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LEGAL INSIGHTS QUARTERLY

September 2025 – November 2025

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Preface to the September 2025 Issue

The September 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 provides a detailed analysis of the board members' civil liabilities in joint-stock companies under the Turkish Commercial Code, outlining duties of care, loyalty, confidentiality, and non-compete, as well as circumstances which give rise to personal liability.

The Banking and Finance Law section examines the regulatory requirements governing share acquisitions in card organizations, including the percentage thresholds for share transfers that trigger mandatory approvals, and implications for both direct and indirect acquisitions by foreign investors. The Capital Markets Law section focuses on the public offering of foreign capital market instruments, analyzing the relevant procedural framework, prerequisites and oversight obligations, providing valuable insight into cross-border securities regulation in line with international standards.

The Competition Law section analyses four cases which illustrate the Competition Board's evolving enforcement across key sectors. The section covers the use of commitments in the EV charging market, conditional clearance of Innovalift/Arkel with behavioural remedies, unconditional approval of Iyzico/Paynet following a detailed market assessment, and a bid-rigging decision in the refractory industry that clarifies the evidentiary standards in cartel cases. The Dispute Resolution section covers a recent ruling by the High Court of Appeals, confirming that during high-inflation periods creditors may claim losses that exceed default interest without the need for concrete evidence, marking a shift towards adopting the "abstract method" of calculating financial loss in exceptional economic conditions.

The Data Protection Law section reviews the Guideline on best practices for personal data protection in the payment and e-money sector, outlining compliance expectations for data controllers and processors in fintech and digital payment services.

The Internet Law section highlights key findings from ICTA's 2024 Report, focusing on access bans and digital oversight. The Telecommunications Law section discusses the role of big data and AI in the electronic communications sector, as assessed by ICTA's latest regulatory report.

The White-Collar Irregularities section outlines recent legislative updates concerning financial crimes, including anti-money laundering and terrorism financing measures. The Employment Law section presents a ruling from the Regional Court of Appeals, clarifying that personal notes in a planner cannot constitute grounds for rightful termination, reinforcing employee privacy and proportionality principles.

Finally, the Intellectual Property Law section delves into the recent amendment on the implementation of the Industrial Property Law, mandating that trademark cancellation requests must now be filed directly before the Turkish Patent and Trademark Office.

September 2025

Corporate Law

Legal Liability of Board Members in Joint-Stock Companies

I. Introduction

The board of directors ("***Board***") manages and represents a joint-stock company as per Article 365 of the Turkish Commercial Code ("***TCC***"). Each and every member of the Board has certain statutory or contractual obligations when carrying out management and representation of the company.

Statutory obligations of the Board arise from the requirements set out under the TCC, whereas the contractual obligations are based on the fiduciary agreement which is deemed to arise automatically between the company and Board, upon the incorporation of the company and/or appointment of the relevant member of the Board.

The Board's liabilities are twofold: civil and criminal. This Article will focus exclusively on civil liability and explore its conditions and consequences of a breach.

II. Obligations of the Board

In certain cases, Board members will be held liable for their obligations to the company. These obligations include but are not limited to, duty of care and loyalty, confidentiality and non-competition, as specified in different articles of the TCC.

First of all, Article 369 of TCC provides that the Board has a duty of care and loyalty towards the company. Accordingly, the Board shall exercise its powers (i) with the diligence of a prudent manager, (ii) by considering the interests of the company, and (iii) within the framework of the rule of good faith. Furthermore, as described under the preamble of Article 369, the Board also has a duty of confidentiality. In this regard, the members of the Board must protect the company's confidential information and avoid any acts that may lead to the disclosure of confidential information to third parties.

Moreover, the Board is prohibited from competing with the company, which is a facet and application of its duty of loyalty. Article 396 of the TCC states that the members of the Board shall not engage in a commercial activity that falls within the company's activity field, on their own behalf or of third parties, and they cannot become a shareholder with unlimited liability in another company that is engaged in the same type of activity, without obtaining prior consent from the general assembly of shareholders. Unless provided otherwise in the TCC or the company's articles of association, the general assembly resolution shall need the approval of majority of the shareholders or their representatives in attendance, with the meeting quorum consisting of votes representing at least one-fourth of the share capital. In addition, if a member of the Board is also a shareholder, the person in question may neither attend nor vote at the general assembly at which a resolution concerning him is to be made. It should be mentioned that the Court of Cassation also ruled that a member of the Board becoming a board member or manager in another company with the same field of activity, would also be deemed to be a violation of the non-compete obligation.[1]

Secondly, members of the Board are prohibited from engaging in transactions with the company under the Article 395 of

[1] 11th Civil Chamber of Court of Cassation, File no. 1985/5620, decision no. 1985/6350 dated 21.11.1985.

the TCC. In other words, the members of the Board shall not enter into any transaction with the company on behalf of themselves or third parties without obtaining prior consent from the general assembly. This shall be resolved in a general assembly meeting with the same quorum as stated for non-compete obligation (since TCC does not provide a higher quorum) unless otherwise provided under the articles of association.

Moreover, Article 395 also prohibits the members of the Board who are not shareholders of the company, as well as their relatives, from borrowing funds from the company. In addition, the company cannot provide surety, guarantee and collateral for these people, neither assume responsibility for, nor take over their debts. If the members of the Board are also shareholders, Article 358 of the TCC shall be applied. Accordingly, the shareholders may become indebted to the company if (i) the shareholder fulfills his/her due obligations arising from capital subscription and (ii) the company's profit, including the free reserves, is sufficient to recoup the losses from previous years.

Lastly, pursuant to Article 393 of TCC, members of the Board shall refrain from acts and transactions where the interests of the company and Board may conflict. That is to say, the members of the Board may not participate in Board meetings on matters in which the company's interest is in conflict with the member's personal interests with respect to (i) himself/herself, (ii) his/her descendant(s) or ascendant(s), (iii) his/her spouse or (iv) his/her relative(s) by blood or marriage, up to and including the third degree. In the doctrine, for instance, where a member of the Board wishes to purchase a plot of land belonging to the company or grant a right or provide a benefit to a member's spouse over a company asset, this would be deemed to constitute conflict. If it is uncertain whether the interest is in conflict, this issue shall be clarified by a resolution of the Board without the participation of the member in question.

III. Legal Liabilities of the Board

Although, as a rule joint-stock companies are represented and managed by the Board as a whole, the Board may delegate some of its powers to one or more of its members or other persons through an internal directive, provided that the articles of association contain a provision allowing for this delegation. The internal directive, which is a document on the internal operation and functions of the Board, outlines the limits of authority and determines the scope of the powers of appointed people. In this case the Board who delegates the powers shall not have any liability for the matters delegated in the internal directive, except for any lack of care in choosing the person to whom the powers are delegated. It should be noted that, in the event of a conflict, the burden of proof lies with the claimant i.e., they shall have to prove that the appointed representative was not chosen with due care and diligence.

Despite the fact that the Board could delegate some of its powers Article 375 lists certain cases for which it retains exclusive powers, meaning that it cannot delegate these to others. These non-delegable powers include but are not limited to executive management of the company, preparation of general assembly meetings and execution of their resolutions, or supervision of those charged with management.

As per Article 553 of the TCC, if any members of the Board violate their statutory obligations or those under the articles of association, they shall be liable towards the company, as well as its shareholders and creditors. Within the scope of the general principles of the Turkish Code of Obligations, the following conditions should be present in order to initiate a liability action against the Board member, (i) the existence of an unlawful act, (ii) fault, (iii) damage and (iv) causal link between the damage caused and the unlawful act. It is worth mentioning that in order for the members of the Board to be held liable, it is sufficient for them to negligently fail to fulfill their obligations listed above. Additionally, if the members of the Board are appointed to represent and bind the company with the signature authorities, they will be held separately liable for this as well.

Pursuant to Article 560 of the TCC, the time limit for such liability actions is 2 (two) years from the date of the claimant has incurred damage and became aware of the identity of the party responsible, and in any case 5 (five) years from the date of the occurrence of the act giving rise to the damage. The correct venue for such liability cases will be the commercial court of first instance where the company's headquarters is located.

In one of its decision on a liability action filed against the Board, the Court of Cassation ruled that a judgment shall be rendered according to the principle of several liability (rather than joint liability), that is, the members of the Board who are at fault in the occurrence of the damage should be determined on an individual basis and the respective amount for each of their liability should be decided separately. The court calculated the amount of compensation that each member of the Board found liable would be required to pay, by taking into account factors such as the degree of fault, fault of a third party, fault of the injured party and consent of the injured party. The upper limit of individual liability determined by the court for each member corresponded to the maximum amount of liability of that member. In this regard, the joint liability of the Board in the former TCC will no longer apply, and each member will be held liable for their own individual amounts.

The members of the Board may be relieved of their liability in cases where they can prove that they are not at fault, or they are released by way of a general assembly resolution or in accordance with the statute of limitations. The members of the Board may also be relieved if they can prove that the damage would have occurred even though they had acted in good faith with the care of prudent managers as regulated in Article 369 of the TCC. Furthermore, the general assembly may release the Board from legal liability as a whole or partly by approving the transactions they had executed in the relevant accounting period.

Banking and Finance Law

Acquisition of Shares in Turkish Card Organizations

In terms of Turkish banking legislation, the term "card organization" refers to card issuing organizations, card system organizations and organizations entering into merchant agreements. All of these organizations provide financial services and are specifically authorized to issue cards, create card systems and enter into merchant agreements.

Each of the foregoing "card organizations" are also specifically defined under Article 4 of Regulation on Bank Cards and Credit Cards ("***Regulation***"). Accordingly, (i) card issuing organizations are banks and other organizations having the authority to issue bank or credit cards, (ii) card system organizations are organizations establishing bank or credit card systems and authorized to issue card in accordance with this system, or to execute merchant agreements and, (iii) organizations entering into merchant agreements are banks or organizations which enter into agreements with merchants for ensuring the acceptance of bank card or credit cards as valid means of payment (the "***Card Organizations***").

Under Turkish laws, the Card Organizations are among the regulated sectors and the shareholding structure of these Card Organizations are of importance since it is the key for transparency purposes and financial sustainability. As share transfers in regulated sectors are generally subject to the approval of relevant authorized authorities, certain share transfers in the Card Organizations are also subject to the approval of the Banking Regulation and Supervision Board (the "***Board***").

In this Article, we will focus on direct and indirect share acquisitions in the Card Organizations that are incorporated in Turkiye and holding relevant licenses, that would require approval of the Board. It should be noted that there are also additional regulatory requirements for foreign banks or financial organizations which may wish to establish a Card Organization or purchase shares in such organizations in Turkiye.

Certain share transfers in the Card Organizations are subject to the approval of the Board before the completion of the deal. The main criteria to assess whether share acquisition will be subject to prior approval of the Board is (a) the percentage of the share capital to be acquired in the company, (b) the consequent ownership of other shareholders in the relevant Card Organization, and (c) whether the acquired shares are have certain privilege rights in terms of management.

In the event of granting and/or removing privileges on existing shares and/or issuing usufruct certificates, again approval of the Board will be required prior to completion of the relevant transaction.

Prior approval of the Board for share transfers is required particularly in the following cases:

(i) if a person (real or legal) acquires, directly or indirectly, shares constituting 10% or more of the share capital of the Card Organization,

(ii) if the direct or indirect shareholding of a shareholder exceeds or falls below 10%, 20%, 33% or 50% of the share capital, as a result of a share transfer, or

(iii) if shares being transferred are privileged in terms of appointing members to the board of directors (regardless of shareholding ratios under limb (i) and (ii) above.)

If the share transfer will be subject to the approval of the Board in accordance with the above, the acquiring company must:

a) adopt a resolution providing for its decision to become a shareholder in the Card Organization;

b) execute a share transfer agreement with the transferring shareholder, which provides the approval of the Board shall be a condition precedent to the closing of the deal; and

c) have the characteristics that are required for the initial founders of the Card Organizations, which are, in general, having the necessary financial strength, reputation, honesty and competence required by the business, and as well as other qualifications required for bank shareholders (***e.g.*** the shareholding structure of legal entity shareholder must be transparent and clear)

for completion of the share acquisition. To apply for approval of the Board, an application should be made to the Board with the supporting documents showing fulfillment of the foregoing conditions, provide certain declarations and undertakings, and also additional information and documents that are provided under the legislation and that may be requested by the Board.

Share transfers completed without obtaining the necessary approval from the Board cannot be recorded in the share ledger of the company. In case they are recorded in the share ledger despite the lack of the approval of the Board, such record and therefore the shareholding of the transferee will be deemed null and void.

Number of shareholders in the Card Organization should not fall below 5 (five) as a result of the share transfer. Otherwise, the share transfer cannot be recorded in the share ledger. This rule aims to control share transfers after the incorporation of the company.[2] As a result of this rule, if the Card Organization has already 5 (five) shareholders, one of the shareholders cannot exit the company by transferring its shares to the existing shareholders, since it will result in the number of shareholders falling below 5 (five).

If the Board approves the share transfer and afterwards the relevant shareholder loses its eligibility (***i.e.*** it is no longer qualified to be a card organization shareholder), said shareholder will be able to exercise its shareholding rights limited to only dividend rights. Such shareholder will not be able to benefit from other shareholder rights, such as the right to participate and vote in the general assembly meetings.

Indirect acquisition of shares at the specified percentage thresholds may also require the approval of the Board. The scope of the indirect shareholding concept of the Card Organizations will be decisive for necessity of the approval. The shareholding structure of the acquiring legal entity must be analyzed up to the level of real persons to detect all indirect shareholders. In order to reach indirect shareholders, the shareholding structures of the (i) legal entity shareholders acquiring shares and (ii) also their legal entity shareholders, if any, shall be determined until the ultimate real person shareholders are identified. In general, the indirect shareholding percentage through legal entities will be calculated by multiplying the shareholding percentages at each level of the ownership chain below the relevant entity.

For real persons, indirect shareholding generally includes the real person's own shares, as well as those held by their spouses, children, or joint controlled entities with unlimited liability. For legal entities, indirect shareholding includes shares of companies which have control over its capital share and management. A

[2] Ahmet Fatih Özkan, Banka Anonim Şirketinde Asgari Kurucu Ortak Sayısı, On İki Levha Yayıncılık, 2021 at 522.

real or legal person is considered to control a legal entity if they can directly or indirectly control the capital or management of company. This control can be established generally through ownership of majority of the shares privileged shares, voting agreements, or the authority to appoint or remove most of the board members. Therefore, merely being a majority shareholder (***i.e.*** holding 51% of the shares) is not required or may not even be sufficient for having control over the company. From the Turkish corporate law perspective, share transfers in the Card Organizations generally are not required to be registered with the trade registry, since these companies will be established as joint stock companies and share transfers in joint stock companies are not subject to registration. That said, as a result of share transfer, the registration obligation stipulated in Article 198 of the Turkish Commercial Code No. 6102 ("TCC") may be triggered. Article 198 of TCC stipulates that if an enterprise directly or indirectly reaches or falls below 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the shares representing share capital of a company, then said enterprise shall disclose such event to the company, within 10 (ten) days following realization of the transaction. Then the company shall have such event registered with the trade registry within 10 (ten) days following the disclosure. If this event is not registered with the trade registry, the rights attached to the relevant shares, including voting rights, will be frozen. Accordingly, share transfers at or above the thresholds that require the approval of the Board may also require the registration of this transaction with the trade registry as a post-closing action.

Capital Markets Law

Public Offering of Foreign Capital Market Instruments in Turkiye

I. Introduction

In financial markets, cross-border offerings of capital market instruments are essential for facilitating international investment and integrating domestic markets with global capital flows. In this respect, Turkiye has a regulatory framework that enables foreign capital market instruments to be publicly offered within its jurisdiction. The principal regulation on that front is the Communiqué on Foreign Capital Market Instruments and Depository Receipts and Foreign Investment Fund Shares ("***Communiqué No. VII-128.4***") issued by the Capital Markets Board of Turkiye ("***CMB***").

Although Communiqué No. VII-128.4 also covers depository receipts and foreign investment fund shares, this article will focus specifically on the definition of foreign capital market instruments under Turkish law and outline the prerequisites and procedural requirements for their public offering in Turkiye.

II. Public Offering of Foreign Capital Market Instruments

Pursuant to Article 4/1(s) of the Communiqué No. VII-128.4 and Article 3/1(ş) of the Capital Markets Law, foreign capital market instruments are securities, derivative instruments and other capital market instruments issued by foreign partnerships or foreign governments and local administrations, excluding foreign mutual fund shares, and other capital market instruments that CMB may include within this scope.

Article 5 of the Communiqué No. VII-128.4 sets forth a series of mandatory prerequisites for foreign capital market instruments to be offered to the public in Turkiye:

(i) The foreign capital market instrument to be offered to the public must not have been rejected by a stock exchange or a competent capital market authority in the country of issue, on the grounds of investor protection or similar.

(ii) Such instruments must be denominated in Turkish Lira or in foreign currencies for which daily trading rates are announced by the Central Bank of the Republic of Turkiye.

(iii) Instruments should not be subject to any restrictions on their sale, the exercise in Turkiye of the financial rights or the performance of managerial rights. Investors in Turkiye should be able to exercise their rights on an equal basis with investors abroad.

(iv) Instruments should not be subject to registrations restricting their transfer or circulation or preventing their owners from exercising their rights, and they should not be subject to rights in rem, rights of imprisonment or similar restrictive rights.

(v) For issuances of foreign corporations other than shares, a long-term rating must be obtained from a rating agency within one year prior to the application date, which shall be equivalent to investment grade according to the rating scale.

(vi) CMB is authorized to impose additional prerequisites in addition to the above requirements for the protection of investors or for similar reasons.

A foreign corporation that wishes to conduct a public offering in Turkiye, must appoint a representative. The representative must be selected from among the authorized broker firms or development and investment banks residing in Turkiye. The agency relationship with the representative should be based on a written agreement, and this agreement should clearly include the obligations of the foreign corporation. In accordance with Article 17 of Communiqué No. VII-128.4, the representative appointed by the foreign issuer is responsible for several procedural and disclosure-related obligations in connection with the public offering of foreign capital market instruments in Turkiye. These include signing the prospectus on behalf of the foreign issuer, ensuring that payment-related announcements are made accurately and in a timely manner, supporting the exercise of financial and managerial rights by investors, making the required disclosures through the Public Disclosure Platform (KAP), and submitting regular reports to the CMB.

Before initiating a public offering of foreign capital market instruments in Turkiye, a formal application must be submitted to the CMB. As part of this application, the issuer is required to prepare a prospectus, which is a key disclosure document designed to inform investors about the issuer's financial condition, operations, and the rights and risks associated with the securities to be offered. The prospectus must be prepared in accordance with Turkish capital markets legislation and is subject to the CMB's review and approval. Only upon the CMB's approval, the prospectus can be published, and the public offering process may formally commence.

In accordance with Article 7 of Communiqué No. VII-128.4, foreign issuers or their representatives are required to apply to the CMB with a complete set of documents listed in the Communiqué. The prospectus, offering circular, issuance certificate, and other relevant documents must be prepared in line with the applicable secondary legislation of the CMB, depending on the nature of the instrument. If the instruments are issued in a foreign currency quoted by the Central Bank of the Republic of Turkiye, the sales must be conducted in Turkish Lira, and the applicable exchange rate, cost items, and who bears these costs must be clearly disclosed in the prospectus. In addition, these instruments must be monitored in dematerialized form, which shall be recorded and tracked on the basis of the relevant right holders through the Central Registry Agency.

Article 8 of Communiqué No. VII-128.4 outlines the essential content of the prospectus to be submitted to the CMB. Within this framework, it is also obligatory to indicate the jurisdiction in which the prospectus of the foreign capital market instrument and other announcements, if any, are being published. In addition, payment dates, exchange rate information, expenses and payment currency should be clearly stated in the prospectus.

As per Article 13 of Communiqué No. VII-128.4, public disclosure obligations of foreign corporations are fulfilled on the basis of the regulations that are mostly applicable to companies with similar characteristics and/or companies in Turkiye traded on the same market/platform of the stock exchange. In addition, within the scope of the financial reporting obligation under Article 14 of the Communiqué, foreign corporations are required to prepare their financial statements in accordance with International Financial Reporting Standards (IFRS) or in line with the format adopted by the European Union and disclose them to the public together with their Turkish translations. Independent audit of these reports must be conducted in accordance with International Standards on Auditing issued by the International Federation of Accountants pursuant to Article 15 of Communiqué No. VII-128.4. In addition, Article 16 of Communiqué No. VII-128.4 provides that the financial and managerial rights associated with foreign capital market instruments are governed by the laws of the country in which the foreign issuer is established. The prospectus must include clear information on how such rights will be exercised under the relevant foreign laws and within the framework of the Central Registry Agency's regulations. Furthermore, foreign issuers are generally exempt from CMB's regulations on dividend distribution and corporate governance, unless the CMB decides otherwise. In cases involving mandatory tender offers, the more investor-friendly provisions between Turkish law and the foreign issuer's home country law will apply.

III. Conclusion

The public offerings of foreign capital market instruments in Turkiye are governed under the detailed and structured regulatory framework of Communiqué No. VII-128.4, which reflects the CMB's commitment to investor protection, market transparency, and regulatory integrity. By setting out clear conditions, the regulation ensures that foreign instruments offered in the Turkish market meet comparable standards to those imposed on domestic issuers.

Competition / Antitrust Law

Plugged into Compliance: Turkish Competition Board's Evaluation of commitments in the EV Charging Sector

I. Introduction

On June 16, 2025, the Turkish Competition Authority ("***Authority***") published the Turkish Competition Board's (the "***Board***") reasoned decision[3] concluding the investigation against Otoyol İşletme ve Bakım AŞ ("***OİB***") upon the acceptance of its commitments. The Authority had initiated the investigation to determine whether OİB and ZES Dijital Ticaret AŞ ("***ZES***") violated Articles 4 and/or 6 of Law No. 4054 on the Protection of Competition ("***Law No. 4054***") due to their vertical relationship in the provision of electric vehicle ("***EV***") charging services along the İstanbul–İzmir Highway (O-5).

The investigation concentrated on whether the vertical relationship between OİB, the exclusive operator of highway service facilities ("***OKSİJEN***") on the O-5 highway, and ZES, the operator of EV charging stations located at these facilities, gave rise to a contractual or de facto exclusivity in favour of ZES. The Board assessed whether such exclusivity amounted to a restriction of competition under Article 4 or an abuse of dominance under Article 6. In this respect, the Board examined whether OİB applied discriminatory conditions to competing EV charging network operators in a manner that could infringe Article 6 of Law No. 4054.

II. Background

The investigation was triggered by a complaint alleging that ZES had monopolized EV charging services on the O-5 highway by excluding other operators from accessing the highway infrastructure. It was claimed that this conduct limited consumer choice, led to higher prices, and undermined service quality. The complainant further argued that the existing regulatory framework, including the relevant secondary legislation issued by the Energy Market Regulatory Authority ("***EMRA***"), did not sufficiently mitigate these competition concerns.

Following the preliminary investigation, the Board decided on July 4, 2024, to initiate a full-fledged investigation into ZES and OİB for the violation of Articles 4 and/or 6 of Law No. 4054.[4]

During the investigation, both undertakings applied for the commitment and settlement procedures. OİB applied to submit commitments on September 18, 2024, followed by ZES on September 24, 2024. On October 18, 2024, the Board accepted both requests for review under the commitment mechanism. ZES's settlement process concluded first: on December 27, 2024, the Board found that ZES had infringed Article 4 of Law No. 4054 through exclusive agreements and imposed an administrative fine of TRY 1,707,963.45, while terminating its investigation through settlement. Consequently, ZES's commitment application was rejected as moot.

[3] The Board's OİB Commitment decision dated 13.02.2025 and numbered 25-06/130-71.

[4] The Board's OİB/ZES Investigation Decision dated 04.06.2024 and numbered 224-28/679-M.

For OİB, the Board issued its settlement decision on January 9, 2025, concluding that OİB had also violated Article 4 through exclusivity clauses and imposed a fine of TRY 6,025,703.83.[5] However, unlike ZES, OİB's commitments were still under evaluation with regard to allegations of discriminatory conduct against EV charging service providers, which could infringe Article 6.

III. The Authority's Competition Concerns in Relation to the Vertical Relationship Between OİB and ZES and the Alleged Discriminatory Practices

In the course of the investigation, the Board identified two principal areas of concern stemming from the vertical relationship between OİB and ZES on the O-5 Highway: (i) the potential anticompetitive effects of exclusivity provisions and (ii) the discriminatory behaviour against charging service providers.

First, the Board examined whether the vertical relationship between OİB and ZES resulted in a single-buyer obligation, effectively granting de facto exclusivity to ZES for operation of EV charging stations in the OKSİJEN branded highway service areas. Although there was no explicit contractual exclusivity, the Board emphasized that de facto exclusivity may still arise from the conduct and practical arrangements between parties. The Authority analysed whether such conduct amounted to a restriction of competition under Article 4 and/or an abuse of dominance under Article 6 by foreclosing access to essential infrastructure and impeding competition.

Second, the Board focused on whether OİB, as the sole entity authorised to allocate space within the O-5 highway service areas, applied discriminatory commercial terms to EV charging network operations, particularly ZES' competitors. These practices were evaluated under the category of *secondary level discrimination*, which arises when a dominant undertaking discriminates among non-competing commercial partners, potentially distorting downstream market dynamics.

The Board's findings, supported by comparative data obtained from contractual arrangements, revealed that OİB applied materially different conditions to various charging station operators in terms of:

(i) General administrative cost contributions,

(ii) Revenue-sharing ratios,

(iii) Deposit requirements,

(iv) Project entry fees, and

(v) Allocation of parking spaces.

For instance, some undertakings were charged project entry fees per device, others were exempted; some paid in foreign currency, while others paid in Turkish Lira; and in certain cases, no parking allocation was made at all. These inconsistencies were found to lack objective justification. The Board noted that such practices could hinder the competitive viability of rivals and entrench ZES's presence by raising costs for competitors.

In light of these contractual inconsistencies, the Board concluded that

[5] The Board's OİB Settlement Decision dated 09.01.2025 and numbered 25-01/8-6.

OİB's behavior could hinder the competitive viability of charging station operators other than ZES. Moreover, because OİB holds exclusive rights to lease land within the highway service areas, a prerequisite for establishing charging stations, its conduct was considered capable of distorting market dynamics and raising entry barriers. Accordingly, the Authority raised concerns under both Article 4, due to the potential foreclosure effects of exclusivity, and Article 6, due to the discriminatory nature of the terms applied to rival undertakings.

The Board also emphasized that the service areas operated by OİB on the O-5 highway constitute essential facilities in the context of EV mobility. Given that charging stations must be accessible within specific geographic intervals to meet consumer needs, the restricted access to these locations significantly impacts market entry. The Board underlined that OİB's conduct, particularly in an ecosystem where legal and physical access to highway infrastructure is monopolized, has the potential to reduce competition, limit consumer options, and impair overall service quality in the rapidly evolving EV charging market.

IV. The Commitment Text

In response to the Authority's findings OİB submitted the following key commitment package aimed at addressing the competition concerns associated with its dominant position as the sole operator of the OKSİJEN-branded highway service areas.

- **Avoidance of exclusivity:** OİB committed not to enter into any agreements that include contractual exclusivity provisions with EV charging service providers for the duration of its operation on the O-5 Highway. This commitment was designed to prevent foreclosure effects stemming from preferential access.

- **Equal treatment in project entry fees:** OİB pledged to apply the same per-device project entry fee to both new entrants and existing operators seeking to expand their capacity. This was intended to eliminate historical disparities, including instances where some undertakings had been exempting from such fees altogether.

- **Standardization of deposit requirements:** OİB committed to convert all existing foreign currency-based deposit obligations into Turkish Lira, and to determine deposits uniformly based on objective criteria. It further undertook to execute amending protocols with all operators within three months of the short-form judgment decision being notified to the parties.

- **Equal revenue-sharing terms:** OİB undertook to apply the same revenue-sharing rates to all charging service providers, with the exception of TRUGO, a TOGG-affiliated undertaking, whose differentiated treatment was explicitly justified on public interest grounds related to its state-supported status.

- **Uniform application of general administrative costs:** Recognizing past inconsistencies (particularly in favour of ZES), OİB agreed to implement a standardized formula for general administrative costs, excluding fuel station operators who already bear operational expenses such as electricity and cleaning services.

- **Equal treatment for future operational matters:** OİB committed to apply equal treatment in assessing future infrastructure-related requests, such as canopy installations, based on objective financial and technical criteria. These measures aim to ensure procedural fairness in dealings with all market participants.

To ensure transparency and enforceability, OİB also committed to submitting biannual reports to the Authority for a monitoring period of five years. These reports will include updated comparative tables reflecting the contractual conditions applied to different operators, as well as copies of the executed amendments demonstrating compliance with the commitments.

The Board evaluated the commitment text in light of the formal requirements outlined in Articles 8 and 9 of the Commitment Communiqué No. 2021/2. It concluded that the commitments were sufficiently clear, proportionate to the competition concerns raised, and capable of timely and effective implementation. In particular:

- The avoidance of future exclusivity addressed the structural foreclosure effects initially identified under Article 4.

- The equalization of project entry fees, deposits, and revenue-sharing terms tackled the discriminatory treatment concerns falling under Article 6.

- The establishment of a standard general administrative costs model and the recognition of only objectively justifiable exceptions (***e.g.***, TRUGO, fuel operators) supported transparency and non-discrimination.

- The commitment to apply equal treatment to future operational requests ensured long-term procedural fairness and competitive neutrality.

- The inclusion of a detailed monitoring mechanism, including periodic reporting and contractual documentation, was viewed as critical for the enforceability and effectiveness of the commitments.

Furthermore, the Board acknowledged that earlier variations in contractual terms might have stemmed from the nascent stage of market development or differing investment conditions. Nevertheless, the Board emphasized that the convergence of terms going forward was essential to prevent competitive distortions in this evolving and strategically significant market.

As a result, the Board concluded that OİB’s commitments adequately addressed the identified concerns, particularly those linked to discriminatory conduct in the downstream market for EV charging services. Accordingly, the investigation against OİB with respect to Article 6 was terminated.

V. Conclusion

The Board’s decision in the ZES and OİB investigation represents a critical step in the development of competition law enforcement in newly emerging markets such as EV charging infrastructure. The case illustrates the challenges posed by vertical relationships involving access to essential facilities, particularly in markets where infrastructure ownership is monopolized by a single undertaking, as is the case with OİB's exclusive operation of service areas on the O-5 Highway.

The commitment undertaken by OİB offer a roadmap for ensuring non-discriminatory access to critical infrastructure and maintaining a level playing field for new entrants and smaller competitors. These commitments are particularly meaningful given the infancy and strategic importance of the EV charging market, where early exclusionary practices can quickly entrench dominant positions and chilly investment in competing technologies.

Notably, the Turkish decision parallels international developments. The UK Competition and Markets Authority ("***CMA***") previously investigated exclusive arrangements between Electric Highway and motorway service area operators such as Moto Hospitality Limited and Roadchef. In that matter, the CMA concluded that exclusive access agreements risked raising entry barriers for rival EV charging networks and resolved the case through commitments that opened access to competing operators. As the Board noted, such arrangements can have far-reaching impacts beyond market structure, potentially affecting a country's ability to meet climate targets.

In this light, the OİB decision reinforces the message that monopolization of infrastructure access- whether contractual or de facto, will attract close scrutiny due to foreclosure effects.

Elevator Market Merger Gets Conditional Go-Ahead as Behavioural Commitments Take Centre Stage

The Turkish Competition Board ("***Board***") has conditionally cleared the acquisition of sole control over Arkel Elektrik Elektronik Sanayi ve Ticaret AŞ ("***Arkel***") by Douglas Family and Companies ("***Douglas***") through Innovalift AB ("***Innovalift***"), a wholly owned subsidiary of Investment AB Latour ("***Investment AB***"). The transaction was notified to the Turkish Competition Authority ("***Authority***") on 19 July 2024 and received conditional Phase I clearance on 16 January 2025.[6]

I. Transaction Overview and Market Activities

Arkel, which is headquartered in Turkiye, is active in the production and sale of elevator components including control panels, motor drivers, battery backups, call and indicator cards, and related auxiliary systems. The company has subsidiaries in Spain, Germany, India, and Hong Kong, and exports to several regions including the Middle East, Europe, and Asia.

Innovalift operates in the elevator manufacturing sector in Turkiye through its subsidiaries Aritco, Motala, and Vimec, whereas it is active in the import and sale of elevator components such as screens, buttons, fixtures, and GSM modules through its local distributors Vega, LCP, and Esse-Ti in Turkiye.

II. Relevant Product and Geographic Markets

The relevant product market was defined broadly as the elevator manufacturing market, with a narrower focus on the elevator components market, which was further sub-segmented into (i) lift control systems (including control panels, motor drives, battery backups, and control cards), (ii) door control systems (specifically door control cards), and (iii) call and indicator

[6] The Board's decision dated 16.01.2025 and numbered 25-02/66-39.

systems (including indicator cards and other auxiliary products).

Considering the homogeneity in the supply and demand conditions between the regions and the jurisdiction of Law No. 4054, the relevant geographical market has been determined as "Turkiye" for all relevant product markets.

III. Competition Board's Substantive Assessment

a. Horizontal Overlap

Due to the fragmented and non-transparent structure of the elevator components market in Turkiye, which is marked by a wide variety of products, inconsistent product categorizations, and lack of sector-wide data, the Authority limited its market share analysis to product segments where Arkel and Innovalift are both active.

Arkel holds strong market positions across several sub-segments of the elevator components market, including lift control systems (notably in control panels and control cards), door control cards, and call and indicator systems (including indicator cards and auxiliary products). Innovalift, in contrast, has a negligible or no presence in these segments, with its local subsidiaries not exceeding minimal market shares across all assessed product groups.

In horizontally overlapping markets, Arkel's market shares were significantly higher than those of its closest competitors, in some cases by several multiples. Despite this, the presence of numerous smaller competitors and an open market structure mitigated concerns over market dominance. Moreover, market share estimates based on both party submissions and third-party competitor data confirmed Arkel's leading position, though no single player held a monopolistic share across all sub-markets.

Pre- and post-transaction HHI (Herfindahl-Hirschman Index) values across the various sub-markets showed only minor increases, reflecting the negligible market share of Innovalift. The only sub-market showing a notable HHI increase was the door control cards segment; however, this was primarily attributed to Arkel's already strong position and Innovalift's low starting point. The transaction was therefore viewed as a transfer of Arkel's existing market power, rather than a merger of two strong competitors.

Despite Arkel's significant market shares in various elevator component sub-segments, the limited presence of Innovalift, the variety of market players, and the ease of market entry via imports led the Authority to conclude that the transaction does not raise significant horizontal competition concerns. The overall structure of the elevator components market, characterized by a lack of significant barriers and flexible buyer-supplier relationships, supports a competitive environment post-transaction.

b. Vertical Relationship and Input Foreclosure

The Authority identified a vertical relationship between Arkel's upstream activities in elevator component manufacturing and Innovalift's downstream operations in elevator manufacturing. Arkel's products serve as essential inputs in the production of elevators and are also used to produce other elevator components. The key vertically affected sub-markets identified were the motor drives and battery spares markets.

Although Arkel holds strong market positions across several elevator component sub-markets (***e.g.***, motor drives, control panels, control cards, and other auxiliary products), Innovalift's market presence in Turkiye is currently very limited. The Authority therefore found no risk of customer foreclosure, ***i.e.***, Arkel refusing to sell to other upstream suppliers.

As for input foreclosure, the Authority noted that (i) Arkel has significant market shares in key input markets, (ii) Innovalift and its subsidiaries are projected to increase their purchases from Arkel post-transaction, potentially sourcing the majority of their elevator component needs from Arkel by 2027, (iii) despite this, Arkel's production capacity is underutilized, and it can significantly expand output without new investment, and (iv) even under a conservative scenario where Innovalift sources all components from Arkel, the volume and value of those purchases would still represent a small fraction of Arkel's total capacity and turnover.

The parties also stated that Arkel will remain a separate brand and business unit, continuing its existing commercial practices; there is no existing supply relationship between Arkel and most Innovalift subsidiaries, and no drastic changes in purchasing behaviour are planned post-transaction; and Arkel plans to expand globally, but must continue serving its existing domestic clients to maintain its business sustainability.

Furthermore, some third parties expressed concerns about possible changes in pricing, supply times, and service quality, emphasizing the importance of continued availability and competitive conditions in the domestic market. Others highlighted risks of Arkel shifting its focus entirely to export markets, which could reduce domestic supply and raise prices.

Although the data submitted did not establish an immediate risk of input foreclosure, the Authority acknowledged the absence of comprehensive industry-wide data and the difficulty of quantifying potential future effects. The Authority therefore concluded that it would be appropriate for Innovalift to submit commitments to address any residual concerns about reduced domestic supply or deteriorating commercial terms for Arkel's existing and potential Turkish customers.

IV. Behavioural Commitments Offered by Innovalift

The Authority identified input foreclosure as the main potential competitive concern arising from Innovalift's acquisition of Arkel. While no direct evidence of input restriction was found, the lack of reliable market data and Innovalift's global presence raised the risk that Arkel could prioritize exports, potentially reducing supply to the Turkish market.

Although most third-party sector players raised no objections, a few expressed concerns over Arkel's potential to disrupt domestic market dynamics through cost-driven pricing, delays in spare part supply, and possible changes in pricing and service policies.

To eliminate these concerns, Innovalift submitted a set of behavioural commitments aimed at preserving access to Arkel's products for domestic customers:

(i) **Existing Customers:** Arkel will continue to supply existing Turkish customers on reasonable, commercially viable, and non-discriminatory terms, aligned with those offered to other customers. Exceptions are limited to contract breaches, force majeure events, legal sanctions, or reputational/ethical risks.

(ii) **Potential Customers:** Innovalift committed to supplying new Turkish customers under equivalent terms to those granted to existing ones, provided similar exception conditions are met. Additionally, Innovalift will submit annual reports to the Authority detailing the customers supplied and the terms of sale.

(iii) **Duration**: The commitments will remain in force for 36 months following the transaction's closing, a timeframe deemed sufficient for the market to adjust and for customers to change suppliers if needed.

The Authority evaluated the proposed commitments under the Commitment Guidelines, noting that while structural commitments (like divestitures) are typically preferred due to their permanence and self-enforcing nature, in this case, behavioural commitments were acceptable. Structural commitments were found to be impractical due to the nature of Arkel's business, and the behavioural measures were considered effective, enforceable, and auditable.

The Authority concluded that the commitments sufficiently addressed the risk of post-transaction input foreclosure, particularly concerns around price increases, restricted supply, and deterioration in service levels for domestic buyers. The commitments were deemed proportionate and tailored to the risks identified.

V. Conclusion

Based on the above findings, the Board conditionally approved the transaction under Communiqué No. 2010/4 at the end of its Phase I review, subject to the binding commitments submitted by Innovalift. These commitments were found to preserve competition in the elevator components market and mitigate risks associated with Arkel's post-merger conduct in Turkiye.

The Innovalift/Arkel decision demonstrates the Board's growing focus on vertical effects in merger control, particularly in transactions involving strong upstream players integrated into global distribution structures. The case highlights the Authority's readiness to intervene where export-oriented targets may shift supply away from domestic customers post-transaction. It also signals the Board's willingness to accept behavioural commitments to address vertical risks, provided these are clearly defined and enforceable.

A Seamless Transaction: Turkish Competition Board's Multi-Pronged Review Unconditionally Clears the Acquisition of Paynet by Iyzico

I. Introduction

On January 9, 2025, the Turkish Competition Board ("***Board***") published its reasoned decision[7] ("***Decision***") approving the acquisition of sole control over Paynet Ödeme Hizmetleri AŞ ("***Paynet***") by Iyzi Ödeme ve Elektronik Para Hizmetleri AŞ

[7] The Board's Iyzico/Paynet Decision dated 09.01.2025 and numbered 25-01/40-25.

("***Iyzico***"). The decision provides valuable guidance on the relevant product market definitions in the electronic payments sector and offers insight into the factors and parameters the Board focuses on in its competitive assessments of these markets.

II. Information on the Parties and Overview of the Legal Framework

In its Decision, the Board first outlined the business activities of the parties. Accordingly, the target, Paynet, founded in 2015, is a licensed payment institution that offers business-to-business ("***B2B***") payment solutions, including customizable web/mobile/virtual point of sale ("***POS***") infrastructure and card data storage services, primarily targeting medium and large-scale companies through complex dealership or franchise networks.[8] Paynet operates only in Turkiye and Northern Cyprus, with the latter excluded from the scope of the notification.

Iyzico, the acquirer, is a licensed payment and electronic money institution operating solely in Turkiye. It provides fast and secure payment solutions to various companies operating across different sectors. It started issuing electronic money in 2019 and offers digital wallet services to the business-to-consumer ("***B2C***") market through its mobile application. Iyzico also holds a payment card industry data security standard ("***PCI DSS***") Level 1 certificate[9] and provides services such as payment gateway, payment processing, onboarding, underwriting, and technical support. Iyzico is controlled by Naspers Limited and remains its only active subsidiary in Turkiye.

After giving a detailed explanation on the parties' activities, the Board provided an overview of the relevant legal background and sector-specific regulations governing the electronic payments sector. The Board remarked that the primary legislative framework governing payment services in Turkiye is the Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions, and provided an overview of the relevant secondary legislation.[10] Furthermore, the Board also explained the legal responsibilities of undertakings involved in card data storage activities within the framework of Law No. 6698 on Personal Data Protection Law. Specifically, the Board addressed the differences between data controllers and data processors and discussed the scope of

[8] Information on Paynet's main products are as follows: (i) PayPortal is a comprehensive web-based platform that facilitates payments, collections, commissions and refunds, (ii) Paynet REST API provides access to Paynet's services via an Application Programming Interface, enabling customers to realize various transactions across different platforms, (iii) CepPOS is a mobile application offering payment and reporting features, and allows customers to manage their payments and collections through their mobile phones, (iv) PayPOS operates on a SoftPOS infrastructure and allows customers to turn any NFC/contactless-enabled Android device into a physical POS terminal within seconds, enabling payment acceptance from anywhere, (v) PayLink allows for payments to be processed independently of physical location via PayPortal or CepPOS, by entering the amount, purpose, and contact details.

[9] These standards have become industry norms in the market. They can be defined as information security protocols that are expected to be followed by all entities that transmit, process or store card holder data. An undertaking or institution intending to store card data must comply with PCI DSS requirements to obtain PCI DSS certification.

[10] The Board made references to Banking Law No. 5411; Law No. 5464 on Bank Cards and Credit Cards; Regulation on Payment Services and Electronic Money Issuance, Payment Service Providers; Communiqué on Information Systems of Payment and Electronic Money Institutions and Data Sharing Services in the Field of Payment Services; Regulation on Bank and Credit Cards and Tax Procedure Law General Communiqué No. 507.

liability related to the collection, processing and retention of personal data. The Board referred to the Guidelines for Data Controllers and Data Processors published by the Personal Data Protection Authority, and emphasized that when offering card data storage services, payment service providers collect, process, store and transfer personal data such as the cardholder's name, surname, e-mail addresses, billing and delivery address, phone number, IP address, and details of the product purchased. In this regard, the Board held that such undertakings may qualify as data controllers.

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

The Board conducted a detailed analysis of the relevant product markets, taking into account both demand-side and supply-side substitution. Accordingly, the Board structured its analysis around three main areas: (i) the market for card data storage services, (ii) the market for virtual POS services, and (iii) the market for mobile POS ("***mPOS***") services.

- The Board held that card data storage services can be classified into B2C and B2B business models. In the B2B model, card data storage services are provided solely to a specific merchant, and the card data is stored only for that particular merchant. Conversely, in the B2C model, the stored cards can be used across all merchants that are integrated with the same service provider. The Board held that the two models are not substitutable from the demand side, as the expectations, intended uses, and service needs of merchants and consumers differ significantly. Similarly, the Board emphasized that from the supply side, transitioning from the B2B to the B2C model requires substantial investments and transformations in licensing, technical infrastructure, operational capacity, human resources, and compliance with international standards, and this renders supply-side substitution unfeasible. For these reasons, the Board concluded that the two models should be assessed as separate relevant product markets.

- In terms of the market for virtual POS services, the Board emphasized that the key issue to be considered in relation to the demand-side substitutability is whether the market for virtual POS services is competitive. The Board held that (i) the market for virtual POS services is competitive, since many banks, payment and electronic money institutions offer similar services, (ii) merchants can easily switch providers based on factors like commissions or service terms and (iii) integration is generally fast and low-cost, especially for small businesses, enabling high demand-side substitutability. Conversely, the Board stated that on the supply side, offering virtual POS services requires significant legal, technical, and financial capabilities such as PCI DSS and ISO certifications, secure infrastructure, and expert personnel compared to physical POS services. These high entry barriers limit the ability of new players to enter the market easily, thereby indicating a low supply-side substitutability. As such, the Board underlined that virtual POS services constitute a distinct relevant product market.

- The Board also assessed whether physical POS services and mPOS services are in the same product market. The Board emphasized that while mPOS services and physical POS services have some similarities from a demand-side perspective such as enabling face-to-face transactions, mPOS services differ from physical POS services in the sense that (i) they do not require a separate POS device, (ii) payments can be processed via a mobile application, (iii) they only support contactless cards, (iv) they are not suitable for shared POS use due to the inability to load applications from different banks separately, (v) they are subject to transaction limits for contactless payments, and (vi) they do not support instalment payments.

Ultimately, the Board defined the relevant product markets as (i) card data storage services market within the framework of B2B business model, (ii) virtual POS services market, and mPOS services market.

The Board defined the relevant geographic market as Turkiye, since factors such as access to supply sources, production, distribution, marketing, sales conditions, or customer preferences for the relevant markets under review do not vary significantly across regions in Turkiye.

IV. 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. The Board held that there are horizontal overlaps between Paynet's and Iyzico's activities in the markets for B2B card data storage services, virtual POS services, and mPOS services. In this context, the Board evaluated the potential risks of the transaction in terms of unilateral effects and coordinated effects, by referring to the Guidelines on the Assessment of Horizontal Mergers and Acquisitions ("***Horizontal Guidelines***").

The Board first assessed the unilateral effects of the transaction by looking into the market shares of the parties and measuring the Herfindahl Hirschman Index ("***HHI***"). For virtual POS services, market shares were calculated both including and excluding banks. While the Board noted that Iyzico is a significant player in the market, it emphasized the dynamic nature of the virtual POS services market and determined that, in the scenario where the banks are excluded, the change in HHI resulting from the transaction does not pose significant risk. In terms of the market for card storage services under the B2B model, the Board held that the merged entity's market share is actually derived from Iyzico, and Paynet has a negligible share in the market. Therefore, the Board concluded that the transaction will not result in a significant change in market concentration. Furthermore, in terms of the mPOS services market, the Board referred to paragraph 18 of the Horizontal Guidelines and stated that when the merged entity's market share is below 20%, it may be presumed that the transaction is unlikely to give rise to competitive concerns requiring an in-depth review or prohibition of the merger.

Since Iyzico is a major player in both the virtual POS services market and the B2B card data storage services market, the Board pursued a more detailed evaluation of these markets in terms of the competitors' market power, entry and expansion barriers, countervailing buyer power and market dynamics. The Board found that competitors in both these markets possess market power, and that the markets are dynamic in nature. Furthermore, given the presence of electronic money and payment institutions, the Board stated that the new market entries are likely, timely, and sufficient to eliminate the anti-competitive effects of the merger. Lasty, for the virtual POS services market, and B2B card data storage market, the Board noted that (i) the five largest buyers constitute a significant part of the parties' sales (***i.e.*** more than 40%), (ii) in spite of certain operational and financial costs, buyers are able to switch providers, and (iii) buyers are able to leverage and exercise their bargaining power. In light of this, the Board determined that there is countervailing buyer power to exert competitive pressure on the merged entity.

In terms of the coordinated effects, although the Board noted that the transaction might lead to market concentration especially in the virtual POS services market based on the HHI levels, it pointed out that the transaction will not reduce effective competition through coordinated effects in the relevant markets due to the existence of competitors that possess both the motivation and the potential to exert competitive pressure on the merged entity, the ability of virtual POS customers to work with multiple providers simultaneously, and the presence of buyer power in both the virtual POS services and B2B card storage services markets. The Board also added that in the assessment of coordinated effects, evidence of past coordination in the relevant markets is important and held that a review of past Board decisions shows no indication of collusion or coordinated behaviour in the relevant markets (***i.e.*** virtual POS services market and B2B card storage services market).

Lastly, the Board assessed other potentially affected markets and determined that although card data storage and virtual POS services may sometimes be offered together, there is no traditional input-output relationship between them, and they are complementary rather than vertically or horizontally related. In its assessment, the Board referred to paragraph 97 of the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions and emphasized that the main competition concern in conglomerate mergers is the possibility of the merged entity leveraging its market power in one market to foreclose competitors in another through tying or bundling practices. However, following a detailed analysis, the Board held that (i) numerous strong competitors exist in both the virtual POS and card data storage markets, (ii) a large portion of the markets remains open to rivals, and (iii) the presence of recent market entries in the last five years also demonstrates low entry barriers. Based on these findings, the Board concluded that the relationship between card data storage and virtual POS services would neither result in input or customer foreclosure nor lead to a restriction of effective competition through tying and bundling practices.

V. Conclusion

Considering the negligible effect on concentration in both virtual POS and B2B card data storage markets, the existence of numerous competing undertakings with significant market shares, and the dynamic nature of the markets, the Board concluded that the transaction would not significantly impede effective competition and cleared the transaction unconditionally. This decision is notable, as it contains detailed explanations and insights relating to the legislative framework of the electronic payments sector, the relevant product market definition, and the multi-pronged competitive assessment.

Bids, Bricks, and Breaches: Turkish Competition Board's Latest Decision on Bid Rigging through Price Coordination in the Refractory Industry.[11]

I. Introduction

On 28 November 2024, the Turkish Competition Board (the "***Board***") concluded the investigation concerning six undertakings active in the refractory materials sector, finding that several undertakings had engaged in bid rigging and price-fixing practices in violation of Article 4 of Law No. 4054. The case is notable for the role of the settlement and leniency mechanisms. The decision signals the Board's continued scrutiny against cartel behaviour, particularly in industrial input markets.

II. Background

The investigation was launched on 23 March 2023, following allegations that refractories manufacturers had colluded to coordinate prices and engaged in bid rigging. During on-site inspections, the Turkish Competition Authority ("***Authority***") obtained a large number of internal correspondences pointing to external communications with competitors, as well as a limited number of correspondences between competitors, indicating systematic communication regarding upcoming bids and commercial strategies.

[11] The Board's Refractory (2024) decision numbered 24-50/1133-488 and dated 28.11.2024.

Accordingly, a full-fledged investigation was launched into Piromet Pirometalurji Malzeme Refrakter Mak. San. ve Tic. AŞ ("***Piromet***"), Asmaş Ağır Sanayi Malzemeleri İmal ve Tic. AŞ ("***Asmaş***"), Kümaş Manyezit Sanayi AŞ ("***Kümaş***"), Daussan Refrakter AŞ ("***Daussan***"), Haznedar Durer Refrakter Malzemeleri San. AŞ ("***Haznedar***"), and, later, into Remsan Refrakter Malzeme San. ve Tic. AŞ ("***Remsan***").

Following the initiation of the investigation, Daussan was the first undertaking to apply for settlement and its case was concluded accordingly. Subsequently, Haznedar applied for leniency which was shortly followed by its settlement application. Haznedar's leniency application was accepted, resulting in a reduction of the fine and the investigation against Haznedar was ultimately concluded through settlement. Remsan was the other undertaking whose investigation was concluded via settlement. These processes led to different procedural and substantive outcomes for the parties.

III. Market Structure

Before delving into the assessments on the obtained documents, the decision provided detailed information on the refractory materials, which are fire-resistant building materials produced in brick form and according to the relevant standards. Previously, materials resistant to high temperatures were referred to as *fire bricks*. Later on, however, the term refractory began to be used instead. They are non-metallic inorganic materials capable of withstanding very high temperatures and aggressive chemical environments without physical or chemical change, primarily used to line equipment like furnaces and kilns in industries such as iron-steel, cement, and glass.

After providing detailed information on the refractory materials sector, the Board noted that the relevant product market may be defined as refractory materials market, which comprises specialized inputs used in high-temperature industrial processes (***e.g.*** metallurgy), in line with the previous decision of the Board[12] concerning the same market. On the other hand, the Board noted that, since the conduct under review was assessed within the scope of Article 4 of Law No. 4054, the definition of the relevant market was not decisive in the outcome and did not affect the assessment of the allegations under examination. Accordingly, the Board did not reach to a precise relevant product market definition. The relevant geographic market was defined as Turkiye.

In terms of market dynamics, the Board noted that, for buyers, beyond the suitability, quality, and performance of refractory products for their production processes, factors such as the procurement time and procedure also play a significant role in purchasing decisions and tenders. In this regard, buyers are often limited to sourcing products not from all refractory suppliers active in the market, but only from those whose offerings are compatible with their specific production needs.

On the supply side, producers make efforts to tailor their products to buyers' production processes and frequently engage in trial product sales as part of this alignment. Consequently, suppliers tend to focus their activities on providing customized solutions to meet the requirements of specific customers. Likewise, due to the diverse characteristics of refractory products available in the market, buyers are compelled to procure from particular suppliers. Moreover, even in the absence of immediate need, buyers may purchase trial products from alternative suppliers, outside their primary sources, in order to identify potential substitutes for future tenders and ensure continuity of supply.

IV. Legal Framework

For a violation of Article 4 of Law No. 4054 to occur, undertakings must be in an anticompetitive collusive relationship. This relationship may take the form of an agreement, concerted practice or a decision of an association of undertakings. The agreement does not have to be a written, legally binding or subject to sanctions for breach. On the contrary, the concept of agreement refers to any mutual understanding between the parties that prevents an undertaking from taking independent decisions. Indeed, the notion of competition requires that each undertaking acts independently in the market and does not coordinate its market conduct with that of its competitors. On the other hand, the limited contribution of an undertaking to the formation of an agreement or its failure to fully implement the agreement does not mean that it is not a party to the agreement.

Concerted practices arise where there is coordination in the conduct of undertakings even in the absence of an explicit agreement.

In its decision, the Board emphasized the distinction between "by object" and "by effect" restrictions under Turkish competition law. It noted that where an agreement is found to have the object of restricting competition, it is not necessary

[12] The Board's Refractory (2007) decision dated 29.1.2007 and numbered 07-10/63-19.

to demonstrate that the agreement has been implemented, that it has produced anticompetitive effects in the market, or that such effects can be proven. Practices such as price fixing, output restriction, and market or customer allocation are considered inherently restrictive of competition by object, and agreements containing such restrictions are presumed to restrict competition. As a result, these agreements are prohibited outright, without the need to assess their actual or potential effects on the market.

In this context, the Board referred to Article 3 of the Regulation on Active Cooperation for Detecting Cartels, which defines cartels as "*Agreements and/or concerted practices restricting competition between competitors for fixing prices; allocation of customers, providers, territories or trade channels; restricting the amount of supply or imposing quotas; and bid rigging*" to once more point out that the effects of the conduct does not carry weight in the cartel assessments.

The exchange of competitively sensitive information may also be considered as an infringement in cases where strategic information such as prices, costs, customer lists, capacity and investment plans are shared between competitors. Even if the information is shared unilaterally, a breach may occur if the other party acts on it, this is because such exchange distorts independent decision-making and reduces the future uncertainties by the behaviour of competitors.

To determine these violations, the Board relies on (i) primary evidence consisting of documents that directly establish the existence of a meeting of the minds and clearly show the parties and the scope, and/or (ii) secondary evidence which is indirect in nature and comprises communication and economic evidence. Among secondary evidence, communication evidence is considered to have the highest probative value.

V. Assessment of the Findings Obtained During On-Site Inspections

During the inspections, the Authority obtained numerous internal correspondences of investigated undertakings. As part of its review, the Board compared the statements found in the relevant correspondence with the actual outcomes of the tenders in question. Based on this analysis, the Board identified multiple instances indicating that Daussan, Asmaş and Piromet had engaged in price coordination across several tenders. For example, for a tender opened by Ekinciler Demir ve Çelik Sanayi A.Ş., the Board determined that Daussan and Piromet colluded during the bid process, by comparing the exact dates and times of the correspondences and the bids. Moreover, the Board determined another instance where, to hide the collusion, the competitors made proposals at different exchange rates in Euro and USD.

The decision also highlights cases where the Board refrained from establishing a violation despite the presence of suspicious correspondence, due to insufficient evidence in the case file to support a definitive finding. For instance, even when a communication contained remarks such as "*The pool tender hasn't been issued yet, but we can discuss that when it comes up,*" which appeared to suggest potential future coordination between competitors, the Board proceeded to examine the tundish impact pool tenders around the relevant dates. Even if the Board was able to pinpoint a specific tender where the bids were aligned at the same price level, since there no further evidence was found that indicated communication between the undertakings in question, it could not be established that there was a collusive arrangement among competitors in relation to the tender under review.

In another instance, the Board examined remarks such as "*We always agreed with Piromet in advance and took one-third each*". While the Board noted that these statements may largely align with the factual circumstances of the case (as verified against the actual bids and tender results), it also emphasized that the distribution of the tendered quantity among participating undertakings is not solely determined by the bidders themselves. Rather, the organizing undertaking may allocate the tendered quantity among participants based on considerations such as product quality, supply security, and other commercial factors. In this context, although the tender outcomes for 2021-2022 appear to show a pattern of approximate one-third distribution among Daussan, Piromet, and Asmaş, the Board concluded that the available evidence was not sufficient to definitively demonstrate that this distribution resulted from a collusive agreement among the participating undertakings.

All in all, the Board established that Daussan had reached agreements with both Piromet and Asmaş regarding the prices in the tenders. As a result, Piromet engaged in anti-competitive conduct in coordination with Daussan, thereby violating Article 4 of Law No. 4054 during the period in question. Similarly, Asmaş engaged in anti-competitive conduct in coordination with Daussan in a manner that also constitutes a violation of Article 4. Accordingly, it was determined that administrative fines should be imposed on the undertakings pursuant to the relevant provisions of Law No. 4054 and the applicable Fines Regulation.

VI. Conclusion

The Board unanimously decided to impose (i) an administrative fine of TRY 6.854.747,87 on Piromet and (ii) an administrative fine of TRY 8.316.022,13 on Asmaş for violating Article 4 of Law No. 4054, by way of a consensus on the prices to be submitted in tenders, (iii) not to impose a fine on Kümaş since there was no finding of a violation in the investigation conducted.

During the investigation, Daussan, Haznedar and Remsan submitted settlement applications pursuant to Article 5 of the Settlement Regulation and the investigation was concluded with settlement for Daussan and Remsan. Haznedar also applied for active cooperation pursuant to Article 6 of the Active Cooperation Regulation and its application was accepted. Notably, Haznedar's leniency application was shortly followed by its settlement application, and the Board decided to postpone the settlement procedure until the leniency process was concluded. Following the acceptance of the leniency application, settlement negotiations were initiated with Haznedar, resulting in the conclusion of the investigation against Haznedar through settlement. Accordingly, Haznedar obtained a fine reduction under leniency and another reduction under settlement.

The Board's Refractory (2024) decision is also significant as it underscores that a strong evidentiary basis is required to establish a violation of Article 4 of Law No. 4054, even in the case of "by object" restrictions such as cartels, which are deemed the most serious breaches of competition law and subject to severe sanctions. It further demonstrates that the Board must, and in this case did, continue to examine "by object" infringements using a comprehensive, fact-based evaluation rather than taking a purely formalistic approach driven by the presumption that practices like price fixing and market sharing are inherently anti-competitive and therefore presumed to infringe competition rules without the need for proof of actual effects. However, while proof of effects is not required for such infringements, this does not eliminate the need to prove the very existence of the infringement itself. The case illustrates this point, as not every piece of communication evidence was deemed sufficient to establish the infringement.

Considered together, the relevant instances in the decision demonstrate that the Board takes a cautious and evidence-based approach, even in cases involving conduct that is categorized as restricting "by object". The decision emphasizes that simply determining questionable language or parallel market activities is not enough to establish a violation has occurred. Instead, the Board seeks concrete and supporting evidence to determine that a violation of Article 4 of Law No. 4054 has taken place.

Dispute Resolution

High Court of Appeals Rules that Loss Exceeding the Default Interest Can Be Proven Without Concrete Evidence in Inflationary Periods

I. Introduction

In times of economic fluctuations and increased inflation, the use of default interest as an adequate remedy for delays in payment of monetary obligations has come under increasing judicial scrutiny. Turkish courts have been faced with complex questions regarding the creditor's right to seek losses exceeding the default interest, when the default interest rates fail to fully address the financial loss incurred due to the debtor's default. Recently, the 6th Civil Chamber of the High Court of Appeals rendered a noteworthy decision[13] affirming that under certain conditions, a creditor may indeed claim loss exceeding the statutory default interest when inflation significantly erodes the actual value of the receivable, and that this can be done by forecasting one's potential losses under the abstract approach.

II. Loss Exceeding the Default Interest

Pursuant to Article 122 of Law No. 6098, a debtor who is in default with respect to a monetary obligation is required to pay default interest as compensation for the creditor's loss. The creditor may claim default interest without the need to establish the existence or extent of the damage suffered, nor is it necessary to prove the debtor's fault. The debtor's lack of fault does not release them from the obligation to pay default interest.[14] The primary objective of default interest is to provide the creditor with a simplified mechanism for recovering losses resulting from delays in receiving its payment in full.

However, the default interest is not always sufficient to fully compensate the loss incurred due to delayed collection. In such a scenario, the loss exceeding the default

[13] 6th Civil Chamber of the High Court of Appeals, File no. 2024/3534, Decision no. 2025/15, dated 13.1.2025.

[14] Barlas, Nami; Para Borçlarının İfasında Borçlunun Temerrüdü ve Temerrüt Açısından Düzenlenen Genel Sonuçlar, İstanbul 1992, at 127.

interest may be sought where the creditor's loss, caused by the debtor's default in performing a monetary obligation, exceeds the amount recoverable through default interest. The loss exceeding the default interest pertains to the period between the date of default and the actual date of payment. Pursuant to Article 122 of Law No. 6098, where the creditor incurs losses in excess of the default interest amount, the debtor shall be liable to compensate such additional damage, unless they can demonstrate absence of fault. This provision grants the creditor the right to claim damages for losses exceeding the default interest; however, it also imposes an obligation on the debtor to establish their lack of fault. The creditor would still need to prove the existence of such loss, as well as the causal link between the loss and the debtor's conduct.

Since loss exceeding the default interest provides the creditor with an additional safeguard, demonstration of such additional loss is subject to a higher level of proof. In the legal doctrine and jurisprudence, different approaches have been accepted regarding the proof to be provided by creditors.

Firstly, in the concrete approach, the creditor shall prove the loss exceeding the default interest with concrete evidence. For example, the creditor can claim and prove his/her loss by demonstrating that he/she had to pay default interest due to not being able to pay debts to third parties on time, made penalty payments, or had to pay interest due to failing to fulfill obligations such as taxes or social security payments on time. On the other hand, in the abstract approach, it is enough for the creditor to demonstrate the loss through the general economic indicators such as fluctuations in value of investment instruments.

In its latest decisions, the High Court of Appeals favors the concrete approach and expects the plaintiff creditors to prove their loss exceeding the default interest by presenting concrete evidence, thereby rejecting claims that are based solely on general economic data.

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

In this case, the plaintiff initiated the lawsuit to recover its losses exceeding the default interest, together with the commercial advance (short-term) interest, since the house he had bought from the defendant was later sold due to the defendant's debts and the defendant had provided a promissory note for its debt. Although the plaintiff collected the debt amount from the defendant through enforcement proceedings, the plaintiff argued that he can no longer buy another house with these funds which were recovered 6 years after the due date.

In the proceedings before the court of first instance, the plaintiff emphasized the extent of the loss he had suffered by explaining that he would only be able to pay a couple of months' rent with the recovered amount, whereas he could have bought a house with the same amount of money, 6 years ago. However, the court of first instance evaluated these statements of the plaintiff as claim for loss of profit and decided that the plaintiff could not objectively prove he had incurred the excess loss due to the late collection; therefore, it rejected the case.

Upon the objection of the plaintiff, the Regional Court of Appeals has evaluated the case on its merits but rejected the plaintiff's appeal as well.

Ultimately, the case was evaluated by the High Court of Appeals, where the court conducted a detailed analysis of the case under the scope of the loss exceeding the default interest and the debtor's default. Considering the economic indicators (such as inflation rates in the country between the date of default and the date of collection, increase in the foreign exchange rates, increase in the gold prices, interest rates on time deposits, interest rates on government bonds, minimum wage increases and the legal interest rates in the specific time period) the High Court of Appeals concluded that it is in accordance with the ordinary course of life that the plaintiff makes an effort to protect the value of his money and make a profit and that it is natural for the plaintiff to turn to investments such as foreign currency, gold, time deposit accounts, government bonds in order to at least prevent the loss of value of the money. On the basis of the foregoing, the High Court accepted the plaintiff had incurred a loss exceeding the default interest.

In addition, the High Court of Appeals stated that the court of first instance should have determined whether the plaintiff has suffered a loss exceeding the default interest by appointing experts to create a mixed investment account of the aforementioned economic instruments, and if any, by subtracting the amount of default interest collected by the plaintiff from this exceeding amount of loss, the amount of the plaintiff's loss exceeding the default interest should be found and the plaintiff should be allowed to recover the calculated loss amount exceeding the default interest; therefore, the first instance court's decision to dismiss the case on the grounds that the plaintiff could not prove the concrete loss was not correct and should be reversed.

The decision of the High Court of Appeals emphasizes the importance of distinguishing the regular inflation periods in the country from the high inflation periods; stating that in periods of constant high inflation, the debtor's default will always cause loss to the creditor but in periods with normal levels of inflation, the value loss of the debt amount between the default and collection dates cannot demonstrate loss as a rule.

IV. Conclusion

In this decision, the High Court of Appeals has emphasized that there has been an increase in the number of cases wherein strict rules of proof are observed in assessment of loss exceeding the default interest during high inflationary periods; and in such cases, when the debtors do not pay their debts, they simply gain unjust profits by taking advantage of low default interest rates. Therefore, applying an abstract approach when assessing the losses exceeding the default interest during high inflationary periods is presented as a solution to overcome the injustice in question.

Data Protection Law

Guideline on Best Practices Regarding Protection of Personal Data in Payment and Electronic Money Sector

In recent years, Türkiye has witnessed rapid growth in electronic money (e-money) and payment services sector, driven by digital transformation, fintech innovation, and regulatory reforms. The legislator and the competent authorities supervising the sector established frameworks to ensure secure, efficient, and transparent transactions. Alongside these developments, data protection has become a central concern for the transactions related to payments and e-money as well. Accordingly, in order to guide the data controllers operating in this sector, the Turkish Data Protection Authority ("***Authority***") published the Guideline on Best Practices Regarding Protection of Personal Data in Payment and Electronic Money Sector ("***Guideline***") on April 11, 2025. The Guideline was drafted with joint efforts of the Authority and the Turkish Payment and Electronic Money Institutions Association, to provide guidance to data controllers who are operating in this sector to ensure compliance with Data Protection Law No. 6698 ("***Law No. 6698***") and establishing examples of best practices.

The Guideline provides detailed definitions on e-money and payment services with references to the relevant legislation and includes evaluations and best practice examples related to e-money issuance, money transfer services, POS services, intermediary services for bill payments and mobile payment services. The Guideline also includes definitions of prepaid instruments, anonymous prepaid instruments and digital wallets, along with exhaustive explanations and examples regarding the actors of the payment services sector.

I. Data Controllers and Data Processors

The Guideline provides a table to identify the data controllers for the related payment services provided but also notes that each specific case should be evaluated on its own.

Business Model / Service	Data Controller
E-money issuance	E-money institution
Money transfer services	Payment institutions that the sender and the recipient use
POS services	Payment institution providing the POS service Merchant itself Banks
Bill payment intermediary services	Payment institution providing the bill payment service
Mobile Payment services	Mobile operator Payment institution that works with the mobile operator Merchant

The Guideline highlights that data controllers listed in the table above, in particular the payment service providers, may from time to time also qualify as data processors depending on certain data processing activities. Likewise, representatives of payment institutions may also be considered as data processors. Therefore in order to fulfill the obligations arising from the legislation, relevant actors should conduct a careful evaluation on their status.

II. Data Subjects

The Guideline determines some of the data subjects with references to the relevant legislation. Accordingly, the data subjects whose personal data are processed by the payment services are mainly recipients, senders, users of the payment services, real person merchants, customers, real person representatives, consumers, real person users (subscribers), real person beneficiaries of e-money services etc. The Guideline again states that the data subjects should be evaluated on a case-by-case basis.

III. Data Categories

Although the Guideline maintains that other types of personal data may be processed within the said payment services, the most widely processed types of personal data have been highlighted by the Authority as the identity, contact, transaction security, customer transaction, financial, audiovisual and biometric data of individuals.

Indeed, the Guideline refers to the relevant legislation and the obligations of the service providers. Considering that provision of payment services usually require identity verifications as per the regulations pertaining to these activities, data subjects' identity and biometric information are commonly processed by the relevant actors.

IV. General Principles

The Guideline emphasizes the importance of adhering to general data processing principles as per Article 4 of Law No. 6698 for payment service providers, and ensuring that personal data is handled lawfully, fairly, and transparently. The Guideline draws attention to the necessity of limiting data collection to what is strictly necessary for the specific payment services being provided, in line with the principle of data minimization. Furthermore, the Guideline underscores the need for accuracy, data security, and accountability, reminding service providers to implement appropriate technical and organizational measures. By doing so, it reinforces the importance of safeguarding users' personal data while facilitating efficient and secure payment services. The Guideline states that the personal data processed for the provision of payment services should be retained for the relevant duration as set out by the legislation.

V. Lawful Bases for Processing

The Guideline provides numerous examples of lawful basis that the data controllers can rely on while processing personal data related to payment services. Data controllers are advised to avoid obtaining explicit consent of data processors without an actual need, when there are other lawful bases suitable for the specific data processing activity. With regard to the processing activities performed during the provision of payment services, the Guideline states that no exemplary activity was found that could rely on the lawful bases stipulated under Article 5/1/b or Article 5/1/d of Law No. 6698. These lawful bases respectively regulate the cases (i) where the processing is mandatory for protecting the life or well-being of a person who is unable to declare their consent themselves due to an actual impossibility or whose consent is not legally valid, or of someone else and (ii) where personal data is disclosed by the data subject himself.

For other lawful bases available under Article 5, the Guideline provides references to the legislation on which data controllers can rely while processing personal data. Further, for the legitimate interest bases, the Guideline sets out the criteria required for the evaluation of the legitimate interest of the service provider, in detail.

As stated above, in some cases payment service providers are required to collect special categories of personal data, such as biometric data. The Guideline again provides the lawful basis for such processing by including the provisions under the related legislations, which may constitute a basis for data controllers in this sector.

VI. Transfer of Personal Data

The Guideline includes information on obligations of the data controllers, which are payment service providers in the context of the Guideline, on sharing information with the competent authorities arising from the legislation they are subject to. Accordingly, it draws a framework for the lawful basis for transferring personal data within the country based on legal obligations. For cross-border data transfers relating to the payment services, the Guideline gives a detailed explanation of Article 9 of Law No. 6698 which was comprehensively amended in 2024. The Guideline stresses that personal data can be transferred abroad provided that the transfer is in line with Article 9 of Law No. 6698. However, it is highlighted that those who transfer personal data abroad still remain subject to the legislation governing the payment services and the relevant statutory obligations, such as retaining certain records of the transactions in their own systems shall in any case persist.

VII. Obligations of the Data Controller

The Guideline lays out the obligations attributed to data controllers under Law No. 6698 and how these should be fulfilled by payment services actors. It includes a detailed section on privacy notices, which refers to how, by whom and when the customers should be notified of the data processing activities they (and their data) are subject to.

The data controllers in payment services sector are obliged to register with the data controllers registry, manage the data subjects' rights and complaints effectively, facilitate the means to receive any questions or complaints and respond to those in accordance with Law No. 6698 and its secondary legislation, comply with the decisions of the Data Protection Board ("***Board***"), and notify the Board in case of a data breach incident. They must also act in line with data retention and destruction requirements, as most of the retention periods are already regulated under the legislation that they are subject to.

VIII. Data Security

Apart from the general principles and obligations set out in Law No. 6698, payment systems are subject to a very detailed and exhaustive set of legislation which governs the measures that the relevant actors are obliged to take. The Guideline, with a section including detailed references to these statutory provisions, sets out the additional security measures that payment service providers are subject to, along with their general obligation to protect and ensure the security of personal data pursuant to Law No. 6698.

In summary, the Authority's Guideline, which consists of a total of ninety-five pages detailing both theoretical information and practical examples, constitutes an important guide and framework for payment service providers to follow with respect to their personal data processing activities.

Internet Law

ICTA's Activity Report for 2024 and Access Ban Decisions

The Information and Communication Technologies Authority ("***ICTA***") is Turkiye's national telecommunications authority. On June 30, 2025, ICTA's Directorate of Sectoral Research and Strategy Development published its Activity Report for 2024.[15] The Report's sixth section provides extensive data on ICTA's activities for online content regulation.

An access ban decision on online content might be rendered based on certain articles of Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through such Broadcasts ("***Law No. 5651***") (***e.g.*** Contents that constitute catalogue crimes under Article 8 of the Law No. 5651, reasons concerning general public and national security under Article 8/A of the Law No. 5651 or violation of personal rights and privacy of life under Articles 9/A of the Law No. 5651). Depending on their content and nature, access ban decisions may be issued by different authorities.

The Access Providers Union ("***APU***") was established to ensure the implementation of decisions to remove and/or block access to all content outside the scope of Articles 8 and 8/A of Law No. 5651.

In addition, individuals who claim that their privacy has been violated by online content may request that access to the content be blocked under Article 9/A of Law No. 5651. ICTA and APU are the two institutions closely related to access ban decisions.

I. Activity Report for 2024

In the Activity Report for 2024 ("***Report***"), it is stated that within the framework of Law No. 5651, ICTA's efforts to combat illegal and harmful online content persist. In line with these efforts, ICTA has attended events such as Association of Internet Hotline Providers' general assembly, training and study meetings, Safer Internet Center Plus's Safer Internet Forum, The Internet Governance Forum's 19th Year Meeting and other similar events.

The breakdown of access bans imposed by ICTA as administrative measures under the catalog crimes defined in Law No. 5651, categorized by type of offense, as taken from the Report, is presented below.

Type	**Percentage (%)**
Obscenity	27,24
Procuring Venues for or Facilitating Gambling	60,15
Illegal betting	0,36
Child Sexual Abuse	0,73
Procurement of Hazardous Materials for Health	0,03
Prostitution	11,40
Narcotics and Stimulants	0,07
Crimes Committed Against Atatürk	0,01
Encouraging Suicide	0,01

[15] Available at https://www.btk.tr/duyurular/2024-yili-faaliyet-raporumuz-yayimlandi (accessed Aug 12, 2025)

Information and links related to internet regulations, statistics, and services are provided through the portal at internet.btk.gov.tr ("Portal") to the general public. The portal also features a query page where users can look up public domain identity details using a domain name or IP address. In 2024, approximately 22 million queries were made through the Portal. The Portal also includes services such as applications for violations of privacy, information on application processes for violations of personal rights, hosting provider notifications, internet complaint processes, website access status, Safe Internet Center and links to awareness-raising services.

In accordance with Law No. 5651, ICTA has fortified its efforts to ensure conscious, safe, and effective use of the internet and to raise awareness in Turkiye. In these efforts, Safe Internet Center was established in 2017, consisting of the following websites:

Güvenli Web (Safe Web) www.guvenliweb.org.tr	İnternet Yardım (Internet Help) www.internetyardim.org.tr	ihbar web (Internet Hotline) www.ihbarweb.org.tr
Güvenli Çocuk (Safe Children) www.guvenlicocuk.org.tr	Güvenli İnternet (Safe Internet) www.guvenlinet.org.tr	Dijital Oyunlar Bilgi Platformu (Digital Games Information Platform) www.guvenlioyna.org.tr

Complaints made on ihbarweb (Internet Hotline) in particular are evaluated from a technical and legal perspective within the framework of Law No. 5651 and related legislation.

In 2024 alone, more than 2 million complaints were made on ihbarweb (Internet Hotline).

Distribution of complaints evaluated in 2024, categorized by type of offense, as taken from the Report, are as follows:

Catalog Type	Number	Percentage
Encouraging Suicide	3.170	1,23
Child Sexual Abuse	4.115	1,60
Facilitating the Use of Drugs or Stimulants	1.866	0,73
Procurement of Hazardous Materials for Health	1.595	0,62
Obscenity	41.141	16,01
Prostitution	25.811	10,04
Procuring Venues for or Facilitating Gambling	53.926	20,98
Crimes Committed Against Atatürk	25.020	9,73
Illegal betting	100.383	39,06
Total	**257.027**	**100**

II. Conclusion

The ICTA's 2024 Activity Report emphasizes the Authority's ongoing commitment to combat illegal and harmful online content in accordance with Law No.

5651. Through administrative measures, collaboration with national and international stakeholders, and awareness-raising initiatives, ICTA continues to play a critical role in shaping a safer internet environment in Turkiye. The data presented reflects both the types of online threats—such as illegal betting, obscenity, and prostitution —and the response mechanisms, including the use of access bans and public reporting channels like ihbarweb. The widespread use of the internet.btk.gov.tr portal and the volume of public queries also demonstrate public engagement and reliance on ICTA's services. Moving forward, continuous improvements in legal frameworks, digital literacy, and institutional cooperation will remain essential to addressing the evolving nature of internet-related crimes.

Telecommunications Law

The Role of Big Data and Artificial Intelligence in the Electronic Communications Sector: A Regulatory Perspective from ICTA's Latest Report

The Information and Communication Technologies Authority ("***ICTA***") has recently published its *Big Data and Artificial Intelligence Research Report,*[16] offering an in-depth analysis of the transformative impact of big data and AI across various industries. The Report emphasizes that as digital transformation accelerates, the electronic communications sector (***i.e.***, the telecom industry) is becoming both a critical enabler and a regulatory concern in the age of data-driven systems. This article outlines key takeaways from the Report with a particular focus on the telecommunications landscape and the implications for legal and regulatory compliance.

I. The Expanding Role of Telecom Operators in the Data Ecosystem

ICTA emphasizes that telecom operators are no longer mere providers of connectivity; they have become key actors in the data value chain. With access to vast amounts of user-generated and system-generated data—ranging from geolocation and traffic patterns to device usage and network statistics—telecom companies have the capacity to drive innovation through advanced data analytics and AI applications.

By leveraging these capabilities, operators can enhance network efficiency, develop predictive maintenance models, deliver customized service offerings, and monitor network quality in real time. The Report notes that such data-driven operations increasingly rely on complex AI models capable of learning and evolving over time. This dynamic has positioned the telecom sector at the heart of Türkiye's broader digital transformation, particularly in light of ongoing 5G deployment and preparations for beyond-5G technologies.

However, this strategic positioning also brings with it heightened regulatory obligations and governance challenges, particularly in terms of data protection, algorithmic transparency, and ethical design.

II. Legal and Regulatory Concerns: From Data Governance to AI Accountability

While the Report does not impose binding legal rules, it signals ICTA's priorities and expectations regarding responsible digital

[16] Available at https://www.btk.gov.tr/uploads/announcements/buyuk-veri-ve-yapay-zeka-arastirma-raporu-yayimlandi/buyuk-veri-ve-yapay-zeka-arastirma-raporu.pdf (accessed at Aug 12, 2025).

innovation. One of the central legal themes is the growing need for sector-specific governance tools tailored to the telecom environment.

First and foremost, compliance with the Turkish Personal Data Protection Law No. 6698 ("***KVKK***") remains a cornerstone obligation. The large-scale processing of location, usage, and behavioural data by telecom providers requires a robust legal basis, purpose specification, and effective implementation of data minimization principles. Additionally, the retention and secondary use of metadata—such as call detail records or mobile usage logs—raise specific concerns under privacy law, especially when processed by AI systems with inferential capabilities.

The Report also draws attention to the need for algorithmic accountability. As telecom companies deploy AI models in customer profiling, network management, and service automation, they must ensure that such systems are explainable, auditable, and free from discriminatory bias. A lack of transparency in AI decision-making could expose operators to regulatory scrutiny or even legal liability if individuals are adversely affected by automated processes they cannot understand or contest.

In parallel, ICTA addresses the issue of data sovereignty. Given the strategic nature of communications infrastructure and its centrality to national security, the Report calls for careful evaluation of cross-border data transfers and the localization of critical telecom datasets. This reflects a broader policy shift toward protecting sensitive infrastructure from foreign control and ensuring regulatory oversight over data-intensive services.

III. Sector-Specific Risk-Based Regulation: The Path Forward

ICTA's report underscores the inadequacy of generic legal frameworks in addressing the specific risks posed by AI and big data in the telecom sector. Instead, it advocates for a nuanced, risk-based regulatory approach that balances innovation with oversight.

Such a framework would require telecom operators to conduct detailed risk assessments before deploying AI tools, particularly in high-impact areas like automated customer service, fraud detection, and network optimization. These assessments should be documented and made available for regulatory review. Furthermore, the integration of privacy-by-design and fairness-by-design principles into the architecture of AI systems is encouraged as a means of mitigating harm from the outset.

The Report also signals an increased interest in establishing collaborative platforms between regulators, industry, and academia to co-develop governance principles. This aligns with broader international trends, including the European Union's proposed Artificial Intelligence Act and the regulatory obligations imposed under the European Electronic Communications Code.

IV. Conclusion

The Big Data and Artificial Intelligence Research Report offers a forward-looking perspective on the convergence of data-intensive technologies and telecom infrastructure. As electronic communications services continue to evolve into intelligent, adaptive systems, legal frameworks must evolve in parallel to ensure that innovation is pursued responsibly, ethically, and in compliance with fundamental rights.

ICTA's guidance reflects a growing understanding that the telecom sector is not just a facilitator of digital services but a key determinant of how data is collected, used, and governed in the digital age. Telecom operators, in turn, must embrace their expanded role by implementing robust data governance mechanisms, ensuring transparency in AI applications, and participating actively in the formation of sector-specific regulatory models.

Accordingly, only through this proactive alignment of technology and law can the sector meet the dual challenge of enabling growth while safeguarding societal trust in the data economy.

White Collar Irregularities

Developments in White Collar Crime

I. Financial Crimes Investigation Board issues new guidelines and updates existing guidelines for suspicious transaction reporting

Pursuant to its authorities stipulated under Article 4 (3) of Law No. 5549 on the Prevention of Laundering of the Proceeds of Crime ("***Law No. 5549***") and Article 6 (1) of the General Communique with No. 13 ("***Communique***"), Financial Crimes Investigation Board ("***MASAK***") has issued new Guidelines on Suspicious Transaction Reporting ("***Guidelines***") for certain obligated parties and has revised the existing guidelines for others. [17]

In this scope, the following obligated parties have been issued with suspicious reporting guidelines for the first time: (i) notaries; (ii) lawyers; (iii) certified public accountants; (iv) independent audit firms; (v) investment partnerships; (vi) insurance and reinsurance brokers; (vii) those engaged in the purchase and sale of all kinds of land, sea, and air vehicles, including construction machinery, and intermediaries; (viii) those engaged in the purchase and sale of historical artifacts, antiques, and works of art, or auctioneers; (ix) sports clubs; (x) electronic commerce intermediary service providers.

In addition, the following obligated parties have been issued with revised guidelines: (i) those who engage in the purchase and sale of precious metals, stones and jewelry and those who act as intermediaries for such transactions; and (ii) buyers and sellers of immovable property for trading purposes and the intermediaries of such transactions.

All of the Guidelines contain similar information and state that as of June 16, 2025, suspicious transaction reporting will be performed by following the procedures and principles that are published in these Guidelines. In this scope, unless electronic submission is not feasible due to a compelling reason, suspicious transactions must be reported through the online portal operated by MASAK available at https://onlineislemler.masak.gov.tr. In order to use this portal, obligated parties must register with a user account.

According to the Guidelines, reports of suspicious transactions with a request for postponement are subject to certain additional requirements. Accordingly, reports with a request of postponement must indicate that the transaction is of an unusual nature; be supplemented with

[17] See https://masak.hmb.gov.tr/duyuru/supheli-islem-bildirim-rehberleri-ve-masak-online-2-0-sistemi-hakkinda-duyuru (Last accessed Aug 12, 2025)

findings from various databases or other sources indicating that the individuals conducting the transaction are involved or may be involved in criminal activity; or show there is a risk that completing the transaction could prevent or hinder the confiscation of funds suspected to be related to the financing of terrorism or proceeds of crime. Additionally, the Guidelines note that suspicious transaction reporting with postponement request must concern transactions that were attempted or are ongoing; and obliged parties who submit the suspicious transaction report with a postponement request must refrain from carrying out the transaction until a decision issued by the Minister of Treasury and Finance is communicated via MASAK to the obligated party.

a. Information on the Obligated Party

The Guidelines explain that report forms must contain all of the information set forth under Section 4.2 of the Guidelines which includes additional explanations on how to fill out all of the required fields in the suspicious transaction forms.

In this respect the forms consist of the following fields: name, last name, or title of the obligated party; Turkish identity number, tax number, foreigner identification number of the obligated party; Turkish identity number or foreigner identification number of the representative of the obligated party; obligated party's reference number; information on whether this is a new or additional report; if it is an additional notification, reference number of the prior notification; category of the report (one of the following options must be selected: "laundering proceeds of crime" or "financing of terrorism", or "financing of weapons of mass destruction"), and urgency level of the report (reports that are tagged with "urgent", "very urgent", and "with request of postponement of the transaction" will be evaluated as higher risk reports by MASAK).

b. Information on the Customer

In terms of real person customers, the Guidelines require certain key information be included in the report to ensure effective assessment and risk evaluation. This includes explanations on the real person's connection with the transaction; information on authenticity of their identification; full name, national identification number; tax number; nationality; mother's and father's name; address; date and place of birth; e-mail address; profession and job title; and any additional information.

For legal entity customers; Guidelines require explanations on the legal entity's connection with the suspicious transaction; authenticity of their identification documents; nature of the establishment; commercial name; business name; tax identification number; registry number; country of residence; place of residence; date of incorporation; address; field of operation; phone number; e-mail address; website information; and any additional information.

c. Information on the Suspicious Transaction

In this section, the obligor is required to provide information on the suspicious transaction or transactions involving monetary value that are deemed reportable. In this respect, information on the status of the transaction, type of transaction, date of transaction, value and amount of transaction, place of transaction and other explanations must be given. The purpose of this section is to briefly report transactions involving monetary amounts that serve as the basis for the report. Therefore, it is sufficient to provide information only on the suspicious transactions involving monetary value that were carried out by (or on behalf of) the named individuals or entities. The suspicious transaction that gives rise to the report may be a single transaction or multiple transactions carried out within a certain time frame.

d. Suspicion Category

This section of the report is used to classify the type of suspected illegal activity associated with the transaction or the individuals involved. Obligated parties must choose up to three of the relevant categories based on the available information. Specific codes are designated for cases related to money laundering, terrorist financing, or financing of weapons of mass destruction. The Guidelines include a link to a reference table for determining the appliable suspicion categories, which can be found at https://ms.hmb.gov.tr/uploads/sites/12/2024/10/SK-Kodlari.pdf.

e. Explanations on the Suspicious Transaction

This section contains detailed and specific explanations on the specific suspicious transaction. Accordingly, obligated parties must conduct all required research and investigations, and report all of the results and elements of suspicion comprehensively in the explanation section of the form. Explanations must be directly entered into the form (not in a separate document) and should be at least 300 characters long, with a maximum of 50,000 characters. Generic or repetitive texts generated by automated systems are not accepted in the form. As such, each report must include specific, case-based explanations.

f. Suspicious Transaction Codes

The Guidelines include a comprehensive list of codes for suspicious transaction types which serve as guidance for obligated parties in determining reportable incidents. However, the Guidelines state that this list is not exhaustive, but merely illustrative of the types of incidents that may be determined as suspicious. For example, providing contradictory or insufficient documents, or a reluctance in providing the requested documents for identification are deemed as suspicious transactions.

II. Law No. 7550 on the Enforcement of Penalties and Security Measures and Amending Certain Laws is Published in the Official Gazette

Law No. 7550 introduces notable amendments to the maximum and minimum penalties applicable for certain crimes in the Turkish Criminal Code with No. 5237 (“***TCC***”) and (among other statutory provisions) also stipulates changes to the enforceability of choice of law provisions in international employment contracts.[18]

a. Revised Penalties for “Threat” and “Aggravated Threat”

Prior to the amendment, TCC had not stipulated a minimum sentence for the crime of threat that involves significant financial loss or other harm, and merely stipulated that it was punishable with imprisonment for up to six months. In

[18] See https://www.resmigazete.gov.tr/eskiler/2025/06/20250604M1-1.htm (Last accessed on Aug 12, 2025)

order to address this gap, Law No. 7550 has brought a minimum penalty for this crime, as a result of which, as per Article 106 of the TCC, the crime of threat that involves significant financial loss or other harm has become punishable with a prison sentence of a minimum of two months and up to six months or a judicial monetary fine.

In the same vein, Law No. 7550 has also introduced a higher maximum time of imprisonment for the crime of aggravated threat ***i.e.***, (i) with use of a weapon, (ii) by concealing their identity, or with unsigned letter or particular symbols, (iii) jointly with more than one person, (iv) by taking advantage of the power to invoke fear derived from a criminal organization, which exists or is assumed to exist). Prior to the amendment, the maximum time of imprisonment for aggravated threat was five years. With the amendment, the maximum time has been increased to seven years. Upon the amendment becoming effective, threatening behaviour with one of the aggravating factors shall be penalized with minimum of two years and up to seven years' imprisonment.

b. Revised Penalties for "Criminal Attempt"

With Law No. 7550, Article 35 (2) of the TCC which governs minimum and maximum sentences for "criminal attempt," the minimum time for imprisonment in the alternative to aggravated life imprisonment, has been increased from thirteen (13) years to fourteen (14) years; and the maximum time for imprisonment has been increased from twenty (20) years to twenty-one (21) years. In the same manner, alternative sentences to life in prison has been increased from a minimum of nine (9) years to ten (10) years; and a maximum of fifteen (15) years to eighteen (18) years.

c. Choice of Law Provisions in Employment Law Contracts

Law No. 7550 also introduced significant amendments to the field of private international law: Article 27 of the Law on Private International Law and Procedural Law with No. 5718 now provides that even when a foreign choice of law has been stipulated in an employment contract, Turkish labor law will prevail if it grants greater protection to the employee and if the employment has a stronger connection to Turkiye. This amendment embraces the principle of prioritizing the more protective national standard in international employment matters. As a result, it prevents employers from bypassing Turkish labor safeguards by opting for more permissive foreign legal systems in their contracts.

Employment Law

Regional Court of Appeals Decides that Content of a Planner in the form of Personal Notes cannot be a Reason for Rightful Termination

I. Introduction

In modern employment relationships, the balance between the boundaries of private life and the employer's right to manage and supervise has become increasingly contentious, especially when it comes to digital content and personal records. Courts have frequently had to assess whether the employer's access to notes, digital correspondence, or personal documents such as planners or journals within the employee's private sphere can be used as evidence, or whether such access may constitute grounds for a termination based on just cause.

The decision of the İzmir Regional Court of Appeals dated April 3, 2017, numbered 2017/503 E. and 2017/414 K., determined that the termination of the employer was not based on a rightful reason, because the statements found in the plaintiff teacher's personal planner, which the dismissal was based upon, were not explicitly made public and remained a part of their private sphere. With this decision, the court established a significant criterion regarding the limits of an employer's interference with an employee's private space and how personal documents should be assessed within the context of employment law. In this regard, the decision constitutes a noteworthy precedent concerning the evidentiary value of both digital and physical records of a private nature, and their role in determining rightful grounds for termination. The reasoning adopted in this case has since been consistently reflected in judicial practice, underscoring its continued relevance in guiding the boundaries between private life and the employer's authority.

Since then, Turkish courts have consistently applied a cautious approach in similar cases, refraining from treating private notes or correspondence as grounds for immediate termination unless there is a clear act of disclosure or misconduct. This consistency demonstrates that the principles laid down in this case continue to influence practice today, particularly in the evolving context of digital communications and privacy in the workplace.

II. Background of the Dispute

The dispute stemmed from the plaintiff's allegation that her employment contract was terminated by the employer without a rightful reason.

The plaintiff alleged that she was working as a kindergarten teacher when her employment contract was terminated through a termination letter, without her defense, and this makes the termination process unlawful. Although the letter referred to a breach of ethical rules and goodwill, she claimed that the reason for termination was not clearly communicated, and no specific incident was specified. The plaintiff further alleged that her personal planner, which she used daily and had accidentally left at the workplace, was taken by the employer without her permission and read aloud in front of other employees. She was then called by phone and told not to return to work while she was on medical leave. The plaintiff argued that the notes in the planner were private and personal, that their content could not be used against her, and that the planner was unlawfully obtained, thus lacking evidentiary value.

The lawsuit was initially filed as a reinstatement claim; then, completely amended to include demands for various compensation and receivables, including, severance pay, payment in lieu of notice, unpaid salaries, overtime, annual leave, and public holiday entitlements.

The defendant, on the other hand, argued that the plaintiff's employment contract was terminated for a rightful reason, due to insulting remarks directed at the school administrator in the document she has been using as a planner. The defendant claimed that the planner was left open in the workplace, that the plaintiff failed to notify the institution about her medical leave and that the contract was terminated immediately according to Article 25/II-b of Labor Law No. 4857, ***i.e.*** behaviors that violate ethical and good faith principles. The defendant also noted that the lawsuit was initially filed as a reinstatement claim but later turned entirely into a compensation case, arguing that this procedural shift was unlawful and that the case should be dismissed on that basis.

Accordingly, the court of first instance ruled partly in favour of the plaintiff, dismissing the claims for notice pay, annual leave, and overtime compensation, while accepting the claims for severance pay, outstanding gross salaries, and gross public holiday pay. The defendant appealed this decision, and the case was subsequently reviewed by the İzmir Regional Court of Appeals.

III. Decision of the İzmir Regional Court of Appeals

In the appeal petition, the defendant argued that their workplace never employed 30 or more employees, and therefore, the lawsuit, which was initially filed as a reinstatement claim but later amended entirely into an employment-related receivables claim, should be dismissed on procedural grounds. In addition, they claimed that the plaintiff's employment contract was rightfully terminated under Article 25/II-b of Labor Law No. 4857, asserting that the insulting statements directly targeting the school administrator in the planner constitutes just cause for termination.

The court rendered its decision by evaluating the case file as a whole, including the submitted evidence, witness statements, the reasoned and detailed expert report. It was determined that the case was initially filed as a reinstatement claim and later entirely amended into a compensation claim. Regarding the planner submitted by the defendant, the court found that there was no need to examine its content to determine ownership, as the phrase "YASEMEN'S NOTEBOOK" on the back cover clearly indicated to whom it belonged.

Upon reviewing the contents of the planner, it was found that it largely consisted of notes taken by the plaintiff regarding work and students, along with some personal writings. In particular, the section dated April 8, 2015, included an insulting remark about the school administrator, which the court noted that it could constitute an insult if said directly to someone's face.

That said, since the planner was used as a personal diary and the statement therein was neither shared publicly nor made openly in the workplace, the court concluded that there was no indication that the plaintiff intended to make the remark public or direct it toward others. Furthermore, the court found that the requirement of "making statements", in the meaning set out in Article 25/II-b of the Labor Law, had not been fulfilled and that mere recording of personal notes cannot be considered to fall under this provision.

As a result, the Court had found no procedural or substantive errors in the factual or legal assessment in the decision dated December 26, 2016, and numbered 2016/63 E., 2016/714 K. of the İzmir 8th Labor Court. Therefore, the defendant's appeal was dismissed on the merits pursuant to Article 353/1-b.1 of the Code of Civil Procedure.

IV. Conclusion

In this decision, the Regional Court of Appeals emphasized that the statements in the employee's personal planner were neither public nor spoken to other people, and therefore did not constitute grounds for termination. This ruling serves as an important example of how an employee's private life and personal space should be protected and viewed within the context of employment law and highlights that materials obtained as done in this particular case cannot be shown as just cause for termination.

Intellectual Property Law

Trademark Cancellation Requests Must Now Be Filed Before the Turkish Patent and Trademark Office.

I. Introduction

The Industrial Property Law ("***IPL***") which came into force in 2017, had transferred the authority to rule in trademark cancellation actions to the Turkish Patent and Trademark Office ("***TurkPatent***") and stipulated that such claims will be evaluated by TurkPatent. However, the enforcement date of the relevant provision was postponed until January 10, 2024 and until that date, such claims continued to be evaluated by the IP courts as per previous procedural requirements.

As of January 10, 2024, the authority of the TurkPatent to handle cancellation actions entered into force. However, the exact procedure for filing such claims remained unclear until the Regulation on the Implementation of the Industrial Property Law ("***Regulation***") was amended on March 15, 2025, and Article 30/A was introduced in order to address the matter, more than a year after the date TurkPatent's authority came into force. This amendment has significantly changed the procedural steps for initiating cancellation actions. In this article, we will elaborate on these changes and outline the new procedural steps to be followed in cancellation proceedings.

II. Changes Implemented by the Amendment to the Regulation

a. Limitation on the Number of Trademarks per Cancellation Claim

Article 30/A(3) of the Regulation provides that each cancellation request may concern only one trademark, which means that it is not possible to request the cancellation of multiple trademarks through a single application. This constitutes a significant shift in practice, as it not only increases the administrative and monitoring burden, but also raises the risk of divergent outcomes in cases involving the same or similar conditions.

b. Filing a Cancellation Claim: Required Documents and Information

Article 30/A(4) of the Regulation sets out the content that must be presented within the request form. The article stipulates that the cancellation claim is now to be submitted through a cancellation request form, which shall set out the following information:

- Registration number of the trademark requested to be cancelled

- Goods and services that are subject to the cancellation request

- identity and contact details of the claimant

- identity and contact details of the attorney for the claimant, if the request is filed by an attorney

- Legal grounds for the cancellation request, by clearly referencing the relevant article, sub article and paragraph in the statutory instrument, as well as other supporting documentation and information, except in case of cancellation requests based on non-use of the subject matter trademark

- Information on payment of the relevant fee.

If any deficiencies are identified regarding the conditions for filing a cancellation request, the claimant will be granted an additional one-month period to remedy the deficiencies. If the deficiencies are not corrected within the statutory term provided, then the application is rejected and the fee paid for this purpose is not refunded.

c. Retrospective Effect of Cancellation Upon Request

As a general principle, if the request to cancel a trademark is approved, the decision would become effective as of the date of filing of the request; hence it would not be retroactive. However, Article 30/A(6) introduces a possibility for the request for cancellation to become retroactively effective, by providing an option for the applicant to request a date upon which the cancellation decision would come into effect. This will allow cancellation decisions to take effect not from the date of filing the cancellation request, but retroactively from an earlier date on which the conditions for cancellation were met.

d. Response Period in Cancellation Actions

As per Article 30/A(7), the trademark owner shall submit its responses against the cancellation request in one month. TurkPatent may also extend this time period by up to another month.

In addition to granting the right to respond to the trademark owner, TurkPatent is also entitled to request further information and/or documents from either of the parties and provide a 1-month statutory period for their submissions, in accordance with Article 30/A(8) of the Regulation.

e. Grounds for Immediate Rejection of a Cancellation Request:

Article 30/A(9) introduces the following cases wherein the cancellation request will be directly rejected by the TurkPatent:

(i) if the trademark is not registered at the time of the request for cancellation,

(ii) if the right to trademark has already expired at the time of the request for cancellation,

(iii) if the request for cancellation relies on the reason “not using the trademark”, but the trademark in question has not been registered for five years at the time of the request for cancellation.

This provision is applied to the request in which a retroactive effect of a cancellation decision is requested, taking into account the date of effectiveness requested by the applicant.

f. Proof of Use in Non-Use Cancellation Requests

As per Article 30/A(10) of the Regulation, in case a cancellation request is based on non-use of a trademark, TurkPatent will request evidence from the trademark owner demonstrating the genuine use of the trademark in Turkiye in the relevant time frame. However, the evidence pertaining to the last three months prior to the cancellation request will be disregarded by TurkPatent, if it considers that the “use” in these months have taken place in anticipation of a possible cancellation request.

It is also stipulated that a cancellation decision cannot extend to “similar goods or services,” but must be strictly limited to the specific goods and services for which the trademark has not been used.

III. Conclusion

While TurkPatent was formally vested with the authority to handle trademark cancellation requests as of January 10, 2024, the absence of a defined procedural regime prevented effective implementation. The amendments introduced on March 15, 2025, have now provided the necessary legal infrastructure, allowing TurkPatent to process such requests in line with the IPL.

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