

Current Turkish Competition Law Landscape

2026

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MERGER CONTROL

1. LEGISLATION AND JURISDICTION

1.1. Legal framework

| 1.1.1. What is the legal framework governing merger control? Which authorities enforce merger control rules?

Merger control in Türkiye is governed by Law No. 4054 on the Protection of Competition ("**Law No. 4054**"), enacted on 13 December 1994, together with communiqués issued by the Turkish Competition Authority (the "**Authority**"). Article 7 of the Law No. 4054 provides a substantive framework for merger control.

The Authority is an administratively and financially autonomous body, composed of the Turkish Competition Board (the "**Board**"), the presidency, and several service departments. Its enforcement work is carried out through six sector-specific divisions and supported by specialized units covering areas such as economic analysis, leniency, IT, external relations, audit, strategy development, public relations, and cartel/on-site investigation support. The Authority employs approximately 281 case handlers in total.

Significant legislative reforms were introduced with Law No. 7246 ("**Law No. 7246**"), which entered into force on 24 June 2020. Under Article 7, the Board is authorized to determine by communiqué which transactions must be notified to the Authority. Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("**Communiqué No. 2010/4**") , effective since 1 January 2011, is the principal secondary legislation and replaced Communiqué No. 1997/1.

Communiqué No. 2010/4 remains the core instrument for merger review in Türkiye. It sets out the scope of notifiable transactions and has introduced significant changes to the merger control regime. It has subsequently been supplemented by Communiqué No. 2021/3 on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings that do not Significantly Restrict Competition ("**Communiqué No. 2021/3**") (introducing the *de minimis* principle), Communiqué No. 2021/2 on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position ("**Communiqué No. 2021/2**") (commitments in competition investigations), and the 2021 Regulation on the Settlement Procedure.

Most recently, Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 (the "**Amendment Communiqué**") published on March 2022 and effective as of 4 May 2022, brought fundamental changes to the Turkish merger control system. In particular, it increased turnover thresholds for mandatory merger control filings and introduced exemptions for transactions involving undertakings active in certain priority sectors such as digital platforms, software, fintech, biotechnology, and health technologies.

| 1.1.2. Which transactions fall within the scope of merger control rules?

The Amendment Law revised Article 7 of the Law No. 4054 by introducing the significant impediment to effective competition ("**SIEC**") test, which closely mirrors the standard applied under the EU Merger Regulation ("**EUMR**"). Pursuant to this amendment, the Authority is empowered to prohibit not only transactions that may lead to the creation or strengthening of a dominant position, but also those that could otherwise result in a significant impediment to effective competition in the market.

The scope of notifiable transactions is set out under Article 5 of Communiqué No. 2010/4. According to this provision, transactions that fall within the notification obligation include:

- mergers between two or more undertakings; and
- acquisitions whereby one or more undertakings, or persons already controlling at least one undertaking, acquire direct or indirect control over all or part of one or more undertakings, through mechanisms such as the purchase of assets, shares (in whole or in part), agreements, or any other instruments.

However, Article 6 of Communiqué No. 2010/4 explicitly excludes certain categories of transactions from the notification obligation and, consequently, from the scope of Article 7 of the Law No. 4054. These exceptions are as follows:

- intra-group transactions, as well as other transactions that do not result in a change of control;
- the temporary acquisition of securities for the purpose of resale by undertakings whose ordinary course of business is the trading of such securities on their own behalf or on behalf of others, provided that the voting rights associated with the securities are not exercised in a manner affecting the competitive policies of the issuing undertaking;

- acquisitions carried out by public institutions or organizations under the mandate of law for purposes such as liquidation, winding up, insolvency, cessation of payments, concordat, or privatization; and
- acquisitions by way of inheritance, as envisaged under Article 5 of Communiqué No. 2010/4.

Further amendments to the Turkish merger control regime were introduced by Communiqué No. 2017/2, which modified Communiqué No. 2010/4. Among its most notable changes, Article 1 of Communiqué No. 2017/2 abolished Article 7(2) of Communiqué No. 2010/4, which had previously required the Board to re-determine the jurisdictional turnover thresholds every two years. As a result of this amendment, the Board no longer bears a statutory duty to periodically review or re-establish turnover thresholds. Accordingly, there is no longer a fixed timeline for updating the thresholds under Article 7(1) of Communiqué No. 2010/4.

In addition, Article 2 of Communiqué No. 2017/2 revised Article 9(5) of Communiqué No. 2010/4, expanding the Board's discretion to evaluate certain transactions collectively. Specifically, the Board may now treat multiple transactions realized by the same undertaking in the same relevant product market within a three-year period as a single transaction. Likewise, two separate transactions carried out between the same persons or parties within a three-year timeframe may also be assessed as a single concentration.

| 1.1.3. What types of joint ventures fall within the scope of merger control rules?

Pursuant to Article 5(3) of Communiqué No. 2010/4, joint ventures are subject to notification and the approval of the Board. For a joint venture to qualify as a concentration under merger control rules, it must be structured as a full-function joint venture and meet two cumulative conditions:

- the existence of joint control in the joint venture; and
- the establishment of the joint venture as an independent economic entity operating on a lasting basis.

In addition to these requirements, even where a joint venture meets the full-function standard, it should not have as its object or effect the restriction of competition among or between the parties and the joint venture itself. This principle derives from Article 4 of the Law No. 4054, which prohibits restrictive agreements. Where the parent undertakings of

a joint venture are active in the same market, or in upstream, downstream, or neighbouring markets as the joint venture, the arrangement may give rise to coordination between otherwise independent undertakings, thereby restricting competition within the scope of Article 4 of the Law No. 4054.

Where a joint venture is determined to be non-full-function, such joint ventures are not subject to the merger control filing obligation. Nevertheless, they may still fall under the prohibition of restrictive agreements under Article 4 of the Law No. 4054. In such circumstances, the parties may perform a self-assessment individual exemption test under Article 5 of the Law No. 4054 to determine whether the joint venture qualifies for an individual exemption. The conditions for exemption under Turkish law are very similar to, if not the same as, the EU regime. Filing for an individual exemption is not a mandatory obligation for the parties; rather, it is a procedural option available to them should they wish to seek legal certainty.

| 1.1.4. How is 'control' defined, and do non-controlling minority and other interests fall within the merger control rules?

The concept of control is defined in Article 3 of the EUMR and is similarly reflected in Turkish merger control legislation. According to Article 5(2) of Communiqué No. 2010/4, control may arise through rights, agreements, or any other means which, either individually or jointly, and whether de jure or de facto, confer the ability to exercise decisive influence over an undertaking. Such rights or agreements typically enable decisive influence by granting ownership or usage rights over all or part of the assets of an undertaking, or by conferring the ability to determine the composition or decisions of the undertaking's governing bodies.

Article 5(2) of the Communiqué further establishes a presumption of control. Accordingly, control shall be deemed acquired not only by persons or undertakings holding such rights, or entitled to them under the relevant agreements, but also by those who, despite not being formal holders of such rights, possess de facto power to exercise them.

In practice, and similar to the EU regime, any merger or acquisition that results in a change of control is subject to notification and approval by the Board. Control is broadly understood as the right to exercise decisive influence over an undertaking's strategic business decisions or its day-to-day management, whether exercised formally (de jure) or in practice (de facto). Consequently, minority or other interests that do not entail a change in control do not trigger a notification requirement.

That said, if minority interests are accompanied by veto rights or certain other rights that enable their holders to influence the management (for example, through privileged shares granting governance powers) the acquisition may be regarded as effecting a change of control (such as from sole to joint control). In such cases, the transaction may trigger a mandatory filing requirement.

1.2. Transactions subject to merger control legislation

| 1.2.1. What are the jurisdictional thresholds that trigger a notification requirement and may transactions below these thresholds nevertheless be reviewed?

Pursuant to the Amendment Communiqué, transactions are subject to mandatory notification before the Authority where at least one of the following turnover thresholds are met:

- the aggregate Turkish turnover of the transaction parties exceeds TL 750 million, and the Turkish turnover of at least two of the transaction parties each exceeds TL 250 million; or
- (i) the Turkish turnover of the transferred business or assets in acquisitions exceeds TL 250 million, and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion; or (ii) the Turkish turnover of any of the parties in the merger exceeds TL 250 million, and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion.

Furthermore, the Amendment Communiqué introduced a sector-specific threshold exemption. Under this provision, the local turnover threshold of TL 250 million does not apply to transactions where the acquired undertaking is active in, or assets relate to, the fields of digital platforms, software or gaming software, financial technology, biotechnology, pharmacology, agricultural chemicals, or health technology, if they:

- operate in the Turkish geographic market;
- carry out research and development (“R&D”) activities in the Turkish geographical market; or
- provide services to users located in Türkiye.

The Amendment Communiqué does not require a Turkish nexus in terms of the activities that trigger the threshold exemption. In other words, it is sufficient for the target company to operate in one of the specified fields anywhere in the world, provided that the target company:

- generates revenue from customers located in Türkiye;
- conducts R&D activities in Türkiye; or
- provides services to Turkish users, even in fields other than the listed ones.

The tests provided under Article 7(b) of the Law No. 4054 sets out two separate tests: Article 7(b)(i) applies exclusively to acquisition transactions (including full-function joint ventures), while Article 7(b)(ii) applies only to mergers.

If a transaction does not satisfy the applicable thresholds, it is not subject to notification. In addition, Communiqué No. 2010/4 does not require the existence of an affected market when determining whether a transaction triggers a filing obligation.

| 1.2.2. Is the filing obligation mandatory or voluntary? If mandatory, are there any exceptions to this obligation?

Once the thresholds are met, notification is mandatory under the Law No. 4054 and its secondary legislation, with no exceptions provided. The Turkish merger control regime does not recognise a *de minimis* exception or any other exemption, other than a certain type of merger in the banking sector. The Banking Law No. 5411 (“**Banking Law**”) provides that the provisions of Articles 7, 10 and 11 of the Law No. 4054 shall not be applicable on the condition that the sectorial share of the total assets of the banks subject to merger or acquisition does not exceed 20 per cent.

| 1.2.3. Are foreign-to-foreign mergers subject to notification and is there a local effects or nexus test?

Foreign-to-foreign mergers fall within the scope of the Law No. 4054 irrespective of whether the transaction parties have a Turkish nexus or generate turnover in Türkiye. In other words, the presence or absence of a Turkish nexus is not determinative for assessing whether a transaction is notifiable under the Turkish merger control regime—notification is required once the jurisdictional thresholds are met.

Furthermore, Communiqué No. 2010/4 clarifies that the existence of an “**affected market**” is not a prerequisite for determining notifiability. Nevertheless, the concept of an affected market plays an important role in the substantive competition analysis carried out by the Board and is also relevant in the preparation of the notification form.

In terms of joint venture transactions, the transaction could be subject to mandatory merger control notification in Türkiye, regardless of whether the joint venture has a Turkish nexus or generates any Turkish

turnover. In other words, whether the joint venture has a Turkish nexus or not is not relevant for the notifiability analysis under the Turkish merger control regime. Provided the joint venture is a full-function joint venture and the jurisdictional thresholds provided under Article 7 of Communiqué No. 2010/4 are triggered, the relevant transaction would be subject to mandatory merger control in Türkiye. The Board's precedents illustrate this approach as well (see *Maccaferri/Prime Synthetic* (6 March 2025, 25-09/205-104), *Hunan Yunchu/Toyota Motor/Meiwa Corporation/Minmetals* (6 March 2025, 25-09/209-107), *Terminal Investment/Barcelona Europe South Terminal, S.A.U./Terminal Catalunya S.A.* (6 February 2025, 25-04/109-62), *HIG Capital/Thoma Bravo/Comptia* (28 November 2024, 24-50/1123-481), *Sentry/Xiamen/JV* (22 August 2024, 24-34/838-357), *Warner Bros/Walt Disney/Fox/Venu Sports* (1 August 2024, 24-32/740-313)).

| 1.2.4. Are there rules concerning foreign investment, special sectors or other required approvals?

Article 9 of Communiqué No. 2010/4 supplements the general rules on turnover calculation by introducing specific methodologies applicable to financial institutions. These special rules govern the calculation of turnover for banks, financial leasing companies, factoring companies, insurance companies, etc.

In addition, Banking Law No. 5411 provides that the provisions of Articles 7, 10 and 11 of the Law No. 4054 will not apply where the sectoral share of the total assets of the banks involved in a merger or acquisition does not exceed 20 per cent. Apart from this, Turkish competition law does not establish special rules for foreign investments.

As explained under 1.2.1., the Amendment Communiqué further introduced a sector-based threshold exemption.

2. NOTIFICATION AND CLEARANCE

2.1. Procedural framework

| 2.1.1. What are the statutory deadlines for submitting a filing? Are there penalties for failure to notify, and are such penalties enforced in practice?

Deadlines for filing

Law No. 4054 does not set a specific statutory deadline for filing. However, it is critical that a notifiable transaction must not be closed prior to receiving clearance decision from the Board.

Penalties for failure to notify or closing before clearance

Where parties to a merger or acquisition that is subject to the Board's approval (i) close a notifiable transaction without the approval of the Board, or (ii) do not notify the notifiable transaction at all, an administrative monetary fine will be imposed on the acquirer in cases of acquisition, and on both merging parties in the case of a merger. This fine amounts to 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision. If this figure cannot be calculated, the turnover generated in the financial year closest to the date of the fining decision will be taken into account. Importantly, this sanction is applied irrespective of whether the Board's review on the transaction.

The minimum fine is revised annually by way of a communiqué. For 2024, the minimum fine is TL 241,043 (effective as of 1 January 2025).

Invalidity of the Transaction

Another sanction of a legal nature is stipulated in Article 7 of the Law No. 4054 and Article 10 of Communiqué No. 2010/4. Under these provisions, if a notifiable merger or acquisition is not notified to and approved by the Board, it is legally invalid, together with all its associated legal consequences.

Termination of Infringement and Interim Measures

Article 9(1) of the Law No. 4054, introduced by Law No. 7246 amending the Law No. 4054 states that, should the Board find any infringement of Article 7, it shall notify the parties concerned through a resolution of the behaviour that should be followed or avoided to establish competition, and of structural remedies, such as the transfer of certain activities, shareholdings or assets.

This provision requires the Board to first consider behavioural remedies. Only if such remedies are deemed ineffective, the Board will impose structural remedies. Undertakings are obliged to comply with structural remedies within a minimum period of six months.

Termination of Transaction and Turnover-Based Monetary Fines

Where a notifiable transaction is closed without notification and, following its substantive review, the Board concludes that the transaction significantly impedes effective competition within the meaning of Article 7, the undertakings may face fines of up to 10 per cent of their turnover generated in the financial year preceding the date of the fining decision (or, if not calculable, the closest financial year thereto).

In addition, managers or employees who played a decisive role in creating the violation may be subject to fines of up to 5 per cent of the fine imposed on the relevant undertaking.

In calculating fines, the Board takes into account a range of factors, including whether the infringement is repeated, its duration, the market power of the undertakings involved, their decisive influence in the realization of the infringement, compliance with commitments, whether the undertakings assisted the examination and the seriousness of the harm caused or likely to be caused.

Beyond monetary penalties, the Board is authorized to:

- take all necessary measures to terminate the transaction;
- remove all de facto legal consequences of unlawful conduct; and
- restore shares and assets, where possible, to the entities that owned these shares or assets before the transaction or, if such a measure is not possible, assign these to third parties and forbid participation in control of these undertakings until this assignment takes place, and take all other necessary measures in this regard.

Sanctions for Foreign-to-foreign mergers

- The foreign-to-foreign character of a transaction does not, in itself, preclude the imposition of administrative monetary fines. Sanctions may be applied both for breach of the suspension requirement and for infringements of Article 7 of the Law No. 4054, irrespective of whether the parties have a Turkish nexus, generate turnover in Türkiye, or whether an affected market exists.
- For instance, in the *Sims Metal/Fairless* (16 September 2009, 09-42/1057-269), both parties were engaged solely in exports to Türkiye. Nevertheless, the Board imposed an administrative fine on Sims Metal East LLC (the acquirer) under the first paragraph of Article 16 of the Law No. 4054, amounting to 0.1 per cent of the company's worldwide turnover in the 2009 fiscal year, on the basis that the transaction had been closed without prior approval.
- The Board has followed the same approach in several subsequent cases. In *Longsheng* (2 June 2011, 11-33/723-226), *LHRH Systems Holding/Haymarine VIC* (17 June 2010, 10-44/762-246), and *CDHA Canada Inc.* (7 July 2010, 10-49/949-332), the Board imposed

turnover-based fines for breaches of the suspension requirement in foreign-to-foreign transactions.

- Article 10 of Communiqué No. 2010/4 provides that a transaction is deemed to be realized (i.e., closed) on the date on which the change in control takes place. It remains uncertain whether this provision may eventually be interpreted by the Authority as permitting the parties to a notifiable transaction to implement a carve-out of the Turkish jurisdiction through a hold-separate arrangement.
- The Board's approach to date has been restrictive. For example, in *Total M* (20 December 2006, 06-92/1196-355) and *CDH Inc/Rnco Limited* (1 February 2007, 07-11/71-23), the Board held that the mere act of closing a transaction is sufficient to constitute a violation of the suspension requirement and to justify the imposition of fines. The Board further emphasized that a separate analysis of whether the change in control had any actual effect in Türkiye is unnecessary for establishing an infringement.

Where the information provided in the notification form is incorrect or incomplete, the filing will be deemed to have been filed only as of the date on which the information is completed and submitted in response to the Board's request.

In cases where undertakings, associations of undertakings, or their members submit incorrect or misleading information in a notification filed for merger clearance, exemption, or negative clearance, the Authority is empowered to impose an turnover-based administrative fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (or, if not calculable, the turnover from the nearest financial year) on undertakings, associations of undertakings, and their members where incorrect or misleading information is submitted.

2.1.2. Who is responsible for making the filing and is there a requirement to pay filing fees?

Under the Turkish merger control regime, a filing can be made by either jointly by the parties to the transaction or unilaterally by one of them. Where a filing is made by only one of the parties, the notifying party should inform the other party of the submission.

No filing fee is required under the Turkish merger control regime.

| 2.1.3. How long are the review periods, and is the implementation of the transaction suspended until clearance?

Following its preliminary review of a notification (Phase I), the Board will decide either to approve the transaction or to initiate an investigation (Phase II). The Board notifies the parties of its decision within 30 calendar days upon receiving a complete filing. If no notification is communicated within this period, the transaction is deemed approved through the implied approval mechanism introduced under Article 10(2) of the Law No. 4054.

The Authority is entitled to issue written information requests directed at the parties, other entities related to the transaction, or third parties such as competitors, customers, or suppliers. Any such request for additional or missing information will cut the review period, which restarts as a new 30-calendar-day period upon the submission of the requested information.

Where a notification gives rise to a Phase II investigation, the procedure transforms into a full-fledged investigation. Such investigations last up to six months. The Board may extend the review period once, for an additional period of up to six months, if necessary.

| 2.1.4. Is there a fast-track procedure available for obtaining clearance?

Neither the Law No. 4054 nor Communiqué No. 2010/4 provides for a fast-track or simplified procedure to expedite the clearance process. Other than maintaining close contact and follow-up with the case handlers assigned to the file, the notifying parties have no procedural tools available to accelerate the Authority's review.

2.2 Public takeovers

| 2.2.1. Are there any special rules governing merger control in the context of public takeover bids?

The notification procedure applicable to privatization tenders deviates from that of standard merger control filings. In this respect, the Board's Communiqué No. 1998/4 was repealed and replaced by Communiqué No. 2013/2 on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Authority for Acquisitions via Privatization to Become Legally Valid ("*Communiqué No. 2013/2*").

Pursuant to Communiqué No. 2013/2, where the turnover of the undertaking, asset, or service production unit to be privatized exceeds TL 250 million, it is mandatory to submit a pre-notification to the Authority prior to the public announcement of the tender

and to obtain the Board's opinion.

Furthermore, for acquisitions realized through privatization that are subject to pre-notification, clearance from the Board is also a mandatory condition for the transaction's legal validity. In such cases, the application should be submitted by all winning bidders after the tender has concluded but before the Privatization Administration adopts its final decision on the acquisition.

2.3 Documentation

| 2.3.1. To what extent must a filing be detailed, and what are the consequences for submitting false or incomplete information?

The Amendment Communiqué introduced a more sophisticated notification form, modelled on the European Commission's Form CO.

The Amendment Communiqué replaced the existing template with a new sample notification form designed to facilitate the submission of filings entirely through e-Devlet, Türkiye's web-based digital government platform. The revised form substantially expands the scope of information required from notifying parties. In particular, it requests detailed data on the global relevant product markets in which the parties operate, information on globally overlapping activities and market-sharing data concerning the overlapping activities, as well as data relating to supply and demand structures, import levels, potential competition, and expected efficiencies.

Where the transaction gives rise to an affected market or markets in Türkiye, the notifying parties should also provide information on import conditions, supply and demand structures, market entry conditions, potential competition, and possible efficiency gains.

The form also requires the number of supporting documents. These include executed copies (or, where applicable, current drafts together with sworn Turkish translations) of key transaction documents, annual reports, balance sheets of the parties, detailed organizational structure charts, and—if available—market research reports relevant to the affected market(s). Since each request by the Board for missing or incomplete information suspends the review period and restarts the statutory timetable, it is in the parties' best interest to provide complete, detailed, and substantiated information from the outset.

In cases where undertakings, associations of undertakings, or their members submit incorrect or misleading information in a notification filed for merger clearance, exemption, or negative clearance, the Authority is empowered to impose an administrative monetary fine. This fine is turnover-based

and set at 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (or, if not calculable, the closest financial year thereto). The fine may be imposed on natural persons or legal entities that qualify as an undertaking or as an association of undertakings, as well as the members of those associations in case incorrect or misleading information is provided by the undertakings or associations of undertakings.

3. SUBSTANTIVE ASSESSMENT

3.1. Substantive test

| 3.1.1. What substantive test is used to grant clearance?

The substantive test applied in Türkiye is the significant impediment to effective competition (SIEC) test, set out under Article 9(1) of the Law No. 4054. This standard was introduced by Law No. 7246, which amended the Law No. 4054, and it mirrors the approach adopted under the EU Merger Regulation. Under the SIEC test, the Authority is empowered to prohibit not only concentrations that may create a dominant position or strengthen an existing dominant position, but also those that, without necessarily establishing dominance, could nonetheless significantly impede effective competition in the market.

With respect to concentrations that create or strengthen a dominant position, Article 3 of the Law No. 4054 provides a statutory definition of **“dominant position.”** It is described as a position held by one or more undertakings in a given market which enables them to act independently of competitors and purchasers when determining key economic parameters, such as production volume, distribution, pricing, and supply.

The Guidelines on the Assessment of Exclusionary Conduct by Dominant Undertakings (**“Guidelines on Exclusionary Conduct”**) set out in greater detail how dominance is to be assessed. They clarify that a 40 per cent market share threshold serves only as a presumptive indicator of potential dominance and therefore it does not automatically establish a dominant position. In this regard, the Guidelines on Exclusionary Conduct note that the Board examines a wider set of market characteristics that may either amplify or mitigate the competitive significance of high market shares and concentration levels. Examples of such factors include:

- the competitors’ capacity to expand production in response to price increases;
- the merged entity’s capacity to restrict or hinder the growth of its competitors;

- the presence of countervailing buyer power; and
- the existence of potential competition or the absence of barriers to entry.

Finally, it is important to note that the application of the SIEC test does not vary by sector; it is a uniform standard across all industries subject to merger control in Türkiye.

| 3.1.2. Does a distinct substantive test apply to joint ventures?

In practice, the Board has consistently applied the full-function test when determining whether a joint venture meets the requirement of being an independent economic entity. Where the assessment shows that the transaction creates a full-function joint venture under these criteria, the Board then proceeds to evaluate the transaction under the significant impediment to effective competition (**“SIEC”**) test.

Moreover, the Turkish merger control regime contains a specific section in the notification form designed to collect information for assessing whether the joint venture is likely to result in coordination between the parties. In this regard, Article 13(III) of Communiqué No. 2010/4 provides that the Board will conduct an individual exemption review in respect of notified joint ventures which, although established as independent and economic units on a lasting basis, nonetheless have as their object or effect the restriction of competition among the parties or between the joint venture and parties. The wording of the standard notification form itself is structured to enable such an evaluation.

3.2. Theories of harm

| 3.2.1. What are the ‘theories of harm’ that the authorities will investigate?

Under the Turkish merger control regime, unilateral effects have been the predominant criterion in the Authority’s assessment of mergers and acquisitions. However, there have been exceptional cases in which the Board addressed coordinated effects under a joint dominance framework and reached its decision on that basis. A notable example is the Lesaffre/Dosu Maya (15 December 2014, 14-52/903-411). In this case, the Board assessed the acquisition of full control over Dosu Maya by Lesaffre. While the transaction did not raise concerns in the dry yeast market, the Board found that in the fresh yeast market the merger would significantly increase market concentration and alter the oligopolistic structure in a way that facilitated coordination among a few remaining players. The Board emphasized factors such as high market shares, structural characteristics of the

market (homogeneity of the product, stable demand, low buyer power, and importance of distribution networks), and barriers to entry. Consequently, the Board concluded that the transaction would give rise to joint dominance and coordinated effects leading to a significant lessening of competition.

In that case, the Board conducted an assessment of the coordinated effects likely to arise from the concentration and determined that the transaction would give rise to joint dominance in the relevant market. The Board based its conclusion on several factors, including structural links among the undertakings operating in the market, evidence of past coordination, the presence of entry barriers, the degree of market transparency, and the characteristics of demand. It ultimately concluded that the factory sales in question would enable certain undertakings to establish joint dominance, resulting in a significant lessening of competition.

The decision was subsequently appealed to the Council of State, which ruled that the Law No. 4054 prohibited only single-firm dominance and not collective dominance. On this basis, the Council of State stayed the execution of the Board's decision.

To date, no transaction has been prohibited on the grounds of vertical foreclosure or conglomerate effects, and Turkish decisional practice contains only limited discussion of these theories of harm. Nevertheless, in the *Toyota/Drive* (6 April 2017, 17-12/143-63), the Board carried out an in-depth assessment of conglomerate effects. This was a significant development, as the Board had not previously focused on conglomerate concerns, despite the fact that these were an important topic for the European Commission in the same period (see *Qualcomm/NXP and Bayer/Monsanto* (18 April 2019, 19-16/231-103)).

The transaction involved Toyota's acquisition of sole control over Drive. Although the parties argued that there was no affected market, given the absence of horizontal or vertical overlaps in Türkiye, the Board determined that the transaction would nonetheless create a conglomerate concentration, since the parties' activities were complementary and substitutable. The Board reasoned that foreclosure of competitors could occur through unilateral practices such as tying, bundling, or other exclusionary conduct, and emphasized that in assessing conglomerate effects, both the incentive and the ability to foreclose, alongside market shares, had to be carefully examined. Following its review, however, the Board concluded that the market shares of the parties and the structure of the two relevant product markets did not provide sufficient market power to enable foreclosure, and it therefore granted unconditional clearance to the transaction.

Similarly, in the *Luxottica/Essilor* (1 October 2018, 18-36/585-286), the Board examined whether Luxottica's market power in sunglasses and optical frames could be leveraged into the market for ophthalmic lenses. The Board ultimately cleared the transaction subject to structural commitments, marking another instance where conglomerate effects were considered in detail.

Overall, the introduction of the SIEC test under Article 9(1) of the Law No. 4054 by the Amendment Law has reinforced the analytical framework by enabling a more reliable assessment of both unilateral and coordinated (cooperative) effects. The test shifts the focus toward examining whether, and to what extent, effective competition would be impeded as a result of a transaction, thereby broadening the substantive standard beyond the earlier dominance-based approach.

3.3. Non-competition issues

I 3.3.1. What role do non-competition factors play in the review process?

In Türkiye, mergers and acquisitions are examined on the basis of competition law criteria, rather than public interest considerations or broader industrial policy objectives. The Authority enjoys both financial and administrative autonomy and is independent in the performance of its functions. In line with Article 20 of the Law No. 4054, no organ, authority, entity or individual may give orders or directives with the aim of influencing the final decisions of the Board.

3.4. Economic efficiencies

I 3.4.1. What role do economic efficiencies play in the review carried out by the authority?

Efficiencies arising from a concentration can be of particular significance in the Board's substantive review, especially in cases where the parties' activities overlap in Türkiye, irrespective of their combined market shares. In contrast with the previous sample notification form, the revised form introduced by the Amendment Communiqué requires parties to complete the relevant sections on efficiencies without exception. Parties can no longer omit those sections simply because their market shares in the affected markets fall below a certain level.

The Board may consider efficiencies where they act as a pro-competitive factor, contributing to improved production quality or significant cost savings. Illustrative examples include reduced product development costs through integration and decreases in procurement and production expenses.

4. REMEDIES AND ANCILLARY RESTRAINTS

4.1. Regulatory powers

| 4.1.1. Which powers may the authorities exercise to block or otherwise intervene in a transaction?

The powers of the Board during the investigation process are extensive.

Under Article 9 of Law No. 4054, if the Board determines that Articles 4, 6 or 7 have been infringed, it may adopt a decision notifying the relevant undertaking(s) or associations of undertakings of the actions to be taken or avoided in order to restore competitive conditions and reinstate the situation that existed prior to the infringement. In doing so, the Board may also express its opinion on the measures to be adopted, including behavioural or structural remedies.

Further, Article 9(1) of the Law No. 4054, as amended by Law No. 7246, establishes a remedy hierarchy: behavioural measures must be considered first, and only where these prove insufficient will the Board resort to structural remedies in addressing violations of Article 7.

Where the Board prohibits a merger or acquisition, such a transaction is deemed legally invalid, and the relevant agreements or documents are rendered unenforceable, even if the closing has already occurred without clearance. Pursuant to Article 13(5) of Communiqué No. 2010/4, authorization granted by the Board extends to restrictions that are directly related and necessary to the implementation of the transaction. The principle, however, is that the parties themselves should assess whether the restrictions envisaged in connection with the merger or acquisition go beyond what is permissible within this framework.

In addition, Articles 13(4) and 14(2) of Communiqué No. 2010/4 empower the Board to attach conditions and obligations to its authorization decisions to ensure that the commitments offered by the parties are properly implemented.

The Board also retains the right to re-examine a clearance decision at any time. If it determines that clearance was obtained through the provision of incorrect or misleading information, or where the parties fail to comply with the obligations imposed in the decision, the Board may revoke clearance, prohibit the transaction, and impose monetary sanctions.

4.2. Remedies and conditions

| 4.2.1. Can competition concerns be remedied, for instance through divestment or behavioural remedies?

The Board has the authority to grant conditional approvals to mergers and acquisitions. In such cases, the transaction may be implemented on the condition that the parties adopt the measures deemed appropriate by the Board and comply with the obligations imposed.

In practice, the parties may also submit divestment, licensing, or behavioural commitments in order to address potential competition concerns identified by the Board. The use of such commitments has been increasingly common and may either be incorporated into the transaction documents themselves or offered during the Board's review process or in the course of an investigation.

While the parties are permitted to complete the transaction prior to the full implementation of the remedies, the merger will only acquire legal validity once the remedies have been duly complied with.

| 4.2.2. What are the key requirements and time-related factors governing a divestment or other remedy?

In practice, the structure and substance of divestiture remedies may differ considerably.

The Guidelines on Remedies that are Acceptable by the Turkish Competition Authority in Merger/Acquisition Transactions ("**Guidelines on Remedies**") prescribe the procedural framework and conditions and require the notifying parties to provide detailed information on how the proposed remedies will be implemented and how they will effectively address the competition concerns identified.

Remedy proposals may be submitted to the Board during either the preliminary review stage ("**Phase I**") or the in-depth investigation stage ("**Phase II**"). While remedies may be offered in Phase I, the notification will be considered formally filed only as of the date on which the commitments are submitted.

In any event, the parties should submit a signed version of the remedies, including comprehensive details on their scope and implementation, along with a separate summary. The Guidelines on Remedies also provide a standard form listing the information and documents that should accompany a remedy submission.

| 4.2.3. What is the authority's past practice regarding the remedies in foreign-to-foreign mergers?

The Board has, on several occasions, accepted remedies or commitments, most commonly divestments, that were either proposed to or imposed by the European Commission, where such commitments were deemed sufficient to address competition law concerns in Türkiye (see *Agilent/Varian* (15

February 2010, 10-15/212-82), *Cookson/Foseco* (20 March 2008, 08-25/254-83), *Bayer/Monsanto* (8 May 2018, 18-14/261-126), *Synthomer* (6 February 2020, 20-08/90-55), *EssilorLuxottica / Hal Holding* (10 June 2021; No. 21-30/395-199), *Musei* (8 September 2022, 22-41/561-225), *Willis / Aon*, (24 February 2022, 21-35/503-246) *Harris / L3* (18 April 2019, 19-22/327-145) and *Honeywell / Civitanavi Systems* (15 August 2024, 24-33/808-342)).

4.3. Ancillary restrictions

| 4.3.1. Under what circumstances are related arrangements (ancillary restrictions) covered by the clearance decision?

The criteria for qualifying a restriction as an ancillary restraint under Turkish merger control are identical to those applied in EU competition law. Accordingly, a restriction, such as a non-compete obligation should be directly linked to and necessary for the concentration, apply only to the parties involved, and remain proportionate in scope. For example, a restriction may be deemed ancillary if its nature, geographic scope, subject matter, and duration are narrowly tailored to what is required to safeguard the legitimate interests of the parties to the notified transaction.

In this context, the Board's approval decision will be considered to extend only those restraints that are directly related and necessary to the concentration (such as non-compete, non-solicitation, and confidentiality clauses). This approach enables the parties to undertake a self-assessment of the ancillary status of their restrictions, while relieving the Board from the need to address such matters in a separate section of its decision.

However, where the ancillary restrictions do not satisfy the relevant criteria, the parties may still be exposed to scrutiny under Articles 4, 5, and 6 of the Law No. 4054, which govern restrictive agreements, exemptions, and abuse of dominance, respectively.

5. INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

5.1. Third-party involvement and rights

| 5.1.1. What role do customers and competitors play in the review process and what rights are granted to complainants?

Pursuant to Article 14 and 15 of Communiqué No. 2010/4, the Board is empowered to request information from third parties, including customers, competitors, suppliers of the parties, and other persons connected to the merger or acquisition. In addition, under

Article 11(2) of Communiqué No. 2010/4, where legislation requires the Turkish Authority to seek the opinion of another public authority, the review period is interrupted and recommences from day one.

Furthermore, third parties, such as customers, competitors, and other relevant persons, with a legitimate interest may take part in a hearing convened by the Board during the course of the investigation.

5.2. Publicity and confidentiality

| 5.2.1. How is the review process communicated to the public and what measures are in place to protect commercial information, including business secrets, from disclosure?

Communiqué No. 2010/4 puts forward a mechanism under which the Authority announces notified transactions on its official website, disclosing only the names of the undertakings concerned and their commercial activities. Accordingly, once a transaction is notified, its existence no longer confidential.

If the Board determines to hold a hearing during an investigation, hearings are, as a rule, open to the public. However, the Board may order that a hearing be conducted in private to protect public morality or trade secrets.

The protection of confidential business information is governed primarily by Article 25(4) of Law No. 4054 and Communiqué No. 2010/3 on the Regulation of the Right to Access to File and the Protection of Commercial Secrets, enacted in April 2010 ("*Communiqué No. 2010/3*"). Under this framework, the responsibility of identifying and justifying confidential information rests with the undertakings. Requests for confidentiality should be made in writing and should demonstrate why the information or documents qualify as commercial secrets. While the Board retains the discretion to evaluate confidentiality claims *ex officio*, the general presumption is that information not expressly marked and justified as confidential will be treated as non-confidential.

Final decisions of the Board are published on the Authority's website after confidential information has been redacted. Nevertheless, Article 15(2) of Communiqué No. 2010/3 provides that confidentiality requests may be disregarded if the information in question is indispensable as evidence to establish an infringement of Law No. 4054. In such circumstances, the Authority may disclose information that would otherwise qualify as trade secrets, provided that it balances public and private interests and applies the principle of proportionality.

5.3. Cross-border regulatory cooperation

| 5.3.1. To what extent does the authority engage in collaboration with antitrust authorities in other jurisdictions?

Article 43 of Decision No. 1/95 of the European Economic Community–Turkiye Association Council (*“Decision No. 1/95”*) empowers the Authority to notify and request the Directorate-General for Competition of the European Commission to adopt appropriate measures where transactions carried out within the EU adversely affect competition in Türkiye. This provision establishes reciprocal rights and obligations between the EU and Türkiye, thereby also granting the European Commission the authority to request the Authority to take measures aimed at restoring competition in relevant markets.

In practice, however, the European Commission has shown reluctance to share evidence or arguments with the Authority, even in cases where such cooperation has been explicitly requested.

Beyond the EU framework, the Authority maintains extensive cooperation with other antitrust agencies worldwide. It has entered into numerous bilateral agreements and regularly organizes training and exchange programs. Recent programs have been conducted for members of the Competition Commission of Pakistan, senior officials of the National Agency of the Kyrgyz Republic for Antimonopoly Policy and Development of Competition, officials from the Mongolian Agency for Fair Competition and Consumer Protection, and members of the competition authority in Northern Cyprus. Similar capacity-building initiatives have also been pursued in cooperation with the antitrust authorities of Azerbaijan, Uzbekistan and Ukraine under bilateral agreements.

The Authority’s website provides details of its cooperation agreements. It has signed memorandums of understanding with Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Egypt, Mongolia, Portugal, Romania, Russia, South Korea, and the Turkish Republic of Northern Cyprus. In addition, memorandums of cooperation have been concluded with Albania, Azerbaijan, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Libya, Morocco, North Macedonia, Peru, Serbia, Tunisia and Ukraine. Also, on 4 September 2024, a cooperation protocol was signed between our Authority and the Egyptian Competition Authority and on 10 September 2024, a Cooperation Protocol was signed between the Authority and the Malaysia Competition Commission.

In terms of multilateral initiatives, since 2019 the Authority has co-hosted the Istanbul Competition Forum with the United Nations Conference on Trade and Development (*“UNCTAD”*), which serves as a plat-

form for discussing key and emerging competition law issues. It also actively participates in projects of the The Organization for Economic Co-operation and Development (*“OECD”*), UNCTAD, the International Competition Network (*“ICN”*), the World Trade Organization and the World Bank. Moreover, through its collaboration with the Statistical, Economic and Social Research and Training Centre for Islamic Countries (*“SESRI”*), a body operating under the Organization of Islamic Cooperation, the Authority delivers technical assistance and training for competition agency personnel in Islamic countries that have newly enacted competition legislation.

On 23 January 2024, the Competition Council of Turkic States was established, with Kazakhstan, Kyrgyzstan, Azerbaijan, Uzbekistan, the Turkish Republic of Northern Cyprus, Hungary and Türkiye as founding members.

Between 2021 and 2024, the Authority participated in a wide range of international programs, including:

- UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy (2022, 2023 and 2024);
- OECD meetings, including the OECD Competition Committee and its Working Party No. 2 on Competition and Regulation and Working Party No. 3 on Cooperation and Enforcement (Paris, 10–14 June 2024; 4–6 December 2024), as well as the 23rd OECD Global Forum on Competition (Paris, 2–3 December 2024)
- Written contributions and interviews for the In-Depth Evaluation of the Competition Committee Report 2024, which assessed the OECD Competition Committee’s impact on competition policy and enforcement;
- GVH–OECD Regional Centre for Competition (RCC) training on Fighting Bid-Rigging in Public Procurement (Budapest, 14–16 May 2024);
- ICN Advocacy Workshop (Nairobi, 22–23 February 2024)
- The 2024 ICN Annual Conference (Saipe, Brazil, 14–17 May 2024), co-organized with CADE;
- Launch of the Balkan Competition Platform, initiated by the Authority and held in Istanbul (30 September 2024), with the participation of senior representatives from Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Kosovo, North Macedonia, Romania, Greece, and Hungary (guest of honor);
- The International Roundtable on Antimonopoly Regulation in the Digital Economy (Kazan, 9–11 April 2024, hosted by the Russian FAS)

- The Central Asia Competition Forum 2024 (Almaty, 25–26 April 2024)
- IMF Article IV Consultation meetings (Ankara, Ministry of Treasury and Finance, 6 June 2024).

As of September 2025, the Authority had not yet published its Annual Activity Report for 2025.

6. APPEAL

6.1. To what extent can decisions be appealed or subjected to judicial review?

Pursuant to Law No. 6352 on Amendments to Certain Laws for the Purpose of Enhancing Judicial Services and the Postponement of Trials and Penalties for Crimes Committed Through the Press and Publications, which entered into force on 5 July 2012, administrative sanctions imposed by the Board may be challenged before the administrative courts in Ankara. Parties seeking judicial review must file an appeal within 60 days of receiving the Board's reasoned decision. As the Board's decisions are classified as administrative acts, legal challenges must be pursued in accordance with the Administrative Procedural Law.

Under Article 27 of the Administrative Procedural Law, the filing of an administrative action does not automatically suspend the execution of the Board's decision. However, the court may, upon the plaintiff's request and with adequate justification, grant a stay of execution if (i) enforcement of the decision risks causing irreparable harm, and (ii) the decision appears highly likely to be unlawful.

Judicial review process consists of three-tier appellate system:

- Administrative courts (first instance),
- Regional courts of appeal (intermediate appellate courts), and
- The High State Court (final review).

Regional courts examines competition cases both on procedural and substantive grounds, reviewing the entire case file and issuing judgments based on the merits. Decisions of the regional courts are, in turn, subject to review by the High State Court, but only in exceptional circumstances expressly provided for under Article 46 of the Administrative Procedural Law.

6.2. What is the standard period allowed for filing an appeal or judicial review?

The period for filing an appeal to the Council of State against the final decisions of the Board is 60 days, calculated from the date of receipt of the Board's reasoned decision. Judicial review proceedings before the administrative courts in Ankara typically last between 8 and 12 months.

Once the proceedings before the administrative courts are concluded, parties may lodge an appeal against the administrative courts' decision before the regional courts of appeal. Such appeal requests should be submitted within 30 calendar days of the official service of the reasoned decision of the administrative court.

In contrast, decisions rendered in private suits are appealable before the Supreme Court of Appeals. These appeals are governed by the general procedural laws, and the appellate process generally lasts 24 to 30 months.

7. ENFORCEMENT PRACTICE, TRENDS AND FUTURE DEVELOPMENTS

7.1. How does the recent enforcement record look, and what are key concerns is the authority focusing on now?

According to the Merger and Acquisition Status Report 2024 and Annual Report of the Authority 2024, the Board reviewed 311 transactions in total. Out of these, 274 transactions were approved unconditionally, and notably, none of the notified transactions were rejected during 2024. A further 29 transactions were found to fall outside the scope of the merger control regime, either because the turnover thresholds were not met or because there was no change in control. As of the reporting date, 2 concentration remains under Phase II review.

The Authority continues to devote particular scrutiny to transactions relating to strategic sectors including infrastructure services, IT, automotive, programming and broadcasting, financial services, construction, telecommunications, and energy.

Statistical data for 2024 reveals that the IT technologies and platform services sector accounted for 71 notifications. These were followed by infrastructure services with 32 notifications. Annual sector reports published by the Authority further highlight these concentration trends.

The Authority also pays special attention to cement and aviation markets, which are consistently monitored with heightened scrutiny. A number of investigations remain ongoing in the cement sector,

and in line with its sensitivity towards construction materials markets, the Authority has investigated areas such as construction iron, aerated concrete blocks, and ready-mixed concrete, imposing fines on offenders. Given the persistent concerns over high levels of concentration, it is reasonable to anticipate close examination of notifications concerning future concentrations in construction materials markets.

A key development was the entry into force of the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position ("**Amended Regulation on Fines**"), which was entered into force on 27 December 2024, replacing the version in force since 2009. The Amended Regulation on Fines provides detailed rules on calculating monetary fines and removes the previous distinction between "**cartel**" and "**other violations**" in setting base fines. Instead, the base fine, up to 10 per cent of the undertaking's turnover, is now determined primarily by the severity of the actual or potential harm, the nature of the violation (e.g., naked or hard-core), and its duration.

7.2. What major cases, rulings and judgments took place in the past year?

Noteworthy merger control decisions of the past year are set out below:

- *VMware/Broadcom* (18 July 2024, 24-30/707-296): The Board examined Broadcom's acquisition of VMware *ex officio* under Article 11 of Law No. 4054. While it did not find any overlaps in Türkiye and cleared the transaction on substantive grounds, the Board imposed an administrative monetary fine of 0.1 per cent of Broadcom's 2023 Turkish turnover for implementing the transaction prior to clearance.
- *Kariyernet/Brotek* (4 June 2024, 24-24/556-236): The Board assessed horizontal overlaps in candidate management systems software and vertical concerns arising from Kariyer.net's online recruitment services and Brotek's software activities. To address risks of foreclosure, Kariyer.net offered behavioural commitments for three years, which were accepted, and the transaction was cleared.
- *Param/Kartek* (27 December 2024, 24-56/1241-531): The Board identified overlaps in payment infrastructure services and potential vertical concerns relating to data security and foreclosure risks. To mitigate these, Param committed to organizational and data firewalls, technical safeguards, and non-discrimination obligations. Clearance was granted subject to

these commitments.

- *Liderform/Doğan Portal* (27 June 2024, 24-27/652-271): The Board raised concerns about input foreclosure and multi-market exclusion in the horse-racing statistics and betting services sector. The parties offered commitments to maintain data and advertising services to competitors, which the Board accepted, granting conditional clearance.
- *Obilet/Biletinal* (15 August 2024, 24-33/815-345): Following the annulment of its earlier decision, the Board re-assessed Obilet's acquisition of Biletal. It found that the transaction would strengthen Obilet's dominance in bus ticketing (IMS, B2B, B2C) and posed foreclosure risks through vertical and conglomerate effects. After a comprehensive package of commitments was submitted, the Board granted conditional clearance.

DOMINANCE

1. OVERALL

1.1. Legislation

| 1.1.1. What is the legislation addressing the behaviour of dominant firms?

The primary legislation regulating the behaviour of dominant firms is Law No. 4054 on the Protection of Competition ("**Law No. 4054**"). Law No. 4054 was last substantively amended on 8 July 2020, following a more comprehensive amendment on 24 June 2020 ("**Law No. 7246**"). Under article 6 of Law No. 4054, *"any abuse on the part of one or more undertakings, individually or through joint agreements or practices, of a dominant position in a market for goods or services within the whole or part of the country is unlawful and prohibited"*. Although Article 6 does not provide a per se definition of *"abuse,"* it offers a non-exhaustive list of conduct considered abusive, following an approach similar to Article 102 of the Treaty on the Functioning of the European Union ("**TFEU**"). In this regard, abuse may consist, in particular, of:

- directly or indirectly preventing market entry or restricting competitor activity;
- directly or indirectly engaging in discriminatory conduct by applying dissimilar conditions to equivalent transactions involving similar trading parties;
- conditioning the conclusion of contracts on acceptance of resale restrictions, including bundling additional goods or services, requiring intermediaries to promote other goods or services, or setting a minimum resale price;
- leveraging financial, technological, or commercial superiority in the dominated market to distort competition in other markets; or
- restricting production, markets, or technical development to the detriment of consumers.

1.2. Definition of dominance

| 1.2.1. How is dominance articulated in the Law No. 4054 and case law? Which factors are considered in the assessment of dominance?

Under Article 3 of Law No. 4054 dominance is defined as *"the power of one or more undertakings in a certain market to determine economic param-*

eters such as price, output, supply and distribution, independently from competitors and customers". Enforcement practice shows that the Turkish Competition Board (the "**Board**") has increasingly broadened the interpretation of Article 6 by softening the *"independence from competitors and customers"* criterion. As a result, the Board has inferred dominance even in scenarios of dependence or interdependence (see *Anadolu Cam*, 8 December 2004, 04-76/980-306; *Warner Bros*, 22 March 2007, 07-19/192-63).

The Board regards a high market share as the most significant indicator of dominance. However, other elements are also taken into account, including barriers to entry (legal and economic), portfolio power, and financial strength. For instance, in *Obilet* (15 June 2023, 23-27/528-89), the Board concluded that Obilet was dominant due to its high market share combined with entry barriers. Similarly, in *Maçkolik* (20 February 2025, 25-07/170-84), Maçkolik was deemed dominant in the digital markets for live sports scores and betting-related services. The Board relied on its traffic share, brand recognition, network effects, portfolio power, and the absence of sufficient countervailing buyer power.

In the context of the merger control, the Law No. 7246 abandons the dominance test and introduces the significant impediment of effective competition ("**SIEC**") test. Consequently, this amendment may also shape how unilateral practices, abuse of dominance, are assessed.

1.3. Objective of the legislation

| 1.3.1. Is Law No. 4054 founded on economic objectives? Does the legal framework on dominance standard embody an economic rationale, or does it safeguard other interests?

Influenced by the Turkish Competition Authority (the "**Authority**")'s 2008 publication of *The Prime Objective of Turkish Competition Law Enforcement from a Law & Economics Perspective* (Dr. Gönenç Gürkaynak, Turkish Competition Authority Press, September 2007), the economic rationale is more typically described in Turkish competition law circles as *"the ultimate object of maximizing total welfare by targeting economic efficiency"*. While not directly applicable to dominance cases, more recent regulations emphasize *"consumer welfare"*, as seen in Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Approval of the Competition Board. The introduction of the SIEC test in merger control similarly reflects a stronger economic orientation. That said, the legislative history and the explanatory notes of Law No. 4054 also make explicit references to non-economic policy objectives, such as protecting small and medium-sized businesses. As a result, these objectives

continue to influence enforcement, particularly in dominance cases, alongside the economic rationale. In practice, the Board does not allow either economic or non-economic considerations to entirely prevail, instead balancing both.

1.4. Sector-specific dominance rules

| 1.4.1. Does Law No. 4054 include dominance rules tailored to specific sectors, apart from the general dominance rules?

Although Law No. 4054 does not provide for sector-specific dominance rules, certain sector regulators hold concurrent authority to identify and regulate dominance in their respective industries. For example, secondary legislation issued by the Information and Telecommunication Technologies Authority prohibits “*firms with significant market power*” from discriminating between companies seeking network access. These firms may not reject, without justification, requests for access, interconnection, or facility-sharing, and must also maintain separate accounts for costs incurred in network operation, such as energy or air conditioning. Comparable measures are found in the energy sector.

1.5. Exemptions from the dominance rules

| 1.5.1 Who falls within the scope of dominance provisions under Law No. 4054? Does the legislation allow for exemption?

The dominance rules, as well as the other provisions of Law No. 4054, apply to all entities qualifying as an “*undertaking*”. The law defines an undertaking as a single integrated economic unit capable of acting independently in the market to produce, market, or sell goods and services. Consequently, Law No. 4054 covers both individuals and corporations, as well as state-owned entities so long as they act as undertakings.

In the early years of enforcement, the Board interpreted the independence criterion narrowly and excluded state-owned undertakings from the application of Law No. 4054 (see *Sugar Factories*, 13 August 1998, 78/603-113). However, more recent practice reflects a broader interpretation that encompasses public entities and sports federations, such as in *Turkish Coal Enterprise* (19 October 2004, 04-66/949-227), *Turkish Underwater Sports Federation* (3 February 2011, 11-07/126-38), *Türk Telekom* (24 September 2014, 14-35/697-309), and *Devlet Hava Meydanları İşletmesi* (9 September 2015, 15-36/559-182). Therefore, state-owned entities are also subject to the Authority’s enforcement, pursuant to the prohibition laid down in Article 6.

1.6. Transition from non-dominant to dominant

| 1.6.1. Is the scope of Law No. 4054 limited to the behavior of the firms that already hold a dominant position?

The prohibition under Article 6 applies solely to undertakings in a dominant position. Similar to Article 102 of the TFEU, dominance itself is not prohibited; only its abuse is unlawful. Article 7, which previously centered around structural changes creating or strengthening dominance, now incorporates the SIEC test. Notably “*attempted monopolization or dominance*” is not recognized in Turkish competition law.

1.7. Collective dominance

| 1.7.1. Does Law No. 4054 address the concept of collective dominance? What is the legal framework set forth for collective dominance in the legislation and case law?

Collective dominance falls within the scope of Turkish competition law. The phrase “*any abuse on the part of one or more undertakings*” in Article 6 explicitly covers collective dominance abuses. However, Turkish precedents are limited and not yet developed enough to outline definitive conditions for finding collective dominance. The Board has, nonetheless, considered “*an economic link*” a necessary element for such findings.

Examples include *Biryay* (17 July 2000, 00-26/292-162), *Turkcell/Telsim* (9 June 2003, 03-40/432-186), *Chemical Solvents* (25 February 2021, 21-10/140-58), *Sinema TV* (18 May 2016, 16-17/299-134), and *Tuna* (19 January 2022, 22-04/58-27).

1.8. Dominant purchasers

| 1.8.1. Is Law No. 4054 applicable to dominant purchasers? Do the rules applicable to dominant suppliers differ from those applicable to dominant purchasers?

Dominant purchasers are covered by the application of Law No. 4054 provided their conduct constitutes an abuse of their dominance. In *TEB* (6 December 2016, 16-42/699-313), the Board concluded that TEB abused its dominance by entering into exclusive agreements with suppliers and obliging them to comply with exclusivity provisions, thereby excluding competitors from the market. In *Nesine* (29 February 2024, 24-11/194-78), the Board determined that Nesine had abused its dominant position by concluding an exclusive agreement for the purchase of advertisement services with one of the largest live match broadcasting platforms, which prevented competitors from accessing those services. Similarly, in *Ferero* (7 March 2023, 24-12/213-87), the Board found

that Ferrero's procurement practices, namely, increasing the purchase of shelled nuts while reducing the purchase of unshelled nuts, restricted competitors' access to the market and distorted competition.

1.9. Market definition and share-based dominance thresholds

- | 1.9.1. What is the legal framework for defining the relevant product and geographic markets? Does the legal framework set market-share benchmarks at which dominance is presumed or excluded?

Market definition follows the same test as in merger control. The Guidelines on the Definition of the Relevant Market ("**Guidelines**") aim to clarify the method and the decision-making criteria of the Board in order to define the market. The Guidelines align with the Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law (97/C 372/03) and are applicable in the context of merger control and dominance. The Guidelines consider demand-side substitution as the primary factor in defining the market, and supply-side substitution and potential competition as secondary factors.

While designed for merger control, Guidelines on the Assessment of Horizontal Mergers and Acquisitions acknowledges that market shares exceeding 50 per cent may signal dominance. For collective dominance, the combined market shares of the parties may be considered. In addition, the Guidelines on the Assessment of Exclusionary Conduct by Dominant Undertakings ("**Guidelines on Exclusionary Conduct**") and the Board's case law has consistently established that undertakings with a market share below 40 per cent are unlikely to be dominant. Examples include *Mediamarkt* (12 May 2010, 10-36/575-205), *Pepsi Cola* (5 August 2010, 10-52/956-335), *Egetek* (30 September 2010, 10-62/1286-487), *Unmaş* (20 May 2021, 21-26/324-150), *D-Market* (15 April 2021, 21-22/266-116), *Aort* (4 February 2021, 21-06/70-31), *Kar Porselen* (7 December 2023, 23-56/1108-391), *Align* (7 December 2023, 23-56/1119-397), *Obilet* (15 August 2024, 24-33/815-345), *Google Advertising Technologies* (12 December 2024, 24-53/1180-509), and *Microsoft* (12 December 2024, 24-53/1166-502).

The Board and the Guidelines on Exclusionary Conduct stress that market shares remain the main, but not the sole, benchmark for dominance. Other relevant elements include barriers to entry, market structure, the position of competitors, and overall market dynamics. Undertakings may rebut presumptions of dominance by showing that they lack the ability to act independently of market parameters, and economic or market studies may serve as significant evidence

in this respect.

2. ABUSE OF DOMINANCE

2.1. Definition of abuse of dominance

- | 2.1.1. How does Law No. 4054 define and determine abuse of dominance? What conduct is subject to a per se prohibition?

Law No. 4054 does not expressly define abuse; instead, it provides a non-exhaustive list of examples. However, paragraph 22 of the Guidelines on Exclusionary Conduct defines abuse as conduct whereby a dominant undertaking exploits its market power in a way that directly or indirectly reduces consumer welfare. Moreover, Article 2 of Law No. 4054 endorses an effects-based approach, meaning that the decisive element in determining whether a practice constitutes abuse is its effect on the market, regardless of the specific type of conduct. Consistently, paragraph 24 of the Guidelines on Exclusionary Conduct provides that in evaluating exclusionary conduct, both the conditions surrounding the conduct and its actual or potential effects on the market should be considered.

2.2. Exploitative and exclusionary practices

- | 2.2.1. Are both exploitative and exclusionary conduct encompassed by the concept of abuse?

The concept of abuse extends to both exploitative and exclusionary practices. It also encompasses discriminatory conduct.

2.3. Link between dominance and abuse

- | 2.3.1. What link must be demonstrated between dominance and abuse? Can conduct by an undertaking that is dominant in one market be considered abusive if it takes places in a different, but related or adjacent, market?

In principle, the finding of abuse must rest on a causal link between dominance and abuse. This was underlined in *Meta* (20 October 2022, 22-48/706-299), where the Board held that establishing abuse requires a demonstrable connection between the abusive conduct and the dominant position, either explicitly or implicitly. The Board, however, has not yet adopted a strict causality test. In some cases, it has relied on the same circumstantial evidence that was used to establish dominance to infer abuse.

Article 6 also prohibits abusive conduct in markets distinct from the one in which dominance exists. For instance, the Board found undertakings to have in-

fringed Article 6 by engaging in abusive behaviour in neighbouring markets, as in *Google Shopping* (13 February 2020, 20-10/119-69), *Google Android* (19 September 2018, 18-33/555-273), *Volkan Metro* (2 December 2013, 13-67/928-390), *Türkiye Denizcilik İşletmeleri* (24 June 2010, 10-45/801-264), *Türk Telekom* (2 October 2002, 02-60/755-305), and *Turkcell* (20 July 2001, 01-35/347-95).

2.4. Defenses

| 2.4.1. Which defenses may be relied on against the allegations of abuse of dominance? May defenses be invoked once exclusionary intent is demonstrated?

Whether a defense is available or successful relies on the factual context of each case. According to Paragraph 30 of the Guidelines on Exclusionary Conduct, the Board will take into account arguments from dominant undertakings that their conduct are justified on the grounds of “*objective necessity*” and “*efficiency*”, or both. Efficiency gains may be relied on if the pro-competitive benefits demonstrably outweigh the anti-competitive effects.

Regarding the availability of defenses in cases where exclusionary intent is established, objective justifications – such as “*objective necessity*”, “*efficiency*” or both – may still be raised. Paragraph 24 of the Guidelines on Exclusionary Conduct specifies that when assessing exclusionary conduct, both the specific features of the conduct and its actual or potential market effects should be considered. Therefore, an actual or potential impact on the relevant market should be established in order to conclude that an undertaking has engaged in abuse.

3. SPECIFIC FORMS OF ABUSE

3.1. Types of conduct

| 3.1.1. Rebate schemes

Although rebate schemes are not directly set out under Article 6 as a specific category of abuse, such schemes may nonetheless amount to abuse. In *Turkcell* (23 December 2009, 09-60/1490-379), the Board held that Turkcell abused its dominance by, among other things, employing incremental rebate schemes to incentivize use of the Turkcell logo and by withholding rebates from buyers cooperating with rivals. A comparable stance was taken toward both retroactive and incremental schemes in *Doğan Media Group* (30 March 2011, 11-18/341-103), where the Board found abuse through rebate practices. The Board reached a similar conclusion regarding *Luxottica* (23 February 2017, 17-08/99-42), addressing unit and

retroactive discounts, and determined in *Unilever* (18 March 2021, 21-15/190-80) that rebate mechanisms in industrial ice cream resulted in de facto exclusivity and thus abuse. In *Ortadoğu Antalya Liman İşletmeleri* (3 March 2022, 22-11/169-68), the Board again identified de facto exclusivity created via rebates in container stuffing services and found a violation of Article 6. The Board’s initial decision on Mey İçki’s behaviour in the vodka and gin market was annulled by the administrative court. On review, the Board determined that Mey İçki had abused its dominance by using retroactive rebate schemes, which it classified as exclusionary practices (11 June 2020, 20-28/349-163). This assessment echoed an earlier finding on exclusivity-enhancing rebates applied by the same undertaking in the rakı market (12 June 2014, 14-21/410-178).

| 3.1.2. Tying and bundling

Article 6 lists tying and bundling as a specific category of abuse. While the Board has evaluated numerous tying, bundling, and leveraging allegations, the Board has occasionally issued fines based on tying and leveraging (see *Google Android*, 19 September 2018, 18-33/555-273; *Google Shopping*, 13 February 2020, 20-10/119-69). In *Google Android*, the Board determined that Google leveraged dominance in licensable smart mobile operating systems and abused its position by tying search and app store services, engaging in exclusivity, and obstructing manufacturers’ use of alternatives, both in that market and in related markets. In *Google Shopping*, the Board found that Google exploited dominance in general search to prioritize its own product in comparison-shopping services. In some instances, the Board has imposed behavioural remedies without fines to prevent tying/leveraging, as in *TTNET-ADSL* (18 February 2009, 09-07/127-38). More recently, in *Obilet* (15 June 2023, 23-27/521-177), the Board indicated that de facto tying between ticketing software and B2C ticket sales could infringe Article 6 and made commitments binding. A similar commitment-based resolution was adopted in *Meta (Instagram–Threads)* (23 November 2024, 24-45/1053-450), where the Board assessed Meta’s tying of its newly launched Threads platform to Instagram and found that such conduct, including cross-platform data integration, could raise exclusionary concerns. After imposing interim measures and issuing daily fines for non-compliance, the Board accepted Meta’s commitments to cease the tying of Threads to Instagram and terminate data sharing between the services.

In *Google Advertising Technologies* (12 December 2024, 24-53/1180-509), the Board examined tying and self-preferencing allegations in the programmatic advertising sector. The Board found that Google

violated Article 6 of Law No. 4054 by way of providing an unfair advantage to its own supply side platform (“SSP”) by relying on its dominant position in the market for publisher ad server services and the relevant self-favouring conduct is of the nature that hinders the activities of its competitors. As a result, the Board (i) imposed a monetary fine on Google and (ii) obliged Google to apply conditions to third-party supply-side platforms (third-party SSPs) that are no less favorable than the conditions that Google applies to its own service, in order to stop the violation and maintain effective competition in the market.

I 3.1.3 Exclusive dealing

Exclusive dealing typically falls under Article 4 of Law No. 4054, which covers agreements, concerted practices, and decisions of trade associations. That being said, exclusive dealing practices may also be examined under Article 6. The Board has, in fact, previously identified Article 6 infringements arising from exclusive dealing practices (see *Karboğaz*, 1 December 2005, 05-80/1106-317).

In relation to single branding obligations, the Board, in *Unilever* (18 March 2021, 21-15/190-80), reviewed rebate schemes in the industrial ice cream market and found that they resulted in de facto exclusivity.

Furthermore, in *Trakya Cam*, the Board examined whether the de facto implementation of an exclusive dealership system by Trakya Cam infringed Articles 4 and 6 of Law No. 4054. While the Board declined to grant an individual exemption to Trakya Cam’s dealership system (Trakya Cam I, 2 December 2015, 15-42/704-258), it later found that Trakya Cam’s practices constituted an abuse of dominance (Trakya Cam II, 14 December 2017, 17-41/641-280).

Tadım Gıda (7 July 2022, 22-72/505-202) is another decision in which the Board evaluated discounting practices and booth placement conditions and found that they create de facto exclusivity or loyalty inducing by limiting the visibility and accessibility of competing products. The investigation was concluded without a finding of infringement following the Board’s acceptance of a comprehensive commitment package submitted by Tadım. The commitments included refraining from granting bonuses or retroactive rebates conditional upon exclusivity, avoiding exclusive supply arrangements in the traditional channel, and ensuring that no financial advantage would be tied to the imposition of non-compete obligations or to minimum purchase thresholds exceeding 60% of the buyer’s annual procurement in the previous year.

In *EssilorLuxotica* (17 August 2023, 23-39/749-259), the Board imposed an administrative fine on the undertaking for breaching binding commitments set out in a previous decision dated 1 October 2018.

Additionally, the Board found that the bundling of ophthalmic lenses and optical machinery led to de facto exclusivity and constituted an abuse of dominance in both the ophthalmic lens wholesale and optical equipment markets. However, the Board refrained from issuing a separate fine for the Article 6 violation, invoking the *ne bis in idem* principle.

In *Storytel* (30 November 2023, 23-55/1076-380), the Board’s assessment centered on the long-term exclusive agreements Storytel concluded with publishers, in light of the allegations that such agreements restricted market entry and expansion of rival audiobook platforms. During the ongoing investigation process, the Board accepted Storytel’s commitments, thereby addressing the competitive concerns and terminating the proceedings without finding an infringement.

Most recently, in *Nesine* (29 February 2024, 24-11/194-78), the Board found that the undertaking had entered into long-term exclusivity agreements, including an exclusive arrangement for the purchase of advertising services with one of the major live match broadcasting platforms, thereby abusing its dominant position in the fixed-odds betting games market. These practices were deemed to hinder competitors’ access to advertising, sponsorship, and broadcasting opportunities. While the investigation was ongoing, the Board applied interim measures to cease the application of such exclusivity clauses, and upon concluding the investigation, imposed an administrative monetary fine on the undertaking.

I 3.1.4. Predatory pricing

While the Board has, in many instances, recognized that predatory pricing may amount to an abusive practice (see *TTNet* (11 July 2007, 07-59/676-235); *Denizcilik İşletmeleri* (12 October 2006, 06-74/959-278); *Coca-Cola* (23 January 2004, 04-07/75-18); *Türk Telekom/TTNet* (19 November 2008, 08-65/1055-411); *Trakya Cam* (17 November 2011, 11-57/1477-533); *Tüpraş* (17 January 2014, 14-03/60-24); *THY* (30 December 2011, 11-65/1692-599); and *UN Ro-Ro* (1 October 2012, 12-47/1413-474)), the Board frequently rejects complaints of this nature, reflecting its reluctance to micromanage pricing conduct. This approach was illustrated in the Board’s *Sony Eurasia* (7 February 2019, 19-06/47-16) decision where the Board held that short-term below-cost pricing strategy did not, in itself, suffice to establish a violation of Article 6 (see also *BİM* (27 June 2008, 08-41/568-216), *Migros* (25 February 2010, 10-19/241-95)).

When reviewing allegations of predatory pricing, the Board’s main consideration is whether the pricing conduct results in market foreclosure for competitors. The Board’s Guidelines on Exclusionary Conduct and precedents of the Board do not require

the evidence of recoupment as a precondition for establishing a violation. In principle, the Board considers that predatory pricing may be found where the following criteria are met (see *Kale Kilit* (6 December 2012, 12-62/1633-598):

- the undertaking holds a financial advantage over its competitors;
- prices are set at an abnormally low level;
- the conduct is aimed at excluding competitors from the market; and
- the undertaking is prepared to bear short-term losses with the expectation of long-term profits.

In evaluating exclusionary effects, the Board frequently employs the **“as-efficient competitor test”** (**“AECT”**) to assess whether predatory pricing could result in the exclusion of competitors from the market. Under this framework, if an equally efficient competitor is deemed capable of remaining in the market despite the predatory pricing strategy pursued by the dominant undertaking, the Board is unlikely to step in, as such pricing would not be considered harmful to effective competition or consumer welfare (see *Port Akdeniz* (03.03.2022, 22-11/169-68); *Çiçek Sepeti* (8 March 2018, 18-07/111-58)). However, if the Board determines that the dominant undertaking’s pricing conduct has the potential to drive equally efficient competitors out of the market, it will reflect this in its overall anticompetitive foreclosure analysis, considering remaining quantitative and qualitative evidence. In particular, the pricing strategies of the undertaking may be deemed exclusionary if as-efficient competitors are unable to implement effective counter-measures for the targeted segment of the customer’s demand without engaging in below-cost pricing. While the Board may, in certain cases, consider the impact of below-cost pricing on less efficient competitors (see *UN Ro-Ro* (1 October 2012, 12-47/1413-474)), such considerations are exceptional. The general preference remains for relying on the AECT, which helps avoiding over-enforcement and the risk of chilling legitimate price competition (see *Türk Telekom* (3 May 2016, 16-15/254-109)). This reflects the Board’s effects-based approach to predatory pricing, grounded in preserving competitive market dynamics while ensuring that pricing strategies do not lead to exclusionary outcomes.

| 3.1.5. Price or margin squeezes

Under Turkish competition law, price squeezing may constitute an abusive conduct, leading to the imposition of fines. The Board examines such allegations with particular rigor as illustrated in its decisions (see *Şişecam* (21 October 2021, 21-51/712-354); *Türk Telekom* (19 October 2004, 04-66/956-232);

TTNet (11 July 2007, 07-59/676-235); *Doğan Dağıtım* (9 October 2007, 07-78/962-364); *Türk Telekom/TTNet* (19 November 2008, 08-65/1055-411); *Türk Telekomünikasyon AŞ* (3 May 2016, 16-15/254-109)). In determining whether price squeezing constitutes abusive conduct, the Guidelines on Exclusionary Conduct highlight four elements: (i) the presence of a vertically integrated undertaking operating both upstream and downstream markets; (ii) an upstream input that is indispensable for downstream competition; (iii) the undertaking’s dominance in the upstream market; and (iv) a margin between upstream and downstream prices so limited that even an equally efficient competitor could not achieve sustainable profitability.

| 3.1.6. Refusals to deal and denied access to essential facilities

Among the frequently observed types of abuse are refusals to deal and denied access to essential facilities, both of which the Board has examined on numerous occasions (see *Eti Holding*, (21 December 2000, 00-50/533-295); *POAŞ* (20 November 2001, 01-56/554-130); *Ak-Kim* (4 December 2003, 03-76/925-389); *Çukurova Elektrik* (10 November 2003, 03-72/874-373); *BOTAŞ* (27 April 2017, 17-14/207-85); *Sanofi* (29 March 2018, 18-09/156-76); *Lüleburgaz* (7 September 2017, 17-28/477-205); *Akdeniz/CK Akdeniz Elektrik* (20 February 2018, 18-06/101-52) *Enerjisa* (8 August 2018, 18-27/461-224); *Aydem/Gediz* (1 October 2018, 18-36/583-284); *MDF/Chipboard* (1 April 2021, 21-18/229-96); *D-Market* (15 April 2021, 21-22/266-116); *İsttelkom* (11 April 2019, 19-15/214-94)). A particularly notable case is the Board’s *Varinak* (19 December 2019, 19-45/768-330) decision in which the Board held that Varinak, which was in a dominant position in the market for maintenance and repair of linear accelerator devices as well as treatment control devices, had abused its dominant position by refusing to grant access to training certifications necessary for competing undertakings to provide such services, thereby foreclosing effective competition in the market. A similar decision was reached in *Medsantek* (28 March 2019, 19-13/182-80) where the Board concluded that the undertaking engaged in exclusionary practices by denying access to critical inputs in the sequence analysis devices market.

The Board also reviews whether the refusal is grounded on an objective justification (*Türk Telekom* (27 February 2020, 20-12/153-83)). Moreover, the Board has generally declined to uphold refusal to supply allegations concerning supplier/reseller relations on the basis that there was no meaningful competition between a supplier and a reseller (*Allergan* (8 September 2022, 22-41/594-248); *Novartis* (11

April 2019, 19-15/215-95); and *Baymak* (6 September 2018, 18-30/523-259)).

| 3.1.7. Predatory product design or failure to disclose new technology

While Article 6 of Law No. 4054 provides an illustrative list of abusive practices, it is non-exhaustive, and other forms of conduct may be considered abusive under this provision. In practice, though, the Board's enforcement record indicates that no administrative fines have been imposed in relation to other potential forms of abuse, such as strategic capacity construction, predatory product design or process innovation, failure to disclose new technology, predatory advertising, or excessive product differentiation.

| 3.1.8. Price discrimination

Both price and non-price discrimination may fall within Article 6. The Board has condemned discriminatory pricing (see *TTAŞ* (2 October 2002, 02-60/755-305); *Türk Telekom/TTNet*, (19 November 2008, 08-65/1055-411); *MEDAŞ* (2 March 2016, 16-07/134-60); *Türk Telekom*, (9 June 2016, 16-20/326-146)) and discriminatory trading conditions (see *Krea* (14 September 2023, 23-43/826-292)).

| 3.1.9. Exploitative prices or terms of supply

Although Article 6 of Law No. 4054 does not expressly mention exploitative pricing or supply terms, such conduct may nevertheless fall within the scope of Article 6. The Board has previously found that excessive or exploitative pricing by dominant undertakings may amount to an infringement (see *Port Akdeniz* (5 November 2020, 20-48/666-291); *Sahibinden* (1 October 2018, 18-36/584-285 and 13 July 2023, 23-31/604-204); *Tüpraş* (17 January 2014, 14-03/60-24); *TTAŞ* (2 October 2002, 02-60/755-305); *Belko* (9 April 2001, 01-17/150-39); *Soda* (20 April 2016, 16-14/205-89); *DFDS* (26 July 2023, 23-34/642-215) (no full investigation in *Soda* and *DFDS*)). Nonetheless, many complaints on these grounds fail given the Authority's unwillingness to intervene excessively in pricing strategies. In addition, the Board's excessive pricing finding against *Sahibinden* was quashed by Ankara 6th Administrative Court (18 December 2019, E. 2019/946, K. 2019/2625), a ruling upheld by the 8th Administrative Chamber of Ankara Regional Administrative Court (20 January 2021, E. 2020/699, K. 2021/68), on the basis that the standard of proof had not been met. The court underlined that intervention in pricing is an exceptional measure.

| 3.1.10. Abuse of administrative or government process

Although the Board has not yet issued an infringement decision based on abuse of a governmental or regulatory process, and the matter has not been

formally raised before the Authority to date, there appears to be no apparent reason to such conduct being found to violate Article 6, provided that sufficient evidence is presented to substantiate the abuse.

| 3.1.11. Mergers and acquisitions as exclusionary practices

While mergers and acquisitions are normally assessed under the merger control regime set out in Article 7 of Law No. 4054, the Board has, albeit in exceptional cases identified structural abuses whereby dominant undertakings have relied on joint venture arrangements as a means of excluding competitors. Such conduct has been held to constitute a breach of Article 6, as exemplified in the *Biryay I* decision (17 July 2000, 00-26/292-162).

Similarly, in *Trakya Cam* (9 February 2015, 15-08/110-46), the Board launched an investigation into *Trakya Cam* whether the dominant flat glass producer's acquisition of its main competitor's assets amounted to an abuse of dominance through structural foreclosure. The Board concluded that no violation had occurred due to insufficient evidence of anticompetitive effects.

| 3.1.12. Other abuses

Because Article 6 is non-exhaustive, additional conduct may be categorized as abuse. That said, the enforcement record indicates that the Board has not imposed fines for allegations such as strategic capacity construction, predatory product design or process innovation, failure to disclose new technology, predatory advertising, or excessive product differentiation.

4. ENFORCEMENT

4.1. Enforcement authorities

| 4.1.1. Is there a separate enforcement authority investigating abuse of dominance rules?

Yes. The enforcement of competition law in Türkiye is entrusted to the Authority, an independent legal entity with administrative and financial autonomy. The Authority is composed of the Board, the presidency, and various service departments. Six divisions with sector-specific allocations carry out enforcement functions, supported by approximately 288 case handlers. Additional units, such as economic analysis and research department; decisions unit; information management unit; external relations and competition advocacy department; management services unit; cartel and on-site inspections support unit; and strategy development unit and a regional

office in İstanbul, assist the technical divisions and the presidency in their tasks. The Board, as the decision-making body of the Authority, consists of seven members, and is also competent to investigate and sanction abuses of dominance.

The Board is vested with extensive investigative powers. It may request any information it deems necessary from public institutions and organizations, undertakings, and trade associations. All addressees are legally obliged to comply within the timeframe specified by the Board. A failure to comply with an order to provide information, or a failure to meet the deadline, may result in an administrative monetary fine of 0.1 per cent of the turnover generated in the financial year preceding the decision. If such turnover is not calculable, the turnover from the nearest financial year is taken into account. The same penalty may be imposed where incorrect or misleading information is provided. For 2025, the minimum administrative monetary fine amounts to 241,043 Turkish liras (effective as of 1 January 2025).

Article 15 of Law No. 4054 authorizes the Board to conduct on-site inspections. Within this framework, the Board may examine the books, all types of data and documents of undertakings and associations of undertakings kept on physical or electronic media and in information systems, and take copies and physical samples thereof. It may also request written or oral statements on specific issues and extend its review to any asset of an undertaking. Furthermore, pursuant to the Law No. 7246 and the Board is authorized to examine electronic information and documentation contained in company systems and devices. Mobile devices such as phones and tablets may also be reviewed, unless it is established that they are solely for personal use. At the very least, the Board is authorized to conduct a preliminary review to determine whether a device is of a personal nature.

The law grants the Board comprehensive powers to carry out dawn raids. Judicial authorization is only required if an undertaking refuses to permit such an inspection. Although the statute allows for oral testimony to be compelled, in practice, case handlers usually allow employees to defer their answers, provided a timely written response is subsequently submitted. Records held on computers and phones, including emails and instant messaging communications such as WhatsApp, are subject to inspection, and even deleted items are reviewed. Any refusal to grant access to premises or relevant records may lead to the imposition of fines.

The Board has imposed fines for obstructing on-site inspections even in cases where the correspondence or messages in question were restored or no vi-

olation was ultimately found. Illustrative precedents include *Hepsiburada* (7 October 2021, 21-48/678-338); *Unmaş* (25 January 2022, 21-26/327-152); *Güven* (8 December 2022, 22-54/831-341); *Vatan* (28 April 2023, 23-19/363-125); *Canon* (28 April 2023, 23-19/365-127); *Misdağ* (22 June 2023, 23-28/530-179); *AbbVie* (5 October 2023, 23-47/898-318); *Epson* (12 October 2023, 23-48/910-324); *Lyksor* (18 April 2024, 24-19/416-169); *Serin Beton* (3 October 2024, 24-40/955-413); *Kloroplas* (15 August 2024, 28 November 2024, 24-50/1125-483); *Koçak Baklava* (24-33/772-322); and *Arzum* (20 February 2025, 25-07/178-89).

The Turkish Constitutional Court delivered a significant decision on 20 June 2023 (application no. 2019/40991, filed on 23 April 2023), which may affect the Authority's procedures regarding on-site inspections. The Court determined that the provision allowing inspections to be conducted without a court warrant contravened Article 21 of the Turkish Constitution, which safeguards domicile immunity. Consequently, the Authority may now be required to seek a warrant from the Criminal Judgeship of Peace before performing an on-site inspection, although such authorization had already been envisaged in the legislation and was occasionally pursued when undertakings refused to cooperate.

4.2. Sanctions and remedies

I 4.2.1. Which sanctions and remedies may the Authority apply? Do fines and sanctions apply individuals?

Sanctions for abuses of dominance under Law No. 4054 are administrative. Where an abuse of dominance is established, each infringing undertaking may be fined up to 10 per cent of its Turkish turnover generated in the financial year preceding the fining decision. If this turnover is not calculable, the turnover of the nearest financial year will be considered. In addition, employees or members of the executive bodies of undertakings or associations of undertakings who have played a decisive role in the infringement may be fined up to 5 per cent of the fine imposed on the undertaking or association of undertakings. In this context, Law No. 4054 refers to Article 17 of Law No. 5326 on Minor Offences. The applicable framework is further detailed in the Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position ("**Amended Regulation on Fines**"), which replaced the previous regulation.

The Regulation provides guidance on how monetary fines are calculated. In determining the base fine, the Board will consider the severity of the harm caused or likely to be caused by the violation and

whether the violation qualifies as naked and/or hardcore. Different base fine rates are set depending on the duration of the violation, ranging from more than one year but less than two years to more than five years. The Board also considers aggravating factors, such as repeated infringements of Article 4 and/or Article 6, continuation of the infringement after the investigation decision has been notified, a decisive role in the infringement, or breach of the confidentiality obligation under Article 12 of the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position. Conversely, mitigating factors may reduce the fine, such as providing assistance during on-site inspections beyond legal obligations, being coerced by other undertakings, having limited involvement in the violation, generating a low share of revenues from the infringing activities, or including overseas sales revenues in annual gross revenues.

Besides monetary fines, the Board is empowered to adopt any measure necessary to terminate abusive conduct, eliminate both de facto and legal consequences of the infringement, and restore competition to the level that existed before the abusive conduct. Moreover, Article 56 of Law No. 4054 declares that agreements and trade association decisions infringing Article 4 are null and void with all their consequences. Although debate continues as to whether this **“null and void”** provision also extends to contracts concluded by dominant undertakings engaged in abusive conduct, such contracts may nevertheless be deemed invalid and unenforceable if they give rise to or facilitate the abusive practice in violation of Article 6.

Article 43 of the Law No. 7246 introduced settlement and commitment procedures. A settlement may be requested by parties that admit to an infringement until the official notification of the investigation report. In such cases, the administrative fine may be reduced by up to 25 per cent, and the parties waive the right to dispute the infringement or the fine once the investigation is finalized by settlement. Under the same provision, undertakings or associations of undertakings may voluntarily propose commitments during a preliminary or full-fledged investigation in order to remove the Authority's competition concerns under Articles 4 and 6 of Law No. 4054. Commitments may be submitted until three months after the official notification of the investigation notice. Depending on their adequacy and timing, the Board may refrain from launching a full-fledged investigation or may terminate an ongoing investigation before completion. Nevertheless, commitments are not admissible for violations such as price fixing, market or customer sharing, or supply restrictions under Ar-

ticle 4 of Law No. 4054.

The most significant fine to date in relation to abuse of dominance was imposed in the *Google Advertising Technologies* (12 December 2024, 24-53/1180-509), where the Board ordered Google to pay 2,607,563,963.59 Turkish liras. The Board did not disclose the exact fine rate it applied in the calculation.

4.3. Enforcement practice

I 4.3.1. Does the Authority have autonomous sanctioning powers, or must it seek approval from a court or other authority?

The Board is empowered to impose sanctions directly. Pursuant to Article 27 of Law No. 4054, the Board has the authority to adopt necessary measures to bring infringements to an end and to impose administrative monetary fines. The exercise of this power does not require prior approval or authorization from any court or other public authority.

4.4. Enforcement record

I 4.4.1. What does the recent enforcement record reveal?

Over the recent years, the Authority has demonstrated a strong enforcement focus on digital markets, particularly in abuse of dominance cases under Article 6 of Law No. 4054. The Board has initiated and concluded several high-profile investigations against major technology companies, many involving data-driven practices, self-preferencing, discriminatory conduct, or restrictions on multi-homing (see *Google Android* (19 September 2018, 18-33/555-273), *Google Shopping* (7 November 2019, 19-38/575-243), *Google Adwords* (12 November 2020, 20-49/675-295), and *Google Local Search* (8 April 2021, 21-20/248-105).

Recently, in *Google General Search Features* (4 July 2024, 24-28/682-283), the Board assessed whether certain rich results, such as **“videos”**, **“people also ask”**, **“translation box”**, and others, unfairly pushed rival content down the page. The Board found no infringement. However, in *Google Advertising Technologies* (12 December 2024, 24-53/1180-509), it concluded that Google had leveraged its dominance in publisher ad server services to benefit its own supply side platform (SSP), in breach of Article 6 and the relevant self-favouring conduct is of the nature that hinders the activities of its competitors. As a result, the Board (i) imposed a monetary fine on Google and (ii) obliged Google to apply conditions to third-party supply-side platforms (third-party SSPs) that are no less favorable than the conditions that Google applies to its own service, in order to stop the violation and maintain effective competition in the market.

In *Meta* (20 October 2022, 22-48/706-299), the Board evaluated that by combining the data collected from its core services (namely Facebook, Instagram and WhatsApp), Facebook abused its dominant position in the market through (i) hindering the activities of its competitors in the online display advertising market with its personal social network services, and (ii) creating barriers to entry to the market. The Board imposed an administrative fine on Meta and imposed certain measures. The Board discussed the compliance proposal submitted by Meta and concluded that the measures were not sufficient to meet the obligation imposed. Therefore, the Board decided to impose on Meta a daily non-compliance fine (21 December 2023, 23-60/1162-417). Subsequently, the Board discussed the final compliance measures submitted by Meta on 5 April 2024 and decided on 24 April 2024 that the proposed remedies were sufficient to meet the imposed obligations. Therefore, the administrative fine imposed on Meta totalled roughly half a billion Turkish lira (4 April 2024, 24-20/467-197). In *Trendyol* (26 July 2023, 23-33/633-213), Türkiye's leading multi-category e-marketplace was found to have abused its dominance by manipulating algorithms and misusing third-party seller data to gain an unfair competitive advantage. Similarly, in *Sahibinden* (17 August 2023, 23-39/754-263), the Board found that the online classifieds platform violated Article 6 by preventing data portability, enforcing de facto exclusivity, and introducing non-compete obligations.

The Board has also applied the commitments procedure to resolve investigations. In *Storytel* (30 November 2023, 23-55/1076-380), the audiobook platform proposed commitments in response to allegations of market foreclosure through long-term exclusivity agreements with publishers, which the Board accepted. A similar approach was taken in *Krea* (14 September 2023, 23-43/826-292), where the Board investigated discriminatory practices in the sub-licensing of football match broadcasting rights and concluded the case upon accepting commitments.

Beyond digital platforms, the Authority has also pursued enforcement in agricultural and raw material purchasing markets. In *Ferrero* (7 March 2023, 24-12/213-87), the Board evaluated whether purchasing practices in the hazelnut supply chain distorted competition. The Board emphasized that Ferrero's conduct arising from its reduced procurement of shelled nuts, increased procurement of unshelled nuts, and failure to Commitments offered by Ferrero were accepted to address the Board's concerns.

The Authority has also examined refusal to deal and essential facilities claims. (see *MDF/ChipBoard*

(1 April 2021, 21-18/229-96), *D-Market* (15 April 2021, 21-22/266-116), *Türk Telekom II* (16 April 2020, 20-20/267-128), *Türk Telekom I* (27 February 2020, 20-12/153-83), *Akdeniz/CK Akdeniz Elektrik* (20 February 2018, 18-06/101-52); *Enerjisa* (8 August 2018, 18-27/461-224) *Aydem/Gediz* (1 October 2018, 18-36/583-284); *İsttelkom* (11 April 2019, 19-15/214-94)), *Varinak* (19 December 2019, 19-45/768-330), *Medsantek* (28 March 2019, 19-13/182-80), *Daichii Sankyo* (22 May 2018, 18-15/280-139), *Türkiye Petrol Rafinerileri* (12 June 2018, 18-19/321-157), *Pharmaceuticals* (8 March 2019, 19-11/126-54), *Zeyport Zeytinburnu* (15 March 2018, 18-08/152-73) and *Kardemir Karabük Demir Çelik* (7 September 2017, 17-28/481-207)). Investigations into exclusive dealing have also emerged in decisions such as: (see *Tırsan* (23 May 2019, 19-19/283-121), *Mars Media* (18 January 2018; 18-03/35-22), *Frito Lay* (12 June 2018; 18-19/329-163) and *Trakya Cam* (14 December 2017; 17-41/641-280).) The Authority has also scrutinized rebate schemes (see *Unilever* (18 March 2021, 21-15/190-80) and *Port Akdeniz* (3 March 2022, 22-11/169-68)).

Overall, the duration of abuse of dominance proceedings varies by case and workload, but typically ranges from one to one and a half years.

4.5. Contractual implications

I 4.5.1. If a contractual clause involving a dominant undertaking is found to be incompatible with the legislation, does this result in the invalidity of the clause or the entire contract?

Article 56 of Law No. 4054 stipulates that agreements and decisions of associations of undertakings contrary to Article 4 are invalid and unenforceable with all their consequences. The agreement will remain valid if the inconsistent clause may be severed under the principles of severability. In *İsttelkom* (11 April 2019, 19-15/214-94), the Board found that İsttelkom abused its dominance in the electronic communication infrastructure instalment market in Istanbul through provisions of the Facility Sharing Protocol. The Board ordered İsttelkom to remove clauses requiring ownership of infrastructure whose costs were borne by the operators and clauses preventing the use, rental, or transfer of such infrastructure to third parties. Similarly, in *Google Android* (19 September 2018, 18-33/555-273), the Board required contractual amendments, including the removal of pre-instalment and exclusivity clauses in manufacturer agreements and the inclusion of an explicit provision to secure competition in the app store.

4.6. Private enforcement

| 4.6.1. Is private enforcement possible? Does the legislation provide a basis for a court or other authority to order a dominant firm to grant access, supply goods or services, conclude a contract, or invalidate a provision or contract?

Yes, private enforcement is possible, but it is limited to damages actions. Moreover, Law No. 4054 does not provide a mechanism for private lawsuits to impose behavioural or other remedies.

Application of the remedy mechanism was introduced in Articles 4 and 6 of the Law No. 7246, and replaced the mechanism previously applicable under Article 7. In this regard, where behavioural remedies are insufficient and have failed, structural remedies can be imposed against anticompetitive conduct by the Board.

Non-compliance with the Board's orders triggers the possibility of an investigation. Yet, the initiation of an investigation does not necessarily result in a finding of an infringement. However, the legislation does not grant the Board the explicit power to compel, through a court order, performance of specific obligations such as granting access, supplying goods or services, or entering into a contract.

4.7. Claims of damages

| 4.7.1. How can harmed companies enforce their claim for damages? What forum is competent to hear such claims and what criteria govern the calculation of damages?

While the Board investigates and sanctions abuse of dominance, private parties may bring civil lawsuits for damages. Article 57 of Law No. 4054 allows real or legal persons that incur losses from a distortion of competition to recover such losses from the responsible parties. Article 58/1 of Law No. 4054 specifies that the damage equals the difference between the cost actually paid by the injured party and the cost that would have been paid absent the restriction of competition. This provision ensures compensation for actual losses. Additionally, competitors uninformed in the violation, yet suffered due to the violation, may claim compensation for all damages, including both actual damages and loss of profit.

Furthermore, Turkish competition law regime allows for treble damages. Article 58/2 of Law No. 4054 provides that if damage results from an agreement, decision, or gross negligence of the parties, the judge may, upon the claimant's request, award compensation up to three times the material damage incurred or the profits gained or likely to be gained by those who caused the harm. For treble damages to

be awarded, (i) the harm should stem from an agreement, a decision or the parties' gross negligence and (ii) the harm should be material (not moral). Debate persists regarding whether judges may apply treble damages once these conditions are satisfied, or whether they retain discretion to award less. Case law reflects varying outcomes: onefold compensation (Istanbul 12th Consumer Court, 6 June 2017, 2016/82 E, 2017/220 K); twofold compensation (Istanbul Anatolian 4th Commercial Court of First Instance, 12 December 2017, 2015/1008 E, 2017/1325 K); and threefold compensation (Marmaris 1st Civil Court of First Instance, 14 November 2017, 2017/17 E, 2017/494 K).

Civil courts usually wait for the Board's decision before ruling on damages. For instance, the Court of Appeals has emphasized that applications to the Board should be treated as preliminary issues (19th Civil Chamber, 1 November 1999, Decision No. 99/3350 E, 99/6364 K; 11th Civil Chamber, 5 October 2009, 2008/5575 E, 2009/10045 K). While the Board's decisions are not binding on courts, they have a significant role in various aspects of civil litigation.

4.8. Appeal process

| 4.8.1. What is appeal process against the Competition Board's decisions?

The final decisions of the Board, including decisions on interim measures and fines, can be appealed before administrative courts in Ankara. Since the Board's decisions are considered administrative acts, legal actions against Board decisions are pursued in accordance with Administrative Procedure Law No. 2577 ("**Law No. 2577**"). Appeals should be filed within 60 days after the Board's reasoned decision is served on the parties in line with Law No. 2577.

5. UNILATERAL CONDUCT OF NON-DOMINANT FIRMS

5.1. Does the legal framework extend to govern the unilateral conduct of non-dominant firms?

Article 6 of Law No. 4054, which is similar to Article 102 of the TFEU, is intended to apply exclusively to the unilateral conduct of dominant undertakings. Dominance is thus a prerequisite for the application of the prohibition set forth in the Article 6 of Law No. 4054. However, recent enforcement practice by the Board reveals a tendency to stretch the scope of Article 4 of Law No. 4054, which governs restrictive agreements, to cover unilateral conduct by non-dominant firms within the vertical supply relationships. Relying on the notion of "implied consent" in vertical relationships, the Board has, at times, treated unilat-

eral conduct such as discrimination or refusal to deal by non-dominant undertakings as if they fall within Article 4 of Law No. 4054, despite the absence of dominance. This emerging shift, treating Article 4 of Law No. 4054 as a substitute where Article 6 of Law No. 4054 is inapplicable, has led to instances in which unilateral actions that should only be assessed under Article 6 of Law No. 4054 have been sanctioned under Article 4 of Law No. 4054.

The Board has issued several decisions cautioning non-dominant undertakings for practices such as imposing dissimilar conditions on their distributors or introducing unilaterally supply requirements to meet minimum objective criteria.

Notable examples include the *3M Türkiye* (9 June 2016, 16-20/340-155), where the Board evaluated discriminatory practices under Article 4 of Law No. 4054 despite 3M Türkiye not being dominant, and the *Turkcell* (13 August 2014, 14-28/565-253), where the Board assessed exclusive agreements under both Articles 4 and 6 of Law No. 4054 but ultimately found no infringement. The Board, in turn, did not address the subtle differences between Article 4 and Article 6 of Law No. 4054.

6. TRENDS

6.1. Are there any anticipated legislative amendments or other regulatory measures to affect this area in the near future?

Guidelines on Competition Infringements in Labour Markets, adopted on 21 November 2024, focus on potential violations of Article 4 of Law No. 4054 in labour markets. Notably, it acknowledges that abuse of dominance can occur in different forms in labour markets and require a case-by-case analysis.

Another notable development is the entry into force of the Amended Regulation on Fines on 27 December 2024. It replaced the former regulation on fines, which had been enforced since 15 February 2009. It sets out detailed guidelines on the calculation of monetary fines. In the case of a violation under Articles 4, 6 and 7, the Board has discretion to determine a base fine rate up to the statutory maximum of 10% of the undertaking's turnover. In accordance with the recently amended Regulation on Fines, the distinction between "*cartel*" and "*other violations*" in the determination of base administrative monetary fines and lower and upper limits for said base fines determined based on the type of violation (i.e., 2% to 4% for cartels and 0.5% to 3% for other violations) has been revoked. Furthermore, the Amended Regulation on Fines foresees that the base fine will be determined by considering, in particular, the severity

of the harm caused or likely to be caused by the violation and whether the nature of the violation is naked and/or hard-core. Under the Amended Regulation on Fines, duration of the violation plays crucial role for determination of the base administrative monetary fine. Moreover, while the revoked Regulation prescribed an increase in base administrative monetary fines if the violation lasted for more than one but less than five years or more than five years, the Amended Regulation puts forth specific base rates for different violation terms. In this regard, there are base fines for violations lasting:

- more than one year but less than two years,
- more than two years but less than three years,
- more than three years but less than four years,
- more than four years but less than five years, and
- more than five years.

Amended Regulation on Fines also sets out aggravating factors such as recurrence of violations of Article 4 and/or Article 6, continued violation after the notification of the investigation decision, decisive role in terms of infringement or the breach of confidentiality requirement under Article 12 of Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position, and also mitigating factors such as assistance with on-site inspections (beyond fulfilling legal obligations), coercion to the violation by other undertakings, limited involvement in the violation, low revenue share of the activities constituting the violation, the inclusion of overseas sales revenues in the annual gross revenues and so on, in determining the magnitude of the monetary fine.

CARTEL REGULATION

1. REGULATION AND AUTHORITY

1.1. The Regulation

| 1.1.1. What is the legislation in terms of cartel enforcement in Türkiye?

The legislation regulating cartel enforcement in Türkiye is the Law on Protection of Competition No. 4054 ("**Law No. 4054**"), adopted on 13 December 1994. Law No. 4054 is based on the Article 167 of Turkish Constitution, obliging the state to take necessary measures to secure a free market economy. The specific provision that regulated cartel enforcement is Article 4 of Law No. 4054, setting out the main principles to be applied.

Law No. 4054 has been subject to numerous revisions since it was first introduced. The latest amendment to Law No. 4054 was approved by the Grand National Assembly of Türkiye on 23 May 2024 and was effective as of 29 May 2024. The previous primary amendment to Law No. 4054 was made on 16 June 2020 ("**Law No. 7246**") and was effective as of 24 June 2020. Per its recital, Law No. 7246 was formed in line with the Turkish Competition Authority's (the "**Authority**") enforcement experience for over 20 years and brought Turkish competition law closer to European Union Law.

1.2. The Authority

| 1.2.1. Is there a separate, dedicated authority investigating cartel matters?

Yes. The Turkish Competition Authority investigates cartel matters in Türkiye. The Authority is composed of the Turkish Competition Board (the "**Board**"), along with the presidency and service departments and has administrative and financial autonomy. The Authority handles its operations through six different divisions, each focusing on specific sectors. As of 1 January, 2024, there were approximately 281 case handlers of the Authority. The following units assist the divisions and the presidency:

- economic analysis and research department;
- decisions unit;
- information management unit;
- external relations and competition advocacy department;

- management services unit;
- cartel and on-site inspections support unit; and
- strategy development unit.

The Board, which is the decision-making body of the Authority, is composed of a total of seven members. The responsibilities of the Board also include investigating and condemning cartel activity. However, if the activity amounts to a criminally prosecutable act (e.g. in cases of bid rigging in public tenders), penal courts and public prosecutors may separately investigate the matter.

The cartel members are adjudicated before the courts as well in private lawsuits as the Authority's enforcement can be complemented with private lawsuits. Private antitrust litigation is also in an increasing trend. The litigants can claim three times their loss as compensation pursuant to a treble damages clause. In these instances, the Courts usually await the Board's decision to render a decision in those.

1.3. Updates

| 1.3.1. What are the recent updates and/or proposals to the current enforcement procedure?

The latest update to Law No. 4054, Law No. 7511 was approved by the Grand National Assembly of Türkiye on 23 May 2024 and was effective as of 29 May 2024. Per this amendment, significant updates have been introduced to the procedure applicable to investigations. The investigated parties are no longer required to submit a first written defense and the additional opinion of the Authority is only prepared if the Authority changes its opinions in the investigation report.

A significant update brought with Law No. 7246 was the introduction of a *de minimis* principle, that is akin to the European Union application. The principles of the *de minimis* rule were introduced on 16 March 2021, through Communiqué No. 2021/3 on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings That Do Not Significantly Restrict Competition ("**Communiqué No. 2021/3**") setting out the principles of *de minimis* in Turkish competition law. Communiqué No. 2021/3 sets out certain thresholds and entitles the Board to decide not to launch a full-fledged investigation into undertakings in cases where these market shares are not met. However, Communiqué 2021/3 is not applied to hardcore restrictions (e.g. price-fixing, territory and/or customer sharing agreements, restriction of supply). The Authority is seemingly inclining more towards investigating violations

that are more significant.

The Authority previously opted to utilize Article 9(3) of Law No. 4054 to conclude pre-investigations which only affected small markets, by referring to procedural efficiency (see *Izmir Container Transporters*, 2 January 2020, 20-01/3-2). This rather controversial approach can now be replaced with Communiqué No. 2021/3. Communiqué 2021/3 allows the Board to focus more on significant matters while bringing the Turkish competition law closer to the European Union law, on which it is modelled.

Law No. 7246 also introduced settlement and commitment mechanisms. The Guidelines on Vertical Agreements were also amended to include provisions on internet sales and most favored nation clauses. The amended version was published on 30 March 2018.

Lastly, Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position (**"Amended Regulation on Fines"**) was amended and entered into force on 27 December 2024. Per the amended regulation, (i) there is no distinction between cartels and other violations in terms of the determination of the basic fine and (ii) upper and lower limits for the basic fine are removed.

The following texts have been either announced or enacted since 2013:

- the Communiqué on the Increase of the Lower Threshold for Administrative Fines specified in Paragraph 1, Article 16 of the Competition Law (to be valid until 31 December 2025);
- the Regulation on The Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position;
- the Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakings That Do Not Significantly Restrict Competition (Communiqué No. 2021/3);
- the Communiqué on Commitments for Preliminary Investigations and Investigations on Anti-competitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (Communiqué No. 2021/2);
- the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector (Communiqué No. 2017/3);
- the Block Exemption Communiqué on R&D Agreements (Communiqué No. 2016/5);

- the Block Exemption Communiqué on Specialization Agreements (Communiqué No. 2025/2);
- the Guidelines On Administrative Fines To Apply In Cases Of Agreements, Concerted Practices And Decisions Limiting Competition And Abuses Of Dominant Position, enacted on 19 February 2025;
- the Guidelines on Competition Infringements in Labor Markets, enacted on 3 December 2024 (Guidelines on Labor Market);
- the Guidelines on Vertical Agreements, enacted on 29 March 2018;
- the Guidelines Explaining the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector (Communiqué No. 2017/3), enacted on 7 March 2017;
- the Guidelines on the General Principles of Exemption, enacted on 28 November 2013;
- the Guidelines on Horizontal Cooperation Agreements, enacted on 30 April 2013; and
- the Guidelines on the Explanation of the Regulation on Active Cooperation for Detecting Cartels, enacted on 17 April 2013.

1.4. Main regulation

1.4.1. What is the main regulation on cartel enforcement in Türkiye?

Article 4 of Law No. 4054, which is akin to and closely modeled on Article 101 (1) of the Treaty on the Functioning of the European Union (**"TFEU"**), aims to prohibit and illegalise the agreements and concerted practices, including cartel agreements, as well as the decisions of the associations of undertakings, which prevent, distort or restrict competition by object or by effect, directly or indirectly in a particular market for goods or services.

Similar to the TFEU, Article 4 itself does not set out a definition of "cartel"; instead, the Authority has defined it under Article 3(1)(ç) of the The Regulation on Active Cooperation for Discovery of Cartels (**"Regulation on Leniency"**) and Article 3 of the Amended Regulation on Fines. According to these regulations, cartels are described as agreements (i) restricting competition and/or concerted practices between competitors for price-fixing; (ii) allocating customers, providers, territories or trade channels; (iii) restricting the amount of supply or imposing quotas and bid rigging.

Likewise, akin to TFEU Law No. 7246 introduced the *de minimis* principle, allowing the Board to not

launch full-fledged investigation upon agreements, concerted practices and decisions of association of undertakings, if the market share and turnover thresholds laid out in Communiqué No. 2021/3 are not exceeded.

Both by object and by effect restrictions are prohibited by Article 4 of Law No. 4054. The content, its aim and the economic and legal framework of the agreement is considered whilst determining whether the agreement restricts competition by object or by effect. The intention has no effect on the liability of the parties, although it may be considered as an aggravating or mitigating factor, subject to the circumstances of the case.

The agreements that have the potential to prevent, restrict or distort competition also fall within the scope of Article 4 of Law No.4054. This is specific to Turkish cartel regulation that reflects the vast discretionary power of the Board. Both potential and actual effects are considered. Per Guidelines on Horizontal Cooperation Agreements, restrictive effects are evaluated based on adverse effects on the market parameters. These parameters could be price, output, quality, product variety or innovation. Article 4 also bears a non-exhaustive list of restrictive agreement examples. This list closely resembles Article 101(1) of the TFEU. Accordingly, the list contains price-fixing, market allocation and refusal-to-deal agreements as examples. Horizontal restrictive agreements such as price-fixing, market allocation, collective refusals to deal (group boycotts) and bid rigging have been persistently deemed to be per-se unlawful. Agreements such as vertical agreements and purchasing cartels are mostly subject to competitive effects tests.

Before the introduction of Law No. 7246 in 2020, Article 4 of Law No. 4054 was delineated from TFEU in terms of *de minimis* exception.

With Law No. 7246, *de minimis* principle was introduced under Article 41 of Law No.4054 with an aim to focus on more significant violations. Per the *de minimis* principle, agreements that exceed the thresholds to be determined by the Board do not benefit from this exception.

The *de minimis* principle is applicable to agreements that fall into the scope of Article 4 of Law No. 4054. That said, it is not applicable to hardcore violations such as resale price maintenance, price-fixing, territory or customer sharing and restriction of supply. As such, cartel agreements also do not benefit from the *de minimis* principle.

Agreements that benefit from a block exemption and/or an individual exemption are exempt from the prohibition of restrictive agreements and practices. The Block Exemption Communiqués are as follows:

- Block Exemption Communiqué on Vertical Agreements ("**Communiqué No. 2002/2**");
- Block Exemption Communiqué on Vertical Agreements in the Motor Vehicle Sector ("**Communiqué No. 2017/3**");
- Block Exemption Communiqué in Relation to the Insurance Sector ("**Communiqué No.2008/3**");
- Block Exemption Communiqué on Technology Transfer Agreements ("**Communiqué No.2008/2**");
- Block Exemption Communiqué on Specialization Agreements ("**Communiqué No.2013/3**") and
- Block Exemption Communiqué on Research and Development Agreements ("**Communiqué No.2016/5**").

These Communiqués are akin to their equivalents in the European Union. The latest block exemption is the Communiqué No. 2017/3 that introduced revised set of rules for the motor vehicle sector in Türkiye, revising the Block Exemption Communiqué No. 2005/4 for Vertical Agreements and Concerted Practices in the Motor Vehicle Sector. A restrictive agreement that (i) falls out of the scope of the block exemption per the relevant communiqué and (ii) does not benefit from individual exemption, would be subject to the prohibition brought with Article 4 of Law No. 4054.

Concerted practices are also prohibited under Turkish competition law. In cases that concern a concerted practice allegation, the Authority can shift the burden of proof per "**the presumption of concerted practice**" mechanism.

1.5. Joint ventures

1.5.1. How does cartel regulation apply to joint ventures?

Per Law No. 4054, joint ventures are considered in between merger control and cartel regulation. The full-function characteristic of the joint venture will determine whether it falls within the scope of merger control or cartel regulation.

A full-functioning joint venture will be evaluated under merger control regime pursuant to Article 7 of Law No. 4054, if the thresholds foreseen are met. If the joint venture is not a full-functioning one, the joint venture will be subject to cartel regulation as it will be evaluated under the test foreseen in Article 4 of Law No. 4054 to determine whether it has an anticompetitive purpose or effect.

2. APPLICATION OF THE REGULATION AND JURISDICTIONAL SCOPE

2.1. Application of the regulation

| 2.1.1. Does Law No. 4054 apply to individuals, corporations and other entities?

Undertakings and associations of undertakings are subject to Law No. 4054. The definition of an undertaking is *“single integrated economic unit capable of acting independently in the market to produce, market or sell goods and services”*. Accordingly, Law No. 4054 may apply to individuals, corporations and other entities so long as they act as undertakings.

2.2. Territorial application

| 2.2.1. Does the regime apply to conducts taking place outside of Türkiye (as well as indirect sales into the jurisdiction)? If it applies, what is the jurisdictional basis?

Law No. 4054 takes into account whether the cartel had any effects in the Turkish markets as Türkiye is an *“effects theory”* jurisdiction. The nationality and/or the location of the cartel along with the existence of a Turkish entity are irrelevant. If the cartel had an effect in Turkish markets, the Board does not decline jurisdiction over non-Turkish cartels or cartel members in the past (e.g., *the suppliers of rail freight forwarding services for block trains and cargo train services*, 16 December 2015, 15-44/740-267; *Güneş Ekspres/Condor*, 27 October 2011, 11-54/1431-507; *Imported Coal*, 2 September 2010, 10-57/1141-430, *Refrigerator Compressor*, 1 July 2009, 09-31/668-156).

Mainly as a result of enforcement shortfalls such as difficulties of formal service or failure to identify a tax number, the Board is yet to enforce a sanction against firms without any Turkish presence. Indirect sales and its specific circumstances are yet to be evaluated by the Board. That said, given that a cartel activity that takes place outside of Türkiye will not in and of itself produce effects in Türkiye, per Article 2 of Law No. 4054, it could be argued that the Turkish cartel regime does not extend to indirect sales. Article 2 of Law No. 4054 lays the foundation of the Board's jurisdiction. The scope of Article 2 of Law No. 4054 includes all restrictive agreements, decisions, transactions and practices so long as they produce an effect on a Turkish market, without subject to where the conduct takes place.

2.3. Export cartels

| 2.3.1. Do conducts that only affect customers or parties outside of Türkiye benefit from any exemption or defense?

Pursuant to Article 2 of Law No. 4054, export cartels are considered outside of the Board's jurisdiction. Investigation launched in *Poultry Meat Producers* (25 November 2009, 09-57/1393-362), the allegations concerned, inter alia, an export cartel. The Board deemed that export cartels should not be sanctioned so long as they do not affect the host country's markets. Despite certain decisions on the contrary which signal an incline of the Board to claim jurisdiction on export cartels (e.g., *Paper Recycling*, 8 July 2013, 13-42/538-238), it could be argued that so long as there is no effect in Turkish markets, an export cartel would fall outside of the Authority's jurisdiction.

2.4. Provisions specific to industries

| 2.4.1. Are there any violations specific to an industry? Are there any exemptions and/or defenses specific to an industry?

There is no industry-specific offense or defense within the scope of Law No. 4054 as it applies to industries and without any exceptions. Slightly different rules for industry-specific exemptions are foreseen in certain communiqués, however, these do not set out industry specific offenses or defenses that are not laid out in Law No. 4054. That said, the Communiqué No. 2017/3 is considered in cases that concern the motor vehicle sector's block exemption. Both the Board and the defending undertaking will consider the rules and thresholds set out in the Communiqué.

Article 4 of Law no. 4054 also applies to state owned entities to the extent that they fall into the scope of the undertaking definition.

Oligopolistic markets for the supply of homogeneous products (e.g., cement, bread yeast and ready-mixed concrete) are persistently investigated by the Board for concerted practice allegations, as a result of the presumption of concerted practice. However, whether this high number of cases (more than 32 investigations in the cement and ready-mixed concrete markets over 20 years of enforcement history) constitute industry-specific offense is subject to debate.

2.5. Conducts approved by the Government

| 2.5.1. Does Government-Approved Activity or Regulated Conduct Benefit from a Defense and/or an Exemption?

State-approved or regulated actions do not benefit from a defense and/or an exemption.

There are sector-specific exemptions in Turkish competition law. Block exemption regulations for the motor vehicle sector and insurance sector can be named as examples for these. Law No. 4054 does not foresee specific exceptions to government-sanctioned activities or regulated conduct.

That said, the Board has evaluated undertakings' defenses on that they operate in a state-approved or regulated manner (e.g., *Paper Recycling*, 10 April 2025, 25-14/323-153, *Paper Recycling*, 8 July 2013, 13-42/538-238, *Waste Accumulator*, 4 October 2012, 12-48/1415-476, *Pharmaceuticals*, 2 March 2012, 12-09/290-91, *Et-Balık Kurumu*, 16 June 2011, 11-37/785-248, *Türkiye Şöförler ve Otomobilciler Federasyonu*, 3 March 1999, 99-12/91-33, *Esgaz*, 9 August 2012, 12-41/1171-384).

3. INVESTIGATIONS

3.1. Phases in an investigation

| 3.1.1. What are the phases in a typical investigation?

The Board may launch an investigation upon a cartel allegation either *ex officio*, or pursuant to a complaint. If the Board deems the complaint not serious, it rejects the complaint. If the Board remains silent for 30 calendar days upon a complaint, the complaint is deemed rejected. If the complaint (or notice pertaining to an allegation) is found serious, the Board deems to conduct a preliminary investigation. The undertakings concerned are not notified or aware of the preliminary investigation unless the Authority conducts a dawn raid. During this preliminary phase, the Authority opts to conduct dawn raids (i.e., unannounced on-site inspections) and/or utilize other investigatory tools (such as formal information request letters). Within 30 calendar days of the preliminary investigation decision, the Authority submits a preliminary report to the Board. Within 10 days following this preliminary report, the Board decides through a formal decision on whether to launch an investigation. If the Board decides to formally launch an investigation, within 15 calendar days, the undertaking(s) concerned are notified with an investigation notice. The investigation is completed in six months, although, if the Board deems necessary, it may extend the investigation period once only, for an additional period of up to six months.

Articles 4 and 5 of Law No 7511 on Amendments to the Turkish Commercial Code and Certain Laws ("**Law No. 7511**" - published in the Official Gazette on 29 May 2024) introduced certain amendments to Articles 43 and 45 of Law No. 4054. Prior to Law No. 7511, the period for the submission of the first written defense was 30 calendar days. This has now been abolished by the new regulation. Therefore, currently the investigation parties are not required to submit their first written defense.

Following the investigation notice, the Authority prepares and serves the main investigation report.

Following the service of the investigation report, the investigated parties have 30 calendar days to respond to it. This is extendable for an additional 30 calendar days.

Law No. 7511 also made the additional opinion phase an option for the Authority. The Authority is no longer "required" to issue an additional opinion. If, however, the Authority changes the positions taken in the investigation report after the submission of the defenses, it will notify the relevant undertakings through an additional opinion within 15 calendar days. The investigated parties have 30 calendar days to reply to the additional report.

The Board may hold an oral hearing *ex officio* or upon request by the parties. Should the Board decide to hold an oral hearing, it is held within at least 30 calendar days and at most 60 calendar days following the completion of the investigation process. The oral hearing is carried out under the provisions of Communiqué No. 2010/2 on Oral Hearings Before the Board. The Board will render its final decision on the same day of the oral hearing. If this is not possible, the Board will render its decision (i) in 15 calendar days after the oral hearing or (ii) in 30 calendar days after the completion of the investigation process in cases where an oral hearing is not held.

The decisions of the Board can be appealed within 60 calendar days after the service of the reasoned decision. The Board usually serves the reasoned decision within three to eight months following the announcement of the final decision.

3.2. Investigative powers of the Authority

| 3.2.1. What are the investigative powers of the Authority? Do these powers require court approval?

The Board is entitled to request any information from all public institutions and organisations, undertakings, and trade associations should it deems necessary. The officials of these institutions are required to provide the required information within the deadline determined by the Board. Failing to comply with a decision that deems for production of information can result in a turnover-based fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not available, the turnover generated in the financial year that is closest to the date of the fining decision is taken into account). The minimum fine is currently 241,043 Turkish lira (Communiqué on the Increase of the Lower Threshold for Administrative Fines specified in Paragraph 1, Article 16 of the Law No. 4054 until 31 December 2025 ("**Communiqué No. 2025/1**"). An incomplete or incorrect information in response to this request may also result in imposition of the

same fine.

Pursuant to Article 15 of Law No. 4054, the Board is also entitled to conduct on-site inspections and dawn raids. The Board is authorized to:

- Examine the books, all types of data and documents of undertakings and associations of undertakings kept on physical or electronic media and in information systems, and take copies and physical samples thereof;
- Request written or oral statement on particular issues; and
- Perform on-site examination of any assets of undertakings.

If the staff of the Authority are not granted access to premises of the undertaking, the Board may impose a fixed fine of 0.5 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not available, the turnover generated in the financial year that is closest to the date of the fining decision is taken into account). This could also result in a daily fine for each day of the violation at 0.05 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not available, the turnover generated in the financial year that is closest to the date of the fining decision is taken into account).

Pursuant to Law No. 4054, the Authority has significant powers in terms of dawn raids. However, as a recent development, the Constitutional Court of the Republic of Türkiye ("*Constitutional Court*") published on 20 June 2023 its reasoned decision of 23 March 2023 where it ruled in brief, that the Authority is obliged to obtain a court decision (i.e., a warrant) allowing the Authority officials to conduct a dawn raid. Per the standard practice of the Authority, pursuant to Law No. 4054, the case handlers of the Authority have been able to legally conduct the dawn raids with the certificate of authorizations issued by the Board. Although the Authority's practice was found to be compliant with Law No. 4054, the Constitutional Court deemed that the practice is unconstitutional as it does not require the Authority to obtain a court decision before conducting dawn raids in contravention of Article 21 of the Turkish Constitution protecting the immunity of domicile. Currently, the Board requires court approval only in cases where the undertaking objects to the dawn raid and apart from this scenario, the Board is not required to obtain approval from courts. In the meanwhile, the dawn raid practice of the Authority should not be significantly affected in a way that would lessen the frequency of the dawn raids.

The wording of Law No. 4054 may be interpret-

ed as employees of the undertaking are compelled to give verbal testimony. However, so long as the response is provided quickly in written correspondence, the Authority does allow a delay for these answers. As such, if the response is provided in a timely manner and in the deadline agreed with the Authority, this allows the employees to avoid responding to issues that are uncertain to them. The Authority examines all computer records and also deleted items.

Furthermore, Law No. 7246 included an explicit provision authorizing the Authority to inspect and make copies of all information and documents in the companies' physical records and those in electronic storage and IT systems. That said, this was the practice even prior to Law No. 7246. The proposed amendment to Law No. 4054's preamble also confirms this by noting that the amendment serves further clarification on the powers of the Authority that are particularly important for discovering cartels. However, per Authority's usual practice, this is not an update.

The officials carrying out the on-site inspection are required to possess a deed of authorization from the Board. This deed of authorization specifies the subject matter and purpose of the investigation. The Authority is not entitled to exercise its said powers (copying records, recording statements by company staff, etc.) for matters that are outside of the investigation's scope (i.e., the scope specified in the deed of authorization).

4. COOPERATION AT INTERNATIONAL LEVEL

4.1. Cooperation between agencies

| 4.1.1. Does the Authority cooperate with authorities in other jurisdictions? If yes, what is the legal basis and the extent?

Pursuant to Article 43 of Decision No. 1/95 of the European Union-Türkiye Association Council, the Authority is authorized to notify and request application of relevant measures from the European Commission's Directorate-General for Competition if the Board deems that a cartel in the European Union has an adverse effect in competition in Turkish markets. This provision foresees reciprocal rights and obligations to the European Union and Türkiye. As such, the European Commission is also authorized to request the Board to apply necessary measures vice versa to restore competition in relevant markets.

The Authority also has various bilateral cooperation agreements on cartel enforcement matters with competition authorities in other jurisdictions (e.g., Romania, South Korea, Bulgaria, Portugal, Bosnia and

Herzegovina, Russia, Croatia, Egypt, Hungary and Mongolia). The Authority also has close connections with other organizations such as the Organisation for Economic Co-operation and Development, the United Nations Conference on Trade and Development, the World Trade Organization, the International Competition Network, and the World Bank.

Moreover, the Turkic States Competition Council was established between Azerbaijan, Türkiye, Kazakhstan, Uzbekistan, Kyrgyzstan and the Turkish Republic of Northern Cyprus on 23 January 2024. The Authority also hosted the first meeting of the Balkans Competition Platform on 30 September 2024 with the attendance of Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Kosovo, North Macedonia, Romania, Greece and Hungary.

The Authority's research department carries out periodic consultations with certain foreign institutions and organizations on protection of competition. The Authority assesses their results and ultimately submits its recommendations to the Board. The cooperation protocol of 14 October 2009 signed between the Authority and the Turkish Public Procurement Authority is an example that aims to establish a competitive environment in terms of public tenders through cooperation and sharing information. Authority's actions are not legally based on informal contacts.

4.2. Interaction between jurisdictions

| 4.2.1. Which jurisdictions significantly interact with Türkiye in cross-border cases? If so, what is the effect of this interaction on the investigation, prosecution and penalizing of the cross-border cartel activity?

The interaction between jurisdictions does not materially affect the Board's investigation on cartels, including cross-border cartels. Principle of comity is not an explicit provision in Law No. 4054. A cartel can be prosecuted in Türkiye in case it has an effect on the Turkish market, regardless of whether it was investigated in another jurisdiction.

5. CARTEL PROCEEDINGS

5.1. Decisions

| 5.1.1. How does adjudications and determinations work in cartel proceedings?

The Board is entitled to initiate an investigation into an undertaking or an association of undertakings *ex officio* or upon complaint. Primarily, the Board adjudicates upon cartel matters. This enforcement may further be supplemented with private lawsuits.

Private lawsuits on cartel matters are addressed in regular courts. The treble damages clause allows litigants to request three times their loss as compensation. Stemming from this clause, private lawsuits in competition cases are in an increasing trend. In these cases, most courts initially wait for the Board's final decision before proceeding with their own ruling.

5.2. Burden of proof

| 5.2.1. Who bears the burden of proof? What is the requisite standard of proof?

The Board's adoption of a low standard of proof is one of the most important material issues specific to Türkiye. Proof that (i) there was a cartel activity and (ii) the undertaking was a participant in cases of multilateral discussions or cooperation are required to prove an undertaking's participation in cartel activity. The Board established a significantly low standard of proof in cartel proceedings, due to the broadening interpretation of Law No. 4054 and in particular the "*object or effect of which*" branch of it.

As for concerted practices, the standard of proof is even lower. If the Board established parallel behavior, the Board may readily infer the existence of concerted practice and the undertakings concerned may be in a position to prove that the parallel behavior did not stem from a concerted practice. Law No. 4054 includes the presumption of concerted practice. As such, the Board is authorized to carry out Article 4 enforcement upon price changes in the market, supply-demand equilibrium or fields of activity of enterprises bear a resemblance to those in the markets where competition is obstructed, disrupted or restricted. Per Board's precedents, conscious parallelism is rebuttable evidence of forbidden behavior, that is deemed as ample ground to impose administrative monetary fines on the relevant undertakings. As such, burden of proof can be switched fairly easily in concerted practice cases, thereby requiring the undertakings concerned to prove that parallel behavior is not stemming from concerted practice but has economic and rational reasons.

Law No. 4054 does not give weight to the "conscious parallelism and plus factors" doctrine, delineating from the approach in the European Union where it is accepted that tacit collusion does not constitute a violation of competition. In cases where clear parallel behavior is established, the Board may not even seek plus factors in addition to conscious parallelism.

It is seen that in practice, the Authority and its officials are adopting a broadening interpretation on cartel definition as well.

5.3. Circumstantial evidence

| 5.3.1. Is Circumstantial evidence sufficient to establish an infringement in cases where there is no direct evidence of the actual agreement?

The evidence on communication and economic data indicating coordination between competitors are deemed as circumstantial evidence by the Board. Communication evidence may prove the undertakings concerned communicated or met each other, however, fails to demonstrate the contents of the said communication. If the content or the existence of the violation is not demonstrated through direct evidence, the Board may utilize circumstantial evidence to establish alone or in addition to direct evidence, particularly in cases of concerted practice.

5.4. Appeal

| 5.4.1. How to appeal against a decision?

The final decisions of the Board, including decisions on interim measures and fines, can be appealed before administrative courts in Ankara ("**Law No. 6352**", which entered into force on 5 July 2012). The appeal can be made by filing an appeal case within 60 days after the Board's reasoned decision is served on the parties. Legal actions against Board decisions are pursued in line with Administrative Procedure Law No. 2577 ("**Law No. 2577**") given that the Board's decisions are considered administrative acts. The judicial review includes both procedural review and substantive reviews.

The execution of the Board's decision is not stayed automatically upon appeal per Article 27 of the Law No. 2577. That said, upon the plaintiff's request, the Court may render a decision to stay the execution of the Board's decision if executing the said decision is likely to cause serious and irreparable damages and the decision is highly likely to be against the law (i.e., showing of a prima facie case).

The appeal proceedings generally take approximately 12 to 24 months before Ankara administrative courts. Decisions of Ankara administrative courts can also be appealed against, before the regional courts and the High State Court. Should the courts annul the Board's decision in full or in part, the decision is remanded to the Board for another review and reconsideration.

Changes in the competent body to review the Board's decisions were a significant development in Turkish competition law enforcement. A three-level appellate court system was introduced and it comprises administrative courts, regional courts (appellate courts) and the High State Court. Regional courts review both the procedural and substantive

grounds of the Board decisions, rendering a decision also by taking into account the merits of the case. Decisions of the regional courts may be subject to the review of the High State Court in exceptional cases as set out in Article 46 of the Law No. 2577. In these cases, the decisions of the regional courts are not final and the High State Court is entitled to uphold or reverse their decisions. A reversed decision is returned to the court rendering the decision for a new decision on the matter, by also considering the High State Court's decision. The appeal before the High State Court generally takes approximately around 24 to 36 months. As for private lawsuits, the decisions are appealable before the Supreme Court of Appeals. The appeal process for private lawsuits differs in the sense that it is governed by general procedural laws and usually lasts 24 to 30 months.

The appeal process is usually initiated by the undertaking found to be in violation in cases where the Board finds a violation. In cases where there is no finding of a violation, the complainant may appeal the decision. The Authority can also challenge a court decision if a Board decision is overturned in judicial review.

6. SANCTIONS

6.1. Criminal sanctions

| 6.1.1. Are there any criminal sanctions for cartel activity? If yes, what are these?

The sanctions laid out in Law No. 4054 are administrative in nature. As such, the sanctions imposed pursuant to Law No. 4054 leads to administrative monetary fines and civil liability but no criminal sanctions. Therefore, cartel activity will in principle not lead to any imprisonment of individuals. However, certain cases were referred to a public prosecutor pursuant to the completion of competition law investigation. Relatedly, bid rigging is criminally prosecutable per section 235 et seq of the Turkish Criminal Code. Similarly, pursuant to section 237 of the Turkish Criminal Code, illegal price manipulation (manipulation through disinformation or other fraudulent means) may result in imprisonment up to three years and a judicial fine.

6.2. Civil and administrative sanctions

| 6.2.1. What civil and administrative sanctions does cartel activity entail?

Once a cartel activity is established, the participant undertakings will be subject to fines of up to 10 per cent of their Turkish turnover generated in the financial year preceding the date of the fining decision

separately (if this is not available, the turnover generated in the financial year that is closest to the date of the fining decision is taken into account). 5 per cent of the fine imposed on the undertaking or association of undertakings may be imposed on the employees and/or members of the executive bodies of the undertakings or association of undertakings that had a significant role (i.e., a determining effect) in the creation of the violation. Pursuant to recent amendments, Law No. 4054 now refers to Article 17 of the Law on Minor Offences. This now requires the Board to take into account the aggravating and mitigating factors (e.g., (i) assistance with on-site inspections (beyond fulfilling legal obligations), (ii) being coerced to the violation by other undertakings, (iii) limited involvement in the violation, (iv) low revenue share of the activities constituting the violation, (v) the presence of overseas sales revenues in the annual gross revenues.) while determining the amount of administrative monetary fine.

The sanctions are not limited to administrative monetary fines as the Board may render a decision to terminate the restrictive agreement, to abolish all consequences of every action that has been taken illegally and to take all other necessary measures to restore the level of competition and establish the status that was present before the infringement. In addition, the restrictive agreement is rendered legally invalid and hence unenforceable with all its legal consequences. Likewise, in cases where there is a possibility of serious and irreparable damages, Law No. 4054 authorized the Board to order interim measures to be applied until the final decision.

Civil lawsuits, although still rare, are increasing in number. Allegations of refusal to supply, price manipulation and exclusionary conduct give rise to the majority of private lawsuits pertaining to Turkish competition law enforcement. Claims in these civil lawsuits are usually settled between parties involved before a court renders a decision.

Akin to US competition law enforcement, Turkish competition law includes treble damages lawsuits, supplementing the administrative proceedings with civil lawsuits. Pursuant to Articles 57 et seq of Law No. 4054, violators may be sued for three times their damages in addition to litigation costs and attorney fees, by any legal or natural person that suffered damages in their business or property due to a competition law violation. These cases are brought before the competent general civil court. That said, the courts do not, in practice, engage in any evaluation to determine whether there is a condemnable anticompetitive agreement or concerted practice. Courts usually await the Board's decision on the matter, rendering the issue as a pre-judicial question. Accordingly, the

court's decision can be obtained in a shorter period in comparison to full judiciary process pertaining to follow-on actions pertaining to the Board's decision.

6.3. Sanction levels

I 6.3.1. Are there any fining or sentencing guidelines? If yes, are these binding? If not, how do adjudicators decide on the level of the sanction? Which aggravating and mitigating factors are considered?

Amended Regulation on Fines was amended and entered into force on 27 December 2024. This sets out detailed guidelines on how to calculate the amount of administrative monetary fines in cases of competition law violations. The Amended Regulation on Fines is applicable both for cartel activity and abuse of dominance. That said, it is not applicable to illegal concentrations.

Per the amended regulation, (i) there is no longer a distinction between cartels and other violations in terms of the determination of the basic fine and (ii) upper and lower limits for the basic fine have been removed. Accordingly, the basic amount of the administrative monetary fine is now determined by considering the gravity of the actual and/or potential damage along with whether the conduct has the characteristics of a naked and/or hardcore violation. Pursuant to Article 5/3 of Amended Regulation on Fines, the basic fine may be increased by:

- 20% if the duration is longer than one year but shorter than two years;
- 40% if the duration is longer than two years but shorter than three years;
- 60% if the duration is longer than three years but shorter than four years;
- 80% if the duration is longer than four years but shorter than five years; and
- 100% if the duration is longer than five years,

Aggravating and mitigating factors are factored in once the basic fine is determined. Article 6 of the Amended Regulation on Fines, lists aggravating factors in a non-exhaustive manner. Basic fine may be increased by:

- one-fold in case of recurrence of violations of Article 4 and/or Article 6,
- up to one-fold in cases of (i) continued violation after the notification of the investigation decision, (ii) decisive role in terms of infringement or the breach of confidentiality requirement under Article 12 of the the Regulation on The Settlement Procedure Applicable in Investigations

on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position ("**Settlement Regulation**").

Under Article 7 of the Amended Regulation on Fines, mitigating factors are also set out in a non-exhaustive manner. There are: (i) assistance with on-site inspections (beyond fulfilling legal obligations), (ii) being coerced to the violation by other undertakings, (iii) limited involvement in the violation, (iv) low revenue share of the activities constituting the violation, (v) the presence of overseas sales revenues in the annual gross revenues.

Per Article 8 of the Amended Regulation on Fines, 5 per cent of the administrative monetary fine imposed on the undertaking or association of undertakings may be imposed on the employees and/or members of the executive bodies of the undertakings or association of undertakings that had a significant role (i.e., a determining effect) in the creation of the violation.

The Amended Regulation on Fines is binding for the Board.

6.4. Compliance programs

| 6.4.1. Can a compliance program in place result in a reduction of fine?

Article 7 of the Amended Regulation on Fines includes the examples of mitigating factors as (i) assistance with on-site inspections (beyond fulfilling legal obligations), (ii) being coerced to the violation by other undertakings, (iii) limited involvement in the violation, (iv) low revenue share of the activities constituting the violation, (v) the presence of overseas sales revenues in the annual gross revenues.

Yet, the list is non-exhaustive and the Board has significant discretion in determining mitigating factors. As per the Board's previous practice, the Board had considered compliance programs as an indication of good faith whilst evaluating mitigating factors (see *Unilever*, 28 August 2012, 12-42/1258-410; *Efes*, 18 July 2012, 12-38/1084-343). However, the existence of compliance programs in and of themselves are not sufficient to deem for mitigating factors in the Board's recent decisions (*Nestle*, 15 February 2024, 24-08/149-61; *Unilever*, 18 March 2021, 21-15/190-80; *Enerjisa*, 8 August 2018, 18-27/461-224; *Frito Lay*, 29 August 2013, 13-49/711-300; *Industrial Gas*, 29 August 2013, 13-49/710-297). That said, there are also decisions where the Board applied a reduction in the amount of the administrative monetary fine pursuant to compliance programs (e.g., *Mey İçki*, 16 February 2017, 17-07/84-34; *Consumer Electronics*, 7 November 2016, 16-37/628-279).

6.5. Director disqualification

| 6.5.1. Does cartel activity result in prohibitions on serving as corporate directors or officers?

The sanctions foreseen for undertakings may only apply to individuals to the extent that they engage in business activities as an undertaking. As for sanctions for cartel activity, employees and/or members of the executive bodies of the undertakings or association of undertakings that had a significant role (i.e., a determining effect) in the creation of the violation may be subject to separate sanctions. There are no additional sanctions foreseen for individuals. That said, bid rigging is criminally prosecutable per section 235 et seq of the Turkish Criminal Code. Similarly, pursuant to section 237 of the Turkish Criminal Code, illegal price manipulation (manipulation through disinformation or other fraudulent means) may result in imprisonment up to three years and a judicial fine.

6.6. Debarment

| 6.6.1. Are there automatic or discretionary debarment from government procurement procedures as a result of cartel infringement?

Pursuant to Article 58 of the Public Tenders Law No. 4734, bid riggers in government procurement tenders may be subject to blacklisting up to two years (i.e., debarment from government tenders). The ministry (i) implementing the tender contract or (ii) that the contracting authority is subordinate to or is associated with renders its decision on blacklisting. In cases of bid rigging in government tenders, the administrative authorities are required to apply blacklisting and hence is not optional.

That said, the blacklisting procedure is not applicable in cartel infringements other than bid rigging.

6.7. Parallel proceedings

| 6.7.1. Can criminal and civil or administrative penalties for cartel activity be pursued together?

This is possible. A single conduct may trigger administrative or civil sanctions (or criminal sanctions in the case of bid rigging or other criminally prosecutable conduct) at once.

7. PRIVATE RIGHTS OF ACTION

7.1. Private claims of damages

- | 7.1.1. Can both direct and indirect purchasers claim damages? Can the purchasers that acquired the affected product from a non-cartel member also bring claims? What level of damages and cost can be compensated?

Turkish competition law includes a treble damages lawsuit, supplementing the administrative proceedings with civil lawsuits. Pursuant to Articles 57 et seq of Law No. 4054, violators may be sued for three times their damages in addition to litigation costs and attorney fees, by any legal or natural person that suffered damages in their business or property due to a competition law violation. That said, the Turkish Code of Obligations prevents the debtor from double recovery, regulating joint creditors. Every creditor should pursue a claim against the debtor. In this case, the debtor is obliged to pay on the amount of their shares. That said, a creditor would be liable to the others and the other creditors, in case if the debtor makes a payment to only one creditor as a whole.

Claims of indirect purchasers are yet to be addressed by the courts. However, Article 58 of Law No. 4054 does not prevent purchased claims as the text states the following, focusing on the existence of damage:

“Those who suffer as a result of the prevention, distortion or restriction of competition, may claim as a damage the difference between the cost they paid and the cost they would have paid if competition had not been limited.”

7.2. Class actions

- | 7.2.1. Are there class actions? If yes, what is the process? If not, what is the scope for representative or group actions? What is the process for these cases?

Class action procedures are not allowed in Turkish procedural law. As such, Turkish courts would not grant class certifications. Class actions by consumer organizations are allowed per Article 73 of Law No. 6502 on the Protection of Consumers. However, these are limited to the violation of the said law and do not cover competition law infringements. Likewise, trade associations may take class actions in cases of unfair competition behavior per Article 56 of the Turkish Commercial Code. That said, this is not relevant to private lawsuits regulated under Article 57 of Law No. 4054.

Group actions are allowed pursuant to Article 113 of the Turkish Procedure Law No. 6100. A group

action may be initiated by associations and other legal entities *“to protect the interest of their members”, “to determine their members’ rights”* and *“to remove the illegal situation or prevent any future breach”*. These group actions do not extend to actions for damages. Group actions shall be brought before the court with a single lawsuit and the decision shall encompass all individuals within the group.

8. COOPERATING PARTIES

8.1. Immunity

- | 8.1.1. Are there immunity programs? If yes, what are the fundamentals? Is there any importance of being *“first in”* to cooperate?

Regulation on Leniency was enacted on 16 December 2023. Main principles of immunity and leniency mechanisms are set out in the Regulation on Leniency. This replaces the former regulation on leniency mechanism, which was enacted on 15 February 2009. The Board published Guidelines on Explanation of the Regulation on Active Cooperation for Discovery of Cartels in April 2013, which was in line with the regulation prior to the Regulation on Leniency. The Authority is expected to release updated guidelines, explaining the Regulation on Leniency.

Regulation on Leniency is mainly applied in cartel cases. The definition of cartel is provided under Article 3(1)(ç) of the Regulation on Leniency. That said, in cases where the applicant believes the violation to constitute a cartel, and the Board deems for a different violation, the applicant may receive exemption from or reduction of the administrative monetary fine. This clearly signals the Authority's aim to encourage leniency applications.

The first undertaking to apply for leniency through an appropriately prepared application for leniency before the service of the investigation report and when the Authority does not possess any finding that signals the existence of a cartel may benefit from full immunity. This full immunity is also applicable to employees or managers of the first applicant. The applicant should satisfy several conditions to receive full immunity. This includes not being the coercer of the reported cartel. If the applicant coerced other cartel members to participate, the applicant firm may only receive a reduction of between 25 per cent and 50 percent while its employees may receive a reduction of between 20 per cent and 100 per cent. Other conditions are:

- the applicant shall submit information and evidence in respect of the alleged cartel, including the products affected, geographical scope of the cartel, the duration of the cartel, the names

and/or trade names of the undertakings party to the cartel and facilitators, and specific dates, locations and participants of cartel meetings;

- the applicant shall not conceal or destroy information or evidence related to the alleged cartel;
- the applicant shall end its involvement in the alleged cartel except when otherwise requested by the Cartels and On-Site Inspections Support Unit;
- the applicant shall keep the application confidential until the end of the investigation, unless otherwise requested by the Cartels and On-Site Inspections Support Unit; and
- the applicant shall maintain active cooperation to the extent necessary until the Board takes the final decision.

8.2. Subsequent cooperation

- | 8.2.1. Is partial leniency possible after an immunity application? If yes, what are the fundamentals? If not, how can subsequent cooperating parties benefit from favorable treatment?

The second applicants are also provided with the possibility of a reduction pursuant to Regulation on Leniency. The Board may also evaluate their active cooperation as a mitigating factor.

8.3. Second cooperating party

- | 8.3.1. What is the treatment for the second cooperating party? Is there any “immunity plus” or “amnesty plus”? If yes, what is the process?

The second party to file an application that is appropriately prepared can receive a fine reduction of between 20 per cent and 40 per cent. Employees or managers of the second applicant may benefit from a reduction anywhere between 20 and 100 per cent.

Applicants to apply for leniency following the first two applicants can benefit from a reduction of 15 per cent to 30 per cent. Employees or managers of these applicants may benefit from a reduction anywhere between 15 and 100 per cent.

8.4. Approaching the authorities

- | 8.4.1. What are the deadlines for initiating and/or filing the immunity or partial leniency applications? What are the time limits?

A cartel member or a facilitating undertaking can file its leniency application until the official service of the investigation report. The applicant can place a

marker and be granted a grace period by the Authority for the submission of necessary information and evidence. Eligibility for the grace period is contingent upon providing minimum information concerning the affected products, the duration of the cartel and the names of the parties. The applicant is provided with a document by the Authority, indicating the date and time of the application and the time granted to prepare the requested information and evidence.

An application cannot benefit from conditional immunity, if it is filed after the official service of the investigation report. Yet, such an application may still be taken into account in terms of fine reduction.

8.5. Cooperation

- | 8.5.1. What nature, level and timing of cooperation is expected from the applicant? Do these differ for subsequent cooperating parties seeking partial leniency?

The applicant should submit the following:

- information on the products affected by the cartel;
- information on the geographical scope of the cartel;
- information on the duration of the cartel;
- the names and/or trade names and addresses of the cartelists and of cartel facilitators;
- the dates, locations and participants of the cartel meetings; and
- other information or documents about the cartel activity.

The foregoing may be provided verbally to the Authority. There are also markers available. An admission on the actual price effect is not necessary for the leniency application. The applicant shall refrain from concealing or destroying the information or documents concerning the cartel activity. The applicant shall stop taking part in the cartel, although the Cartels and On-Site Inspections Support Unit may order otherwise. The leniency application is kept confidential until the service of the investigation report, unless the Cartels and On-Site Inspections Support Unit decides on the contrary. The applicant is obliged to continue its active cooperation with the Authority until the Board renders its final decision. The applicant is also expected to submit any new documents to the Authority as soon as it discovers them, cooperate with the Authority on additional information requests and refrain from any statement that would contradict with the documents submitted as part of

the leniency application.

These rules are also applicable to subsequent co-operating parties.

Until recently, the standard adopted for ***“necessary documents and information for a successful leniency application”*** and the ***“minimum set of documents that a company is required to submit”*** was extremely high. In 3M (, 27 September 2012, 12-46/1409-461), the Authority recommended the Board to revoke the full immunity granted to the undertaking, noting that the applicant did not provide documents that could be discovered during a dawn raid. Yet, the details of the matters were not disclosed in the reasoned decision as the case was closed without a finding of violation. It could be argued that this very high standard for ***“cooperation”*** in terms of the leniency program renders it almost impossible to meet and only met by very few companies. This trend was signified by the significant broadening in the interpretation of the ***“coercion”*** and ***“the Authority’s already being in possession of documents that prove a violation at the time of the leniency application”*** concepts.

The fresh yeast producers decision published on 30 March 2015 (14-42/783-346) handed a new decision which could signal a new era for the Turkish leniency program. The decision was novel one as the Board granted full immunity pursuant to Article 4/2 of the Regulation on Active Cooperation for Detecting Cartels. The full immunity was granted upon an application made following the initiation of the preliminary investigation and execution of dawn raids. The decision was the first of its kind as it granted immunity after dawn raids. This conclusion was justified through substantive evidence and added value were brought in through the leniency application. Likewise, in *Mechanical Engineering* (14 December 2017, 17-41/640-279), the Board granted full immunity to an applicant who applied for leniency during the course of the preliminary investigation. The Board rendered a decision to halve the administrative monetary fine for the undertaking who applied for leniency during the investigation phase in its decision regarding undertakings active in the roll-on, roll-off transportation sector (18 April 2019, 19-16/229-101). This was subject to whether the information provided significantly contributed to the investigation. The Board underlined in the decision that the contributions included evidence showing that the violation started earlier than what was detected during on-site inspections and evidence showing price information exchange by violating undertakings. The information provided also included details on how the price exchange was conducted.

In *Gaziantep automobile* expert-opinion (9 July 2020, 20-33/439-196), the Board rendered a signifi-

cant decision on price-fixing arrangements. The investigation was launched into automobile expertise service providers in the Gaziantep province of Türkiye. Concrete evidence of a horizontal cartel agreement was found, aimed at determining automobile expertise service price tariffs and refusal to provide services on Sundays or to provide services on Sundays according to a rotation schedule set inter se. Pursuant to these findings, the Board imposed an administrative monetary fine on the investigated parties. Yet, one of the investigated parties was granted a 50 per cent reduction on the administrative monetary fine pursuant to its leniency application.

Lastly, the Board rendered two decisions, where it evaluated combined applications for the settlement mechanism and leniency mechanism. These decisions were rendered before the introduction of the Regulation on Leniency (i.e., they were evaluated under the previous leniency regulation of 15 February 2009). These decisions concerned Kınık Maden Suları A.Ş. and Beypazarı İçecek Pazarlama Dağıtım Ambalaj Turizm Petrol İnşaat Sanayi ve Ticaret A.Ş. In *Kınık* (14 April 2022, 22-17/283-128), the Board applied a 25% reduction pursuant to the settlement application and a 35% reduction for the leniency application. Subsequently, in *Beypazarı* (18 May 2022, 22-23/379-158), the Board applied a 25% reduction for the settlement application and a 30% reduction for the leniency application, as the undertaking applied for leniency after *Kınık*.

8.6. Confidentiality

I 8.6.1. What is the confidentiality provided to the leniency applicant? Does this level of confidentiality also apply to subsequent applications? What information becomes public and when?

Pursuant to the principles set out in the Regulation on Leniency, unless the Cartels and On-Site Inspections Support Unit decides on the contrary, the applicant (an undertaking or the employees or managers of an undertaking) is obliged to keep the application confidential until the service of the investigation report. This confidentiality also applies to subsequent applications. The Board can evaluate the information and/or documents *ex officio*, however, the rule of thumb is that information and/or documents are not confidential to the extent that they are not requested to be treated as confidential. The undertakings shall request the treatment of commercial secrets as confidential in writing, by also justifying confidential nature of the information and/or these documents. The non-confidential information may be disclosed to the public through the reasoned decision that is usually announced within three to four months after the Board renders its decision.

8.7. Settlements

| 8.7.1. Can the Authority engage into a plea bargain, settlement, deferred prosecution agreement (or non-prosecution agreement) or other binding resolution with the investigated party to resolve the cartel activity? Are there any judicial or other oversights to these settlements?

Inspired by the European Union law, Law No. 7246 introduced commitment and settlement mechanisms aiming to enable the Board to end investigations without going through the entire pre-investigation and investigation procedures.

The commitment mechanism enables the undertakings or association of undertakings to offer commitments during a preliminary investigation or full-fledged investigation voluntarily. These commitments should aim to eliminate the Authority's concerns that pertain to Articles 4 and 6 of Law No. 4054. Subject to the timing and sufficiency of these commitments, the Board is authorized to decide not to launch a full-fledged investigation following the preliminary investigation or to end an ongoing investigation without going through the entire investigation procedure. That said, the commitment mechanism is not applicable for violations such as price-fixing between competitors, territory or customer sharing, or the restriction of supply. The Regulation on the Settlement Procedures to be Applied during Investigations Regarding Settlement Regulation entered into force on 15 July 2021. Settlement Regulation sets forth other procedures and principles of the settlement process. Contrary to the commitment mechanism, settlement is applicable to any type of competition law violation.

Per the Settlement Regulation, the Authority may *ex officio* invites the investigation parties to settlement negotiations. Upon Authority's invitation, the parties should notify whether they accept the invitation to initiate settlement negotiations with the Authority within 15 calendar days. The Board has the discretion to reduce the amount of fine between 10 and 25 per cent per Article 4(4) of the Settlement Regulation. Settlement Regulation notes that the actual reduction of the administrative monetary fine cannot be less than 10 per cent. Per Article 6(5) of the Settlement Regulation, the Authority shall inform the settling party on:

- the content of the allegations;
- the nature and scope of the alleged violation;
- the main pieces of evidence that constitute a basis for the allegations;
- the potential reduction rate to be applied in

case of settlement; and

- the range of the potential administrative monetary fine that might be imposed against the settling party.

The Board would adopt an interim decision upon the settlement negotiations. The interim decision would include, *inter alia*, the nature and scope of the alleged violation, the maximum rate for the administrative monetary fine in accordance with the Amended Regulation on Fines, and the rate of reduction applied pursuant to the settlement procedure. Should the settling party agree on the foregoing matters, the undertaking shall submit a settlement letter that includes, *inter alia*, an express declaration of admission as to the existence and scope of the violation. Article 9(1) of the Settlement Regulation obliges the Board to render its final decision concluding the investigation within 15 days after the submission of the settlement letter. This final decision should include the finding of the violation and the administrative monetary fine to be imposed against the settling undertaking.

The Board can re-launch an investigation if:

- there is a substantial change in any aspect of the basis of the decision;
- the relevant undertakings do not comply with the commitments; and
- there is a realisation that the decision was decided on deficient, incorrect or fallacious information provided by the parties.

8.8. Corporate defendant and employees

| 8.8.1. If immunity or partial leniency is granted to a corporate defendant, what is the treatment for its current and former employees

The same level of immunity or leniency granted to the entity also applies for the current employees of the cartel members. Yet, there are no precedents on former employees.

In addition, until the official service of the investigation report, a manager of the cartel member undertaking is able to apply for leniency per the Regulation on Leniency. This application is independent from the application of the cartel member undertaking, if there is one. A total immunity from, or reduction of an administrative monetary fine for such manager may be possible, subject to the application order. The reduction rates and conditions for immunity or reduction shall be the same as those foreseen for cartel members.

8.9. Dealing with the Authority

- | 8.9.1. In terms of dealing with the Authority, what are the practical steps for an immunity applicant or subsequent cooperating party?

All applicant cartel members are required to actively cooperate with the Authority to maintain the leniency or immunity granted by the Board. Therefore, the Board should be kept up-to-date and informed on the cartel subject to the investigation to the maximum possible extent through extra effort.

9. DEFENDING A CASE

9.1. Disclosure

- | 9.1.1. What information and evidence does the Authority disclose to the defendant?

Law on the Right to Obtain Information (the “*Law No. 4982*”) and Communiqué No. 2010/3 on the Regulation of Right to Access to File and Protection of Commercial Secrets (“*Communiqué No. 2010/3*”) are the two legal bases for right of access to the file in Turkish competition law. Pursuant to Article 5/1 of Communiqué No. 2010/3, right of access to the case file shall be granted upon the requests of the parties in written form, within due period during the investigation. Upon a written request, the right to access the case file can be exercised at any time until the deadline for the submission of the last written statement.

That said, Law No. 4982 is not subject to any timing or scope restriction. The applicant is able to gain access to information and documents within the case file through access to the case file, provided that the information and documents are not internal documents of the Authority or trade secrets pertaining to other parties.

9.2. Representing employee

- | 9.2.1. Can a counsel represent the employee under investigation while representing the employing corporation? When should a present or former employee obtain independent legal advice and/or representation?

So long as there are no conflicts of interest, counsel can represent both an undertaking under investigation and its employees under Turkish law. However, separate investigations for employees are rare and there are no criminal sanctions against employees for antitrust infringements.

9.3. Multiple corporate defendants

- | 9.3.1. Can a counsel represent multiple corporate defendants? If yes, is this dependent on the affiliation between the corporations?

Even if the corporations are not affiliated, attorneys-at-law (members of a Turkish bar association qualified to practice law in Türkiye) can and do represent multiple corporate defendants, provided that there are no conflicts of interest and the represented parties consent to such representation. People who are not registered attorneys are able to undertake representations. However, these representatives are not bound by the same ethics codes that bind attorneys in Türkiye.

9.4. Payment of penalties and legal costs

- | 9.4.1. Can the legal penalties imposed on an employee and their legal cost be covered by the corporation?

This is possible. But seeking separate advice on tax or bookkeeping prior to paying such legal penalties and legal costs is advised.

9.5. Taxes

- | 9.5.1. Are administrative monetary fines and/or other sanctions, along with private damages tax-deductible?

Administrative monetary fines are not considered to be tax-deductible pursuant to Article 11 of Corporate Tax Law No. 5520. Whether losses, damages and indemnities paid based upon judicial decisions are tax-deductible depends on circumstances. This is evaluated on a case-by-case basis and a separate tax or bookkeeping advice is advisable in each case.

Administrative monetary fines may be subject to reductions. So long as the payment is made within one month of the receipt of the reasoned decision, the relevant legislation on payment of administrative monetary fines allows the undertakings to discharge from liability by paying 75 per cent of the administrative monetary fine. The payment of such an amount is without prejudice to an appeal.

9.6. International double jeopardy

- | 9.6.1. Are penalties imposed in other jurisdictions considered whilst determining the sanctions on corporations or individuals? Is overlapping liability for damages in other jurisdictions taken into account in private damage claims?

No. The penalties imposed in other jurisdictions are not taken into account by the Authority. Overlapping liability for damages in other jurisdictions is also

not considered. Circumstances pertaining to indirect sales are yet to be addressed by Turkish cartel rules.

9.7. Reducing the administrative monetary fine

| 9.7.1. What is the optimal approach for reducing the amount of the administrative monetary fine?

In addition to the leniency program, Article 9 of Law No. 4054, which authorizes the Board to order structural or behavioral remedies to restore the competition as before the infringement, can also serve as a means through which infringement allegations are settled before a full-blown investigation is launched. Yet, this is only possible with a very diligent review of the relevant implicated businesses to identify all the concerns, and adequate professional coaching in eliminating all competition law issues and risks. The Board at least found a mitigating factor where the undertaking immediately took measures to cease any wrongdoing and if possible to remedy the situation in cases where the infringement was too far advanced to be subject to Article 9 notice.

10. UPDATE AND TRENDS

10.1. The recent cases and developments in Türkiye

Per the Authority's annual report for 2024 the Board finalised a total of 166 cases relating to competition law violations. Among the 166 cases, 148 were subject to Article 4 (anticompetitive agreements) only and five cases were subject to both Article 4 and Article 6 (abuse of dominant position). The Board issued administrative monetary fines amounting to a total of 5,946,683,069 Turkish Lira (approx. USD 145 million¹) in 2024 on merit related assessments, and the administrative monetary fine in 2024 for Article 4 cases was 3,130,521,386 Turkish lira (approx. USD 76 million²). Specifically, the Board imposed administrative monetary fines totalling 2,138,216,979 Turkish lira (approx. USD 52 million³) in relation to horizontal anticompetitive arrangements in 2024.

In 2024, the Board increased its scrutiny of labor markets. The Board rendered its *Doğa Koleji* (3 October 2024, 24-40/948-407) where it investigated whether 19 private schools operating in the Kocaeli province violated Article 4 of Law No. 4054 through no-poaching agreements and fixing employee salaries. As a result, Arı İnovasyon ve Bilim Eğitim Hizmetleri AŞ was imposed an administrative monetary fine of 591,347.22 TL for taking a part in the cartel. The remaining 18 undertakings benefitted from the settlement mechanism. Similarly in the *French High*

Schools (24 April 2024, 24-20/466-196), the Board evaluated whether French high schools in Istanbul jointly determined school registration fees and certain items pertaining to these fees, along with the salaries of Turkish teachers. The Board evaluated the conduct as a cartel and rendered its decision imposing an administrative monetary fine of approximately 21 million TL on the undertakings because of the violation in the labor market.

In *Healthcare Sector* (24 February 2022, 22-10/152-62), the Board imposed administrative monetary fines on 29 undertakings and associations of undertakings due to (i) price-fixing agreements, (ii) restricting competition in the labor market and (iii) exchanging competitively sensitive information. The Board concluded that six undertakings established a cartel in two different cities. In addition, the Board found that the practices of 16 undertakings aimed at restricting competition in the labor market by preventing employee transfers, and wage fixing constituted another violation of Article 4 of Law No. 4054. Lastly, the Board imposed administrative monetary fines on eight undertakings for exchanging competitively sensitive information; where seven undertakings were found to have been directly active in information exchange, while one undertaking association was deemed as a facilitator.

Furthermore, the Board provided detailed theoretical background for hub-and-spoke cartels and use of algorithms for agreements in its recently published settlement decisions pertaining to the *cosmetics sector* (5 July 2023, 23-29/563-190; 31 August 2023, 23-40/768-270 and 21 September 2023, 23-45/853-304).

¹ At exchange rates as of 1 September 2025 based on the Turkish Central Bank's announcement that USD 1 corresponds to TL 41.0379.

² At exchange rates as of 1 September 2025 based on the Turkish Central Bank's announcement that USD 1 corresponds to TL 41.0379.

³ At exchange rates as of 1 September 2025 based on the Turkish Central Bank's announcement that USD 1 corresponds to TL 41.0379.

10.2. Regime reviews and modifications

| 10.2.1. Are there any expected changes in terms of Turkish competition law in the form of ongoing or anticipated reviews or proposed changes?

Law No. 7246 introduced certain significant substantive and procedural changes to Law No. 4054. These are, among others, new provisions related to adoption of the significant impediment of effective competition ("**SIEC**") test, *de minimis* principle, on-site inspection powers of the Authority, behavioral and structural remedies and commitment and settlement mechanisms and secondary regulations in relation to some of the relevant mechanisms. Moreover, the Regulation on Leniency was adopted.

Currently, the Authority is in the process of evaluating possible legislative action in terms of digital markets. This proposed legislation is also mentioned within the Online Advertising Sector Inquiry Final Report. Previously, the Authority noted that it is working on digital market regulations E-Marketplace Platforms Sector Inquiry Final Report, by referring to Regulation (EU) 2022/1925 Digital Markets Act" as a basis for it.

The regulation on gatekeepers is expected to be incorporated into Article 6 of Law No. 4054 which regulates abuse of dominance. Once completed, the amendment is expected to be the most remarkable update in Turkish competition law within the scope of digital markets.

Along these lines, the Ministry of Trade formulated a Draft Regulation Amending Law No. 4054, with an emphasis on establishing and preserving competition in digital markets. The Authority conveyed the final draft with the certain parties and held stakeholder meetings to receive opinions on the draft. The timeline for the adoption of the draft, however, currently remains uncertain.

On 3 December 2024, the Authority published the Guidelines on Competition Infringements in Labor Markets ("**Guidelines on Labor Markets**"), explaining the framework of competition law enforcement (including cartel enforcement) in labor markets. Per the Guidelines on Labor Markets, wage-fixing agreements are treated as price-fixing agreements, whereas no-poaching agreements are evaluated within the same ballpark with customer/supplier allocation. Information exchange and ancillary restraints are also addressed in the Guidelines on Labor Markets. Lastly, the application of Article 5 (on exemption), Article 6 (abuse of dominance) and Article 7 (merger and acquisition control) of Law No.4054 in Labor Markets are assessed in the Guidelines on Labor Markets. In view of the foregoing, it is anticipated that the Board

may scrutinize labor markets in the upcoming years by utilizing the detailed explanations laid out in the Guidelines on Labor Markets.

COMPETITION IN DIGITAL MARKETS

1. LEGAL SCOPE

1.1. Regulation

| 1.1.1. Which Law regulates competition in digital markets in Türkiye? Does it differ from the standard competition law regulation?

Currently, there is no legislation in Türkiye specifically aiming to regulate competition in digital markets. The main competition law legislation in Türkiye is Law No. 4054 on Protection of Competition ("**Law No. 4054**"). Law No. 4054 applies to competition in all markets, including digital markets. There are no specific rules or exemptions with respect to competition in digital markets in Türkiye.

However, recently, the Ministry of Trade prepared a Draft Regulation on Amending Law No. 4054 ("**Draft Amendment**") that aims to update existing competition rules to establish and preserve competition in digital markets. The Draft Amendment closely resembles the Digital Markets Act ("**DMA**") in the European Union. Since its preparation, several revisions have been shared with certain institutions to receive comments before the Draft Amendment is enacted. Lastly, the Turkish Competition Authority (the "**Authority**") has shared the final draft of the Draft Amendment to consult with related parties.

1.2. The Authority

| 1.2.1. Which authority enforces competition law in Türkiye's digital markets?

The Authority enforces competition law in Türkiye's digital markets. Although there is no dedicated digital markets unit, the Authority operates with several departments dedicated to specific sectors. Although there is no dedicated department for digital markets, the 1st Supervision and Enforcement Department oversees information and communications technology and services and media and advertising services, which are broadly related to digital markets.

1.3. Guidelines

| 1.3.1. Have the Authority issued any guidelines on the application of competition law to digital markets?

The Authority did not yet issue a dedicated secondary legislation (i.e., regulation, communiqué or guideline) for the application of competition law rules

in digital sectors. That said, the Draft Amendment published by the Ministry of Trade and revised with pursuant to opinions of market stakeholders, aims to take legislative actions concerning digital markets and has published the Draft Amendment.

1.4. Reports

| 1.4.1. Are there any advisory reports in Türkiye on competition law issues in digital markets?

The Authority announced that it had commenced its work on a digitalisation and competition policy report at the beginning of 2020. The Authority specified its aim as *"approaching business models that are at the focus of consumer-friendly innovations with greater sensitivity while shaping the competition policies of the future"*.

On 18 April 2023, the Authority published the Study on the Reflections of Digital Transformation on Competition Law ("**the Study**"). The Study includes an overview of the competition law framework for digital markets and emphasizes the challenges posed by data practices, algorithmic collusion, interoperability and platform neutrality.

The Authority also started working on sector inquiries focusing on (i) online marketplaces in June 2020, (ii) online advertising in March 2021, and (iii) mobile ecosystems in April 2024. The Authority's goal is to determine behavioural and structural issues pertaining to these sectors, and to propose solutions accordingly. These sector inquiries of the Authority served as preparatory elements facilitating legislative actions.

On 14 April 2022, the Authority published its final report upon its e-marketplace sector inquiry. The report evaluated the effect of e-marketplace platforms on competition and proposed a policy towards e-marketplaces. The report underlined that market power of e-marketplace platforms is supported by network externalities, multi-homing, economies of scope and scale, multi-sidedness, and data-driven business models.

Due to these market characteristics, e-marketplaces are associated with high barriers to entry and expansion and a tendency to evolve into a single platform (i.e., tipping). Initially, the Authority references its ongoing preparation of legislation regarding gatekeepers in digital platforms, where e-marketplace platforms are already covered under the category of *"online intermediary services"*. The Authority recommends that the new legislation should impose the following obligations on e-marketplace platforms with gatekeeper status:

- gatekeepers should not apply contractual or

de facto exclusivity clauses or impose broad most-favoured-nation (“*MFN*”) clauses on their vendors;

- they should not use non-public data, that is acquired through the activities of vendors, in their own products competing with the products of these vendors;
- they should not favor their own products or the products belonging to their group companies in their platform rankings;
- they should provide their sellers with free, efficient, high-quality, and real-time access to the performance tools which will enable the sellers to track the profitability of their sales within the platform;
- they should not create a technical or behavioral impediment to the transfer of the data to other platforms, which the sellers or consumers provide to the marketplace;
- they should provide free, effective, good quality and real-time access to (1) the data provided by the vendor to the marketplace and (2) the data generated from this data to its vendors or third-parties authorized by the vendors;
- they should ensure interoperability between their main platform services and ancillary services;
- they should ensure platform transparency by providing their sellers with sufficient information on the scope, quality, performance, and pricing of their main and ancillary platform services; and
- they must notify the Authority on all acquisitions, regardless of the turnover thresholds in the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization (“*Communiqué No. 2010/4*”) of the Turkish Competition Board (the “*Board*”).

Moreover, the Authority advocates for a more conservative and strict application of competition rules in the digital markets. Therefore, the Authority recommends reinforcing the secondary legislation to achieve this goal. In particular:

- Market share thresholds and theories of harm should be revised in line with exclusivity and *MFN* obligations.
- Platforms’ exploitative behaviors should be defined and clarified. In terms of unfair contractual obligations, the legislation preparations already address topics such as *MFN*/exclusivity

clauses, platform transparency, and excessive data collection and confidentiality. But a clarification and reinforcement of these elements through secondary legislation would be helpful.

In sum, the Authority suggests that secondary legislation complementing the primary legislation changes to be introduced in digital markets would be necessary.

On 30 May 2025, the Authority published its final report on the sector inquiry into online advertising on its website. The Authority previously defined the main aim for launching this sector inquiry as clarifying how the complex online advertising sector works, determining the concentration level in relevant markets, and investigating structural or behavioral problems in these markets. The Authority underlined that due to the digitalization in the world, the advertising sector also gravitated towards a digital structure. The ability to track users’ footprints, which enables advertisers to address their target audience is recognized in the report. The Authority emphasizes the pace of growth of online advertising and notes that it takes the biggest share of advertising spend.

The report evaluates the competition in search advertising and display advertising separately. For display advertising, the report acknowledges the significance and advantage of social media platforms stemming from detailed data at platforms’ service. The Authority also recognizes and suggests the following:

- A conflict of interest stems from vertical integration in the supply chain.
- The market carries concerns of potential tying and self-preferencing conducts.
- Potential data aggregation raises concerns about an advantage. For this concern the Authority emphasizes that the Draft Amendment, which limits data usage of gatekeepers, would be able to address this concern.
- There is a concern about transparency in the market, hindering conscious decisions of advertisers in choosing the publishers and services. The Authority once again underlines that this concern is addressed by the Draft Amendment.
- The quality of news content is jeopardized due to the decreased advertising income of news publishers because of their gravitation towards digital platforms. Concerns arise from this asymmetry between news publishers and digital platforms. The Draft Amendment is seen as a potential tool to eliminate this concern.

- Prevention of third-party cookie usage also arises concerns.
- Profitability and sustainability of advertising activities is under a risk as Operating systems limit third-party applications' access to Mobile Advertising Identifiers. The Authority recommends investigating this matter further.

1.5. A priori guidance

| 1.5.1. Can the Authority provide advance guidance for undertakings on competition law compliance before entering into an agreement or determining a pricing strategy active in digital markets?

There is no system that provides advance guidance on competition law compliance in the Turkish competition law regime. An ex post review mechanism is available, called individual exemption for agreements, concerted practices and decisions. Parties to an agreement, concerted practice or decision are also able to conduct a self-assessment to see if the conditions of individual exemption are met, so notifying for individual exemption is not a positive duty but an option for obtaining legal certainty. The Authority would not carry out an ex ante review within the scope of an individual exemption filing and this is not available for unilateral conduct such as pricing.

1.6. Regulatory atmosphere and enforcement

| 1.6.1. How is the general approach towards digital companies in Türkiye in terms of government policy and the Authority's approach?

To address the new economy's challenges, the Turkish government has adopted various tailor-made economic agendas and policy choices. Accordingly, the Turkish government's 11th Development Plan (the "*Plan*") (2019–2023) demonstrates the goal of increasing its innovation capacities is included as a development priority. The Plan, inter alia, lists boosting productivity and competitiveness in priority sectors by accelerating digital transformation as a main objective.

The Authority also carefully follows the national and international developments in the digital economy sector. On 4 April 2021, the Authority announced on its official website that it closely scrutinizes digital markets and that it is working on a legislation proposal for digital markets. In its announcement, the Authority also referred to the EU DMA proposal. Accordingly, the Authority prepared a Draft Amendment and conveyed it to certain undertakings to receive feedback before its enactment.

The Authority has acknowledged the Draft Amendment in its final report on the sector inquiry regarding

e-marketplace platforms and announced that it aims to adopt a sensitive approach for business models that are the focus of consumer-friendly innovations. The Authority confirmed that e-marketplaces dissociate from traditional markets in terms of their operation and effects of their platform economy. The Authority also noted that digital platforms "*have become the main gateway to reach markets and customers*" in its final report on the sector inquiry regarding e-marketplace platforms stated that:

"digitalisation transforms the appearance of market malfunctions and competition issues that we face in traditional markets in parallel to economic operations and consuming habits. E-marketplaces have certain features arising from platform economies that distinguish them from traditional markets. These, along with the business model that e-marketplaces adopt, make it more difficult to understand how competition works in this field."

In a similar fashion, the Board considers that the digital sector has separate competitive dynamics and therefore has a different and more complex structure and operation than provisions of a traditional legislative landscape. Therefore, the Authority and the Government are working on relevant regulations with an aim of adapting the current legal framework to the digital age.

Likewise, the Authority's Study emphasizes the rapid growth of digital markets. The Authority also notes that digital markets are characterized by network effects, data-driven business models, and platform economics that can pose challenges for competition authorities. Therefore, this requires the competition authorities' proactive approach to ensure that digital markets remain competitive and fair for all competitors. The Study concludes by underlining that effective competition law enforcement in digital markets is an important element to ensure innovation and consumer welfare are not compromised.

The Board's enforcement track record in recent years concerning digital sector players also mirrors its intention to put the digital economy, including big tech platforms, under scrutiny (See, e.g. *Sahibinden/Otobid*, 16 January 2025, 25-02/47-28; *Google Advertising Technologies*, 12 December 2024, 24-53/1180-509; *Google YouTube Advertising*, 3 May 2024, 24-21/486-207; *Google Search Features*, 4 July 2024, 24-28/682-283; *Meta/WhatsApp*, 18 January 2024, 24-05/80-32; *Amazon/Trendyol/Hepisburada*, 15 November 2023, 23-49/940-M; *Sahibinden*, 13 July 2023, 23-31/604-204; *Nadirkıtap*, 7 April 2022, 22-15/273-122; *Trendyol*, 30 September 2021, 21-46/669-334 and 27 February 2023, 23-11/177-54; *Google Local Search*, 8 April 2021, 21-20/248-105; *Meta*, 20 October 2022, 22-48/706-299; *Meta/Face-*

book interim measures, 11 January 2021, 21-02/25-10; Meta/Threads, 8 February 2024, 24-07/125-50; Google Search and AdWords, 12 November 2020, 20-49/675-295; Kitapyurdu, 5 November 2020, 20-48/658-289; Google Shopping, 13 February 2020, 20-10/119-69; Google Android, 19 September 2018, 18-33/555-273; Çiçek Sepeti, 8 March 2018, 18-07/111-58; Booking, 5 January 2017, 17-01/12-4; Yemek Sepeti, 9 June 2016, 16-20/347-156).

2. HORIZONTAL AGREEMENTS

2.1. Specific rules and examples

| 2.1.1. Are there any specific rules or exemptions for the assessment of anticompetitive agreements between competitors in digital markets in Türkiye?

There are no rules specific to horizontal agreements in digital markets. That said, the Guidelines on Horizontal Cooperation will apply to any horizontal agreements including in the digital markets.

2.2. Accessing online platforms

| 2.2.1. How has the Authority addressed horizontal restrictions on access to online platforms?

The Board does not yet have any jurisprudence where it addressed horizontal agreements that bring restrictions on access to online platforms.

2.3. Algorithms

| 2.3.1. Did the Board address the application of competition law to the use of algorithms, in particular to algorithmic pricing?

The Board evaluated the pricing algorithms of D-Market Elektronik Hizmetler ve Ticaret AŞ ("*Hepsiburada*") in the investigation concluded pursuant to Hepsiburada's commitments (3 October 2024, 24-40/951-410).

The Board initiated its preliminary investigation into Hepsiburada with concerns on (i) alleged discriminatory behaviour and the MFN clauses included in its agreements with customers, and (ii) the automatic pricing mechanism. That said, the Authority dropped its initial allegations on discriminatory conduct and MFN clauses and proceeded with a focus on whether Hepsiburada had violated Article 4 of Law No. 4054 through its automatic pricing mechanism.

The main concern in the investigation was the design of the tool (the "*Match the Buybox Price*" option) which was evaluated to have a potential to create price uniformity without any formal collusion. It should be underlined that Hepsiburada ("*the plat-*

form") did not directly set the prices, but provided a pricing tool with certain features, which was evaluated as potentially facilitating a risk of competition harm. As such, the platform was put in a responsible position for the competitive risks that may arise by the digital infrastructure and tools provided. Following the submission of its first written defense, Hepsiburada submitted its application to initiate the commitment procedure, proposing to address the Board's competitive concerns through a set of proposed commitments.

Hepsiburada's commitments included, *inter alia*:

(i) removing the "*match buybox price*" option from its automatic pricing mechanism, hence the "*stay below buybox price*" and "*stay above buybox price*" options were the only options remaining;

(ii) organizing "*Stay below the Buybox Price*" and "*Stay above the Buybox price*" options so that they will not output the same result as "*Match the Buybox Price*" option and

(iii) not obliging the sellers to use the automatic pricing mechanism and not offering any incentive that may lead to results that are the same as obliging sellers.

The Board deemed that the commitments submitted by Hepsiburada sufficient to resolve the concerns, thereby rendering them binding.

This was one of the first cases in Türkiye concerning the competitive risks and effects of algorithmic pricing mechanisms. This also sets an important precedent for how algorithm driven coordination risks will be evaluated and monitored in Türkiye.

2.4. Data collection and sharing

| 2.4.1. Has the Board considered the application of competition law to 'hub and spoke' information exchanges or data collection in the context of digital markets?

The Board addressed the allegations of a hub-and-spoke cartel through the "*Buybox*" system of e-marketplaces in its investigation launched against Ayaz ve Ortakları Ltd. Şti. ("*Evdeeczane*"), Ege Teknoloji Kimya Mak. San. Tic. Ltd. Şti. ("*Cosmed*"), Farmakozmetika Sağlık Ürünleri ve Kozmetik Tic. Ltd. Şti. ("*Farmakozmetika*"), and SB Grup Kozmetik AŞ ("*Bakım Kutusu*") and rendered four separate decisions within the scope of these very closely related investigations (*Bakım Kutusu*, 21 September 2023, 23-45/853-304; *Evdeeczane*, 31 August 2024, 23-40/768-270; *Farmakozmetika*, 5 July 2023, 23-29/563-190; *Cosmed* 5 July 2023, 23-29/565-192). The Buybox system was explained as the system that determines which seller's product will be promoted, by giving priority to the

seller offering the product at the lowest price.

The Board found that Cosmed intervened in its reseller prices and determined which products would be included in the Buybox system. The Board also emphasized that (i) EvdeEczane, Farmakozmetika, and Bakım Kutusu had access to each others' competitively sensitive information through the Buybox system and (ii) these undertakings were able to intervene in each others' prices through Cosmed.

Pursuant to its findings, the Board concluded that Cosmed acted as the hub in a hub and spoke cartel, facilitating a horizontal coordination between undertakings. The investigation was concluded following settlement requests from all undertakings, and a 25% reduction in the administrative monetary fine.

2.5. Additional issues

| 2.5.1. Did any other key issue emerge in Türkiye in terms of application of competition law to horizontal agreements in digital markets?

The Board launched a full-fledged investigation against 32 undertakings active in the digital sector for an alleged gentlemen's agreement in labor markets on 20 April 2021. The parties of the investigation appear to range from IT and software companies to platform businesses, along with undertakings in the media industry and undertakings in the food and beverages sector. The Authority emphasized the importance of employees' contributions to connecting products and services with consumers in the digital age, where creativity and innovative intelligence have an increasing importance. The investigation was concluded through settlement mechanism and the Board imposed an administrative monetary fine on the following undertakings (26 July 2023, 23-34/649-218):

- 1. Arvato Lojistik Dış Ticaret ve E-Ticaret Hizmetleri AŞ,
- 2. Bilge Adam Yazılım ve Teknoloji Anonim Şirketi,
- 3. Binovist Bilişim Danışmanlık AŞ,
- 4. Çiçeksepeti İnternet Hizmetleri AŞ,
- 5. D-Market Elektronik Hizmetler ve Ticaret AŞ,
- 6. Flo Mağazacılık ve Pazarlama AŞ,
- 7. Koçsistem Bilgi ve İletişim Hizmetleri AŞ,
- 8. LC Waikiki Mağazacılık Hizmetleri Ticaret AŞ,
- 9. Sosyo Plus Bilgi Bilişim Teknolojileri Danışmanlık Hizmetleri Ticaret AŞ,

- 10. TAB Gıda Sanayi ve Ticaret AŞ,
- 11. Türk Telekomünikasyon AŞ,
- 12. Veripark Yazılım AŞ,
- 13. Vivense Teknoloji Hizmetleri ve Ticaret AŞ,
- 14. Vodafone Telekomünikasyon AŞ,
- 15. Zeplin Yazılım Sistemleri ve Bilgi Teknolojileri AŞ,
- 16. Zomato İnternet Hizmetleri Ticaret AŞ

3. VERTICAL AGREEMENTS

3.1. Specific rules and examples

| 3.1.1. Are there any special rules or exemptions for the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets in Türkiye?

In Türkiye, there are no rules specific to vertical agreements in digital markets. The Block Exemption Communiqué on Vertical Agreements ("*Communiqué No. 2002/2*"), the generally applicable communiqué will also apply to any vertical agreements in digital markets.

3.2. Online sales bans

| 3.2.1. How are absolute bans on online sales in digital markets evaluated by the Authority?

Pursuant to the Guidelines on Vertical Agreements ("*Vertical Guidelines*"), online sales are generally evaluated as passive sales and therefore cannot be restricted. However, there are certain exemptions where restrictions on online sales can benefit from the protective cloak of the block exemption. As an example, suppliers may impose quality conditions for online sales channels, in particular, if there is a selective distribution system in place. The restrictions must be objective, fair and reasonable, and should not directly or indirectly lead to the prevention of online sales to benefit from the block exemption.

The Board's decisional practice shows that it adopts a strict approach in terms of restrictions on online sales and considers these online sales as passive sales, which cannot be restricted (e.g. *Jotun*, 15 August 2018, 18-05/74-40). As such, in *Baymak* (26 March 2020, 20-16/232-113), the Board evaluated an absolute restriction on internet sales covering both individual websites of the distributors and third-party platforms as a violation and likewise in *Yataş* (6 February 2020, 20-08/83-50) emphasized that online

sales are passive sales and the restriction of passive sales may not benefit from block exemption.

Similarly, in *BSH* (16 December 2021, 21-61/859-423), the Board deemed that the undertaking prohibiting its authorised dealers from selling on digital platforms cannot benefit from the block exemption and does not meet the conditions for an individual exemption per Article 5 of Law No. 4054. The Board underlined that prevention of passive sales in a selective distribution is considered as a 'hardcore restriction'.

The Vertical Guidelines do not provide a clear approach as to whether restrictions on sales through online marketplaces may be considered a hardcore restriction. That said, paragraph 28 of the Vertical Guidelines states that the supplier may demand the buyer to only sell through 'sales platforms/marketplaces' that meet certain standards and conditions. However, the Vertical Guidelines emphasize that this demand should not aim to prevent the distributor's online sales or price competition. Therefore, a general prohibition of sales over platforms without objective and uniform conditions and justifications aligned with the characteristics of the product may be assessed as violations.

Therefore, the Board first explained that internet sales are, generally speaking, considered passive sales in Turkish competition law practice, akin to the European Commission's practice. The Board further noted that the restriction of sales on marketplaces:

- means direct or indirect prohibition of online sales;
- is against the principle of equivalency and serves as a deterrent factor for the usage of internet by resellers as a distribution channel; and
- restricts the active and passive sales realised by the members (dealers and distributors) of the selective distribution system to the end users.

Further to these, the Board ruled that the restriction of sales through online marketplaces at the case at hand is not based on (i) objective grounds considering the nature of the product or (ii) any qualitative criterion. Therefore, the Board concluded that restrictions on online marketplace sales are considered 'hardcore restrictions' and therefore cannot be granted a block exemption as per the Vertical Guidelines.

The Board re-evaluated its decision from 2015 where BSH was granted an individual exemption, clarifying its stance on that it views resale price maintenance along with online sales restriction as naked and hardcore violations.

Furthermore, in *Oriflame I* (14 March 2024, 24-13/245-102), the Board approved the undertaking's commitments upon the allegations of online sales ban. Oriflame I refers to various documents obtained, which demonstrate that Oriflame either entirely prohibited the resellers' online sales or despite a total restriction on online sales was the general policy, allowing online sales for only a limited time. Findings also refer to blockage punishments by Oriflame on the resellers if they breach the online sales ban. The Board evaluated these as **"competition law concerns"** under the Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse Of Dominant Position (**"Communiqué No.2021/3"**) and evaluated Oriflame's commitments.

To address these concerns, Oriflame committed to sign new agreements with its authorised resellers. Per the commitments, these agreements will include provisions to: (i) remove any clauses that may directly or indirectly restrict resellers' online sales, (ii) avoid de facto restrictions on online sales, (iii) refrain from requiring authorization or approval for resellers wishing to make online sales, and (iv) announce these contractual revisions on its official website. The Board evaluated these measures as appropriate and sufficient to resolve the competition law concerns in question. Therefore, the Board rendered these commitments binding for Oriflame and concluded the investigation.

3.3. Resale price maintenance

I 3.3.1. How did the Authority address online resale price maintenance?

Pursuant to Communiqué No. 2002/2, vertical agreements of undertakings with market shares over 30 per cent cannot benefit from the block exemption. Yet, agreements that directly or indirectly restrict the buyer's ability and freedom to determine its own resale prices do not benefit from the exemption of Communiqué No. 2002/2 as they are considered as hardcore restrictions.

In *Sony* (22 November 2018, 18-44/703-345), the Board deemed that Sony had (i) monitored the prices in online platforms; (ii) demanded compliance with its recommended resale prices; and (iii) the ability to threaten the distributors through withholding incentive payments in case of non-compliance. The Board ruled that Sony's conduct restricted the distributors' ability to autonomously determine their online prices. Therefore, the Board found Sony in violation of Article 4 of Law No. 4054 by determining the resale prices of its online retailers and imposed an administrative monetary fine of 2,346,618.62 Turkish lira on

the undertaking.

In *Groupe SEB* (4 March 2021, 21-11/154-63), the Board evaluated the allegations on violation of Article 4 of Law No. 4054 through determining the resale prices and restricting the online sales of their distributors and other resellers in the investigation launched into Groupe SEB İstanbul Ev Aletleri Ticaret A.Ş. ("**Groupe SEB**") and İlk Adım Dayanıklı Tüketim Malları Elektronik Tekstil İnşaat ve İletişim Hiz. San. Tic. Ltd. Şti. ("**İlk Adım**"). The Board evaluated the practices of Groupe SEB and İlk Adım, that included interfering with distributors' pricing strategies, imposing sanctions on distributors that disrupt the pricing strategy such as prohibiting online sales and also notifying distributors for price increases. The Board concluded that the undertakings violated Article 4 of Law No. 4054 and decided to impose administrative monetary fines on Groupe SEB and İlk Adım.

On 5 May 2023, the Board published its reasoned decision pertaining to the full-fledged investigation initiated against Korkmaz Mutfak Eşyaları San. ve Tic. A.Ş. ("**Korkmaz**"), Punto Dayanıklı Tüketim Malları İth. İhr. Tic. Ltd.Şti. ("**Punto**") and Gençler Ev Araç ve Gereçleri Pazarlama Ticaret A.Ş. ("**Gençler**") (10 November 22-51/754-313). The Board decided to launch the investigation pursuant to a complaint that Korkmaz had violated article 4 of Law No. 4054 by preventing resellers from operating with low profit margins and imposing measures for ensuring such a resale pricing policy. The Board found that dealers and distributors of Korkmaz were prevented from selling Korkmaz products at prices that differed from retail prices determined by Korkmaz. Furthermore, the Board deemed that the authorised dealership agreement between Korkmaz and its dealers prevented dealers of Korkmaz from determining retail prices on the online sales channel as well. As such, the Board concluded that Korkmaz has violated article 4 of Law No. 4054 by way of resale price maintenance practices.

In *Olka/Marlin* (30 June 2022, 22-29/488-197), the Board determined that Olka and Marlin had violated Article 4 of Law No. 4054 by explicitly interfering with the dealers' prices. The investigation was concluded through settlement. Upon examining the findings, the Board found that Olka and Marlin had requested their dealers to (i) remove the discounts on the products and (ii) adjust or revise the prices in accordance with the resale prices determined by Olka and Marlin. The Board evaluated that Olka and Marlin actively interfered with their dealers' sales on online marketplaces. The Board also found certain documents showing that Olka and Marlin contacted their dealers to withdraw certain products from the online sales. Olka and Marlin were also notifying their dealers that

they would terminate ongoing commercial relationships if they continue their online sales. The Board deemed that Olka and Marlin had restricted competition through interfering with their dealers' prices by actively controlling the prices, and imposing restrictions on the dealers' online sales conducted through online marketplaces (both through agreements and unauthorised conducts). Board concluded that this constituted a violation of article 4 of Law No. 4054 and noted that, in some instances, the restriction of the online sales function as a complementary element to enhance the deterrence and effectiveness of the determination of resale prices. As such, the Board therefore evaluated these two conducts as a single violation. In addition to the evaluations of the single violation, the Board concluded the investigation process with a settlement procedure.

3.4. Geoblocking and territorial restrictions

| 3.4.1. How does the Authority address geoblocking and other territorial restrictions?

There is no specific rule in Turkish law concerning restrictions on online sales to customers in other countries nor the Board has any precedents on this front. Per Article 4 of the Communiqué No. 2002/2, restrictions requiring the buyer not to sell the products or services in certain territories or to certain customers may violate competition laws. That said, this rule has certain exceptions. As an example, a supplier may prevent its buyer's active sales to an exclusive territory or to customers allocated to the supplier or another buyer.

In addition, the supplier may prevent its authorised distributors from making sales to unauthorised distributors in a selective distribution system. Yet, the restriction of passive sales to exclusive territories or customers fall outside of the scope of the block exemption. In any event, the jurisdiction of the Authority is limited to transactions that have an effect in Turkish markets. As such, as a rule of thumb, restrictions on sales to customers in other countries should fall into the scope of Article 4 of Law No. 4054.

3.5. Platform bans

| 3.5.1. How did the Authority address supplier-imposed restrictions on distributors' use of online platforms or marketplaces and restrictions on online platform operators themselves?

According to the Vertical Guidelines updated on 29 March 2018, online sales are evaluated as passive sales and hence cannot be restricted. The Board considered online platform bans as anticompetitive in various decisions and carried out its analysis accordingly (e.g., *Baymak*; (26 March 2020, 20-16/232-113);

Yataş; (6 February 2020, 20-08/83-50); and *Marks & Spencer* (11 April 2019, 19-15/208-93).

In *BSH*, (16 December 2021, 21-61/859-423), the Board deemed that the undertaking prohibiting its authorised dealers from selling on digital platforms cannot benefit from the block exemption and does not meet the conditions for an individual exemption per Article 5 of Law No. 4054. The Board underlined that prevention of passive sales in a selective distribution is considered as a ‘hardcore restriction’. The decision set a precedent clarifying the Board’s clear and consistent position on prohibiting online sales, especially through online marketplaces.

Following this, the Board initiated a full-fledged investigation into BSH along with five other undertakings active in the market for engaging in resale price maintenance and online sales ban on their dealers. The Board emphasized that the supplier is able to require the dealer to only sell through “**sales platforms/marketplaces**” that fulfil certain standards and conditions. That said, the Board underlined that this restriction should not aim to prevent dealers’ online sales or price competition. Therefore, a ban on sales through platforms should be implemented only if supplemented by objective and uniform conditions, and the justifications for these conditions should be aligned with the specific characteristics of the product. The investigation was concluded with commitments.

3.6. Targeted online advertising

| 3.6.1. How did the Authority address restrictions on using or bidding for a manufacturer’s brand name for targeted online advertising?

The Board ruled in *Google Search and AdWords* that it is not possible or appropriate to deem for a violation on Google’s display of third-parties’ text ads, given that these practices have aspects that increase competition (12 November 2020, 20-49/675-295). Similarly, in *Çiçeksepeti*, the Board did not consider the display of third-party websites’ text ads for branded queries within the scope of Law No. 4054 (8 March 2018, 18-07/111-58).

The Board concluded a pre-investigation launched against Google pursuant to allegations that Google’s bidding mechanism restrained competition between e-commerce sites. The Board decided not to launch a full-fledged investigation as it found that the allegations did not reflect the truth (7 November 2019, 19-38/575-243).

In *Modanisa/Sefamerve* (25 November 2021, 21-57/789-389), the Board refused to grant negative clearance or individual exemption to certain keyword bidding practices. The decision harbours extensive

explanation and analysis on branded keyword bidding practices in terms of competition law and intellectual property law, hence is of great significance. The decision also indicated that the agreements restricting companies from bidding on each other’s brands could be exempted from Law No. 4054 so long as these agreements only contain narrow non-brand bidding restrictions. As such, the decision sets out that the Board threads a line between intellectual property protections and competition law sensitives while assessing agreements on the use of negative keywords.

The Board launched an investigation against four online platforms (*Arabam Com*, *Vava Cars*, *Araba Sepeti Otomotiv Bilişim Danışmanlık* and *Letgo*) that are active in second-hand car purchasing and selling. The investigation was launched pursuant to allegations that these undertakings engaged in negative matching agreements. The Board concluded that the undertakings have violated Article 4 of Law No. 4054 through negative keyword agreements on each other’s brand names with their competitors for Google text ads. The Board concluded the investigation through settlement for *Araba Sepeti Otomotiv Bilişim Danışmanlık*, *Letgo* and *Arabam Com* with the decisions of 13 July 2023 (23-31/589-199), 20 July 2023 (23-32/629-211) and 20 July 2023 (23-32/630-212) respectively.

3.7. MFN clauses

| 3.7.1. How does the Authority address MFN clauses?

The Vertical Guidelines were updated on 30 March 2018 and recognize the pro-competitive nature of MFN clauses. Therefore, it adopts a ‘rule of reason’ approach to the analysis of anticompetitive effects of these clauses. The Vertical Guidelines provide that while analyzing MFN clauses, (1) the relevant undertakings’ and their competitors’ positions in the relevant market; (2) the object of the MFN clause in the relevant agreement; and (3) the specific characteristics of the market, should be taken into consideration. An MFN clause may benefit from the block exemption, if (i) the market of the beneficiary does not exceed 30% and (ii) other conditions are satisfied. MFN clauses are evaluated differently for online platforms in comparison to traditional markets. That said, the Vertical Guidelines do not provide any indication as to which party’s market (i.e., supplier, buyer or intermediary) share should be taken into account.

The Board’s first evaluation on online platforms’ MFN clauses in detail was *Yemek Sepeti* (9 June 2016, 16-20/347-156). The Board ultimately deemed that the undertaking violated Article 6 of Law No. 4054, which prohibits abuse of dominance. *Yemek*

Sepeti (which is now owned by Delivery Hero SE, one of the leading online food ordering and delivery marketplaces), was the incumbent online food delivery platform in Türkiye. The undertaking had a significant market share and geographical coverage. Various competitors of Yemek Sepeti argued (mostly encouraged by investigations initiated in certain European countries upon the MFN clauses imposed by Booking.com) that Yemek Sepeti (i) held a dominant position in the market for online food delivery platform services and (ii) abused its dominant position by hindering the entry of competitors via the MFN clauses. The Board, after confirming that Yemek Sepeti held a dominant position with a market greater than 90 per cent, undertook an assessment of the MFN clauses that were in place between Yemek Sepeti and the restaurants on the online platform. The Board divided these clauses into two different categories: MFN clauses that required restaurants not to offer better terms in their own food delivery channels (narrow MFN clauses); and MFN clauses that required restaurants not to offer better terms in any other channel, including competing platforms (wide MFN clauses). The Board focused on wide MFN clauses, analysed its effects in detail and concluded that their anticompetitive effects outweighed the efficiency gains that they created under the specific circumstances of the case. Whilst deeming so, the Board underlined Yemek Sepeti's significant market power. The Board did not evaluate narrow MFN clauses as a violation and refrained from conducting a detailed effects-based assessment in this particular case. In fact, the Board specifically noted that the narrow MFN clauses were not the subject of the investigation.

The Board set a landmark in *Booking.com* (5 January 2017, 17-01/12-4) on the application of MFN clauses in online markets under the Turkish competition law regime. The Authority claimed that the provisions related to the price and availability parity clause as well as the best price guarantee (wide MFN) included in the agreements between Booking.com and the accommodation service providers, had the effect of restricting competition per Article 4 of Law No. 4054. The Board deemed that such clauses:

- foreclosed the market to the competitors and reduced the competition in the market for accommodation reservation services platforms;
- reduced Booking.com's competitors' incentive to offer lower commission rates to the accommodations that execute broad MFN clauses with Booking.com;
- prevented the application of competitive pressure to the commission rates applied by Booking.com; and

- protected Booking.com from new entrants to the market.

The Board concluded that Booking.com's wide MFN clauses violated Article 4 of Law No. 4054. The Board's findings in *Yemek Sepeti* and *Booking.com* were incorporated into the Authority's amendments to the Vertical Guidelines.

In *Kitapyurdu* (5 November 2020, 20-48/658-289), the Board deemed that Kitapyurdu.com's requests for additional discounts and access to similar or better discounts and campaigns that were applied to competitors could be evaluated under wholesale MFN clauses. The Board ruled that such practices may benefit from block exemption so long as the undertaking's market share is below 40 per cent (the previous threshold foreseen in Communiqué No. 2002/2).

In *Hepsiburada* (15 April 2021, 21-22/266-116), the Board evaluated that even under the narrowest market definition, Hepsiburada was not dominant. Although its agreement envisaged a wide MFN clause, the Board found that this clause was not enforced pursuant to responses submitted by undertakings and that the clause did not create any effect. That said, the Board emphasized that since the MFN clause may (i) foreclose the market to other online platforms that operate with a lower commission, (ii) create barriers to entry to the market and (iii) price stringency. Thus, the Board considered the wide MFN clause restrictive of competition after determining that it did not create any effects and stating MFN clauses are not per se violations. Consequently, the Board carried out an exemption analysis and concluded that the MFN clause benefitted from a block exemption.

The Board assessed whether Getir violated Articles 4 and 6 of Law No. 4054 through its platform services regarding online food ordering and delivery in *Getir* (15 September 2022; 22-42/606-254). The allegations concerned the MFN clauses and practices on restaurants active on Getir. The allegations revolved around narrow and wide MFN clauses imposed by Getir on member restaurants in its platform. Despite the contracts not having an MFN clause, the Board identified that Getir was implementing de facto narrow and wide MFN practices. The Board also determined that Getir frequently checked the prices applied by member restaurants on competing platforms, particularly on Yemek Sepeti. The Board determined that Getir would negotiate with restaurants to apply similar conditions on Getir, should it detect lower prices or lower minimum purchase prices, or better contents on the competing platforms. Getir also applied certain penalties to these restaurants.

The Board rejected the allegations and did not

launch a full-fledged investigation into Getir. The Board deemed that the narrow and wide MFN clauses implemented by Getir for its member restaurants benefit from block exemption since the undertaking's market share in terms of both order amount and commission income remains below 30 per cent, and the relevant vertical agreement fulfils the other conditions set forth in the Vertical Guidelines. As such, the Board did not launch a full-fledged investigation into Getir. Through this decision, the Board has reaffirmed its commitment to thoroughly evaluating the competitive landscape, specifically related to MFN practices and shed light on the delicate balance that competition authorities must strike to foster innovation and fair market dynamics while ensuring compliance.

In another decision, the Board evaluated allegations that DSM Grup Danışmanlık İletişim ve Satış Ticaret AŞ ("**Trendyol**") violated article 6 of the Law No. 4054 (5 January 2023, 23-01/2-2). Trendyol provides, inter alia, food order delivery services and fast-moving consumer goods ("**FMCG**") order delivery services. The allegations concerned Trendyol abusing its market power in multi-category e-marketplaces within the market for online food and FMCG by way of cross-subsidisation.

The Board also investigated the allegations on Trendyol imposing MFN clauses on the sellers for its FMCG delivery service. The Board determined that Trendyol's contracts had narrow MFN clauses which prevented the sellers from determining different prices in their physical and online sales channels. That said, the Board found that Trendyol did not actively monitor whether the sellers complied with the MFN clauses and did not impose any sanctions for not complying with these MFN clauses. The Board then analysed whether the MFN clauses included in these agreements benefitted from the block exemption per Communiqué No. 2002/2.

The Board found that (i) Trendyol's market share did not exceed 30%, (ii) the agreements did not include any provision which would prevent a block exemption (e.g., provisions concerning resale price maintenance or restrictions on passive sales). The Board, consistent with its precedents, deemed that the MFN clauses in these agreements benefitted from block exemption under Communiqué No. 2002/2.

Additionally, in its final report on e-marketplace platforms, the Authority stated that contractual arrangements that include MFN clauses and especially wide MFN clauses are problematic. The Authority emphasized that implementation of wide MFN clauses by platforms leads to serious competition concerns, such as a decrease in price competition and an increase in retail prices, price rigidity and pos-

sible anticompetitive collaborations in the market, and barriers to entry and expansion. As such, the Authority recommended e-marketplace platforms with gatekeeper status should not apply contractual or de facto exclusivity or MFN clauses.

Lastly, the Authority's Study emphasized that stakeholders raised concerns about MFN clauses and exclusivity practices for Price Comparison, Comparison (Specialised Search) and Reservation Services. Yet, certain stakeholders noted that narrow MFN clauses may be implemented to ensure fair competition and preserve the investments.

3.8. Multi-sided digital markets

I 3.8.1. How did the Authority address vertical restraints imposed and efficiency arguments in multi sided digital markets? How were the efficiency arguments addressed?

Vertical agreements that fall outside the block exemption set out in Communiqué No. 2002/2 are not automatically deemed to be in violation of Law No. 4054. The undertakings may plead the efficiency defense. Article 5 of Law No. 4054 sets out the cumulative conditions for an individual exemption as follows:

1. the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress;
2. the agreement must allow consumers a fair share of the resulting benefit;
3. the agreement should not eliminate competition in a significant part of the relevant market; and
4. the agreement should not restrict competition by more than necessary for achieving the goals set out in (1) and (2).

Potential efficiencies or benefits for consumers are considered whilst deciding whether a restrictive agreement could benefit from an individual exemption. Restrictions should not exceed what is necessary to reach efficiencies and benefits, and the agreement should not eliminate competition in a significant part of the relevant market. No specific defense is referred to by the Vertical Guidelines, in addition to the "**efficiency defense**". Therefore, possible defense scenarios heavily depend on case-specific parameters.

In *Travel Agents* (25 October 2018, 18-40/645-315), *Kitapyurdu* (5 November 2020, 20-48/658-289), and *Hepsiburada* (15 April 2021, 21-22/266-116), the Board deemed that the relevant agreements or practices including MFN clauses benefit from the block

exemption of Communiqué No. 2002/2.

3.9. Additional issues

| 3.9.1. Did any other key issue emerge in Türkiye in terms of the application of competition law to vertical agreements in digital markets?

No.

4. UNILATERAL ANTICOMPETITIVE CONDUCT

4.1. Determining the market power

| 4.1.1. What are the criteria to determine market power in digital markets in Türkiye? Does the Turkish competition law regime have a concept of 'abuse of economic dependence' for cases where an undertaking's market power does not amount to a dominant position?

There are no separate dedicated criteria for establishing market power in digital markets under Turkish competition law and the market share of an undertaking is the primary point for evaluating its position in the market. In contrast, dominance in a market is the primary condition for the application of the prohibition stipulated in Article 6 of Law No. 4054 in cases of unilateral conduct.

An undertaking with a market share of 40 per cent is a likely candidate for dominance, while a market share of less than 25 per cent would not generally be sufficient to consider a firm dominant. Yet, these are subject to exceptions. Although a large market share is the most indicative factor in assessing dominance, the Board also considers other factors, such as legal or economic barriers to entry and the portfolio power and financial power of the incumbent firm.

In terms of online platforms, in addition to its share, the Board would take into account network effects, entry barriers, innovation and the multisided aspects of the relevant activities. Overall, the Board's dominance analysis resembles its analyses in brick-and-mortar markets.

4.2. Abuse of market power

| 4.2.1. To what extent are companies in digital markets subject to the rules preventing abuse of market power in Türkiye?

Article 6 of Law No. 4054 regulates abuse of dominance. The article does not define "*abuse*" per se, but provides a non-exhaustive list of specific forms of abuse. Article 6 of the Law No. 4054, generally prohibits the abusive exploitation of a dominant market position. These examples are as follows:

- directly or indirectly preventing entry into the

market or hindering competitor activity in the market;

- directly or indirectly engaging in discriminatory behaviour by applying dissimilar conditions to equivalent transactions with similar trading parties;
- making the conclusion of contracts subject to acceptance by the other parties of restrictions concerning resale conditions, such as:
 - the purchase of other goods and services;
 - acceptance by intermediary purchasers of the display of other goods and services; or
 - maintenance of a minimum resale price; and
- distorting competition in other markets by taking advantage of financial, technological and commercial superiorities in the dominated market; and limiting production, markets or technical development to the prejudice of consumers.

As there is no definition of abuse of dominance online in Turkish competition law, the general rule above also applies to the online space.

4.3. Data access

| 4.3.1. How did the Authority address concerns surrounding access to data held by undertakings with market power in digital markets?

There are no provisions precisely addressing concerns surrounding access to data held by companies with market power in digital markets in the Turkish competition law regime. That said, the Draft Amendment proposed restricting and regulating the access to data-related to gatekeepers in a manner akin to the DMA in the European Union.

The Authority acknowledged the difficulties whilst determining the scope of effect and establishing competition violations based on big data. The Authority stated that conventional practices and approaches would clearly fall short in terms of handling issues in the digital market.

In *Nadirkitap* (7 April 2022, 22-15/373-122), the Board decided that Nadirkitap holds a dominant position in the market for platform services for second-hand book sales. As such, the Board evaluated that Nadirkitap abused its dominance by way of unjustifiably preventing access to and the portability of book data uploaded to its website by third-party sellers. As a result, the Board issued an administrative monetary fine to Nadirkitap. Moreover, to ensure

effective competition, the Board also required Nardirkitap to cease blocking access to data and provide sellers with their data in an accurate, understandable, secure, complete, free-of-charge and appropriate format, upon the sellers' request. Thus, sellers were able to transfer data to other platforms.

In *Sahibinden* (17 August 2023, 23-39/754-263), the Board imposed an administrative monetary fine on Sahibinden Bilgi Teknolojileri Paz.ve Tic. A.Ş. ("*Sahibinden*"), a leading online platform in Türkiye, as it found that Sahibinden abused its dominant position by imposing restrictions on data portability and non-compete clauses. The Board also imposed certain measures on Sahibinden to terminate the violation and re-establish effective competition in the market. The Board found that Sahibinden obstructed corporate members to use more than one platform by preventing data portability, and hence imposed de facto/contractual exclusivity and hindered the activities of its competitors by implementing data portability restrictions and non-compete obligations. Ultimately, the Board decided to impose an administrative monetary fine of TRY 40,150,533.15 on Sahibinden and imposed obligations to (i) revise the contracts between Sahibinden and corporate members to remove clauses that were evaluated as a violation, (ii) establish a free of charge infrastructure for corporate members to effectively transfer their data on Sahibinden's platform to other competing platforms and to keep this data up to date, and (iii) establish necessary infrastructure to allow seamless data transfer, if requested and therefore ensure that the request from competing platforms are responded to continuously and effectively.

Lastly, the Authority's recent Study emphasizes that prevention of access to data or interoperability is an important method through which the competition can be distorted by an undertaking. The Authority finds it appropriate to regulate data access practices of platforms with significant market power, as a potential solution to address competition concerns in digital markets.

4.4. Data collection

| 4.4.1. How did the Authority address concerns surrounding the collection of data by companies with market power in digital markets?

There is no regulation in Turkish competition law regime precisely addressing the collection of data by companies with market power in digital markets. Yet, the Draft Amendment proposes to restrict and regulate the collection of data by gatekeepers in a similar fashion to the DMA in the European Union.

The Board has launched an *ex officio* investiga-

tion into Meta to determine whether the obligation to share data imposed on WhatsApp users violates article 6 of Law No. 4054 as the update in the privacy policy would enable Facebook to collect, process, and use more data (11 January 2021, 21-02/25-10). The Board focused on the scope and significance of WhatsApp data and imposed an interim measure requiring Facebook to cease the execution of the new privacy policy and notify all of its users. The Board's concerns arising from the utilisation of WhatsApp data in other markets where Facebook operates and rendering this mandatory for using WhatsApp are as follows:

- tying WhatsApp data to other Facebook company products and data;
- Facebook uses its power in the consumer communication services market to restrict the operations of its competitors in online advertisements; and
- possibility of consumer exploitation as a result of the over-collection of data and utilisation of said data for other services.

In 2022 *Meta* (20 October, 2022 (22-48/706-299)), the Board evaluated that by combining the data collected from its core services (namely Facebook, Instagram and WhatsApp), Facebook abused its dominant position in the market through (i) hindering the activities of its competitors in the online display advertising market with its personal social network services, and (ii) creating barriers to entry to the market. The Board imposed an administrative monetary fine on Meta and imposed certain measures. The Board discussed the compliance proposal submitted by Meta and concluded that the measures were not sufficient to meet the obligation imposed. Therefore, the Board decided to impose on Meta a daily non-compliance administrative monetary fine (21 December 2023, 23-60/1162-417). Subsequently, the Board discussed the final compliance measures submitted by Meta on 5 April 2024 and decided on 24 April 2024 that the proposed remedies were sufficient to meet the imposed obligations. Therefore, the administrative monetary fine imposed on Meta totalled roughly half a billion Turkish lira (4 April 2024, 24-20/467-197).

In the final report on the sector inquiry on e-marketplace platforms, the Authority stated that "***data is the currency of the digital world; however, consumers are either not aware of the payments made by this currency***" and underlined that data collected by marketplaces can be an important competitive asset. The Authority also noted that platforms can develop their marketing strategies by estimating customers' preferences more accurately and making advertise-

ments for customers in a more targeted way as the customer data that platforms collect increases.

The Authority's recent Study also underlined that excessive data collection and the use of data for other purposes as a method that can distort competition.

4.5. Leveraging market power

| 4.5.1. Did the Authority adopt any decision on leveraging market power in digital markets, such as through tying, bundling or self-preferencing theories of harm?

In *Google Shopping* (13 February 2020, 20-10/119-69) the Board evaluated the allegation that Google put rival shopping comparison services ("**CSSs**") in a disadvantageous position as a result of its Shopping Unit, to which rival CSSs do not have access. The Board concluded that Google has a dominant position in the general search market and leveraged this dominant position in shopping comparison services.

Likewise in *Google Android*, the Board determined that Google gained advantages within the scope of economies of scale with the Android operating system and mobile application distribution. Google allegedly leveraged those economies of scale in its advertising services (19 September 2018, 18-33/555-273). Moreover, in *Google Local Search*, the Board found that Google abused its dominant position by way of restricting competition in the markets for local search services and accommodation price comparison services by way of hindering the activities of its rivals through preventing local search services from accessing the Local Unit and providing advantages to Google's own local search and accommodation price comparison services in terms of position and display on the general search result page (8 April 2021, 21-20/248-105).

In *Trendyol* (30 September 2021, 21-46/669-334), the Board evaluated the documents obtained through the searches on Trendyol's algorithms and systems, which revealed that Trendyol had manipulated the actual data on its platform by intervening in the algorithms and codes to favor its own products and services, and thereby misled sellers and users on its platform. Accordingly, Trendyol was found to have artificially increased the number of followers, deleted low user scores for Trendyol branded products and listed its own brands at the top in brand filters.

With regards to the use of third-party data monitored and obtained via its marketplace activities, the Board underlined the risk of copycatting, where Trendyol would be able to detect the profitable and popular products or services and offer these, without exposing itself to commercial risk or incurring the

costs that third-party sellers had to face. The Board considered this to be a self-preferencing behaviour and noted that this could (i) discourage innovation efforts of third-party sellers and (ii) enable Trendyol to free-ride on these sellers' efforts and data. The Board also emphasized Trendyol's ability to offer even lower prices increasing the disadvantage for third-party sellers.

On 26 July 2023 (23-33/633-213), the Board rendered a decision fining Trendyol for violating Article 6 of Law No. 4054 by taking unfair advantage of its own retailing business through intervening in the algorithms and using the data of third-party sellers. The Board decided that to launch an investigation pursuant to the allegation that Trendyol has abused its dominant position and violated Article 6 of Law No. 4054 by way of sharing customer data with its subsidiary, Dolapcom Elektronik Hizmet ve Ticaret AŞ, which is an online intermediary platform for second-hand shopping and preventing data portability. The investigation was concluded through commitments.

In *Meta* (7 November 2024, 24-45/1053-450), the Board launched an investigation against the undertaking for allegedly abusing its dominant position by combining user data from Instagram to Thread application. The Board imposed interim measures to prevent data combining between two platforms. Although Meta had introduced an "**account-free usage**" option for Threads, the Board found the measure insufficient as it did not fully address the investigation's fundamental concern regarding data combination. As a result of the investigation, Threads' operations in Türkiye were ceased temporarily. The Board primarily focused on Meta integrating Threads and Instagram applications and considered this as a tying practice and an abuse of dominant position. Although Meta did not explicitly force users to sign-up for Threads, the Board deemed the requirement to have an Instagram account in order to sign-up for Threads as a form of coercion. Although Meta offered users an "**account-free usage**" option, since users cannot actively interact with others, this presented a limited experience that did not provide the core functionalities of Threads application. Considering Instagram's high usage rate and user base, the Board evaluated such a practice could lead to competitive restrictions in the tying product market. The Board found that Meta holds a dominant position in the social media market and assessed that limiting user choice could further strengthen Meta's dominant position. As such, the Board concluded that Meta leveraged its dominant position in one market to gain a foothold in another.

Meta's final commitments were designed to apply both to users signing up for the Threads application

for the first time, and to users whose accounts were deactivated following the removal of Threads in Türkiye. Per these commitments, users will have control over their personal data when signing up for Threads, as the application will no longer combine personal data with information from their Instagram accounts. Pursuant to this proposal, Meta's commitments were deemed sufficient to address the competition concerns. The Board therefore concluded the investigation without imposing any administrative monetary fine on Meta.

4.6. Other theories of harm

| 4.6.1. What other conducts were deemed as abuse of market power in digital markets in Türkiye?

In *Sahibinden*, the Board found that *Sahibinden.com* abused its dominant position by applying excessive prices and imposed an administrative monetary fine against *Sahibinden.com* in the amount of 10,680,425.98 Turkish lira (10 October 2018, 18-36/584-285). Yet, Ankara 6th Administrative Court annulled this decision as it evaluated that the decision failed to meet the requisite standard of proof (E.2019/946 K.2019/2625). As a result, the Board re-evaluated its decision and ultimately opted to follow the Administrative Court's decision by noting that direct harm to the end consumer could not be proved (2 May 2019, 19-17/239-108).

The Board also initiated a full-fledged investigation into *Biletix.com* (a Turkish subsidiary of Ticketmaster) to evaluate the allegations that Biletix applies excessive pricing to consumers (20 July 2019, 19-22/341-M). The investigation was launched pursuant to the allegations that Biletix added extra costs to tickets it sold under the categories of service, transaction and cargo costs via exclusive agreements it had signed with organisers. The Board concluded that Biletix should not enter into agreements that include exclusivity or provisions that would lead to de facto exclusivity. Yet, the Board did not issue an administrative monetary fine but notified the relevant authority as it found no abuse. (21 January 2021, 21-04/53-22).

In *Facebook interim measures*, the Board evaluated the market power of Facebook in (i) consumer communication services; (ii) social network services; and (iii) the online advertisement services market. The Board rendered its decision and ruled that Facebook's data sharing requirement imposed upon WhatsApp users could lead to serious and irreparable damages until the final decision. This stemmed from the concern that Facebook can use its power in the consumer communication services market to restrict the operations of its competitors in online advertisement (11 January 2021, 21-02/25-

10). This was the first time that the Authority has thoroughly analyzed the interface between data protection and competition law, and it has assumed jurisdiction over the matter, thereby leading to an interim measure on consent procedures.

5. MERGER CONTROL

5.1. Merger control framework

| 5.1.1. How does merger control framework apply to digital markets in Türkiye?

Article 7 of Law No. 4054 regulates mergers and acquisitions, and the principal regulation on merger control is the Competition Law and Communiqué No. 2010/4.

On 4 March 2022, the Authority published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board ("**Amendment Communiqué**"). The Amendment Communiqué introduced certain new rules concerning the Turkish merger control regime, which had fundamental effects on merger control notifications submitted to the Authority. One of the most significant developments introduced by the Amendment Communiqué is the increase of the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Authority.

In addition, a threshold exemption for undertakings active in certain markets or sectors was introduced with the Amendment Communiqué. As such, these special thresholds will be applicable for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users. Pursuant to the Amendment Communiqué, a transaction is required to be notified before the Authority if:

- the aggregate Turkish turnover of the transaction parties exceeding 750 million Turkish lira and the Turkish turnover of at least two of the transaction parties, each exceeding 250 million lira; or
- the Turkish turnover of the transferred assets or businesses in acquisitions exceeding 250 million lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion lira, or the Turkish turnover of any of the parties in mergers exceeding 250

million lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion lira.

That said, the 250 million lira turnover thresholds mentioned above will not be sought for the acquired undertakings (target companies) active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to the users in the Turkish geographical market.

The Amendment Communiqué does not seek a Turkish nexus in terms of the activities that render the threshold exemption. Accordingly, provided that the target company operates in the Turkish geographical market; conducts R&D activities in Türkiye; or provides services to the Turkish users in any field other than the said fields, the threshold exemption will be applicable so long as the target company is active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies anywhere in the world.

As such, the Amendment Communiqué does not require the following:

- operating in the Turkish geographical market;
- conducting R&D activities in Türkiye; or
- providing services to Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

5.2. Prohibited mergers

| 5.2.1. Did the Board prohibit any mergers in digital markets in Türkiye?

No.

5.3. Market definition

| 5.3.1. How did the Board define relevant markets in the context of digital markets?

The Board has not refrained from adopting new market definitions for digital markets should it deems necessary based on the specific features of each case that it assesses. The Board is inclined to define separate market definitions for online and offline services that provide the same goods and services. As an example, the Board separated the electronic and physical sale of event tickets and defined the relevant product market as *"intermediary services for*

the electronic sale of event tickets over a platform" in the *Biletix* (11 November 2013, 13-61/851-359), which involved one of the largest companies for ticket sales and distribution for various cultural, musical and sports events in Türkiye. The Board evaluated that there was a distinction between brick-and-mortar retailers and online florist services in the *Çiçek Sepeti* (16 December 2010, 10-78/1623-623), where it rendered a decision concerning an online platform for flower sales. The Board defined the relevant product market as *"online flower sale services"*. In *Yemek Sepeti* (9 June 2016, 16-20/347-156) and *Booking.com* (5 January 2017, 17-01/12-4), the Board distinguished and separated the online and offline sales channels by evaluating that the offers of online sales channels are not available in a similar fashion or accessible in the offline sales channels.

The Board consistently defines the relevant geographical market as Türkiye, without further segmentation. Indeed, the decisions referred above define the geographic market as Türkiye. Only in *Yemek Sepeti* (9 June 2016, 16-20/347-156) the Board defined the geographical market as *"each city that Yemek Sepeti is active in"* along with Türkiye.

5.4. 'Killer' acquisitions

| 5.4.1. How did the Board address concerns surrounding 'killer' acquisitions in digital markets?

Pursuant to the Amendment Communiqué, the Authority introduced a threshold exemption for undertakings active in certain markets or sectors. As such, the 250 million Turkish lira turnover thresholds will not be sought for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users.

The Board discussed the killer acquisition theory in detail in *Google LLC/Galileo AI Inc.* (16 January 2025, 25-02/62-37). As Galileo is a start-up, the Board initially noted that it will carry out a killer acquisition analysis on the transaction. The Board emphasized that the three elements should be present concurrently for the transaction to be deemed as a killer acquisition:

- A large and established undertaking should be taking over a recently founded or a developing undertaking,
- The product or technology acquired should not be adopted or developed, should be disregarded-

ed or should exit the market and, as a result of this,

- Competition should cease at horizontal level and product development processes should end.

The Board ultimately approved the transaction and deemed that (i) the parties' activities do not overlap horizontally or vertically and (ii) the transaction does not carry all elements of a killer acquisition.

5.5. Substantive assessment

| 5.5.1. What factors are considered by the Board in its substantive assessment of mergers in digital markets?

Before the amendment of Law No. 4054 ("**Amendment Law**"), there were no debates about the suitability of merger tools to address digital mergers and the dominance test was applicable to these mergers.

The Amendment Law replaced the previous dominance test and introduced the significant impediment of the effective competition ("**SIEC**") test. With this new test, the Board is now able to prohibit not only transactions that may create a dominant position or strengthen an existing dominant position but also those that could significantly impede competition. Additionally, focusing more on whether and how much the competition is impeded as a result of a transaction, the SIEC test may also reduce over-enforcement. Thus, the test may prove beneficial for pro-competitive mergers and acquisitions even though the transaction leads to significant market power based on, for instance, major efficiencies. In a similar fashion, this new approach may also be beneficial for dominant undertakings contemplating transactions with *de minimis* impact. In *TIL /Marport* (13 August 2020, 20-37/523-231), the Board refused to grant approval to the transaction on the grounds that the notified transaction was likely to cause a significant impediment to effective competition for the first time.

The Turkish merger control regime takes into account the innovation in the assessment of mergers. As such, the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions acknowledges innovation as a benefit created by competition and a factor for the Board's assessment of mergers. In certain decisions of the Board where the transaction was approved (see *Johnson and Johnson/Mentor*, 8 January 2009, 09-01/10-8; *Ticketmaster/Live Nation*, 11 June 2009, 09-27/572-133; *Syngenta/Monsanto's Sunflower Seed Business*, 1 October 2009, 09-43/1097-277; *Atlas Elektronik/Advanced Lithium Systems*, 21 April 2011,

11-25/476-145; *Metair/Mutlu Holding*, 21 November 2013, 13-64/901-381; *Novartis/GlaxoSmithKline Oncology Business*, 4 November 2014, 14-43/796-357; *Apax-Accenture/Duck Creek*, 9 June 2016, 16-20/330-149; and *Linde/Praxair*, 10 October 2017, 17-31/520-224), the parties claimed that the transaction would enable them to develop innovative products and encourage innovation in the future.

The Board acknowledged in *Cisco Systems/IBM* (2 May 2000, 00-16/160-82) that the transaction would benefit consumers with the development of innovative applications. Therefore, despite Cisco's increased post-merger market share, the Board concluded that the transaction would not increase the concentration level or significantly lessen competition in the relevant market.

In *Microsoft/Activision Blizzard* (13 July 2023, 23-31/592-202), the Board determined that there is horizontal overlap between the parties' activities in game publishing; game distribution; game-related licensed product sales; and online display advertising. However, the Board acknowledged that each of these markets contain many competitors with high market shares, both in Türkiye and globally, and that there will be many strong competitors after the transaction. As a result, the Board evaluated that the transaction will not result in significant impediment of competition both in terms of unilateral effects and coordination-inducing effects.

The Board also evaluated that there is a vertical overlap between the upstream market for the development and publishing of games and the parties' activities in the downstream markets for digital distribution of console and computer games, console hardware and cloud gaming services. The Board evaluated that it would not make economic sense for Microsoft to impose input foreclosure considering the market shares in the console hardware market, Sony's leading position in the market, the significance of the game 'Call of Duty' on Xbox and the importance of the cross-play feature.

As for unilateral effects in the cloud gaming services market, the Board deemed that even if Microsoft would not be able to foreclose input. This is because of (i) Microsoft's global share and (ii) the presence of many large and powerful players in the cloud gaming services market.

Following this, the Board evaluated the commitments submitted by Microsoft to the European Commission regarding the cloud gaming market and their validity in Türkiye. Accordingly, in line with the information provided by Microsoft to the Authority, it was confirmed that the first of the open licences providing streaming rights for Activision Blizzard games within the scope of the commitments, the streaming pro-

vider license, will be valid globally and for 10 years, both for the undertakings already active in the market and for the undertakings that may potentially enter the market within this period, while the second of the open licenses, the consumer licence, will be valid for a period of 10 years for all existing and potential consumers globally. As such, the Board concluded that the relevant commitments will also be valid for Türkiye for 10 years.

Lastly, the Board determined that the presence of a large number of players operating in the market will render it difficult to establish coordination among undertakings and to discipline non-compliant undertakings as a result of a possible coordination. The Board deemed that the transaction would not significantly impede competition and may be approved.

5.6. Remedies

| 5.6.1. How did the Board approach the design of remedies in mergers in digital markets?

The Amendment Law, Article 9 introduced the **“first behavioural, then structural remedy”** rule for Article 7 violations. In case behavioural remedies are first applied and failed, the Amendment Law aims to grant the Board the power to order structural remedies for anticompetitive conduct infringing Article 7 of Law No. 4054. In addition, if the Board finds through a final decision that behavioural remedies have failed, undertakings or association of undertakings will be granted at least six months to comply with structural remedies.

Prior to the Amendment Law, structural remedies took precedence over behavioural remedies as the general approach. This can be considered in isolation only if structural remedies are impossible to implement as behavioural remedies are as effective as structural remedies. In order for behavioural remedies to be approved in and of themselves, they must produce results as efficient as divestiture. The Board will re-evaluate the behavioural commitments at the end of a three-year period.

In *Ideasoft* (10 April 2025, 25-14/336-158) the Board evaluated the acquisition of Ideasoft by GT Global in the market for **“readymade e-trading software and infrastructure provision services”**. The Board defined the transaction as a conglomerate transaction and noted that conglomerate transactions generally do not raise competitive concerns. That said, the Board emphasized that pursuant to the transaction, Sipay, an undertaking that is controlled by the same person who controls GT Global, would be able to access competitively sensitive information pertaining to its competitors through Ideasoft. Another concern raised by the Board was that Sipay may offer conditions that are less advantageous to

Ideasoft’s competitors. To address the Board’s concerns, GT Global offered commitments to the Board. Per its commitments, GT Global committed that Ideasoft will (i) maintain its agreements with its existing customers, (ii) renew these agreements should the customer request, (iii) offer all products and services to Sipay and its competitors without any advantage to Sipay. To address Board’s concerns in terms of competitively sensitive information, GT Global committed that (i) there will be no competitively sensitive information sharing between Ideasoft and Sipay, (ii) agreements of Ideasoft will be revised accordingly, (iii) employees who have access to confidential and/or competitively sensitive information will sign a confidentiality agreement and (iv) databases of Sipay and Ideasoft will be kept separate. The Board concluded that the commitments were sufficient to address concerns and approved the transaction within the scope of the commitments.

In *Kariyer.net* (4 June 2024, 24-24/556-236) the Board assessed the transaction concerning the acquisition of Brotek by Kariyer.net. The Board found that the parties’ activities were overlapping horizontally in the market for **“human resources software”** and under further segmentation, the horizontal overlap was evaluated in the market for **“candidate management systems software”**. Moreover, the Board determined a vertical overlap between the market for **“candidate management systems software”** (downstream market) and market for **“online employee electing and allocating services”** (upstream market). The Board named the main concern as an input foreclosure in the downstream market stemming from Kariyer.net’s market power in the upstream market and its vertically integrated structure. To address the Board’s concerns, Kariyer.net committed to, inter alia, carry out its interaction with third-parties in line with tangible criteria, without any discrimination among equals. The Board accepted Kariyer.net’s behavioral remedies and approved the transaction.

6. UPDATE AND TRENDS

6.1. Recent developments and future prospects

| 6.1.1. What are the recent trends, case law and policy initiatives in Türkiye in terms of competition law enforcement in digital markets?

The Ministry of Trade prepared a Draft Amendment that aims to update existing competition rules to establish and preserve competition in digital markets. The Draft Amendment closely resembles the DMA in the European Union. Since its preparation, several revisions have been shared with certain institutions to receive comments before the Draft Amendment is

enacted. Recently, the Authority has shared the final draft of the Draft Amendment to consult with related parties.

On 4 March 2022, the Authority published Communiqué No. 2022/2 on the Amendment Communiqué. Pursuant to the Amendment Communiqué, the Authority introduced a threshold exemption for undertakings active in certain markets or sectors. As such, the 250 million Turkish lira turnover thresholds will not be sought for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies, if they operate in the Turkish geographical market, conduct research and development activities in the Turkish geographical market, or provide services to Turkish users.

The Authority is working on the Digitalisation and Competition Policy Report, aiming to clarify the competition policies that it will be implementing in the future. The Authority acknowledged the difficulties whilst determining the scope of effect and establishing competition violations based on big data. The Authority stated that conventional practices and approaches would clearly fall short in terms of handling issues in the digital market. Within this scope, closely following the digital economy and potential competition violations by platforms, the Board incorporated new duties related to the digital economy into the work description of the Presidency of the Strategy Development Department to ensure that the Authority is in a position to move proactively. These developments show that the Authority may be inclined to change its enforcement policies concerning digital markets in the future.

On 14 April 2022, the Authority published its final report prepared upon its sector inquiry on e-marketplace platforms to address the developments in digitalisation in light of competition law. The Authority shed light on relevant competitive concerns in relation to e-marketplace platforms and proposed relevant policy recommendations.

On 18 April 2023, the Authority published its Study. The study provides an overview of the competition law framework for digital markets, and highlights the challenges posed by data practices, algorithmic collusion, interoperability and platform neutrality.

On 30 May 2025, the Authority published its final report on the sector inquiry into online advertising on its website. The Authority previously defined the main aim for launching this sector inquiry as clarifying how the complex online advertising sector works, determining the concentration level in relevant markets, and investigating structural or behavioral problems in these markets.

Recent case law

In *Google Local Search*, the Board found that Google abused its dominant position by way of restricting competition in the markets for local search services and accommodation price comparison services by way of hindering the activities of its rivals through preventing local search services from accessing the Local Unit and providing advantages to Google's own local search and accommodation price comparison services in terms of position and display on the general search result page (8 April 2021, 21-20/248-105). The Board imposed an administrative monetary fine of 296,084,899.49 Turkish lira and ordered various behavioural remedies. As such, Google had to provide conditions to competing local search services and competing accommodation price comparison services that are not disadvantageous against Google's own related services on the general search results page. Pursuant to the Board accepting Google's remedies, the Board decided that Google had failed to implement the new designs to be used in local search services with respect to hotel inquiries and therefore did not fully meet the obligations imposed. Therefore, the Board imposed a daily administrative monetary fine until the new designs were implemented with respect to the local search service-related to hotel inquiries. The Board deemed that Google implemented the designs it previously failed to apply with respect to the local search service for hotel inquiries and therefore completed the process on 21 May 2024.

In *Google-YouTube Advertising*, (3 May 2024 (24-21/486-207), the Board evaluated the commitments proposed by Google to address the allegations that (i) Google brings a restriction that YouTube inventory can only be purchased through Google's own DSP and (ii) Google prevents the verification and measurement of the ads on YouTube via independent service providers. Google committed to grant access to certain third-party DSPs to the same types of programmatic advertising campaigns available in Google's own ad buying tools (Google Ads and DV360), including YouTube video inventory served to users in Türkiye. The Board assessed the commitments separately for the allegations on (i) Google brings a restriction that YouTube inventory can only be purchased through Google's own DSP and (ii) Google prevents the verification and measurement of the ads on YouTube via independent service providers. The Board concluded that the commitments significantly resolve the competition concerns raised and therefore, concluded the investigation for the said allegations.

In *Nesine* (29 February 2024, 24-11/194-78), the Board found that Nesine had engaged in an exclusive

agreement on the purchase of advertisement services with one of the largest live match broadcasting platforms, Maçkolik and abused its dominant position by preventing competitors from purchasing these advertisement services.

In *Obilet* (15 June 2023, 23-27/521-177), the Board concluded that Obilet could be considered dominant in the markets for ***“ticketing software service regarding bus transportation”, “distribution of bus trip data to platforms (B2B)”*** and ***“sale of bus tickets through platforms (B2C)”***. The Board evaluated that Obilet’s practices – which de facto sought to tie its ticketing software service for bus transportation to the sale of bus tickets through platforms – could be in violation of Article 6 of Law 4054. Obilet offered commitments to address the Board’s concerns and the Board concluded the investigation by making those commitments binding on Obilet.

In *Google Advertising Technologies* (12 December 2024, 24-53/1180-509), the Board found that Google violated Article 6 of Law No. 4054 by way of providing an unfair advantage to its own supply side platform (***“SSP”***) by relying on its dominant position in the market for publisher ad server services and the relevant self-favouring conduct is of the nature that hinders the activities of its competitors. As a result, the Board (i) imposed an administrative monetary fine on Google and (ii) obliged Google to apply conditions to third-party supply-side platforms (third-party SSPs) that are no less favorable than the conditions that Google applies to its own service, in order in order to stop the violation and maintain effective competition in the market.



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GÜRKAYNAK

Attorneys at Law

ELIG Gürkaynak represents corporations, business associations, investment banks, partnerships and individuals in a wide variety of competition law matters.

Our firm also collaborates with international law firms on Turkish competition law matters.

In addition to our strong Turkish competition law practice, our international experience provides us with a high capability in multinational competition law issues. We have particular experience in the European Union competition law regime.

Our Antitrust Practice Group provides international and domestic clients with all types of legal services concerning competition law issues, including litigation. ELIG Gürkaynak provides competition law assistance particularly in the following ways:

General Advisory Competition Law Assistance

We provide clients in a broad range of industries with the antitrust counseling they need. We also advise clients on a day-to-day basis concerning business transactions that almost always contain antitrust law issues, including distributorship, licensing, franchising, toll manufacturing, etc. We give EU and/or Turkish competition law advice in the form most convenient to our clients.

Competition Law Aspects of Mergers & Acquisitions

We have extensive experience in merger control issues. We have been counseling clients involved in mergers, acquisitions and joint ventures about Turkish notification requirements, and our Antitrust Practice Group has been involved in obtaining approvals from the Turkish Competition Board in dozens of notifications. We also review Share Purchase Agreements and Shareholders Agreements, and engage in other aspects of transaction planning, in order to minimize delays and/or structural changes caused by the review of the Competition Board.

Legal Representation on Competition Law Investigations

We have extensive experience in defending companies before the Competition Board in all phases of an antitrust investigation. Our Antitrust Practice Group has in depth knowledge of representing defendants and complainants in complex antitrust investigations concerning all forms of abuse of dominant position allegations and all other forms of restrictive horizontal and vertical arrangements, including price-fixing, resale price maintenance, refusal to supply, territorial restrictions and concerted practice allegations

Competition Law

Litigation Concerning Competition Law Matters

The parties of an investigation can challenge decisions of the Competition Board in court. In addition to our antitrust litigation expertise, our firm has considerable expertise in administrative law, and is therefore well equipped to represent clients before the High State Council, both on the merits of a case, and for injunctive relief. We also represent clients in civil courts with respect to compensation claims arising out of antitrust allegations.

Educational Seminars and Compliance Programs in Competition Law

Companies can limit or avoid antitrust liability by training their executives and employees about the requirements of the antitrust legislation. We tailor our educational seminars and compliance programs according to the factors surrounding the company and market involved, and train the executives/ employees/ members of our clients in competition law matters.

“Gönenç Gürkaynak leads Türkiye’s best competition practice at ELİG Gürkaynak Attorneys-at-Law. The team comprises a further seven partners – who have a combined 30 years of experience at the TCA – as well as eight counsel and 40 associates.”

Global Competition Review 100 2025, Elite Firm

“ELIG Gürkaynak Attorneys-at-Law remains the market leader for competition law matters in Turkey. The law firm is highly active in both merger clearance notifications and behavioural investigations before the Turkish authorities.”

Chambers Europe 2025, Band 1

“ELIG Gürkaynak Attorneys-at-Law leverages its leading competition law expertise to address complex merger control issues and represent companies before the Turkish Competition Board. The firm advises a broad array of multinational corporations and prominent domestic clients. Founding partner Gönenç Gürkaynak is a recognised authority on merger control and competition law.”

The Legal 500 EMEA 2025, Tier 1

“One of the leading competition lawyers in Turkey, Gönenç Gürkaynak is highly esteemed for his ability to handle both merger control filings and behavioural investigations.”

Chambers Europe 2025, Top Ranked Lawyer



Mergers & Acquisitions

With our solution-oriented and business minded approach to legal risks and structures, ELİG Gürkaynak advises clients such as multinational companies, international and domestic strategic investors, and investment banks.

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Attorneys at Law

Our strong M&A team consistently shows the capability to simultaneously handle numerous significant M&A transactions, reorganizations and spin-offs.

ELIG Gürkaynak attorneys were involved in more than 15 closed M&A transactions in the last two years. With its solution-oriented and business minded approach to legal risks and structures, ELIG Gürkaynak advises various types and sizes of clients with different backgrounds and interests, such as multinational companies, international and domestic strategic investors, and investment banks. In these deals, as the specifics of the transaction requires, ELIG Gürkaynak's M&A team works in close quarters with the Banking & Finance, Competition and Litigation departments of the firm.

Due Diligence

ELIG Gürkaynak has an extensive track record for complex due diligence work. ELIG Gürkaynak conducted due diligence reviews in physical and virtual data rooms in numerous M&A transactions and submitted the outcome to its clients in detailed reports, always accompanied by an executive summary. Our firm embodies the diverse legal expertise necessary for assisting its clients in determining all material risks involved in M&A transactions by providing a legal due diligence review in all relevant fields of law.

For a well-founded due diligence process, our team not only identifies the risks to be envisaged in transactions but also provides solution-oriented advice and counseling designed to meet the self-imposed above-the-market standards on a case by case basis.

Our M&A team is well connected to top-quality specialists in several other expertise areas such as tax structuring, real estate assessment and environmental due diligence, and has the capabilities to establish coordination among these experts, reporting also to the client for the findings and suggestions of these experts.

Contract Drafting, Review and Negotiation

ELIG Gürkaynak has a well-established practice in drafting, reviewing and negotiating share transfer, asset purchase and/or shareholders agreements as well as ancillary contracts that may be required in transactions e.g. employment contracts, option contracts and pledge agreements and sui generis contracts tailor-made for each specific transaction. Advising the sellside our M&A team works closely with the client in preparation of exhibits to the transaction documents, especially as far as the representations and warranties sections of contracts are concerned.

Mergers & Acquisitions

Joint Ventures

Our team has vast experience in the establishment, reorganization and winding up of joint ventures operating in various markets. ELIG Gürkaynak provides complete legal assistance from inception of a joint venture through structuring, contract negotiation and implementation. Our experience of complex cross-border deals and multi-jurisdictional projects provides our clients with an informed, international and comprehensive view of factors relating to choice of law issues as well as the structure itself.

In addition to the competition law, arbitration and intellectual property aspects of these concentrations, our firm has a strong capability to advise the transaction parties in properly handling the corporate governance matters of joint ventures.

Private Equity, Venture Capital and MBOs

Our firm also has a leading position in private equity, venture capital transactions as well as management buy-outs, since ELIG Gürkaynak attorneys were involved in major transactions of this type in Türkiye. ELIG Gürkaynak also advises private equity funds in structuring their exit strategies including domestic and US registration rights and public offerings.

In addition to its extensive experience in the M&A practice in Türkiye, ELIG Gürkaynak attorneys also contribute to this field of law with their publications. The firm's M&A department co-edited a book on M&A transactions entitled "M&A Transactions under Turkish Law", authored jointly by members of the firm and available in Turkish and English. This is the first book in Turkish legal literature on how to structure M&A transactions under Turkish law. Additionally, the firm's M&A department prepared the Türkiye chapters of *Getting the Deal Through/Mergers & Acquisitions* (2003-2011) and the *European Mergers & Acquisitions Review* (2007-2011).





General Corporate / Contracts

Our corporate team has extensive experience in advising on general corporate law matters under Turkish law.

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Attorneys at Law

ELIG Gürkaynak provides legal counseling concerning long term strategic business planning and the day-today operations of our clients.

Our corporate team assists multinational and local clients by providing a wide range of corporate advisory services. Our lawyers offer unique solutions and strategic planning regarding company incorporation and restructuring, along with a range of corporate housekeeping. We provide on the ground advice in regards to the following:

- Corporate housekeeping including drafting of board resolutions, convention of general assemblies, preparation of representation papers and “signature circulars”, and internal directives.
- Issuance of special powers of attorney and guiding our clients through the paperwork.
- Set-up of companies, branches and liaison offices, supporting our clients’ entry into the Turkish market with introduction to local service providers such as certified public accountants and tax advisors, virtual office space providers and payroll service providers etc.

- Divesting / de-registering (liquidation) of companies, branches and liaison offices, along with conversions, for example, from joint stock to limited liability.
- Implementing and incorporating global internal procedures into the Turkish regulations.

On the wide range of contracts required to operate a business effectively in the local environment, our corporate team will be able to draft and advise on a full range of agreements, including the following:

- License Agreements,
- Toll Manufacturing Agreements,
- Confidentiality Agreements,
- Revenue Sharing Agreements,
- Subscription Agreements,
- Advertising Agreements,
- Services Agreements,
- Facility Management Agreements,
- Rental Contracts,
- Construction Agreements.



Litigation & Arbitration

ELIG Gürkaynak has significant litigation experience and is well-equipped to handle all types of legal disputes before the Turkish courts. Together with the legal requirements of our clients in the pre and post dispute stages, arbitration is also a fundamental practice area.

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Attorneys at Law

ELIG Gürkaynak is one of the few Turkish law firms that combines an international legal practice with a solid track-record and knowledge of litigation before Turkish civil and administrative courts.

Except for criminal law matters, ELIG Gürkaynak is well-equipped to handle all types of legal disputes before Turkish courts and report to its clients in English, German or French.

The following types of cases are examples of those handled by ELIG Gürkaynak's litigation team:

Litigation in General

ELIG Gürkaynak's litigation team represents clients in all types of civil cases, including unfair competition cases, real estate disputes, shareholding disputes, bankruptcy and execution proceedings, labor law cases.

Intellectual Property Litigation

ELIG Gürkaynak secures and enforces the intellectual property rights, including trade secrets, of its clients through civil law cases. We have substantial experience in representing clients in Turkish courts of various levels concerning intellectual property infringement cases, and related compensation claims.

Administrative Law Matters

The Turkish State actively participates in markets as a regulator as well as an independent player. The decisions, administrative orders and actions of the State are increasingly subject to judicial review in administrative courts. ELIG Gürkaynak has a high capability in administrative law matters, as its team includes an expert on administrative law with a significant academic background in this field.

Arbitration Related Litigation

ELIG Gürkaynak has experience in actions concerning the recognition and enforcement of foreign arbitral awards. Furthermore, to the extent all disputes arising from a contract which contains an arbitration clause cannot be resolved through arbitration due to the mandatory provisions of Turkish law, ELIG Gürkaynak is well able to engage in litigation in tandem with the arbitration proceedings. For example, as a specific form of such parallel litigation, ELIG Gürkaynak is well equipped to handle cases before Turkish courts in relation to obligations of the shareholders under the articles of association simultaneously with arbitration proceedings among the same parties arising from a shareholders' agreement.

Competition Law Related Litigation

ELIG Gürkaynak has significant experience in appealing against the decisions of the Turkish Competition Board in the High State Court both on the merits of a case and for interim measures applications. Furthermore, since the Turkish Competition Law - which is otherwise modeled after the EU competition law regime - includes a “treble damages clause” taken from the US antitrust regime, we represent plaintiffs and defendants in competition law related compensation actions before the Turkish civil courts of all levels.

Arbitration

Together with all legal counseling requirements of clients in the pre-dispute and post-dispute stages, arbitration is one of the fundamental practice areas of ELIG Gürkaynak.

The adoption of the New York Convention of 1958 and the promulgation of the International Arbitration Law of 2001 based on the UNCITRAL Model Law in Türkiye constituted a welcome step forward in facilitating the recognition and enforcement of

arbitral awards. In this new era of arbitration friendly and efficient legal environment, ELIG Gürkaynak has formed a leading arbitration and dispute resolution practice through its cooperation with numerous international law firms.

ELIG Gürkaynak serves its clients not only during the dispute, but also by assuming a preventive role in the early stages of a transaction (e.g. during the negotiation and drafting of contracts). Furthermore, as a law firm that strives for forming efficient and focused arbitration processes and strategies, ELIG Gürkaynak also assists its clients during the final pre-dispute stages where a potential dispute is highly likely.

ELIG Gürkaynak is a member of the ICC Turkish National Committee and the London Court of International Arbitration (LCIA).

ELIG Gürkaynak is committed to the continuing legal education of its attorneys and fellow colleagues in this field. ELIG Gürkaynak attorneys regularly attend international conferences on arbitration.





Anti-Corruption, Compliance and White Collar Irregularities

As a leading law firm, one of the significant practices of ELİG GÜRKAYNAK relates to assisting clients on white collar irregularities, internal investigations and compliance matters.

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Attorneys at Law

ELIG Gürkaynak frequently assists multinational clients in terms of international investigations and compliance matters in connection with Turkish corporate compliance issues under the FCPA, the UK Bribery Act and the mandatory provision of Turkish law on anti-corruption.

ELIG Gürkaynak has so far followed and frequently helped develop different and demanding work plans for a vast number of internal investigations on the Turkish operations of US or UK based multinational companies, Turkish operations of companies quoted in foreign stock exchanges, large Turkish conglomerates, frequently coordinating issues also with their external and/or internal counsel outside Türkiye. ELIG Gürkaynak has interviewed over 200 employees, drafted disclosure petitions, dealt with PR and GR aspects of projects of this nature, prepared extensive white collar due diligence reports, provided over 80 FCPA trainings, and helped clients adopt and implement policies of detecting and ensuring full corporate compliance in Türkiye.

Our law firm holds a significant legal capability in all the fields of law required for such projects, including but not limited to employment law (notices, obtaining defenses of employees, terminations for cause, settlement negotiations, etc.), data privacy law (review of records, review of e-mail messages, correspondence, phone records, etc.), and corporate law (affiliate intervening through general assembly, Board of Directors member removals, fiduciary

duties of a Board Member to the shareholder company, confidentiality obligations, etc.). As for the criminal law aspects of such projects, ELIG Gürkaynak works on the criminal law dimensions together with an outside law firm-specialized in Turkish criminal law- with which it has a long standing track-record for coordinating white collar crime issues.

ELIG Gürkaynak has a high reputation for handling these types of self due diligence projects because it has handled, as requested by the in-house legal counsel and/ or compliance managers of multinational companies, quite a high number of such projects. Although, due to confidentiality constraints, ELIG Gürkaynak is naturally not free to match any names of clients with a white collar irregularity representation undertaken, set forth below are descriptions of some of the projects undertaken so far by ELIG Gürkaynak:

“*Compliance, antitrust, and white-collar irregularities are all mainstays of ELIG Gürkaynak Attorneys-at-Law’s active compliance practice. On a day-to-day basis, the team provides crucial advice concerning new and updated legislation to ensure compliance and tailors programmes to protect corporations in future scenarios. Data protection and due diligence matters are also fruitful sources of work for the firm. The team’s client list includes domestic and multinational companies, including prominent social media players.*”

The Legal 500 EMEA 2025, Tier 1

(1) Company suspected FCPA violations (through payments to public officials). ELIG Gürkaynak’s work on company records and correspondence proved suspicion, and proved the nature of payments to be bribery under Turkish law, and in any case exceeding what would constitute facilitating payments for FCPA purposes.

(2) Company had already found out about embezzlement. Self-dealing and unauthorized revisions in company books and records. Documents proving embezzlement were alleged to be stolen by the subsidiary. ELIG Gürkaynak coordinated all legal aspects and Turkish law consequences of the matter.

(3) Company suspected code of conduct and company policy violations, including antitrust violations and bid rigging in public tenders. ELIG Gürkaynak’s interview of employees, signed affidavits and corroborating indicia in company records proved violations. Furthermore, ELIG Gürkaynak’s findings revealed acts constituting smuggling of

products into country under Turkish customs law. ELIG Gürkaynak coordinated all legal aspects and Turkish law consequences of the matter.

(4) Company suspected subsidiary employees competing with the company with commercial sales of gratuitous allocation of products, as part of a fringe benefit to all employees in the country. ELIG Gürkaynak’s work on the matter proved the suspicion. ELIG Gürkaynak coordinated all legal aspects and Turkish law consequences of the matter.

(5) Company suspected inappropriate payments to certain heads and high ranking officials of municipalities through a reported gap in the profits. Financial evidence found by auditors and legal evidence found by ELIG Gürkaynak led to managers of the company admitting the wrongdoing. ELIG Gürkaynak also provided legal assistance in the consequent process where the international company pulled out of the partnership.

Anti-Corruption, Compliance and White Collar Irregularities

(6) Company found out about numerous significant payments for services and products that are not integral to the business of the company over the course of five years. Outside detective company hired by client and their investigation revealed that the companies providing these services and products are tied to family members and friends of managers. All such managers and two BoD members terminated for cause through ELIG Gürkaynak assistance. Through the assistance of ELIG Gürkaynak, the company also intervened through General Assembly due to the need for the shareholder to compel the subsidiary to grant permission for a full blown search of company records by ELIG Gürkaynak. ELIG Gürkaynak's full blown investigation revealed significant gifts to public officials.

(7) Company audit revealed payments to members of committees deciding on the legal categorization of the real estate owned by the joint venture of the company in Türkiye. The wrongdoing was admitted through the joint venture partner's proposal to pay the amount to the company. The company hired ELIG Gürkaynak to conduct a due diligence on the joint venture. Corporate law assistance also provided due to the need to obtain proper permission from the joint venture company under Turkish law. All e-mails reviewed by ELIG Gürkaynak attorneys through servers. Affidavits prepared through interviews with employees. ELIG Gürkaynak coordinated all legal aspects and Turkish law consequences of the matter.





Employment Law

The team at ELİG GÜRKAYNAK handle all types of employment law related disputes in connection with labor law litigations in Turkish courts including reemployment lawsuits and termination claims.

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Attorneys at Law

ELIG Gürkaynak is one of the few corporate law firms in Türkiye with a significant employment and labor law practice.

ELIG Gürkaynak attorneys advise clients in drafting employment contracts or adopting their internationally used employment contracts under Turkish Labor Law. ELIG Gürkaynak also counsels clients on their daytoday handling of employment law related matters, i.e. advising on organizing holiday entitlements, shifts or disciplinary actions. In addition, ELIG Gürkaynak works on drafting work place regulations, policies and disciplinary procedures.

ELIG Gürkaynak has extensive experience in organizing and managing employee termination procedures in accordance with the requirements of Turkish labor law legislation.

ELIG Gürkaynak attorneys also handle all types of employment law related disputes in connection with labor law litigations in Turkish courts, i.e. re-employment lawsuits,

termination compensation claims and overtime payment claims.

The Turkish Code of Obligations now includes an explicit provision in accordance with international law regarding mobbing. We provide practical advice to our clients in order to assist them to implement a mobbing free environment, along with informing clients on what constitutes mobbing. When required, our firm also advises and represents its clients regarding mobbing and such claims made by a client's employees.

In addition, ELIG Gürkaynak provides various training programmes to our clients' human resources departments regarding employment law related matters including the Turkish Labor Code, occupational standards, labour relations, entitlements, dismissals and work place regulations.



Technology, Media & Telecommunications Law

ELIG Gürkaynak delivers tailor made strategies with a thorough understanding of existing and emerging technology mediums while also demonstrating a comprehensive knowledge of legal practice.

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Attorneys at Law

The team at ELIG Gürkaynak is highly committed to meeting the needs of our domestic and international clients by combining our expertise in legal practice and our specialization in unique practice areas.

Our team of lawyers are at the cutting edge of technology. ELIG Gürkaynak specialises in unique practice areas such as online and mobile payment services, software development, hardware regulations, television and radio broadcasting, and regulatory compliance for telecommunication operators.

a) IT Law

ELIG Gürkaynak identifies the needs of its clients by taking into consideration their desire for innovation while respecting the legislative landscape. The team at ELIG Gürkaynak provides strategic legal assistance driven by our clients' business models and goals. We provide legal solutions for our clients in complex and multi-jurisdictional transactions, including:

- Drafting IT related agreements, including software and hardware related agreements, outsourcing agreements and licensing agreements.
- Analyzing workflow for possible legal issues with local legislation as well as possible intellectual property and trademark disputes and data protection irregularities.

- Analyzing regulatory compliance status of manufactured, imported and/ or exported hardware and software, and providing guidance in order to ensure a steady stream of business and operations.

- Providing comparative analysis of local legislation, international treaties, directives and agreements in order to minimize legal risks and offer our clients a better understanding of the legal landscape as well as a legal road map to help structure their business.

- Offering one stop shop legal assistance to start-up technology companies.

b) Media and Entertainment Law

Media convergence brings together computing, communication, and content, while being a direct consequence of the digitization of media content and the popularization of the internet. It transforms the long-established media industry and content “silos” and disengages content from select devices such as televisions, satellite/ cable boxes and radios. The phenomenon presents major challenges for public policy and regulation.

“*ELIG Gürkaynak demonstrates a reputable practice advising prominent international technology, telecommunications and media companies on high-end Turkish matters. The law firm's expertise spans regulatory, data protection and compliance advice. It counts blue-chip technology companies and media outlets as its clients.*”

Chambers Europe 2025, Top Ranked

ELIG Gürkaynak is one of the few law firms in Türkiye that is able to meet a client's needs with respect to legal issues arising from the convergence of technologies in the media industry, along with all media and entertainment law related matters for clients who operate in a wide range of media industry. We provide legal services including:

- Representing clients before the Turkish telecommunication, broadcasting and intellectual property authorities and assisting clients in their communication with these authorities and Turkish courts at all levels.
- Providing in-depth legal analysis on content provided, hosted, broadcasted, printed and published by our clients and providing them with creative counseling services to ensure compliance with the relevant legislation as well as decisions granted by Turkish courts and authorities.
- Providing sector-specific highlevel regulatory advice and risk assessmentrelated to media businesses and social media platforms

in regards to compliance issues that may arise from the relevant legislation. We offer a range of legal counseling services providing comparative analysis of current and upcoming legislation, innovative legal solutions and our team ensures that our clients are notified when a potential legislative effort may have effects on their business.

- Drafting agreements and legal documents covering all aspects of the client's business areas such as license agreements, talent agreements, intellectual property acquisition agreements, sponsorship agreements, production, co-production and post-production agreements, video game agreements, newspaper agreements, printing press agreements, organization agreements, promotion agreements, advertisement agreements and consulting agreements.
- Providing legal assistance regarding broadcasting and media strategies in Türkiye for international companies.

- Providing legal assistance to gaming companies, along with a complete legal review and assistance for websites, which are localized in Türkiye.
- Assisting news websites within the scope of Turkish law including but not limited to internet, advertising and media legislations.

c) Telecommunications Law

Increasing developments in the telecommunications sector introduce new legal challenges, which require multidisciplinary and expert legal solutions.

ELIG Gürkaynak provides legal advice on sector related regulatory and legal risk analysis and regulatory reporting. The team provides an increasingly important range of legal advice to our clients on a daily basis, including:

- Following up on legislative developments and reporting changes in the legal landscape.

- Identifying our clients' business position under local and international legislation, together with a compliance analysis.

- Drafting sector specific agreements, including infrastructure outsourcing, cloud services, managed networks, mobile virtual network operation, VoIP services, and analyzing these for potential legal risks and issues under local legislation.

- Preparing and filing applications before the relevant governmental authorities.

- Legal counseling concerning administrative and technical aspects of disputes regarding the telecommunications sector.

*Legal 500 EMEA:
Tier 1
Media & Entertainment*



Internet Law

ELIG Gürkaynak represents the world's leading internet companies and is one of the few independent Turkish law firms with an internationally recognized Internet Law practice.

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Attorneys at Law

Our Internet Law practice provides advice in a range of areas including Notice and Takedown or Judiciary Decision Enforcement Assistance, regulatory counselling and internet related litigation.

We represent the world's leading internet companies. Our Internet law practice provides advice in a range of areas including:

Regulatory Counseling:

ELIG Gürkaynak provides regulatory counseling and risk assessment services to leading Internet Service Providers, social networks, hosting providers and payper-click advertising service providers for compliance issues that arise from the relevant legislation. We offer a range of legal counseling services providing indepth and comparative analysis of current and upcoming legislation, innovative legal solutions and intuitively notify our clients when a potential legislative effort may have an impact on their business.

Notice and Takedown or Judiciary Decision Enforcement Assistance:

We provide legal assistance and comprehensive Turkish law analysis, along with review, evaluation and consistent policy oriented advice on a vast range of enforcement issues including takedown, removal and access ban requests from the courts and administrative bodies.

Internet Related Litigation:

ELIG Gürkaynak has unequalled experience and an excellent reputation in terms of Internet related litigation. We represent clients in a range of Internet related disputes, particularly user generated content hosts, online games providers and pay-per-click advertising services providers.

Our vast experience in handling disputes related to the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (the "Law No.5651") and secondary legislation offers our clients confidence and stability within their business.

Domain Name Disputes:

ELIG Gürkaynak offers legal assistance to its clients in domain name disputes and particularly advice on cybersquatting related matters. We represent clients before the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center and have solid experience and an extensive background in handling domain name disputes, particularly domain names with the '.tr' extension.

Website Agreements:

We deliver hands-on legal solutions for our clients' website related agreements, including terms and conditions of use, privacy policies, membership agreements and end-user agreements. ELIG Gürkaynak's tailored legal assistance reflects its in-depth understanding of its clients' goals, strategies and business models. Our highly qualified and skilled team, with top tier experience in Turkish law, guides clients through potential compliance issues without hampering their business success.

Intellectual Property on the Internet:

ELIG Gürkaynak provides legal advice in trademark and copyright infringement related disputes that arise from online content. We deliver swift and accurate legal advice where a dispute may require immediate action to ensure that our clients' intellectual property rights remain damage free.

“*ELIG Gürkaynak Attorneys-at-Law excels in handling complex projects across the technology, media, and TMT sectors, offering strong expertise in mobile payment systems, software agreements, licensing, and regulatory matters. The team is highly regarded for its extensive knowledge of data protection and privacy. Renowned litigator Gönenç Gürkaynak brings significant experience representing clients before the Constitutional and Administrative Courts.*”

The Legal 500 EMEA 2025, Top Ranked



ELIG Gürkaynak's team is duly qualified in Türkiye to provide its clients with the complete range of legal services for protecting and exploiting all types of intellectual property and technology assets.

We assist our clients in the registration and protection of patents, trademarks, copyrights and industrial designs. To obtain maximum protection in Türkiye, rightholders should register their registrable intellectual property rights, so far as possible. Furthermore, registered or not, in order to properly protect the fruits of their hard work, we assist our clients with respect to all forms of infringement issues.

ELIG Gürkaynak assists its clients in policing the market place and taking prompt action against infringers. We also serve our clients in anti-piracy and anticounterfeiting campaigns. ELIG Gürkaynak has successfully prosecuted unauthorized use of various trademarks in Türkiye. Our experience involves prosecution of unauthorized registration and use of "well-known" trademarks and trademark

annulment cases. In addition to our extensive experience in drafting technology transfer agreements and structuring various types of licensing arrangements, we assist our clients in legal services concerning the acquisition and use of information technology products and services.

ELIG Gürkaynak also advises on contracts for the acquisition and exploitation of computer software, databases, creative works, designs and publishing rights.



Real Estate Law

The considerable investments of ELİG Gürkaynak's international and domestic clients in real estate matters are protected by a thorough understanding of the rather rigid and mandatory provisions of the Turkish property law.

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Attorneys at Law

Real estate law by definition requires a thorough knowledge of local rules and regulations.

ELIG Gürkaynak represents clients in all proceedings and transactions that deal with real property and the structures attached to it; including purchase and sale, construction, mortgages, easements, facility management, restrictive covenants, refinancings, leases, title examinations, quiet title actions and project development.

We have particular expertise in shopping center and hotel management contracts and our experience in real estate law also extends to advising on the administration of and investments concerning free trade zones and organized industrial zones.

The real estate team at ELIG Gürkaynak also provides consultation to our clients in relation to the review of zoning plan notes and compliance of utilization licenses with construction permits and zoning plans.

ELIG Gürkaynak assists clients in financing transactions and bankruptcy trust matters.

In particular, ELIG Gürkaynak has experience in the following aspects of banking and finance law:

Loan Agreements

In the area of bank financing, ELIG Gürkaynak attorneys participated in drafting numerous loan documentation with emphasis on leveraged finance transactions and represented agent banks in providing senior financing to a large number of borrowers operating in a variety of industries. In the area of acquisition financing, our lawyers advised banks and other lenders, as well as borrowers, on financings for acquisitions, bridge loans, working capital and general corporate purposes.

ELIG Gürkaynak attorneys have extensive experience in connection with the standards, principles, forms and requirements of international financing institutions such as

OPIC, IFC and major worldwide banks. We believe this experience provides us with a unique advantage in terms of bringing a financing deal with such institutions to a smooth closing in an efficient manner.

Structured Finance

In structured finance, our attorneys advised Turkish banks and arrangers on securitization deals in Türkiye including their securitization programs structured on future cash flows.

Bankruptcy and Reorganizations

In the area of bankruptcy and reorganizations, ELIG Gürkaynak attorneys have experience in representing creditors in bankruptcy matters. ELIG Gürkaynak attorneys can assist clients, especially creditors against bankruptcy estate, in connection with structuring bankruptcy and claims against the bankruptcy estate.



Data Protection & Privacy Law

Our team is a pioneer in this field of law with an established background and significant experience in data protection and privacy. ELİG Gürkaynak actively contributes to the legislative process and the establishment of legal precedents.

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Attorneys at Law

ELIG Gürkaynak is one of the few Turkish law firms practicing data protection and privacy law in Türkiye.

Our team has a solid background and significant experience in this practice area, which makes us a pioneer in this field of law and enables us to actively contribute to the legislative process and the establishment of legal precedents. We are directly involved in legislative efforts in the data protection and privacy area due to our extensive knowledge on European Union legislation.

Our business oriented approach to handling issues related to data protection and privacy law enables us to successfully assist our clients in strengthening their positions against the risks incurred by data protection and privacy law related issues, while always working to ensure our client's business remains uninterrupted.

The irrepressible development of information technology and diversity results in an inevitable increase in the amount and type of data exchanged between individuals and machines, and a change in the way and purpose in which this data is processed. The ever increasing nature of data flow and data processing leads to legal concerns regarding data protection, security, integrity and privacy. The legal framework where these concerns emerge may lag behind the developments being made in information technologies. We assist our domestic and international clients in initiating, developing and sustaining their projects and operations within the Turkish market, without focusing on the stumbling blocks. We also provide

affirmative legal strategies and compliance advice in terms of data protection and privacy law.

Our team provides data protection and privacy consultancy for the information and communication technologies sector, along with insurance, retail, energy, oil and gas, transportation, financial services, commercial and professional services and media sectors on various matters including:

- Practical legal advice on data protection and privacy law matters which take into consideration all of our clients regulatory compliance challenges and advising on prospective regulations, drafting policies and agreements, and offering advice on legislation relating to the international transfer of data.
- Extensive regulatory advice on data breaches, assisting clients in risk management and compliance strategies, including offering potential litigation options related to unauthorized use and disclosure of personal information by third-parties.
- Legal advice and practical suggestions relating to data security incidents.



Anti-Dumping and Anti-Subsidy Investigations

Our experienced team works in close collaboration with international law firms and domestic and international clients to develop strategies throughout an anti-dumping investigation.

ELİĞ
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Attorneys at Law

We provide efficient and rapid coordination of information flow, while developing strategies and defenses to represent the interests of our clients throughout the investigation process.

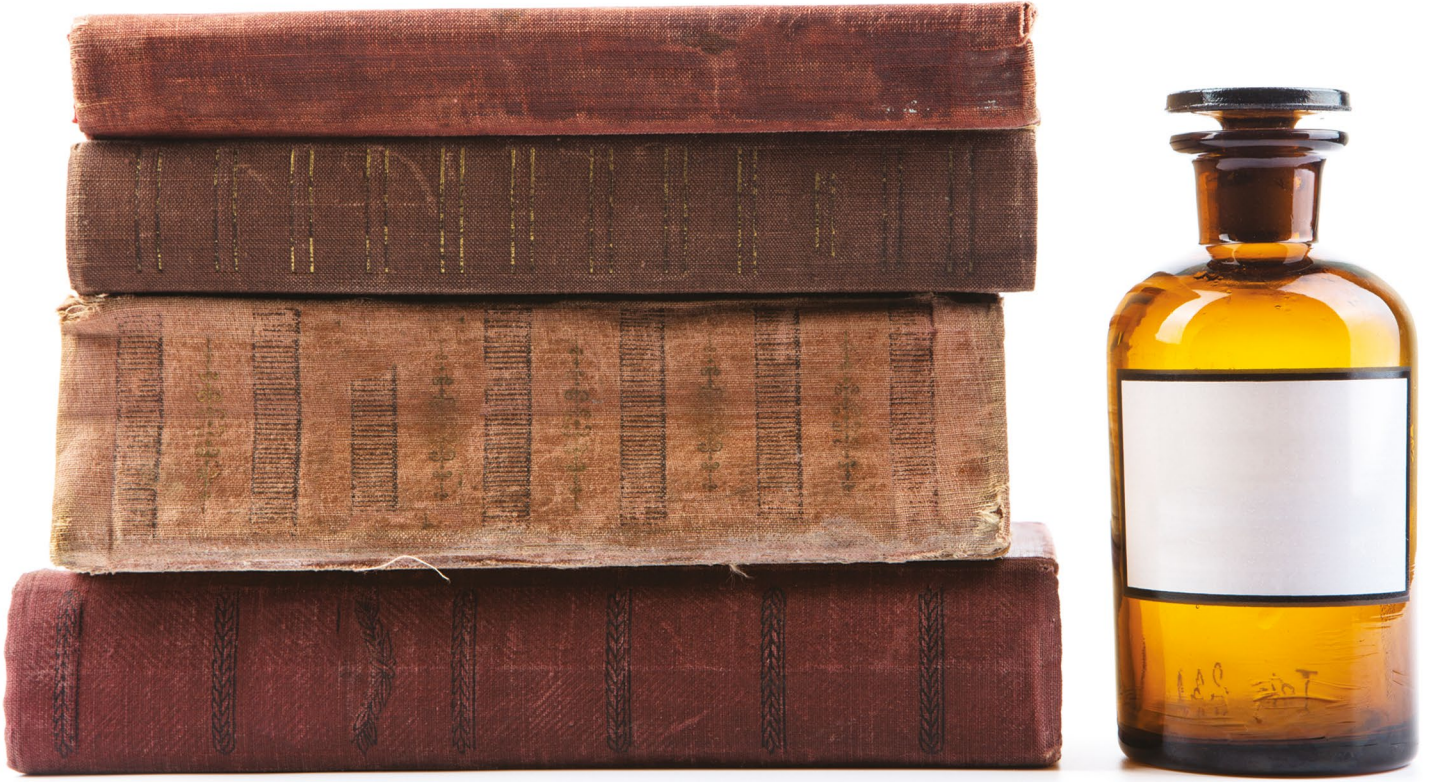
ELIG Gürkaynak has a skilled team providing legal assistance and representation to domestic and international manufacturers, importers and exporters in anti-dumping and anti-subsidy investigations in a variety of industries.

In close collaboration with international law firms and our clients' domestic in-house counsel teams, ELIG Gürkaynak provides advice and coordination on anti-dumping and anti-subsidy investigations taking place in Türkiye and in Türkiye's export partners including the European Union, Russia, US, UAE and Iraq, to maintain alignment on an on-going basis during the course of an investigation process.

ELIG Gürkaynak also represents international clients in domestic investigations. One of the essential missions of the Turkish General Directorate of Imports is to defend domestic producers' interests against imports which cause serious injury to the domestic industry. With a view to protect the industry, Türkiye has developed and adopted national legislation

on the prevention of unfair competition in imports. In this respect, the Turkish General Directorate of Imports is authorized to initiate investigations and apply and enforce trade defense instruments (anti-dumping and anti-subsidy) in compliance with the World Trade Organization rules and national legislation, where there is a material injury or threat of material injury and a causal link between dumped or subsidized imports and the injury.

We provide assistance and represent clients in all stages of investigations, including collecting and coordinating data to wrap up questionnaires, compile information petitions, confidentiality statements, additional petitions or information requests by the Turkish General Directorate of Imports, provide comments and opinions on the investigations, including preliminary and final determinations, review final disclosures and develop injury defense, and provide assistance on public hearings and on-site inspections.



Pharmaceutical and Healthcare Regulatory

ELIG Gürkaynak advises pharmaceutical, healthcare, medical device and life-sciences multinationals on all regulatory framework aspects.

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Our growing practice offers broad industry knowledge regarding regulatory requirements and practices of Turkish healthcare institutions.

ELIG Gürkaynak provides legal consultancy to a wide range of sectors including healthcare, pharmaceutical, medical device and life-sciences companies in their day-to-day operations, regulatory issues and contracts. Our dedicated team provides legal advice to healthcare and pharmaceutical clients on matters relating to re-structuring, licensing, intellectual property, management of sector related transactions and regulatory and governmental issues.

We closely monitor developments in the Turkish regulatory environment triggered by government agencies and inform and assist our clients so that they may adapt and benefit from the changes in legal and regulatory areas.

Our team of attorneys has extensive experience with the standards, principles, forms and requirements of various Turkish healthcare institutions such as the Ministry of Health, the Medicines and Medical Devices Agency and the Social Security Institution.

The support offered by ELIG Gürkaynak extends to a wide range of areas including all aspects of the regulation of pharmaceuticals, medical devices, cosmetics, pharmacies, hospitals, healthcare professionals, and pricing, promotion, labeling, safety, advertising and marketing principles of medicines and medical products. We guide our clients through numerous complex guidelines and practices of the Ministry of Health, for example, compassionate use, procurement from abroad, scientific and product promotional meetings, Good Distribution Practice (GDP), Good Manufacturing Practice (GMP), samples, adverse effects, pharmacovigilance, clinical research and donations.

Using our renowned expertise in competition law, M&A, anti-corruption, employment, intellectual property, dispute resolution, public procurement and administrative law, we ensure our clients receive high quality legal advice and assistance throughout the entire business cycle of a life sciences and healthcare product or service.

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