Competition Litigation Comparative Guide

ELİG
GÜRKAYNAK
Attorneys at Law

Competition Litigation Comparative Guide

Article Author(s)

Turkey

Contributing Editor

Contributing Editor

1. Legal framework

1. 1. Which laws regulate competition in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The principal competition legislation in Turkiye is the Act on Protection of Competition No. 4054 ("***Competition Act***").

Article 4 of the Competition Act prohibits the agreements and concerted practices, 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.

Article 6 of the Competition Act prohibits abuse of dominant position. The Guidelines on the Assessment of Exclusionary Conduct by Dominant Undertakings ("***Guidelines on Exclusionary Conduct***") provides greater detail on assessment of dominance.

The prohibition on restrictive agreements and practices may benefit from a block exemption issued by the Turkish Competition Board ("***Board***") or from an individual exemption under Article 5 of the Competition Act. Guidelines on Vertical Agreements sets out conditions of relevance to Block Exemption Communiqué on Vertical Agreements No. 2002/2.

With regard to review of concentrations, the governing legislation on merger control in addition to Article 7 of the Competition Act is Communique No.2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board.

Judicial review of the Board's decisions must be pursued in accordance with Administrative Procedure Law No.2577. Claims for damages stemming from competition law assessed under tort liability, which are regulated under general provisions of the Law No. 6098 ("***Code of Obligations***") and the procedural aspects of the claims of damages are subject to the Law No. 6100 ("***Civil Procedure Law***").

1. Legal framework

1. 2. Which authorities are responsible for enforcing the competition legislation? What is their general approach to enforcement?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The national authority responsible for enforcing competition legislation in Turkiye is the Turkish Competition Authority ("***Authority***"). Article 20 of the Competition Act establishes the authority as an institution with "administrative and financial autonomy" with the purpose of implementing the Competition Act. The authority uses its powers to take measures, regulate and audit compliance, thus ensuring the protection of competition.

The Authority is located in Ankara The Board is the decision-making body and responsible for, inter alia, reviewing allegations of abuse of dominance, anticompetitive agreements and concerted practices, as well as mergers and acquisitions and requests for exemptions and negative clearances under Competition Act.

The main duties of the Board include: (i) to carry out examinations, inquiries and investigations concerning the activities and transactions which are prohibited by Competition Act; (ii) to take the necessary measures (behavioural and structural remedies) for terminating infringements of the provisions stipulated under Competition Act; and (iii) to impose administrative monetary fines (up to 10% of turnover).

The Authority's approach to enforcement does not focus on industry-specific offences nor defences which lead to a particular scrutiny. The Competition Act applies to all industries, without exception. The sectors most frequently examined by the Authority in the first six months of 2024 included (i) the food industry (retail sector), (ii) chemicals and mining, (iii) automotive and vehicles, (iv) machinery, and (v) culture, arts, entertainment, games of chance, and education.

2. Private claims

2. 1. What types of private claim may be brought for breach of competition law in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The first consequence of a violation of Competition Act in terms of private law is the invalidity of the relevant agreement or decision pursuant to Article 56(1) of the Competition Act. In this regard, the parties to the agreement may at any time assert the invalidity of the agreement, and performance of obligations arising from invalid agreements and decisions cannot be demanded.

The second consequence of a violation of Competition Act in terms of private law is the compensation claims. According to Article 58 of Competition Act, the competitors of the infringing undertaking(s) who were not themselves involved in the competition law violation and who suffered harm due to the competition law violation can claim compensation for "all of their damages" stemming from the violation, that is, actual damages and loss of profit. For example, decreases in sales volumes and market share, or products that could not be sold because of the competition law infringement can be claimed as "loss of profit", which qualifies as "damage" that is subject to compensation.

The Turkish competition regime also entitles any party injured due to a competition law violation to request for three times their actual damages or three times the profits gained or likely to be gained by the infringers, provided that the damage arises from an agreement or decision of the parties, or from cases involving gross negligence on their part.

Interest may also be claimed on the damages arising from competition law violations, to accrue from the date of infringement.

2. Private claims

2. 2. What is the legal basis for bringing a claim for breach of competition law?

Turkey
ELIG Gürkaynak Attorneys-at-Law

It is widely recognised and well-established that liability for damages arising from a competition law violation is defined as tort liability which is shaped and determined on the basis of the standard principles set out under the Code of Obligations. A claimant seeking compensation based on harm stemming from a competition law violation under Article 49 of the Code of Obligations must prove the existence of the following four cumulative elements:

- Existence of an unlawful act (that is, violation of the Competition Act in antitrust cases).
- Fault (whether intentional or negligent) of infringers in committing the unlawful act.
- Occurrence of harm/damage caused by a competition law violation.
- Appropriate causal link between the competition law violation and the harm/damage suffered resulting from that violation.

Under the general principles of liability, anyone who causes, through a culpable and unlawful act, causes harm to another is obliged to compensate for that harm. The burden rests on the claimant (the injured party) to establish the unlawful conduct, the damage suffered, the defendant's fault, and the causal connection between the act and the harm (Articles 49 and 50(1) of the Code of Obligations).

3. Parties

3. 1. Who has standing to bring a claim for breach of competition law?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Any third party who has suffered harm due to the prevention, distortion or restriction of competition can bring a claim for damages pursuant to Article 58 of Competition Act, including third parties such as, consumers, direct and indirect purchasers and competitors.

The parties to an infringing agreement cannot bring damages actions against other infringing parties to the agreement. However, if the claimant brings an action against one or more of the infringing parties and is awarded compensation, the defendant(s) can seek to recover the compensation paid to the claimant from the other infringing parties.

In terms of vertical agreements High Court of Appeals decisions state that the contracting party who suffered losses could file claims for compensation (19th Civil Chamber of the High Court of Appeals (21.04.2005, E. 2004/9634, K. 2005/4463); 13th Civil Chamber of the High Court of Appeals (25.12.2002, E. 2002/12626, K. 2002/14028).

3. Parties

3. 2. Can a claim for breach of competition law be brought against parties outside the jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

According to Article 16 of Civil Procedure Law, claimants can bring follow-on actions against legal entities that are domiciled in Turkiye. Claimants can bring actions in:

- The place where the tort is committed.
- The place where the damage occurred, or where it could possibly occur.
- The domicile of the injured party.

Pursuant to Article 6(1) of Civil Procedure Law, as a general jurisdictional rule, the claimants can bring an action in the domicile of the defendant from the date on which the action was brought.

In addition, if the infringement had an impact within Turkish borders, the claimants could also bring follow-on actions against corporate entities domiciled outside Turkiye.

3. Parties

3. 3. Can a claim for breach of competition law be brought against individuals, or only companies?

Turkey
ELIG Gürkaynak Attorneys-at-Law

According to Article 57 of the Competition Act, anyone who prevents, distorts or restricts competition must compensate the injured parties for any damages resulting from violation of Competition Act. Therefore, it is theoretically possible to bring an action against individuals.

Article 58 of the Competition Act states that compensation claims of the competitors who were affected by the restriction of competition can be brought against the "undertaking(s)" that restricted competition. Article 3 of the Competition Act defines "undertaking" as the "natural and legal persons who produce, market or sell goods or services in the market; and the units of such natural and legal persons that can take independent decisions and that constitute an economic unity". Therefore, actions can be brought against individuals who can be deemed to be an "undertaking" in this sense; individuals who are not considered to be an "undertaking" according to this definition cannot be subject to a compensation claim.

Claimants can bring actions against individuals who are domiciled in Turkiye. Where the infringement made an impact within the borders of Turkiye, individuals who are domiciled outside Turkiye can also be subject to damages claim or compensation lawsuit. Therefore, the residency status of an individual is not used as a criterion to determine whether that individual can be subject to damages claim.

4. Collective actions

4. 1. Is it possible to bring a collective action for breach of competition law in your jurisdiction? If so, what is the applicable regime?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The concept of class action does not exist in Turkiye for damage claims.

In terms of collective actions, associations and other legal entities may have independent legal standing on their own behalf in order to bring an action to protect the interests of their members or the people they represent, petitioning the court for determination of their rights, elimination of a breach of law, or prevention of the violation of any future rights. More specifically, pursuant to Article 113 of the Civil Procedure Law, associations and other legal entities may initiate a group action to "protect the interest of their members", "to determine their members' rights", and "to remove the illegal situation or prevent any future breach". However, it is not possible to request compensation through such action, as the law only allows for a "determination of illegality". In other words, collective actions do not cover actions for damages.

4. Collective actions

4. 2. Do collective actions proceed on an 'opt-in' or an 'opt-out' basis?

Turkey
ELIG Gürkaynak Attorneys-at-Law

As explained under Section 4.1., the concept of a class action does not exist in Turkiye for damage claims.

Under Article 113 of the Civil Procedure Law, associations and other legal entities may, within the scope of their status, initiate lawsuits in their own name to protect the interests of their members or the group they represent. Since the collective actions are initiated by the relevant associations or other legal entities, the "opt-in" and "opt out" mechanisms are not applicable for collective actions regulated under Article 113 of the Civil Procedure Law. Nevertheless, third parties may intervene in an ongoing process provided that the relevant third party's interest will be affected as a result of the decision.

4. Collective actions

4. 3. Do collective actions require certification? If so, what requirements must be met to obtain certification?

Turkey
ELIG Gürkaynak Attorneys-at-Law

There is no certification requirement for collective actions under Turkish law.

5. Forum

5. 1. In what forum(s) are claims for breach of competition law heard in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Actions for damages are heard in the civil courts. Under Article 2/2 of the Civil Procedure Law the general competent courts for competition law damages claims are the civil courts of first instance. In addition, an action for damages can fall under the jurisdiction of specialized courts with regard to the subject matter in dispute and the legal status of the claimant. For example, a damages action in which the claimant is qualified as a “merchant” must be filed at the commercial courts of first instance. In this respect, High Court of Appeal is also authorized as the authority of appeal in compensation cases arising from competition law.

Consumers whose actions were undertaken for non-commercial or non-professional purposes must apply to the Arbitration Committees for Consumers or bring the action in the consumer courts based on the value of the dispute.

6. Bringing a claim

6. 1. What is the limitation period for claims for breach of competition law in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The Competition Act does not contain any specific provisions on the statute of limitations that apply to claims for damages arising from competition law violations. Therefore, the general provisions in the statute of limitations set out under Article 72 of the Code of Obligations apply**.** Within the scope of Code of Obligations, there are three different limitation periods that are applicable to compensation claims:

- Two years from the time the claimant becomes aware of the damage and the identity of the person(s) liable for the damage.
- Ten years from the date of the infringement.
- Longer, if a longer limitation period is provided under the provisions of Turkish criminal law, for the relevant unlawful behaviour.

There is an academic debate whether the ten-year limitation period under Article 146 of the Code of Obligations should apply in cases where there is a contract between the parties (the claimant and the infringing party) and the liability arises from the contract itself. Nevertheless, in practice, the 11th Civil Chamber of the Court of Appeals has adopted that the eight-year limitation period under Law No. 5326 on Misdemeanors should apply to limitation periods for competition law damages claims within the scope of Article 72 of the Code of Obligations (*see*. Decisions dated 30.03.2015 and numbered 2014/13296 E, 2015/4424 K and 01.08.2019 and numbered 2019/1672 E, 2019/5015 K).

The limitation period will start to run when the claimant becomes aware of the damage and the identity of the person(s) liable for it.

6. Bringing a claim

6. 2. What are the formal requirements for bringing a claim for breach of competition law?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The Board decisions are a "veiled" pre-requisite for filing a private antitrust litigation compensation lawsuit. The Court of Appeals has rendered various decisions in which it held that first instance courts must wait for the Board's final decision before a case can be heard. On this basis, courts tend to dismiss compensation lawsuits that are filed before a final decision is rendered, or they decide to halt the civil proceedings and only proceed with them after the Board decision is finalised.

In terms of competition damages claim under commercial law, the claimant should first initiate mediation proceeding because it is mandatory by law to do so for receivable/compensation requests. Accordingly, one cannot bring such claims before a court before pursuing mediation process and if one fails to do so, the lawsuit gets dismissed on procedural grounds. If the parties are unable to reach a settlement at the end of the mediation proceedings, only then the can the claimant apply to the court for initiating a lawsuit. If the parties do settle, the claimant cannot apply to the court for initiating a lawsuit. If the parties fail to settle under the mediation proceedings, the claimant files a petition with the court and pay the calculated legal fees for the case, which varies based on the amount of damages in question.

6. Bringing a claim

6. 3. What are the procedural and substantive requirements for bringing a claim for breach of competition law?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Procedural requirements for bringing a claim before civil courts are regulated under Article 114 of the Civil Procedure Law. Accordingly, Turkish courts should have jurisdictional authority over the claim, and the case should be filed before the competent court. In addition, the parties must have the capacity and the authority over the claim; and where legal representation is required, the representative must possess the necessary qualifications. The claimant party must pay the legal fees for filing the claim and comply with any security requirement ordered by the court. The same action must not have been previously filed and still pending or must not have been subject to a final decision.

In terms of substantial aspects of a claim for damages, the claimant shall demonstrate following elements of tort:

- Existence of an unlawful act (*e.g.* violation of the Competition Act in antitrust cases).
- Fault (whether intentional or negligent) of infringers in committing the unlawful act.
- Occurrence of harm/damage.
- Appropriate causal link between the competition law violation and the harm/damage suffered as a result thereof.

6. Bringing a claim

6. 4. What are the implications if a public enforcement action in relation to the same behaviour is pending? Can a claim still be brought?

Turkey
ELIG Gürkaynak Attorneys-at-Law

It is widely recognised and accepted that it is prudent for a court to delay hearing a case that has been filed after an alleged violation of the Competition Act, until the Board renders its decision. Therefore, as a general practice, a stand-alone action will remain pending if there is an ongoing competition law investigation into the same alleged violation.

If the Board decision in a particular case is under appeal, the court will also generally await finalisation of the Board's decision.

Therefore, the courts tend to accept the parties' request to suspend proceedings until the issuance of the Board’s decision on the alleged competition law infringement.

In addition, if there are criminal proceedings based on the competition law infringement, the civil court can decide to stay its proceedings until the criminal court renders its decision.

6. Bringing a claim

6. 5. How is jurisdiction over the claim determined?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Claimants can bring follow-on actions against legal entities that are domiciled in Turkey. Pursuant to Article 16 of the Civil Procedure Law, claimants can bring actions in:

- The place where the tort is committed.
- The place where the damage occurred, or where it could possibly occur.
- The domicile of the injured party.

In accordance with Article 6 (1) of the Civil Procedure Law, as a general jurisdictional rule, the claimants can bring an action in the courts where the defendant is domiciled at the date the action is brought. In case the damaging action occurs due to acts of multiple parties, relevant parties shall be jointly responsible for the damage under Article 7(1) of the Civil Procedure Law. If there are multiple defendants, it is possible to initiate the case in any of the courts where they reside, subject to the exceptional scenario in which the law designates a joint jurisdiction for defendants. In this case, the case is required to be filed where the tort is committed.

6. Bringing a claim

6. 6. How is the applicable law determined?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Pursuant to Article 38/1 of the Private International and Procedural Law No. 5718, all the infringements directly affecting the Turkish market are subject to Turkish law even if they originate from a foreign country.

6. Bringing a claim

6. 7. Under what circumstances must security for costs be provided?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Article 84 of the Civil Procedure Law regulates the instances in which the court may require security for costs. Accordingly, security for costs is provided under following circumstances:

a. If a Turkish citizen without a habitual residence in Turkiye initiates a lawsuit, participates in a lawsuit as an intervening party, or pursues an action.
b. If the claimant has previously been declared bankrupt or initiated reconciliation procedures or declared to be in payment difficulty.

The amount of the security is decided by the court to cover the expenses of the legal procedures and proceedings, as well as the losses or damages of the other party. The court will grant a peremptory (absolute) term to the claimant to provide the security. The court will continue to hear the case if the security is provided in the time allotted. However, the action will be dismissed on procedural grounds if the claimant does not provide the security in time.

6. Bringing a claim

6. 8. Are interim remedies available in competition litigation? If so, how are they obtained?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Interim remedies in a case file for damages of a competition violation are subject to general provisions Article 389 of the Civil Procedure Law. A claimant can request from the court a decision on interim measures in a follow-on action. The Civil Procedure Law provides that certain interim measures, such as preliminary injunctions, can be used in the course of private antitrust litigation actions.

A preliminary injunction decision can be rendered where there is a concern that a change in the current circumstances could make it significantly difficult (or completely impossible) to enforce a right, or that a delay could cause significant damage or inconvenience to one of the parties.

In accordance with Article 392 (1) the party requesting application of interim measures has to provide security for any potential damage may incur on defendant or the relevant third parties due to application of interim measures, for the possibility of the grounds for request of interim measure are later to be unfounded.

7. Disclosure and privilege

7. 1. What rules apply to disclosure in your jurisdiction? Do any exceptions apply?

Turkey
ELIG Gürkaynak Attorneys-at-Law

First instance court decisions are not published. Court of Appeals decisions are published and publicly available, however, the confidential information included within them is generally redacted.

When confidential information is disclosed to the Authority, the members of the Board and other personnel are under a legal obligation not to disclose any trade secrets or confidential information obtained while carrying out their official duties, even after they leave the Authority. The Authority will not disclose any commercial secrets when a confidentiality request has been received and accepted.

Trials are public procedures; however, they can be closed to the public and be conducted privately when considerations of public morality or public security require it. In addition, as regulated under Article 161(2) of the Civil Procedure Law in case the documents provided by either of the parties are confidential, the parties may submit a request to the court to keep the confidential documents in the court's designated secure lockers to ensure protection of confidential documents. Confidential documents can only be accessed or examined with the explicit permission of the court. In practice the courts are conservative about deeming documents as confidential and rendering them non-accessible by the other parties of the case file, so as not to prejudice these parties` rights to defence. Nevertheless, as a general principle, parties may ask for a confidentiality cloak for such documents for the purpose of protection of commercial secrets.

7. Disclosure and privilege

7. 2. What rules on third-party disclosure apply in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

According to Article 161 of Civil Procedure law, parties to a case can examine the case file under the supervision of the court clerk. Other than the parties to the lawsuit, third parties who have an interest in the case can also examine the case file, on the condition that they prove their interest in the case and receive permission from the court. Any documents and minutes that are deemed confidential can only be accessed or examined with the express permission of the court.

According to Article 46 of Law No. 1136 ("***Legal Practitioners' Act***"), a registered lawyer can examine any case file without requiring a power of attorney for the relevant lawsuit. However, a lawyer who does not have or submit a power of attorney relating to the lawsuit will not be permitted to make copies of the papers or documents in the case file.

7. Disclosure and privilege

7. 3. What rules on privilege apply in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Turkish law upholds the principle of attorney–client privilege. Moreover, Legal Practitioners' Act expressly prohibits lawyers from revealing any information obtained in the course of their professional relationship with clients.

8. Evidence

8. 1. What types of evidence are permissible in your jurisdiction? Is expert evidence accepted?

Turkey
ELIG Gürkaynak Attorneys-at-Law

In Turkish civil proceedings, all forms of evidence are admissible provided they have been lawfully obtained. Parties must submit and present their evidence within the case file, as judges do not conduct *ex officio* investigations to gather additional material; the final judgment is rendered solely on the basis of the evidence introduced by the parties.

Acceptable forms of evidence typically include written and physical documents, witness testimony, expert reports, oaths, and on-site inspections. Legal oath, final judgments, and deeds constitute conclusive evidence, whereas witness statements, expert reports, and on-site examinations are regarded as discretionary evidence, since the court may evaluate their probative value at its discretion.

Expert evidence, classified as discretionary, is admissible. An appointed expert must convey the results of their research and inform the court about the matter at hand either verbally or in writing, at the discretion of the court. Experts may be appointed by the court, generally ex officio and sometimes with the request of the parties, from among the court's registry of sworn-in professionals. The parties can also offer expert opinions/reports; however, the court generally tends to rely on the reports of the court-appointed experts.

Witness testimony is similarly admissible but treated as discretionary evidence. In the cross-examination of witness, the judge(s) will interrogate the witness themselves, and will not allow any other person (such as an expert) to do so. The parties' attorneys can address their questions directly to the witness, as long as the questions do not disrupt the order of the courtroom.

8. Evidence

8. 2. What is the applicable standard of proof?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Under Article 59(2) of the Competition Act, the existence of agreements, decisions and practices restricting competition can be proved by any kind of evidence. Therefore, there is no specific standard of proof.

For tortious liability, it is widely recognised and well-established that liability for damages arising from a competition law violation is shaped and determined on the basis of the standard principles set out under the Code of Obligations. A claimant seeking compensation based on harm stemming from a competition law violation under Article 49 of the Code of Obligations must prove the existence of the following four cumulative elements:

- Existence of an unlawful act (that is, violation of the Competition Act in antitrust cases).
- Fault (whether intentional or negligent) of infringers in committing the unlawful act.
- Occurrence of harm/damage caused by a competition law violation.
- Appropriate causal link between the competition law violation and the harm/damage suffered resulting from that violation.

8. Evidence

8. 3. On whom does the burden of proof rest?

Turkey
ELIG Gürkaynak Attorneys-at-Law

According to Article 50 of Code of Obligations, the claimant (i.e. the injured party) bears the burden of proving the unlawful act, the resulting damages, the defendant's fault, and the causal link between the act and the damages.

However, a rebuttable presumption exists that shifts the burden of proof to the defendant when the alleged conduct involves a concerted practice. To shift the burden of proof to the defendant, the claimant must provide evidence pointing to the existence of an agreement or the distortion of competition in the market, for example:

- *De facto* allocation of markets.
- Stability of the market price for a relatively long period of time.
- Price increases by the market players within close time periods.

8. Evidence

8. 4. What defences are typically available in competition litigation?

Turkey
ELIG Gürkaynak Attorneys-at-Law

In addition to the defences based on lack of procedural requirements (e.g. failure to fulfill procedural requirements stipulated under Article 114 of the Civil Procedure Law) the defendant part may base its defence arguments on the lack of substantial elements of the damages stemming from competition law violation (e.g. lack of an unlawful act, lack of fault, lack of harm/damage, lack of appropriate causal link between the alleged competition law violation and the alleged harm/damage suffered as a result thereof).

The Competition Law and judicial precedents do not specifically recognise a “passing-on” defence in civil damages claims. It is yet to be tested under the Turkish competition law enforcement regime and there is no publicly available action or decision in which the courts have examined the “passing-on defence”.

There are, however, no barriers preventing a defendant from putting forward a "passing-on" defence in civil damages claim. The issue requires a case-by-case analysis since the admissibility of the defence will depend on the particular position of the claimant and the specific features of the claim.

9. Settlement

9. 1. Can the proceedings be discontinued without a full trial? If so, how; and what are the implications?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The Civil Procedure Law does not set out a separate procedure for the parties to seek to have a specific issue (such as limitation) tried as a preliminary issue in advance of a full trial. However, most procedural issues, such as the court's lack of jurisdiction or the expiration of the statute of limitations, are considered and treated as preliminary issues, which must be resolved by the court before delving into the merits of the case.

The civil procedure rules do not provide a "strike-out" mechanism, under which the court can review the case on its merits in the pre-trial stage. The court will only begin to review the merits of the case during the examination period.

Also, the parties can always agree on an out-of-court settlement and any court permission is not required. According to Article 313 of the Civil Procedure Law, parties may settle while the case is pending before the court. This settlement is concluded in the form of a contract. Settlement may occur until the court's decision is finalised. Settlement concludes the case file and produces legal effects of the court's final decision. If the parties wish so, the court may render its final verdict based on the terms and conditions of the parties' settlement agreement.

9. Settlement

9. 2. In the case of collective actions, is collective settlement possible? If so, how; and what are the implications?

Turkey
ELIG Gürkaynak Attorneys-at-Law

There is no special settlement procedure for collective actions. Therefore, consequences of settlement option in collective action are also subject to the explanations under Section 9.1.

10. Court proceedings

10. 1. Are court proceedings in your jurisdiction public or private? If the former, are any options available to the parties to keep the proceedings or related information confidential?

Turkey
ELIG Gürkaynak Attorneys-at-Law

First instance court decisions are not published. Court of Appeals decisions are published and publicly available, however, the confidential information included within them is generally redacted. Trials are public procedures; however, they can be closed to the public and be conducted privately when considerations of public morality or public security require it. The parties can submit a request to keep the proceedings confidential, or the court can decide to keep the proceedings confidential *ex officio*.

As regulated under Article 161(2) of the Civil Procedure Law in case the documents provided by either of the parties are confidential, the parties may submit a request to the court to keep the confidential documents in the court's designated secure lockers to ensure protection of confidential documents. Confidential documents can only be accessed or examined with the explicit permission of the court. In practice the courts are conservative about deeming documents as confidential and rendering them non-accessible by the other parties of the case file, so as not to prejudice these parties` rights to defence. Nevertheless, as a general principle, parties may ask for a confidentiality cloak for such documents for the purpose of protection of commercial secrets.

10. Court proceedings

10. 2. How do the court proceedings unfold in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The Civil Procedure Law divides the first-instance trial into several stages, which are as follows (i) pleading phase (ii) preliminary examination, (iii) investigation, (iv) hearing and (v) judgement. Upon filing of the petitions (the claimant and the defendant both can file two petitions within the scope of pleading phase) the preliminary hearing takes place.

The preliminary hearing takes approximately three months after the proceedings commence, however, the estimated period might be extended depending on the dynamics of the case, especially if one of the parties are domiciled abroad.

After the preliminary hearing, the court proceeds to the examination phase, which is the stage where the court collects all the evidence, have experts examine certain matters if necessary and obtain reports. After collecting all the documents and information, the court makes a final assessment of the disputed matter and renders its decision. If the judicial review of the relevant Board decision is not yet finalised, the first instance court waits for its finalisation, which would prolong the whole process.

10. Court proceedings

10. 3. What is the typical timeframe for proceedings?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The litigation process before the court of first instance generally ranges from approximately 18 to 24 months, depending upon the status of the underlying Board decision. Where judicial review of the relevant Board decision remains pending, the first-instance court will defer proceedings until its conclusion, potentially extending the overall timeline.

10. Court proceedings

10. 4. What rules apply to the joinder of third parties?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Third parties can intervene in a lawsuit as a primary intervening party or secondary intervening party. According to Article 65 of the Civil Procedure Law, in case a third party claims a right over the subject matter of the proceedings, it may bring an action against the parties to the ongoing proceedings before the court renders its final judgment on the matter. The primary intervention action will be carried out together with the main trial.

In addition, according to Article 66 of the Civil Procedure Law, a third party who has a legal interest in success of one of the parties may participate in the proceedings as a secondary intervener, for the purpose of supporting the party of interest. Such participation is allowed prior to the conclusion of the investigation phase in proceedings.

10. Court proceedings

10. 5. To what extent do the decisions of national or foreign competition authorities influence the court’s decision?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The Board decisions are a "veiled" pre-requisite for filing a private antitrust litigation compensation lawsuit. Courts tend to dismiss compensation lawsuits that are filed before a final Board decision is rendered, or they halt the civil proceedings and only proceed with them after the relevant decision is finalised.

The Civil Procedure Law also regulates foreign legal instruments that are binding on Turkish courts. According to Article 204 of the Civil Procedure Law, finalised decision rendered in another court is one of the final pieces of evidence that the parties can submit.

According to Article 301 of the Civil Procedure Law a "decision" is defined as a piece of paper that includes a copy of the court's ruling, physically delivered to the parties by the court at the conclusion of the judicial process. Further, a court's "finalised" decision can be described as an official document issued by the court on the merits, or otherwise on procedural grounds, pursuant to a judicial process, against which legal remedies cannot be sought. Thus, to label a document as a "court decision", there must be an authorised court issuing the document. Therefore, decisions issued by bodies other than those recognised as courts by the relevant states do not fall under the scope of Article 204 of Civil Procedure Law. However, as per Article 192 of the Civil Procedure Law decisions promulgated by other, non-judicial bodies can be regarded and treated as discretionary evidence, on which Turkish courts can choose to rely in their legal deliberations.

11. Remedies

11. 1. What remedies are available in competition litigation in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Compensatory damages are available under the Turkish competition law regime, and their extent and calculation means are set out under Article 58 of the Competition Act.

Damages are calculated as the difference between the cost they paid and the cost they would have paid if competition had not been limited. In other words, the damage price that the injured parties paid for the product / service in question and the price that they would have paid, had competition not been restricted; indicating that the actual losses suffered by the claimant will be compensated.

According to Article 58(1) of Competition Act, the competitors of the infringing undertaking(s) can claim compensation for "all of their damages" (*i.e.* actual damages and loss of profits) arising from the violation of the Competition Act.

The injured party may request three folds of material damages it has incurred due to violation of competition law. In order for a claimant to be awarded treble damages, it shall demonstrate that:

- The damage must result from an agreement or decision of the parties, or an act of gross negligence by them.
- The claim must be for material or financial damages (not moral damages) and the damages in question must be actual damages incurred by the injured party.

11. Remedies

11. 2. Are punitive damages awarded in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Under the general provision of the Code of Obligations, the award of damages aims to compensate for the losses of a party, and thus, compensation cannot exceed the amount of loss; however, it is possible for the compensation to be lower than the actual loss.

However, treble damages regulated under Article 58 of the Competition Act would serve as an example of limited instances where damage claims with punitive nature finds field of application under Turkish law.

11. Remedies

11. 3. Will the courts consider any fines imposed by the competition authorities in deciding on the quantum of damages? What other factors will it consider in this regard?

Turkey
ELIG Gürkaynak Attorneys-at-Law

The administrative monetary fines that are imposed by the Competition Board are not taken into account by the courts when awarding damages in private antitrust actions. However, it is argued that administrative monetary fines imposed on undertaking(s) that are subject to an action for damages should be considered when calculating the damages to be awarded.

The main rule for calculating damages is the difference between the price that the injured parties paid for the product/service in question and the price that the injured parties would have paid if competition had not been restricted. Also known as the "difference theory," this relates to the artificially increased prices resulting from competition law violations. It aims to compensate the consumers for the damage they have suffered by paying more than the regular price for a product, due to the price increase applied by the cartelists.

Please also see our explanations under 2.1. above.

12. Appeals

12. 1. Can the decision of the court or tribunal be appealed? If so, on what grounds and what is the process?

Turkey
ELIG Gürkaynak Attorneys-at-Law

It is possible to appeal the judgment of the relevant court if the monetary value is above a certain threshold. Under Turkish law, the appellate court system consists of two tiers: (i) the Regional Court of Appeals and (ii) the High Court of Appeals (the ultimate judicial authority in the appeal process). The appeal thresholds (revised annually) are TRY 40,000 for Regional Courts of Appeal and TRY 544,000 for the High Court of Appeal in 2025.

The decision of the court of first instance could be appealed before the Regional Court of Appeals on the following grounds, inter alia: (i) procedural errors in the decision of the court of first instance, (ii) the court of first instance being authorized to render the decision, (iii) the court of first instance's failure to collect the necessary evidence, (iv) insufficient review by the court of first instance, (v) misapplication of the law etc.

Decisions of Regional Court of Appeals are subject to appeal before the High Court of Appeals. Article 371 of the Civil Procedure Law provides the grounds of before the High Court of Appels as (i) misapplication of the law or the contract between the parties, (ii) incompliance with the procedural requirements for the lawsuit, (iii) rejection of an evidence submitted by a party without any objective justification and (iv) existence of mistakes or missing elements which have affected the judgment of the court.

13. Costs, fees and funding

13. 1. What costs and fees are incurred when litigating in your jurisdiction? Can the winning party recover its costs?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Pursuant to Article 107 of the Civil Procedure Law, the claimant can bring an "unspecific receivable" lawsuit action when the amount or value of the receivable cannot be precisely calculated, or when it is impossible to accurately and definitively determine the amount or value of the receivable on the date the action is brought. An unspecific receivable lawsuit action can be launched by specifying the legal relationship and stipulating a minimum amount or value for the receivable. In this way, the claimant who brings the unspecific receivable lawsuit action pays legal fees and costs according to the temporary receivable amount demanded in the petition. Then, during the ongoing litigation process, the remainder of the legal fees are collected after the receivable amount demanded by the claimant is accurately and definitively determined, either by the relevant expert witness(es) or by the claimant itself

Pursuant to Article 326(1) of the Civil Procedure Law, the unsuccessful party will bear the litigation costs except where statutes provide otherwise. In case of a partial win/loss, the litigation courts are imposed on the unsuccessful party pro rata the value of the claim that the court has rejected. The court decides on the litigation costs, which will include the judgment fee and the court expenses based on the annual tariffs, as well as the attorneys' fees (the only amount which belongs to attorneys) based on the Minimum Fee Schedule set out by the Turkish Bar Association each year.

13. Costs, fees and funding

13. 2. Are contingency fees and similar arrangements permitted in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Pursuant to the Legal Practitioners' Act, attorneys' fees can be freely negotiated between attorney and client. Accordingly, conditional fee (i.e., contingency fee) agreements are permissible in principle. Such fees may be structured as a percentage of the claimed amount, subject to an upper limit of 25%. It is widely accepted that the parties can decide on a "conditional" fee arrangement, as long as the fee does not exceed the 25% limit. However, attorneys' fees cannot be less than the amounts specified in the Minimum Fee Schedule set out by the Turkish Bar Association, which varies depending on type of the lawsuit or transaction and are determined annually. As a result, actual "no gain – no fee" structures are not permitted under Turkish law.

13. Costs, fees and funding

13. 3. Is third-party funding permitted in your jurisdiction?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Turkish law imposes no limitations on the use of third-party funding of legal actions. Therefore, although it is not a common practice, a lawsuit may, in principle, bringing an action funded by a third party is theoretically possible. However, third party funders cannot be held liable for other party's costs, as it is only the parties of the case that could be liable against one another in relation to the costs borne from the case.

14. Trends and predictions

14. 1. How would you describe the current competition litigation landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Turkey
ELIG Gürkaynak Attorneys-at-Law

Despite specific provisions regarding damages claims in the Competition Act, liability for compensation has not been effectively enforced over the past twenty years The main reason is the jurisprudence of the High Court of Appeals that requires a violation decision of the Board for the court to hear the case, and that courts cannot hear the case until this decision becomes final. In line with this jurisprudence, courts sometimes directly dismiss compensation claims due to the absence of a final Board decision, while in other cases they make it a preliminary issue.

On the other hand, settlement mechanism has become an increasingly used mechanism in parallel with the increasing scrutiny of the Authority. It requires the acceptance of the alleged infringements by the perpetrators. Moreover, the perpetrators will not be able to bring the final decision to the judicial review once they settle. Therefore, once settled, the Board's decision will be final (i.e. no longer appealable) and third parties were to bring private damages actions right after the settlement decision and courts can immediately delve into the merits of a potential private action for damages claim. All in all, settlement decisions of the Board would facilitate successful damages claims of potential claimants.

15. Tips and traps

15. 1. What would be your recommendations to parties facing competition litigation in your jurisdiction and what potential pitfalls would you highlight?

Turkey
ELIG Gürkaynak Attorneys-at-Law

As noted above, one of the most substantial challenges is the jurisprudence of the High Court of Appeals requiring a final decision of the Board. Hence, a party considering initiating a compensation claim should apply to the Board first to render a violation decision.

Furthermore, Turkish law does not provide for class-action mechanisms for compensation claims. Consequently, end-users who have incurred harm cannot pursue a collective claim against undertakings that have violated competition law and often lack the financial capacity to initiate individual proceedings against large corporations. This structural constraint has impeded the development of competition damages actions in Turkiye, where such claims are largely brought by competitors who possess the necessary resources to litigate.

mondaq

Connecting knowledge & people

Bristol | Essex | New York | Sydney

t: +44 (0) 20 8544 8300
e: enquiries@mondaq.com