengthen Meta's current market position as well as broader issues related to limiting consumers' freedom of making independent choices.

The Board had previously imposed certain obligations on Meta to cease data combining practices across its core platforms.[4] The Board found that, by combining data across its various core platforms, Meta not only strengthened its market position but also made it more difficult for competitors to access advertisers and financial resources. The Board determined that for the infringement to end Meta must (i) ensure that users are in full control of their data, (ii) Meta must not combine data obtained through Threads with Instagram of other core services without explicit consent and (iii) end users must be provided with a less personalized but equivalent alternative that allows them to freely choose whether to participate in the data combination practices or not. The service must be provided on equal terms to all users, with no difference in quality and functionality, regardless of whether they consent to data combination or not (except for differences directly resulting from the data combination).

The Board particularly emphasized the importance of informing users on their options with regards to the use of their data and users' freedom in making choices. In light of this, one of the core aspects that the Board focused on related to the fact that the user must provide explicit consent after being fully informed and provided with a specific choice. The consent must be (i) specific to a particular subject, (ii) based on sufficient information, and (iii) be given freely and voluntarily. When consent is requested, a proactive, user-friendly solution should be provided to the end user, allowing them to give, modify, or withdraw their consent in a clear, explicit, and understandable manner. In this sense, the online interface should not be designed in a way that deceives, manipulates, or otherwise disrupts or weakens the ability of end users to freely give their consent. Additionally, the process of giving consent should not be more difficult than withholding it.

Meta committed to cease its data combination practices from its Threads and

[4] The Board's decision of 20.10.2022 (22-48/706-299).

Instagram (unless explicitly consented). The Board concluded that the commitments submitted by Meta are sufficient to address potential data combination concerns since users will have full control over their personal data when signing up for Threads, as the application will no longer combine personal data with information from their Instagram accounts, unless users provide explicit consent. The commitments will apply both to users signing up for the Threads application for the first time, and to users whose accounts were deactivated following the removal of Threads in Turkiye.

The Board assessed in detail the way in which the consent will be provided and whether the commitments provide users with the option to freely participate in Meta's services. For a user to freely give their consent, it is important for them to know what they are consenting to. The user is expected to have access to all information, not only about the specific subject, but also about the consequences of their consent (including for what purposes the personal data will be used). The Board concluded that under Meta's commitments (i) users are fully informed and able to fully and properly exercise their free will and (ii) the commitments offered to end users who do not consent to the combination of data, are not provided with services that are different, or of a lower quality compared to the service provided to users who consent to data combination.

V. Conclusion

The Board concluded the investigation without imposing an administrative monetary fine since it found Meta's commitments to be sufficient to address the identified competition concerns. The case shows once again that the Board prioritizes the scrutinization of data combining and tying practices by dominant platforms in digital markets. The decision is highly significant as the Board's detailed theoretical assessment provides a glimpse in terms of its approach concerning data combination and tying practices in digital markets and the broader concept of key competition concerns in connection to data-driven market dominance.

The Price of Visibility: the Turkish Competition Board Accepts Commitments by Hepsiburada in its Automatic Pricing Mechanism Investigation

I. Introduction

On March 3, 2025, the Turkish Competition Authority ("***Authority***") published the Turkish Competition Board's ("***Board***") reasoned decision[5] terminating the investigation into D-Market Elektronik Hizmetler ve Ticaret AŞ ("***Hepsiburada***"), a digital retail shopping website that has been in operation since 2000, following the acceptance of their commitments. The Authority initiated the investigation to assess whether the automatic pricing mechanism Hepsiburada offered for the use by sellers in its multi-category e-marketplace platform violated Article 4 of the Law No. 4054 on the Protection of Competition ("***Law No. 4054***"). The Board concluded that the commitments proposed by Hepsiburada were sufficient to address the competition concerns stemming from this practice and therefore decided to close the investigation.

This decision is particularly significant as it reflects the Board's modern approach to competition law in the digital age,

[5] The Board's decision of 03.10.2024 (24-40/951-410).

emphasizing on how platform design, automatic pricing mechanisms and algorithms may distort the competitive structure of a given market through risks of coordinated effects, rather than traditional forms of collusion. The Decision includes extensive theoretical explorations of the competition concerns, effects and theories of harms relating to different types of algorithms offered. The Decision holds international significance as well; while similar concerns have been investigated in other jurisdictions such as the EU, US and the UK, this decision stands out as a novel example of a competition authority terminating an investigation into allegations concerning automatic pricing mechanisms by imposing binding commitments requiring their removal or modification.

II. Background

In line with its usual practice, the Board first initiated a preliminary investigation into Hepsiburada based on two main competitive concerns: (i) alleged discriminatory behaviour and the Most Favoured Customer ("***MFC***") clauses included in its agreements with customers, and (ii) the automatic pricing mechanism. However, the initial allegations concerning discriminatory conduct and MFC clauses were dropped, and the investigation proceeded with a focus on whether Hepsiburada had violated Article 4 of Law No. 4054 through its automatic pricing mechanism. Following the submission of its first written defence, Hepsiburada applied for the initiation of the commitment procedure, offering to address the Board's competition concerns through a set of proposed commitments.

III. The Automatic Pricing Mechanism in Buybox

Hepsiburada launched its automatic pricing mechanism in June 2023, offering sellers three options: (i) Match the Buybox Price, (ii) Stay below the Buybox Price and (iii) Stay above the Buybox Price. Hepsiburada explained that the buybox system, which was put into practice by Hepsiburada in June 2023, basically gathers the products that are sold by more than one seller under a single heading. This was developed to (i) facilitate the shopping experience of users, (ii) gather the offers of different sellers of the same product under a single heading and (iii) ensure that the most favourable offer stands out in line with certain algorithmic criteria.

In this system, the products displayed in search results are those of the seller who "wins" the buybox. Since multiple sellers often offer the same product, the buybox determines which seller's listing is prominently featured when a user selects "Add to cart" or "Buy now." Therefore, winning the buybox significantly boosts a seller's visibility and, consequently, their sales performance.

Through the automatic pricing system, sellers may be inclined to adjust their prices dynamically based on the buybox winner's price. The automatic pricing mechanism integrated into the buybox system allows sellers to automate manual price switching within certain rules. Under the scope of the automatic pricing mechanism, sellers are offered "Match the Buybox Price", "Stay below the Buybox Price" and "Stay above the Buybox Price" options and they can update their prices automatically by taking the price of the seller who wins the buybox as a reference price.

Hepsiburada defended its system by arguing that (i) while price carries the greatest weight in determining the buybox winner, it is not the sole criterion; (ii) the pricing mechanism considers sellers' current, not future, prices; (iii) sales made through this mechanism do not directly influence buybox rankings; (iv) the automated pricing tool is merely an alternative to manual pricing intended to simplify the process; and (v) its use is entirely optional and at the discretion of the seller. Nonetheless, concerns were raised that widespread use of the "Match the Buybox Price" function could lead to price rigidity across the platform, undermining price competition among sellers and potentially facilitating tacit collusion or coordinated effects, even in the absence of any explicit agreement.

IV. The Authority's Competition Concerns in Relation to Pricing Algorithms

Algorithms, particularly pricing algorithms like price monitoring, dynamic pricing, and personalized pricing, may have efficiency-enhancing and pro-competitive effects through matching supply and demand and reducing costs, lowering prices, and facilitating new market entry. However, they can also harm competition by enabling easier monitoring, coordination, and punishment of deviations among competitors, potentially leading to collusion or abusive practices. In other words, they may also increase market transparency, making it easier for competitors to observe each other's strategies. Theories of harm include both coordinated behaviour (algorithmic collusion) and unilateral conduct (such as self-preferencing or excessive pricing).

The concerns in the investigation relate to the possibility that sellers may be less likely to set their retail prices at different levels and there may be price rigidity in platforms as a result of the increase in the number of the sellers who use the automatic pricing mechanism, especially "Match the Buybox Price" rule in the future. In other words, the concern that was prominent in the investigation relates to the design of the tool (the "Match the Buybox Price" option) which has the potential to create price uniformity — a so-called coordinated effect — without any formal collusion. This is interesting, considering that Hepsiburada did not directly set the prices, but provided a pricing tool with certain features, which was regarded as potentially facilitating a risk of competition harm, meaning that the platform is responsible for the competitive risks that may be imposed by the digital infrastructure and tools provided.

V. The Commitment Text

Hepsiburada committed to (i) removing the "*match buybox price*" option from its automatic pricing mechanism, offering sellers only the "*stay below buybox price*" and "*stay above buybox price*" options; (ii) arrange "Stay below the Buybox Price" and "Stay above the Buybox price" options in a manner that they will not produce the same result as "Match the Buybox Price" option (for instance not being able to write "stay above or below 0% or 0 TL" in terms of percentage and amount) and (iii) continuing not obliging the sellers to use automatic pricing mechanism and not offering any incentive that may create the same results as obliging sellers. Furthermore, Hepsiburada will also not consider the use of automatic pricing mechanism by sellers as a criterion in the functioning of the algorithm in terms of buybox criteria; and it will not share data related to other sellers' use of the

mechanism, such as the number of sellers applying it or the rules they selected.

The Board decided that the commitments submitted by Hepsiburada were found sufficient to resolve the competition problems and rendered binding according to article 43 of the Act no 4054. Hepsiburada undertook to apply all commitments indefinitely and to submit annual compliance reports to the Authority starting from the first year after the reasoned decision is notified to the undertaking.

VI. Conclusion

In conclusion, the Board concluded that the commitment package submitted by Hepsiburada was adequate to eliminate the identified competition concerns, met the requirements of the commitment procedure and therefore terminated the investigation without finding a violation. The Board accepted Hepsiburada's commitment package on the grounds that the commitments effectively address the competition concerns arising from the structure and application of Hepsiburada's automatic pricing mechanism. The commitments were deemed sufficient to address concerns regarding indirect coercion of sellers, as well as the broader risk of structural coordination across the platform. The Board assessed that the commitments were proportionate, capable of remedying the identified harm in light of Article 9 of Communiqué No. 2021/2 and enforceable within a short time frame. The Board also accepted the indefinite duration of the commitments and considered the annual reporting obligation an effective tool for monitoring compliance.

The decision is significant as it marks one of the first cases in Turkiye addressing the competitive risks and effects posed by algorithmic pricing mechanisms (rather than traditional agreements among competitors). The case also sets an important precedent for how algorithm-driven coordination risks will be evaluated and monitored going forward. The case shows that the TCA will continue closely monitoring the digital markets on how digital tools can lead to anti-competitive outcomes, even without explicit collusion. Lastly, the decision highlights the Authority's growing focus on digital platforms and their practices and, demonstrates the willingness to resolve complex competition concerns through commitment procedures without reaching a formal finding of a violation.

Turkish Competition Board Imposes Administrative Monetary Fine for Gun-Jumping During Phase II Review[6]

I. Introduction

The Turkish Competition Board (the "***Board***") imposed an administrative monetary fine on the Yılmaz Family for implementing its acquisition of sole control over Kartek Holding A.Ş. ("***Kartek***") through Param Holding International Coöperatief U.A. ("***Param***") before obtaining the Board's approval.[7] Further to the complaints lodged by third parties before the Turkish Competition Authority (the "***Authority***") that Param already started to exercise control over Kartek while the Board's review of the transaction is ongoing, the Authority

[6] This article first appeared in Mondaq on May 9,2025, as "*Turkish Competition Board Imposes Administrative Monetary Fine for Gun-Jumping During Phase II Review*" (https://www.gurkaynak.av.tr/Content/dosya/3879/mondaq-curated-may-2025-turkish-competition-board-imposes-administrative-moneta.pdf)

[7] The Board's Param/Kartek decision dated 04.04.2024 and numbered 24-16/390-148.

conducted on-site inspections at the premises of Param, Kartek and their subsidiaries. Based on the evidence obtained during the on-site inspections, the Board determined that the transaction was closed while the Board's review was still ongoing and therefore imposed an administrative fine on the Yılmaz Family, who ultimately controls Param. The transaction was eventually conditionally approved by the Board subject to the behavioural commitments submitted by Param during Phase II review.[8] The decision stands out for being a rare case of gun-jumping decision during Phase II review as well as the Board's thorough analysis of Param's practices that led to the acquisition of control over Kartek prior to obtaining the Board's approval.

II. Background of the Transaction and the Authority's Review

The transaction involved the acquisition of sole control over Kartek by Param. The transaction was notified to the Authority on 29 August 2023. During the Authority's review process, Param submitted a set of commitments on February 19, 2024 in an effort to secure approval. The Authority initiated a Phase II review regarding the transaction on March 14, 2024. Meanwhile, multiple third-party complaints were filed with the Authority alleging that Param had already started implementing the transaction. These complaints prompted the Authority to conduct on-site inspections on February 29, 2024 at the premises of Param, Kartek and their subsidiaries.

[8] The Board's decision dated 27.12.2024 and numbered 24-56/1241-531.

III. Decisional Practice of the Board Regarding Actions That Could Amount to Violation of Suspension Requirement

The parties to a transaction could choose to proceed with certain procedural or preparatory steps prior to obtaining the Board's approval decision to facilitate a swift transition/closing process, as long as these steps do not result in the exercise of decisive influence/control by the acquiring party, prior to the approval decision of the Board. Unlike the decisions of the General Court and the European Court of Justice in Canon,[9] Altice[10] and Ernst & Young,[11] the precedents of the Board and the Turkish administrative courts do not provide detailed guidance on whether standstill obligation can be extended to actions not contributing to the implementation of a concentration. Although Law No. 4054 on the Protection of Competition ("***Law No. 4054***") or the secondary legislation do not provide an exhaustive or exemplary list of actions that could amount to violation of suspension requirement, the Board's decisional practice involving gun-jumping cases provide guidance on this front. According to the Board's previous decisions, actions like shared infrastructure, board appointments, or customer engagement can be assessed as indicators of violation of suspension requirement.

In Ajans Press/PR Net,[12] the Board determined that Ajans Press acquired

[9] Judgment of the General Court dated 18 May 2022, Canon Inc. v European Commission, T-609/19.
[10] Judgment of the Court of Justice dated 09 November 2023 - Altice Group Lux v Commission, C-746/21 P.
[11] Judgment of the Court of Justice dated 31 May 2018 - Ernst & Young P/S v Konkurrencerådet, C-633/16.
[12] The Board's Ajans Press/PRNet decision dated 21.10.2010 and numbered 10-66/1402-523.

control over PR Net before the Board's approval decision, on the grounds that (i) PR Net moved to the building where Ajans Press is seated, (ii) Ajans Press intervened in matters such as choosing PR Net's telephone numbers and broadcast subscriptions, (iii) PR Net network worked within Ajans Press' network, (iv) PR Net personnel exchanged correspondences with Interpress, which is within the same economic entity as Ajans Press, (v) PR Net personnel had a meeting at a specific time upon the directive of the owner of Ajans Press, (vi) customer share lists have been prepared and joint studies have been arranged, and (vii) production sources has been shared.

Similarly in Cegedim/Ultima,[13] the Board highlighted that the transaction was realized prior to the Board's approval based on the facts that vice chairman of Cegedim had been appointed to the board of directors of Ultima as the representative of Cegedim before the Board's decision, that Cegedim intervened in Ultima's invoicing procedures, reviewed the agreements of its employees, collected employee information and had considered printing business cards for them.

Following a complaint by third parties, the Board reviewed in Boyner/YKM[14] whether (i) the target's orders are cancelled, (ii) the acquirer decides to integrate its own organizational structure into the target's stores, (iii) the acquirer obtains the resumes of the target's employees and executives, (iv) the target dismisses its employees upon the acquirer's decision, (v) the target refrained from renting a store in an area where the acquirer and the target competed with each other because the acquirer undertaking was de facto included in the management of the target, (vi) the acquirer informs the shopping malls by telephone about the acquisition, and (vii) whether it requests, forces or warrants oral commitments about modifications on store signboards. However, the Board could not obtain any evidence showing that Boyner played a decisive role in YKM's business decisions prior to the Board's approval.

Similarly, in Taxim Capital/Doğanay,[15] the Board reviewed whether Taxim Capital had been able to exercise decisive influence over determination of the prices of Doğanay's products prior to the Board's approval. Although the Board has detected a price increase of the products in question subsequent to the discussions between the executives/employees of Doğanay and Taxim Capital via WhatsApp, the Board remarked that the findings are not enough to reach a conclusive outcome as to whether Taxim Capital was able to exercise decisive influence over Doğanay's prices.

To that end, based on the decisional practice of the Board, the following actions taken by the transaction parties prior to obtaining the Board's approval might lead to acquisition of control and result in the violation of suspension requirement: (i) essential business decisions of the target being subject to the written or verbal instruction/approval of the acquirer, (ii) ceasing the target's R&D activities or preventing the progress of such activities, (iii) target's assets being used or utilized by the acquirer, (iv) management and operations including offers and discounts

[13] The Board's Cegedim/Ultima decision dated 26.08.2010 and numbered 10-56/1089-411.

[14] The Board's Boyner/YKM decision dated 20.09.2012and numbered 12-44/1359-M.

[15] The Board's Taxim Capital/Doğanay decision dated 29.04.2021 and numbered 21-24/280-125.

to customers and decisions related to employees being handled by the acquirer, (v) contracts to be signed with customers being reviewed and approved by the acquirer, (vi) exchange of sensitive information such as prices, terms of contract and discounts, (vii) combination of sales teams, (viii) transaction parties informing the customers that they are acting on behalf of each other, (ix) representatives of the acquirer being present in the board of directors of the target, (x) the target's customers being served by the acquirer, (xi) the acquirer intervening with the target's invoices and transactions, (xii) review of employee contracts by the acquirer, and (xiii) payment of due debts by the acquirer.

IV. The Board's Analysis as to Whether Param Acquired Control Over Kartek prior to the Approval Decision

According to the evidence obtained during the on-site inspections, Param was directly involved in the promotion, dismissal, and recruitment of personnel of Paycore (*i.e.* Kartek's subsidiary) and Param's own evaluation systems were used within Kartek's HR processes. The findings obtained by the Authority also revealed that staff changes and team performance were effectively supervised by Param, and Param executives participated in strategic meetings and exercised influence over financial planning and compensation. Several findings illustrate that Param and Kartek jointly managed customer communications and business offers. In some cases, Param was positioned as the lead entity in communications with third parties. The Board also established that Param employees had full VPN access to Paycore's IT systems, including file servers and internal software. In addition, Paycore's social media and web management were delegated to Param teams. Internal correspondence included explicit references indicating Kartek became a Param company and Param officials attending board meetings of Paycore. It was also understood from the evidence that Param had a say in various business processes including supplier selection, financial approvals, and even promotional budget allocations.

In light of the documents obtained during the on-site inspections, the Board found that (i) a senior executive at Kartek was appointed by Param, (ii) Param participated in Kartek's internal management meetings, (iii) Param played a significant role in decisions concerning employee promotions, salary increases, and the selection of Kartek's payroll bank, acting as the final decision-maker on such matters, (iv) the two companies jointly managed employee transfers, (v) Param and Kartek jointly developed marketing and sales strategies, (vi) Param took part in Kartek's customer meetings, and both undertakings acted as though they belonged to the same economic unit before customers, (vii) Param was involved in Kartek's day-to-day business operations, including invoice processing, procurement, social media management, and debt-related payment planning, (viii) Param personnel held active user accounts on Kartek's internal systems, and (ix) Param provided employees to Kartek in support of systemic and operational processes.

To that end, the Board determined that these practices are aimed at exercising decisive influence over Kartek and therefore Yılmaz Family (*i.e.* the ultimate controller of Param) acquired de facto control over Kartek. The Board further assessed that given that Yılmaz Family realized/closed the transaction before obtaining the Board's approval, Yılmaz

Family should be subject to an administrative monetary fine for the violation of suspension requirement. As a result, the Board imposed an administrative monetary fine on the Yılmaz Family corresponding to 0.1% of Yılmaz Family's annual Turkish turnover in its 2022 financial year for closing the transaction before obtaining the approval decision of the Board as per Article 16(1) of Law No. 4054.

V. Practical Takeaways for Pre-Closing Conduct

Param/Kartek provides a practical reference point for future transactions where the parties may seek to engage in certain pre-closing transaction steps. In the absence of an exhaustive list of practices under Turkish merger control regime, even indirect actions such as shared employee access, technical assistance, or marketing coordination may be considered as evidence of exercising decisive influence over the strategic business decisions of target entities.

While the Param/Kartek decision does not address board-level appointments, it illustrates how the Authority may assess the pre-closing nomination of key executives/senior officers as potential indicators of gun-jumping. Where such appointments are made unilaterally by the acquiring party rather than through the target's existing governance mechanisms, they may be viewed as a violation of the suspension requirement. Based on the Board's reasoning and past practice, transaction parties should be mindful of the following when managing pre-closing behaviour:

Transaction parties should refrain from any conduct that may indicate premature integration, including granting access to internal systems or infrastructure (such as VPN, file servers, or planning tools); intervening in HR matters like promotions, evaluations, or dismissals; managing operational or financial decisions (including budgeting, pricing, procurement, or contracts); initiating joint branding or customer communication efforts; referring to the target as part of the acquiring group in any internal or external correspondence; unilaterally appointing key personnel before clearance, or informing the target's clients about the transfer of its contracts to the acquirer.

Generally acceptable steps include non-operational integration planning (*e.g.* for IT systems or branding), regulatory and due diligence preparations that do not concern business conduct, and controlled project coordination efforts overseen by clean teams with strictly limited access and compliance documentation. In order to protect the value of the target entity until closing, the transaction parties may also agree that contracts to be entered into by the target prior to closing whose value exceed a certain threshold and which fall outside the ordinary course of the business of the target are subject to the approval of the acquirer. However, the parties should be cautious about determining an adequate monetary threshold/value for such contracts based on the business parameters of the target to make sure this arrangement only covers the contracts that fall outside the ordinary course of the business of the target.

VI. Conclusion

Param/Kartek decision will likely serve as a foundational reference point in future cases dealing with early implementation of notifiable transactions in Turkiye. Transaction parties, legal advisors, and investors should take note of the

enforcement risk posed by seemingly informal or practical integration steps during pending reviews. The decision is a clear call for heightened compliance discipline during the standstill period, especially in sensitive and fast-evolving sectors such as financial technologies which are closely scrutinized by the Board.

An Assessment on Bidding Markets: The Turkish Competition Board's BLS/iData Decision

I. Introduction

On March 10, 2025, the Turkish Competition Authority ("***Authority***") published the Turkish Competition Board's ("***Board***") reasoned decision[16] ("***Decision***") regarding the acquisition of sole control over iDATA Danışmanlık ve Hizmet Dış Ticaret AŞ ("***iData***") by BLS International Services Ltd ("***BLS***") through its wholly-owned subsidiary BLS International FZE, UAE ("***BLS FZE***"). The Decision provides valuable guidance as to the methods used in assessing the transactions in the bidding markets.

II. The Board's Assessment on the Relevant Product and Geographic Market

The Decision indicates that BLS International Vize Hizmetleri Limited Şirketi ("***BLS Türkiye***"), a Turkish subsidiary of BLS FZE, provides visa processing services on behalf of the Spanish Embassy/Consulate within Turkiye while iData is active in the assessment and approval of visa applications and provides services to the German Ministry of Foreign Affairs as well as the Italian Ministry of Foreign Affairs. While determining the relevant product market, the Board noted that the activities of the parties to the transaction include (i) providing information to visa applicants, receiving documents at visa application centres, (ii) transferring documents to missions (*i.e.* consulates and embassies who require this service), and (iii) returning passports to visa application centres for their return to applicants. The Board defined the relevant product market as "the market for visa application processing services" and moreover, recognized the existence of a horizontal overlap between the parties' activities.

III. The Board's Competitive Assessment in Relation to the Notified Transaction

In the Decision, the Board assessed whether the transaction would result in significant impediment of effective competition in Turkiye by several methods.

Firstly, in accordance with the Control Guidelines on the Assessment of Horizontal Mergers and Acquisitions ("***Horizontal Guidelines***") the Board evaluated the potential risks of the transaction into two sub-segments: unilateral effects[17] and coordinated effects,[18] while noting that the fact that the Transaction will be realized in the bidding

[16] The Boards BLS/iData decision dated 12.06.2024 and numbered 24-26/629-262.

[17] Unilateral effects refer to the significant impediment on competition by the creation or strengthening of a dominant position as a result of the elimination of competitive pressure on other undertakings operating within the market.

[18] Coordinated effects refer to instances such as the undertakings coordinating their actions and increasing their ability to raise the prices without openly engaging in an agreement of such kind or concerted practices.

market may require further scrutiny within the segment of coordinated effects specifically in relation to market shares of the Transaction parties.

Subsequently, the Board analysed the competitive relevance between the Transaction parties, to inspect the competitive pressure the parties put on each other prior to the transaction, pursuant to paragraph 30 of the Horizontal Guidelines providing that "*With respect to bidding markets, it is possible to analyse whether the bids submitted by one of the merging parties in the past exerted competitive pressure on the bids of the other party.*" The Board further expressed its concern in relation to the coordinated effects by mentioning that in bidding markets, the undertakings may coordinate their behaviour for market allocation. The Board underlined that, the balance between supply and demand in the bidding markets is created through the tender process among the bidders and bidders compete in the tender process within the scope of the criteria set by the customer issuing the call for a tender. Therefore, the Board emphasized that, due to the nature of bidding markets, the competition ends once a bidder wins the tender. Thus, the undertaking that wins the tender does not face any competitive pressure until the next tender (*i.e.* the winner may acquire 100% market share depending on the scope of the tender), which significantly decreases the efficiency of scrutinizing the market shares of the parties that operate within bidding markets, given that market shares may not accurately reflect the positions of the undertakings, especially in cases where the winner of a bid process achieves a 100% market share.

Following its above assessments, the Board noted that although the usual method to measure market shares is based on revenues, due to the nature of the market in question, a more accurate analysis could be conducted by measuring the market shares based on the number of applications processed by the undertakings. Against the foregoing, the Board found that the aggregated market shares of the transaction parties had never reached 40% in the relevant market in Turkiye, which is indicated within the Horizontal Guidelines as the threshold for giving rise to competitive concern. Therefore, given BLS's marginal market share as well as the market structure, in which the scope of the next tender could be subject to change such as a previously local tender being conducted on a global scale which would then prevent previous strong players from competing and therefore completely eradicating the significance of any previous market share held by the relevant undertaking, the Board concluded that the market shares of the transaction parties would not pose significant risks in terms of the competitive landscape.

However, the Board then recognized that for the potential unilateral effects of the transaction, market shares could still provide significant insight, as naturally, with the end of competition among the two undertakings, the parties gain the opportunity to bid higher in future tenders. To that end, the Board emphasized the importance of assessing whether the parties are close competitors and found that BLS and iData had rarely competed against each other during the tender procedures and there were no frequent instances of the parties losing the tender to each other, which indicated that the parties were not close competitors and the transaction would not have significant effects on competition within the market,

in spite of the relatively high market share of the parties.

In addition, the Board evaluated concentration levels surrounding the transaction, while also noting that although this method could provide primary foresight, it would not provide a conclusive result on the matter. Therefore, the Board measured the Herfindahl Hirschman Index ("***HHI***")[19] and found that post-transaction, while the HHI value would be above 2000, the change in the HHI value would remain below 150. According to the Horizontal Guidelines, this is unlikely to cause competitive concerns unless (a) one of the parties to the transaction is an undertaking that has potential of entering the market or an undertaking that has just entered the market and has a low market share, (b) certain parties to the transaction are innovative undertakings whose innovative natures have not yet been reflected in their market shares, (c) there are cross-partnerships between players in the market, (d) one of the parties to the transaction has a low market share while having a competitive feature that prevents anti-competitive cooperation between players (*i.e.* the presence of a maverick undertaking), (e) there has been coordinated movements that restrict competition between market players or conduct facilitating such coordination, or (f) one of the parties to the transaction has a market share of or greater than 50% before the transaction. As none of the conditions listed above were present, especially in relation to the market structure and the transaction parties, the Board determined that the analysis conducted in terms of the concentration levels revealed that the transaction would not cause any significant impediments on competition within the market.

On the other hand, the Board also considered the presence of other players within the market and found that the market has a "market leader" (*i.e.* VFS) who has significant market share and the ability and means to inflict significant competitive pressure on the transaction parties, as VFS provides services to 27 countries on a local, international and global scale, starkly contrasting the acquirer which provides services to 4 countries, while iData is not even operating on a global basis. The Board also noted the presence of other players within the market which are found to be capable of putting competitive pressure on BLS and iData.

Finally, the Board inspected the buyer power within the market and determined that due to the disposable nature of the service in question, as it is entirely a conscious choice of the missions to utilize the services provided by the undertakings within this sector, and so the countries who consider it necessary to obtain such services from third parties hold significant buyer power over the undertakings operating within the market. This dynamic is further indicated by the fact that the countries were also found to be solely decisive in any prices inflicted on the individuals applying for a visa.

[19] This method is utilized by adding the squared market shares of the parties and measuring the difference in the final value prior to and after the transaction, which puts further weight upon parties with higher market shares. The final value found after subtracting the initial value from the potential post-transaction value is then used to gain further insight in terms of the effects of the transaction.

IV. Conclusion

In light of the fact that the parties would face significant competition by a leading undertaking as well as other players within the market, the changes of HHI levels did not necessitate further scrutiny on this front, and considering the diplomatic missions held significant buyer power which would balance the competitive parameters of the market, the Board concluded that there would be no significant impediment upon the competitive landscape as a result of the transaction and thus, cleared the transaction unconditionally. The decision holds significance as it shows the methods of scrutiny conducted by the Board in the bidding markets.

Dispute Resolution

High Court of Appeals Rules that Electronic Messages Can Serve as Prima Facie Evidence if Sender Can Be Identified

I. Introduction

For a long time, modern communication methods (*i.e.,* SMS, WhatsApp messages, and e-mail correspondence) between parties have been a subject of debate before the courts, as their status as valid evidence was not clearly established. Messages sent via platforms like SMS and WhatsApp were often viewed with scepticism, and their legal significance was questioned due to concerns over authenticity and the lack of physical documentation which bears signature. However, with the widespread use of digital communications, courts have gradually recognized the need to accept and include electronic messages as legitimate type of evidence.

The recent decision by the 3rd Civil Chamber of the High Court of Appeals numbered 2023/3928 E. and 2024/3869 K., dated November 26, 2024, marks a significant point in this regard, confirming that such electronic communications, once the identity of the sender is verified, can serve as *prima facie* written evidence in legal proceedings.

II. Background of the Dispute

The dispute stemmed from a determination of the termination of two separate contracts signed between the parties for just cause, along with a request for the determination that no debt was owed due to the bonds given to the defendants according to the contracts, and the return of these bonds.

According to the plaintiff, the defendants failed to fulfil their obligations within the agreed 15-day performance period specified in the contracts. The plaintiff argued that the defendants did not perform the required services despite the stipulated timeframe. Consequently, the plaintiff enjoyed its right to terminate the contracts and demanded the return of the bonds provided to the defendants as security. However, the defendants refused to return the bonds, claiming that they had fulfilled their contractual obligations.

Accordingly, the court of first instance ruled in favour of the plaintiff, accepted that the defendants failed to perform in accordance with the contracts, and ordered the defendants to return the bonds to the plaintiff. Both parties objected to this decision. The Regional Court of Appeals established that the defendants continued to provide the services stipulated under the contracts even after the plaintiff issued a termination notice on January 5, 2016, which was significantly delayed beyond the 15-day performance period stipulated

in the contracts. The expert report confirmed that the consultancy services continued until April 7, 2017. In light of these findings, the court accepted the defendants' appeal and reversed the initial decision.

The plaintiff appealed this decision, and the case was subsequently examined before the 3rd Civil Chamber of the High Court of Appeals.

III. Decision of the 3rd Civil Chamber of High Court of Appeals

In this case, the High Court of Appeals' main focus was on the dispute arising from the contracts and the legal consequences of certain electronic communications between the parties.

The plaintiff argued in its appeal petition that a message sent by one of the defendants, *Perihan*, on January 21, 2016, which explicitly stated that the bonds would be returned, constituted an acknowledgment of the defendants' failure to fulfil their contractual obligations. The plaintiff argued that this message was not merely an acknowledgment of non-performance but also implied the effective termination of the contract, which served as the foundation of this lawsuit.

An important aspect of this case is that the High Court of Appeals considered WhatsApp communications as a "starting point" for written evidence, *i.e. prima facie* evidence. The importance of a *prima facie* evidence is that such evidence may be accepted by courts as written evidence if it is supported by witness testimony. The High Court of Appeals confirmed that electronically sent messages, including SMS, e-mail messages, and WhatsApp messages, can serve as a valid starting point for proving the existence of a legal relationship if it can be determined who sent the message and to whom it was sent. In its ruling, the High Court of Appeals refers to the provisions of the Turkish Civil Procedure Code, particularly Articles 199 and 202, which stipulate that (i) written texts, electronically stored data are recognized as documents under this Law and (ii) *prima facie* evidence is a document which, although it is not sufficient to fully prove the legal transaction subject to the claim, shows the legal transaction in question as probable and is given or sent by the person or its representative against whom it is asserted, respectively. Accordingly, the Court ruled that as long as the identity of the sender is verifiable, such electronic communications can be considered the beginning of evidence and thus may be used to establish a basis for further legal claims.

Another critical issue is that the defendants continued to provide services after the termination of the contract by the plaintiff. While the Regional Court of Appeals stated that the defendants continued to provide services after the termination notice, the High Court of Appeals found that there was no concrete evidence to support this claim. The message from Perihan, promising the return of the bonds, was seen as a clear indication that the defendants had failed to fulfil their obligations under the contract. The Court found that the defendants had not provided sufficient evidence to show that they had continued to perform their duties as per the contract after the issuance of the termination notice. It was determined that, while such a claim had been made, the decision lacked the necessary evidence to substantiate it. The Court stressed that the message sent by Perihan and other communications should have been properly evaluated in conjunction with the other evidence presented in the case.

Ultimately, the High Court of Appeals found the Regional Court of Appeals' decision lacking and inaccurate; therefore, decided to reverse the previous decision, emphasizing that the electronic message sent by Perihan, once the sender was verified, constituted a valid form of preliminary written evidence. In light of this, the High Court of Appeals sent the case back for re-evaluation, instructing the Regional Court of Appeals to reconsider the case, taking into account the messages provided by the plaintiff.

IV. Conclusion

In this decision, the High Court of Appeals emphasized that messages sent via mobile phones, such as this one, can be considered as valid preliminary written evidence, as long as the identity of both the sender can be identified and proven. With this decision, the Court emphasized the important role that electronic documents can play in legal proceedings and clarified that communications made through platforms such as WhatsApp have legal value as evidence.

This ruling establishes an important precedent by affirming the legal validity and evidentiary weight of electronic messages.

Data Protection Law

Guideline on Processing of Special Categories of Personal Data Published by Personal Data Protection Authority

Article 6 titled "Conditions for Processing Special Categories of Personal Data" in the Personal Data Protection Law No. 6698 ("***DPL***") has been amended with the Law No. 7499 on the Amendment of the Code of Criminal Procedure and Certain Laws which was published in the Official Gazette of March 12, 2024. This amendment entered into force on June 1, 2024, and introduced new processing conditions to the existing framework for special categories of personal data. Considering these changes, the Personal Data Protection Authority published a Guideline on Processing of Special Categories of Personal Data ("***Guideline***") on February 26, 2025, with the aim of assisting data controllers in properly applying the correct legal grounds when processing special categories of personal data and fulfilling their obligations in compliance with the DPL. The Guideline consists of three sections. The first section provides information on special categories of personal data, the second section covers the conditions for processing special categories of personal data, and the third section outlines the actions to be taken by data controllers to comply with the new amendments to the DPL.

I. Special Categories of Personal Data

Types of special categories of personal data are determined by the legislator and cannot be expanded through interpretation. These categories include race, ethnic origin, political opinions, philosophical beliefs, religion, sect or other beliefs, appearance and dress, association, foundation or trade union membership, health data, sexual life, criminal convictions and security measures, as well as biometric and genetic data. The Guideline explains these special categories of personal data in detail and provides examples for each category.

II. Conditions for Processing Special Categories of Personal Data

According to the DPL, the processing of special categories of personal data is prohibited in principle. However, they can

be processed under certain circumstances and conditions stipulated in the DPL. As stated in the Guideline, amendments to Article 6 of the DPL were provided to ensure alignment with the European Union legal acquis in the field of personal data protection, to adapt to innovations brought by developing technology, and to adopt new approaches embraced in international platforms. These amendments, which took into account provisions in the GDPR and deficiencies encountered in practice, aimed to extinguish the distinction between processing conditions among special categories of personal data and to introduce new processing conditions. In this framework, processing conditions applicable to all special categories of personal data have been rearranged, and their number has increased through the introduction of new processing conditions. These new processing conditions are explained in detail in the Guideline.

III. Actions to be Taken by Data Controllers to Comply with the DPL

The Guideline outlines the following actions that data controllers must take to ensure compliance.

a. Updating personal data processing inventory

The Guideline indicates that the amendments to Article 6 of the DPL may necessitate changes to data controllers' processing conditions for special categories of personal data. In such cases, data controllers are required to update their personal data processing inventories and accordingly, their respective records in the Data Controllers Registry.

b. Regulation of the processes for obtaining explicit consent

The Guideline emphasizes that obtaining explicit consent in cases where a different legal basis exists for processing personal data may constitute a violation of the DPL and the principle of good faith. It states that for special categories of personal data previously processed based on data subjects' explicit consent, data controllers should now rely on any of the new processing conditions introduced by the amendments to Article 6 of the DPL, if applicable, rather than continuing to use explicit consent.

In this context, following the amendments to Article 6 of the DPL, if data controllers will no longer rely on explicit consent for processing special categories of personal data, it is advisable to update the existing explicit consent texts accordingly and inform data subjects about these changes and their implications.

c. Amendments to privacy notices

The Guideline states that following the amendments to Article 6 of the DPL, if there is a change in the processing conditions for special categories of personal data, data controllers must reflect these changes in their privacy notices and inform the data subjects about the updated privacy notices.

d. Updating retention and disposal policies

The Guideline indicates that data controllers who are obligated to prepare personal data retention policies should review these policies to ensure compliance with the amendments on the DPL. This review is necessary to ensure that special categories of personal data are not kept longer than required under the new

processing conditions, in cases where the processing conditions for such data have changed.

e. Taking data security measures

It is stated in the Guideline that data controllers and data processors must implement the measures specified in Personal Data Protection Board's ("***the Board***") Decision dated January 31, 2018, and numbered 2018/10 on "Adequate Measures to be Taken by Data Controllers in the Processing of Special Categories of Personal Data" while processing the special categories of personal data to ensure data security. Additionally, it is highlighted that the Personal Data Security Guideline (Technical and Administrative Measures) prepared by the Board should be taken into consideration as well.

Internet Law

Constitutional Court's Recent Decision on Social Media Posts of an Employee

On December 26, 2019, an employee of a public bank applied to the Constitutional Court, alleging that his employment contract was terminated due to content he posted on social media, and this violated his right to freedom of expression and right to respect for private life. He also claimed that the excessive duration of the reinstatement proceedings constituted a breach of his right to be tried within a reasonable time. The Constitutional Court rendered its judgment under the application number 2019/42221 on October 9, 2024,[20] and found no violation of either of the applicant's fundamental rights under Articles 26 (freedom of expression) and Article 20 (right to respect for private life) of the Constitution.

The applicant had been working at one of the state-owned banks under an indefinite-term employment contract since 2009. He was working as an assistant director/ project management assistant at the time of his termination (July 25, 2016). The termination letter stated that the applicant's posts and likes on social media "harmed the bank's reputation and public image and caused reputational damage" and cited internal disciplinary provisions alongside Article 18 of the Labor Act No. 4857, which permits termination of the employment contract on valid grounds.

The social media posts on which the grounds for termination were based, were made from the applicant's personal social media account shortly after the coup attempt of July 15, 2016, and included the following statements:

- "After last night's staged show, we learned that blocking one direction of a bridge is enough for a coup."
- "Apparently 20-30 officers staged a coup while thousands of others were playing Pokémon."
- "If all coups target governments, why was not a single governor or district governor harmed?"
- "The winners are always those who planned the show."
- "2,745 judges dismissed within hours. How were they identified so quickly?"
- "Why did the coup plotters raid the President's hotel after he left?"

The applicant filed a lawsuit before Ankara 28th Labor Court, claiming that the

[20] Available at https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/42221 (accessed May 19, 2025)

termination of his employment contract was unlawful. The court dismissed the case on the grounds that the termination was based on valid grounds. The decision stated that the applicant's social media posts were damaging to social unity during an extraordinary period for the country, and that the employer's termination of the employment contract could be justified under these circumstances.

The applicant appealed the decision. Thereupon, Ankara Regional Court of Appeals (8th Civil Chamber) ruled that the termination of the employment contract was within the jurisdiction of the Inquiry Commission on the State of Emergency Measures (OHAL Commission). However, OHAL Commission did not find the dismissal within the scope of state of emergency presidential decree numbered 685 and decided to send the file back to the judicial authorities for review.

The file was sent by the Labor Court to the Ankara Regional Court of Appeals for re-evaluation in line with this decision. Ankara Regional Court of Appeals, on the other hand, ruled that the case be retried and returned the file to the lower court. The court stated that the employer had not fully submitted the information and documents that led to the termination of the applicant's employment, and instructed the court to collect all evidences -social media posts- to evaluate other posts made by the complainant against the FETÖ organization, to investigate whether there was a judicial or administrative investigation, and investigate whether there were any deposit accounts opened at Bank Asya by the applicant, a bank associated with the FETÖ organization.

Following a retrial, the Labor Court once again rejected the claim. The court considered that the applicant's posts describing the coup attempt as a hoax were unacceptable for the employer and that such content damaged the corporate image of the company.

The applicant appealed the decision again and Ankara Regional Court of Appeals rejected the appeal, this time stating that the termination was a "termination based on reasonable suspicion". Considering the content of the social media posts and the applicant's possible connections with Bank Asya, the court evaluated that the employer's relationship of trust had been damaged, and that the employment relationship could not be expected to continue.

The applicant brought the matter before the Constitutional Court, asserting that:

- His posts constituted political critique and were later deleted.
- He had also posted content condemning the coup.
- He was not given the opportunity to fully present his defence or supporting evidence.
- The suspicion-based termination severely harmed his professional reputation and personal life.

The Constitutional Court, in its decision of October 9, 2024, unanimously declared the application admissible in terms of the right to freedom of expression (Article 26) and the right to respect for private life (Article 20). However, it ultimately held by majority that there had been no violation of either right in relation to the termination of the applicant's employment due to his social media posts. The Court further found the allegation concerning the right to be tried within a reasonable time (Article

36) was inadmissible on the grounds of non-exhaustion of available remedies.

Telecommunications Law

Recent Developments Regarding Over-the-Top Services

I. Introduction to Over-the-top Services

Over-the-top services ("***OTT services***") refer to media and communication services that are directly served to consumers through the internet. OTT Services offer convenient access to a wide range of services such as messaging, calling, video and audio streaming while bypassing traditional platforms such as broadcast television and satellite transmission. OTT services include widely used online chat platforms that allow text messaging without the need for a mobile network operator, movie streaming platforms and other such paid or free streaming services.

II. Legislation Regarding OTT Services

OTTs are regulated under the Electronic Communications Law ("**Electronic Communications Law"**) with number 5809 and Regulation on the Authorization Regulation Regarding the Electronic Communications Sector ("**Regulation**") published in the Official Gazette of May 28, 2009, with number 27241.[21] OTT services were defined in the scope of Turkish Law with the Law on Amendment of the Press Law and Other Laws, published in the Official Gazette of October 18, 2022, numbered 31987.[22]

This amendment defined OTT services as, interpersonal electronic communication services within the scope of audio, written and visual communication provided to subscribers and users with internet access through publicly available software, independent of operators or the internet service provided.

III. Authorized Body and Scope of Authority

According to Article 60 of the Electronic Communications Law, the Information Technologies and Communication Authority ("**ICTA**") is authorized to monitor and supervise compliance with the legislation, the right of use and other authorization conditions, to impose administrative fines on operators (up to three percent of their net sales in the previous calendar year) in case of non-compliance, to take necessary measures for the purposes of national security, public order or the proper execution of public services and the implementation of provisions introduced by law, to take over the facilities when necessary in exchange for compensation, and to cancel the authorization it has granted in case of non-payment of the authorization fee within the period it determines or in case of gross negligence.

However, ICTA shall seek the opinion of the Ministry of Transport and Infrastructure ("**Ministry**") in cases requiring the cancellation of authorizations related to electronic communication services that involve the use of frequency bands to be granted nationwide and that must be conducted by a limited number of operators.

The Ministry operates as a directing force behind the ICTA's actions regarding electronic communications. This deduction

[21] Available at https://www.resmigazete.gov.tr/eskiler/2009/05/20090528-4.htm (accessed May 19, 2025)
[22] Available at https://www.resmigazete.gov.tr/eskiler/2022/10/20221018-1.htm (accessed May 19, 2025)

is further strengthened as per Article 9 of the Electronic Communications Law.

While ICTA is the authorized body in charge of authorizing companies that want to provide electronic communication services and/or establish and operate a network or infrastructure, if ICTA determines that there are reasons arising from public safety, public health and similar public interest requirements, it may prevent companies from operating in the field of electronic communication or from providing electronic communication services, if necessary, by also consulting with the Ministry.

IV. ICTA's Announcement Regarding the Draft Regulation Amending the Authorization Regulation Regarding the Electronic Communications Sector

On March 24, 2025, ICTA announced[23] that the Draft Regulation on Amendments to the Regulation on Authorization for the Electronic Communications Sector and Other Drafts ("**Draft**") has been opened to public comment per ICTA's decision dated March 7, 2025, numbered 2025/IK-YED/70.

The Draft contains the same definitions for OTTs as the Electronic Communications Law, which will be added to the Regulation.

The Draft contains two categories of authorization exemptions for OTTs. It is proposed that;

a) Services that do not exceed the monthly de-duplicated access or user number thresholds to be determined by the Authority, and

b) Services for which interpersonal electronic communication is not the primary element, as determined by the Authority, will be exempted from authorization requirements.

The Draft replicates the representation requirements under the Electronic Communications Law, providing that over-the-top service providers shall carry out their activities through their fully authorized representatives in the form of a joint-stock or limited company established in Turkiye, within the framework of authorization by the Authority. In the same regard, it is proposed that providers of over-the-top services that exceed the monthly de-duplicated access or user count thresholds to be determined by the Authority will become subject to additional regulations, in order to fulfil the duties of the Authority assigned by Law for matters related to public order and national security.

The Draft contains a proposal stating that notifications can be made to OTT service providers who carry out these activities from within Turkiye or abroad, via electronic mail or other means of communication, using information obtained from communication tools, domain names, IP addresses and similar sources on their websites. Notifications will be deemed to have been made at the end of the fifth day following the date of such notification.

It must be noted that as per the Draft, OTT service providers that provide services without authorization will be subject to administrative fines ranging from one

[23] Available at https://www.btk.tr/duyurular/elektronik-haberlesme-sektorune-iliskin-yetkilendirme-yonetmeliginde-degisiklik-yapilmasina-dair-yonetmelik-taslagi-ile-diger-taslaklar-kamuoyu-gorusune-acilmistir (accessed May 19, 2025)

million Turkish liras to thirty million Turkish liras. Providing services without fulfilling the obligations stipulated in the regulations, even though authorized, is also subject to administrative fines.

V. Access Blocking OTTs and the Difference with Previous Legislation

The previous legislation provided that ICTA would seek the Ministry's opinion in cases (i) requiring the cancellation of authorizations related to electronic communication services and (ii) preventing companies from operating in the field of electronic communication or from providing electronic communication for reasons of public safety, public health and similar public interest requirements.

The Draft proposes that the Authority may decide to directly block access to the relevant application or website of OTT service providers, regardless of whether they are subject to authorization, within the framework of national security, public order, public health, and similar public interest requirements.

This proposal poses a stark contrast with the previous requirements of taking the Ministry's opinion on limiting electronic communication services and the activities of companies that want to provide electronic communication services.

VI. Conclusion

The Draft contains many provisions that bring Electronic Communications Law and Regulation on the Authorization Regulation Regarding the Electronic Communications Sector in parallel, as well as broadening ICTA's authority over OTT services. The period of receiving public comments regarding the Draft ended on April 28, 2025.

White Collar Irregularities

An Overview of the Amendments Introduced by the Financial Crimes Investigation Board

On December 25, 2024, significant amendments to laws on preventing the laundering of proceeds of crime and the financing of terrorism have been published in Official Gazette with number 32763. With four (4) amendment regulations on anti-money laundering regulations and two (2) amendment communiques on the General Communique of the Financial Crimes Investigation Board ("***MASAK***"), noteworthy expansions to the know-your-customer due diligence requirements of particular groups of obliged parties, such as crypto-asset-service-providers ("***CASPs***") and electronic commerce intermediary service providers ("***ECISPs***"), have been elaborated in detail within the secondary legislation.

An overview of these six (6) new amendments is provided below.

I. Amendments on the Regulation on Measures for the Prevention of Laundering Proceeds of Crime and Financing of Terrorism ("Measures Regulation")

Measures Regulation has introduced a new obliged party in the form of "medium, large, and very large size electronic commerce intermediary service providers, limited to the transactions that are carried out with electronic commerce service providers" which will be under a legal obligation to comply with MASAK's regulations. In this scope, in context of transactions carried out with electronic commerce service providers ("***ECSPs***"), the ECISPs will be subject to the relevant requirements on know-your-customer,

reporting of suspicious transactions, training, internal audits, control and risk management systems, continuous reporting and collaboration with MASAK.

Identity verification requirements for crypto-asset transfers have been detailed in the Measures Regulations. In this scope, crypto-asset service providers ("***CASPs***") that serve as intermediaries in transactions of 15.000 Turkish Liras and above, must confirm the accuracy of the sender's:

- name, last name, if the sender is a legal entity that is registered in the trade registry, and for all other legal entities or unincorporated enterprises, the full commercial name of the entity;
- wallet address; if there is no wallet address, then reference number of the transaction;
- at least one of the following to identify the sender: such as the address, or place and date of birth, or customer number, citizenship number, passport number, tax identification number.
- In crypto-asset transfer messages, information on the recipient's name and last name (and commercial name if any) and wallet address or reference number must also be present; however, verification of such is not a requirement.

If the CASP receives a transfer inquiry that does not contain the specified information, the CASP may request completion of the information. If the crypto-asset transfer requests are consistently missing information, the recipient CASP may consider rejecting future transfers from the sender CASP, restricting transactions, or terminating its business relationship with such CASP.

All intermediary CASPs, throughout the chain of messages from CASP that issued the initial transfer order, until the final recipient of the transfer, shall ensure that required information about the sender is included in crypto asset transfer messages at every stage of the transfer.

During the transmission of crypto asset transfer messages, information about the sender and recipient should be transmitted securely; and software applications, such as distributed ledger technology or other independent messaging platforms or application interfaces may be utilized for transmitting data contained in the messages.

In crypto-asset transfers that are sent or received from wallet addresses that are not registered to any CASPs, at least one piece of the following information that helps in identifying the party must be obtained from the customer that is a party to the transaction before the relevant CASP:

- name and last name of the sender or recipient that is the real person without a registered wallet address;
- if a legal entity, then its commercial name, address;
- place and date of birth, customer number, citizenship number, passport number, tax identification number.

In the case of a crypto asset transfer received from or sent to a CASP or a financial institution authorized to conduct crypto asset transfers that is located abroad and is not obligated under its own regulations to share information regarding the sender and recipient, CASP must

obtain a declaration from the customer involved in the transfer. This declaration must include at least one piece of identifying information about the sender or recipient—such as the full name in the case of real persons, or the trade name in the case of legal entities, along with either the address, place and date of birth, customer number, citizenship number, passport number, or tax identification number. If the foreign service provider or financial institution uses a messaging system (such as a software or distributed ledger technology) the information listed may be included via the system.

Finally, Measures Regulation stipulates that additional information and documents may be requested from the customer with regards to the parties of the transaction. In case sufficient information cannot be obtained with regards to the parties of the transaction, then actions such as non-performance of the transfer, restriction of transactions with the financial institution or termination of business relationship may be considered.

II. Amendments to the Regulation on Investigations of Money Laundering ("Investigations Regulation")

The amendments to the Investigation Regulation have expanded the purpose and scope of the previous wording of the regulation to include Article 231 of the Presidential Decree No. 1 regarding Organization of the Presidency. The relevant article includes the provisions on the duties and authorities of the Presidency of Financial Crimes Investigations Board.

The legal basis of the Investigations Regulation has also been updated to include a reference to Article 537 of the Presidential Decree No. 1, which is a provision that stipulates that principles and procedures of enforcing the Presidential Decree will be determined by regulations of the Presidency.

A new definition of "audit personnel" has been added by reference to Article 2 (e) of Law No. 5549; accordingly "*tax inspectors, treasury and finance experts employed at the Presidency, customs and trade inspectors, sworn bank auditors, treasury controllers, insurance supervision experts and actuaries, experts from the Banking Regulation and Supervision Board and the Capital Markets Board, as well as auditors and experts of the Central Bank of the Republic of Turkiye*" have been authorized as audit personnel.

In this scope, audit personnel have been granted authorities to make recommendations to the Presidency of the MASAK on seizure and other protective measures such as arrest, custody, detention, judicial control, search and seizure of property.

A new obligation to have inspection report read by the Presidency of the Board before being sent to the public prosecutor's office has been introduced as per Article 8 (4) of the Investigation Regulation. Accordingly, inspection reports prepared in coordination with public prosecutor's offices are first sent to the Presidency of MASAK for initial read-out before being sent to the public prosecutor's office.

III. Amendments to the Regulation on the Procedures and Principles Regarding the Electronic Notification System of the Financial Crimes Investigation Board ("Notification Regulation")

Notification Regulation stipulates the procedures and principles of the electronic notification infrastructure that is established by MASAK in order to serve

notifications within scope anti-money laundering laws and regulations (*i.e.* Law No. 5549, Law No. 6415).

In this scope, the Notification Regulation governs the standard for electronic notification on obliged parties. The amendment to the Notification Regulation has introduced a registration obligation for CASPs in the electronic notification system of the Central Registration Institution and the national postal service (*i.e.* Posta ve Telgraf Teşkilatı A.Ş.). The application time for CASPs has been introduced with Provisional Article 3. Accordingly, CASPs that actively operate within scope of Provisional Article 11 of Capital Markets Law and CASPs that have been announced by the Capital Markets Board as being actively operating, must apply to register in the electronic notification system operated by PTT A.Ş. within one month of publication of the Notification Regulation. As the Notification Regulation was published on December 24, 2024, the last day to register was on January 24, 2025.

IV. Amendments to the Regulation on the Compliance Program for Obligations of Anti-Money Laundering and Prevention of the Financing of Terrorism ("Compliance Program Regulation")

Compliance Program Regulation governs the procedures and principles for obliged parties under Law No. 5549 for the establishment of a compliance program. With the Amendments to Compliance Program, CASPs have been included in the list of obliged parties that must establish a compliance program. Besides, medium, large, and very large size ECISPs have also been obligated to appoint a compliance officer.

Compliance Program Regulation has introduced new requirements to the scope of the compliance program. Accordingly, compliance programs must include measures to prevent the violation of, non-compliance with or refusal to perform decisions on asset freezes, along with identification of risks, evaluations, monitoring, and reduction thereof as well as advanced controls for implementation of such measures. In monitoring and control activities within the scope of corporate policy, measures must be taken to continuously monitor customers and transactions, taking into account asset freezing decisions and potential matching criteria of customers. In this context, the sender and receiver information in cryptocurrency transfer messages through electronic transfers must also be scrutinized.

In the establishment of business relations between financial institutions and CASPs, the following minimum requirements for identity verification must be fulfilled, which are as follows: financial institutions must (i) obtain as much information possible about the source of the assets and funds belonging to the customer; (ii) obtain information about the purpose of the transactions; and (iii) keep the business relationship under close scrutiny by increasing the number and frequency of controls implemented and determining the types of transactions that require additional control. Furthermore, establishment of a business relationship with a CASP is subject to the approval of a senior official in the financial institution.

Compliance Program Regulation requires that compliance officers for CASPs and ECISPs be appointed within one (1) month of publication of the Regulation and corporate policies that include compliance

programs be reported to MASAK as "commitment forms".

V. Communiques No. 26 and No. 27 Amending the General Communique of the Financial Crimes Investigation Board

Communique No. 26 adopts a "risk-based approach" for customer identification methods and stipulates obligations on (i) medium, large and very-large size ECISPs while carrying out transaction in the electronic commerce marketplace, as well as (ii) obliged parties conducting games of chance and betting activities exclusively in electronic environment.

Accordingly, the obligations for parties conducting games of chance and betting activities are similar and as follows:

- They must enter into an agreement with a bank in Turkiye;
- They must obtain identity information (*i.e.* name, surname, date of birth, nationality, Turkish ID number for Turkish citizens, and foreign ID number for foreign nationals) which is verified by querying the database of the Ministry of Interior's General Directorate of Population and Citizenship Affairs;
- They must obtain information regarding the customer's occupation and profession;
- They must ensure that all collections and payments are made through a bank account or credit card account that is consistent with the verified identity information of the accepted customer.

On the other hand, obligations for ECISPs are as follows:

- ECISPs must enter into an agreement with a bank in Turkiye, and stipulate that the collection and payment transactions related to the goods or services offered will be carried out electronically;
- In applications submitted electronically by natural person ECSPs residing in Turkiye, information such as the name, last name, date of birth, nationality, Turkish ID number (for Turkish citizens), or foreign ID number (for foreign nationals) must be verified by querying the database of the Ministry of Interior's General Directorate of Population and Citizenship Affairs Identity Sharing System;
- In applications submitted electronically by legal entity ECSPs registered in the Turkish Trade Registry, the identity information of the individual authorized to represent the legal entity must be verified using the procedure for real persons. The information regarding the legal entity itself (title, trade registry number, tax identification number, field of activity, and full address) must be verified by querying registration documents and records from databases maintained by the Union of Chambers and Commodity Exchanges of Turkey (TOBB), the Revenue Administration, or other institutions that centrally store such information;
- In applications submitted electronically by ECSPs residing abroad, the same information

required from ECSPs residing in Turkiye must be collected, and this information must be verified either through documents submitted by the relevant persons and/or via public sources maintained by institutions equivalent to TOBB or other official data holders in the relevant country;

- All collections and payments with the ECSP must be made through a bank account or credit card account that matches the verified identity information of the accepted customer.

Communiqué No. 27 has introduced new restrictions on CASPs which prohibit them from conducting identity verification procedures remotely. In this scope, CASPs that mediate the purchase, sale, or custody of encrypted crypto assets are not permitted to perform remote identity verification. In addition, Communique No. 27 requires that a bank or credit card account that matches the customer's identity information be used throughout the ongoing business relationship including establishment, withdrawal, and deposit transactions.

Despite the prohibition on remote identity verification procedures, certain CASPs may perform remote identity verification when establishing an ongoing business relationship with a real person, until relevant legislation governing the obliged party's primary field of activity allows contracts to be established without face-to-face interaction with the customer, through methods that enable identity verification. Even if remote identification is conducted, information such as address and identity information must be confirmed via the Ministry of Interior's General Directorate of Population and Citizenship Affairs Identity Sharing System database.

Employment Law

The Constitutional Court Annuls the Regulation on Choice of Law in Employment Agreements

I. Introduction

The Constitutional Court, in its decision of November 5, 2024, on the number 2023/158 E. and 2024/187 K. ("***Decision***"), evaluated critical issues on the applicable law in employment agreements with foreign elements and annulled the first paragraph of Article 27 of the Law No. 5718 on International Private and Procedural Law ***("IPPL")***, regulating the choice of law.

II. Dispute Subject to the Decision

According to Article 27 of IPPL, employment agreements containing a foreign element shall be governed by the law chosen by the parties, provided that the mandatory provisions of the law of the employee's habitual workplace, intended to ensure a minimum level of protection, are preserved. According to the second paragraph of the same article, in the absence of a choice of law, the employment agreement is governed by the law of the place where the employee habitually performs their work. However, if the employee is temporarily assigned to another country, that location is not deemed to be the habitual workplace.

To evaluate the Decision, the term "habitual workplace" should be defined first. The 9th Civil Chamber of the High Court of Appeals stated in its decision dated May 18, 2021, and numbered 2021/5065 E., 2021/9195 K., that habitual workplace is where the employee predominantly performs their duties in

terms of time and substance—in other words, the actual place of work.

In this regard, Article 27 of the Law essentially upholds the principle of autonomy of contractual parties and the freedom of contract, while safeguarding the employee's minimum rights under the mandatory rules of the law of the habitual workplace. It can be argued that this legislative approach may be interpreted in favour of employees working abroad.

On the other hand, objections regarding the provision stated that application of the law of the habitual workplace to disputes concerning entitlements of employees who are working at foreign branches of Turkish-registered companies leads to deprivation of constitutionally protected rights. It has been argued that Turkish employees engaged at such foreign workplaces are unable to access the same legal protections afforded to their counterparts employed in Turkiye due to application of foreign law, which is mandated by the rules in question. This discrepancy is alleged to be incompatible with the principle of equality. It was further asserted that the legal systems of some habitual workplaces may not be sufficiently developed to ensure adequate protection, and thus, the rules mandating the application of such laws fail to align with the state's constitutional obligation to enhance the living standards of its working population.

The objections also emphasized that it is the state's duty, under international agreements, to take protective measures in favour of employees engaged in cross-border employment relationships. Accordingly, it was claimed that protective provisions of the law were intricately connected to the employment relationship and should not be overridden by a choice of law. Furthermore, it was submitted that the applicable legal rules should be known to both parties in advance, and that employers should be required to inform employees about the applicable law but absence of such requirements in the current provisions was alleged to constitute a violation of both the right to property and the principle of equality of arms (in the sense of a "fair balance" between the parties).

Further, it was stated that knowledge of the applicable legal rules alone is insufficient for resolving employment disputes involving a foreign element, as familiarity with judicial interpretations in the relevant foreign jurisdiction is also essential. Considering that foreign law is subject to change, the provisions in question may lead to inconsistent judicial decisions, thereby undermining legal certainty. Lastly, it was alleged that the challenged rules infringe upon the right to a fair trial and the state's duty to protect employees.

On these grounds, the contested provisions were claimed to violate the Preamble of the Constitution, as well as Articles 2, 5, 10, 13, 35, 36, 49, 55, and 90 therein.

III. Evaluations of the Constitutional Court's Decision

The first paragraph of Article 27 permits application of a law other than that of the employee's habitual workplace.

In its assessment, the Constitutional Court referred to Article 49 of the Constitution, which imposes on the state a duty to take necessary measures to protect employees and the unemployed, to enhance living standards, to foster a conducive economic environment for employment, to prevent unemployment, and to promote labour peace. Within this framework, the Court emphasized that in employment

relationships, where the employee is inherently the weaker party, regulations must aim to protect the employee and ensure a fair balance in the employer-employee relationship.

However, although the selection of applicable law is generally permitted in employment agreements involving a foreign element, the first paragraph of Article 27, unlike the second, does not contain a safeguard requiring the application of the law most closely connected to the agreement. This raises risks, such as choice of law may produce outcomes detrimental to the employee, the employee may be forced to agree on the law dictated by the employer due to limited bargaining power or may not be able to foresee the consequences of this choice as they do not have sufficient information regarding the chosen law. Accordingly, the Constitutional Court found that a provision allowing such a result disrupts the reasonable balance that must be maintained in labour relations and is inconsistent with the state's positive obligations to protect employees.

IV. Conclusion

In its decision, the Constitutional Court found the first provision of Article 27 of the IPPL, which allows parties to choose the applicable law in employment agreements with a foreign element while preserving the mandatory provisions of the employee's habitual workplace law, to be unconstitutional. The Court held that this rule gives way to circumvention of the employee's rights through a choice of law, which violates constitutional protections.

Intellectual Property Law

High Court of Appeals Affirms the Necessity for Commercial Use in Evaluating Infringement and Compensation Claims

I. Introduction

In its decision dated January 15, 2025, numbered E. 2024/929, K. 2025/162 (the "***Decision***"), the 11th Civil Chamber of the High Court of Appeals emphasized the importance of the presence or absence of commercial motivation behind the use of personal image, in evaluating claims of intellectual property rights infringement and associated claims for monetary compensation.

II. Dispute Subject to the Decision

The dispute examined in the Decision pertains to the plaintiffs' claim for monetary compensation, wherein the plaintiffs, as the legal heirs of the prominent Turkish artist Kemal Sunal, asserted that Kocaeli Municipality infringed their intellectual property and personality rights by utilizing visual representations of various film characters portrayed by well-known actors, including Kemal Sunal, in promotional posters regarding COVID-19 pandemic.

It was stated that one of the posters featured the character "*Apti Şakrak*" from the well-known film *Çöpçüler Kralı*, a role portrayed by Kemal Sunal. The plaintiffs further contended that the use of Kemal Sunal's image in the advertisement attracted national media attention, and that they sought monetary compensation for unauthorized use of intellectual property rights arising from this depiction.

In its response, Kocaeli Municipality argued that the visuals in question were

intended to raise awareness about the COVID-19 pandemic, aimed at boosting public morale and providing guidance on protective measures, and emphasized that the use had no commercial purpose or financial gain.

III. Decisions Issued During the Litigation

Upon evaluating the parties' arguments, the first instance court held that the use in question was not intended for commercial gain but was aimed at raising public awareness regarding the pandemic. The court further noted that the defendant had incurred out-of-pocket expenses for the preparation of the posters, reinforcing the conclusion that there was no commercial benefit derived from the use. It is noteworthy that these findings were made despite the assessments to the contrary under the experts' report submitted during the proceedings.

Although the plaintiffs did not raise a specific claim of unfair competition, the first instance court nevertheless addressed the matter ex officio and concluded that no such case existed, citing the absence of both a violation of rights and commercial purpose. On this basis, the court dismissed the lawsuit in its entirety.

Following the plaintiffs' objection, the Regional Court of Appeals upheld the decision of the first instance court, providing further reasoning for the dismissal of the claim. The Regional Court emphasized that the likeness of an individual is protected under Turkish Civil Law No. 4721 ("***TCL***") as well as Law No. 5846 on Intellectual and Artistic Works ("***IAW***"). The court referenced Article 86 of IAW, which prohibits use of an individual's likeness without their consent. However, the court also acknowledged an exception for public figures, such as movie stars, singers, or members of parliament, allowing the use of their likeness in cases where the intent is informing the public about daily events.

In assessing the plaintiffs' claims, the Regional Court of Appeals noted that the likeness used in the subject matter of the dispute pertains to the movie Kapıcılar Kralı, the rights to which are owned by the production company. The court acknowledged that the plaintiffs could potentially rely on Article 24 of the TCL and Article 86 of the IAW, both of which prohibit the use of an individual's likeness without their consent. However, the Regional Court of Appeals also referenced Law No. 5953 on Municipalities, noting that the posters in question were created in connection with the duties of Kocaeli Municipality to promote the prevention of the pandemic. The court stated that while it could be argued that the defendant derived some form of benefit from using the likeness, it nonetheless had no commercial purpose, and no harm was inflicted on the plaintiffs. As a result, the Regional Court of Appeals dismissed the plaintiffs' objection.

Upon the plaintiffs' appeal, High Court of Appeals, in its Decision, dismissed the appeal request, affirming that the Regional Court of Appeals' decision was in accordance with both the law and procedural requirements.

IV. Evaluation of the Decision and Conclusion

While both the first instance court and the Regional Court of Appeals rejected the claim, further details in the reasoning provided by the Regional Court of Appeals highlight a key aspect of the dispute. In its decision, the first instance court concluded

that there was no commercial purpose in the use of the likeness, but did not make a clear distinction between the "character" and the "likeness." As correctly pointed out by the Regional Court of Appeals, the rights to the "character" (*i.e.*, "Apti Şakrak") are owned by the production company, not the plaintiffs.

The Decision also demonstrates that when the use of a personal image is not commercially motivated, such as in cases where public benefit is weighed against personal rights, such use cannot be considered an infringement.

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