ISSN 2147 – 558X

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LEGAL INSIGHTS QUARTERLY

March 2026 – May 2026

LEGAL INSIGHTS QUARTERLY

March 2026 – May 2026

Mart/March 2026, Istanbul

Yayın Türü / Type of Publication
Yerel Süreli / Local Periodical

ELİG Gürkaynak Avukatlık Bürosu adına Yayın Sahibi, Sorumlu Müdür / Owner and Liable Manager on behalf of ELIG Gürkaynak Attorneys-at-Law

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ISSN 2147 – 558X

Preface to the March 2026 Issue

The March 2026 issue of *Legal Insights Quarterly* has been prepared to provide an in-depth overview of key legislative developments, regulatory transformations, and evolving case law shaping the contemporary legal landscape in Turkiye.

The Corporate Law section examines the scope and limitations of directors' liability towards shareholders in joint stock companies, focusing on fiduciary duties, conditions for liability, and mechanisms for exclusion from it under the Turkish Commercial Code, with particular attention to the balance between managerial discretion and accountability.

The Banking and Finance Law section provides a comprehensive overview of open banking services in Turkiye, outlining the fragmented yet evolving regulatory framework, addressing licensing, technical, and data-related obligations applicable to account information and payment initiation services.

The Capital Markets Law section addresses the process by which a private company becomes a public company through a share capital increase route, detailing the legal prerequisites, procedural steps, and regulatory approvals required.

The Competition Law section of the March 2026 issue analyses recent enforcement and merger control developments reflecting the Authority's focus on digital markets, industrial concentrations, and commitment-based resolutions. In this regard, the section reviews the recent amendments to the Turkish merger control regime introduced by Communiqué No. 2026/2, focusing on the revised jurisdictional turnover thresholds, the recalibrated rules for technology-driven sectors, and the newly simplified notification framework. It covers the allegations against Trendyol regarding allegedly discriminatory practices among marketplace sellers under Law No. 4054, the acquisition of 51% of the shares of Andar Elektromekanik by H. İbrahim Bodur Holding AŞ, the Board's evaluation of the commitments submitted by Mars and CJ ENM in an abuse of dominance investigation concerning the cinema exhibition market. Finally, it reviews a mobile game transaction, reflecting the Authority's approach to digital sectors.

The Data Protection Law section introduces the Constitutional Court's recent decision on amendments to the Law on the Protection of Personal Data. Moving on, the Internet Law section outlines recent changes to the mandate and organisational structure of the Presidency of Cyber Security, while the Telecommunications Law section reviews the recent amendments to the Electronic Communications Law No. 5809.

The Dispute Resolution section addresses the timing of mandatory mediation in eviction lawsuits based on the new owner's need, in light of a recent Regional Court of Appeal decision. Moreover, the Employment Law section sheds light on a recent Court of Cassation decision clarifying employees' entitlement to salary increases during the statutory notice period, resolving the divergence in practices of lower-courts.

Finally, the IP Law section focuses on the 13th Edition of the Nice Classification, which has entered into force as of January 1, 2026, and assesses the reclassification of goods previously concentrated in Class 9 and its practical implications for trademark filing.

March 2026

Corporate Law

Directors' Liability Towards Shareholders in JSCs: Scope and Limitations under Turkish Law

I. Introduction

Directors' liabilities are shaped primarily by the Turkish Commercial Code No.6102 ("**TCC**"). TCC regulates the statutory obligations of directors and the principles of their general fiduciary duties. These regulations balance the directors' accountability for unlawful and negligent conduct with their discretion and freedom as professionals in commercial decision making.

Persons who can bring claims against directors are also set out by TCC. Shareholders have a unique position as claimants because, in addition to claims for the damage they directly incur, they can also pursue derivative claims for company's damages and request that the company shall be directly compensated.

This article examines the fiduciary duties of directors in joint stock companies ("**JSC**") under Turkish Law. It explores the conditions under which liability may arise or be excluded, identifies those rightsholders entitled to bring claims against directors, and analyzes scope of the claims available to shareholders.

II. Fiduciary Duties and Basis of Directors' Liability

Article 553 of the TCC operates as an umbrella provision for directors' liability in JSCs and creates a link between the liability and the breach of duties regulated throughout TCC. Said provision states that directors would be personally liable towards the company, shareholders, and creditors of the JSC for damages arising from their faults in breach of their statutory duties as well as those obligations set out in the articles of association of the company. Article 553 of TCC does not define the scope of directors' duties. Accordingly, assessment of liability requires identifying the directors' duties which may be subject to breach. Directors' liability therefore arises from breach of their duties either regulated by the TCC or under the articles of association. Main duties of the directors in JCS can be summarized as below:

- **General Management:** Directors are responsible for the management and representation of the JSC (TCC Article 365). This responsibility can be considered as the starting point of directors' fiduciary and statutory obligations.
- **Duty of Care and Loyalty:** Directors are required to act with due care and loyalty while carrying out their duties. This duty obliges directors to act in good faith, in the best interests of the company, and with the level of care expected from a prudent manager (TCC Article 369).
- **Non-delegable Duties:** TCC further identifies certain non-delegable duties, including the appointment of the company's top-level management, establishment of organizational, accounting, and internal control systems, preparation of financial statements and annual reports, supervision of delegated management, and monitoring of the company's financial position (TCC Article 375).
- **Capital Maintenance and Financial Distress Obligations:** In

addition to their general management duties, the directors also have obligations concerning capital maintenance and financial distress. In case of over-indebtedness or capital loss, the directors are required to take prescribed measures without delay such as convening the general assembly and notifying the court (TCC Article 376).

- **Non-Compete and Conflict of Interest Restrictions**: As a more detailed provision regarding duty of loyalty, directors are not allowed to enter into transactions with the company (TCC Article 395) or conduct activities that may compete with the business of the company (TCC Article 396) unless otherwise allowed by the general assembly.

- **Special Liability Provisions:** In addition to general liabilities of directors stemming from Article 553 of the TCC, there are also certain circumstances that may give rise to special liability of directors. In case corporate documents relating to incorporation, capital increases, mergers, demergers, changes of legal form or public offerings contain false, misleading or incomplete information, or material facts regarding these are concealed, persons involved in preparing such documents may be held liable (TCC Article 549-552). These provisions specifically address false declarations in a company`s incorporation documents, misrepresenting that the company capital has been subscribed to or paid when it has not, overvaluation of in-kind contributions or assets acquired by the company, and misleading information in public offering documents. Directors may be held liable not only for actually producing such misrepresentations, but also for knowingly approving them or allowing them to persist

III. Conditions for Liability and Exclusion from Liability

In order for the claimants to hold the directors liable, there should be damage to the shareholders, company or the creditors of the company.

Damage to claimants may arise at different levels. The damage suffered by the shareholders themselves would constitute direct damage for them, while any damage suffered by the company would be deemed indirect damage to shareholders due to reduction in share value. As a rule, it is not possible to seek compensation for indirect damages unless otherwise stated by law. However, shareholders may ask directors to indemnify the company's damages, provided that such indemnity is paid to the company. This allows shareholders to protect their share value in cases where the company is unwilling to bring claims against directors. Creditors, on the other hand, may only bring such claims against the directors in the event of bankruptcy of the company. Shareholders occupy a unique and significant position amongst claimants, as they can pursue indemnity for damages suffered by the company through derivative legal action where the recovery shall be paid directly to the company.

In such cases, the claimants should set out that director was at fault and breached their fiduciary duty, as well as establish a causal link between that breach and the claimant's loss or damage.

Directors may be relieved from liability under certain circumstances: If a director can demonstrate that the decision giving rise to the damage was taken in good faith, on the basis of adequate and reliable information, without conflicts of interest, and with a reasonable belief that it served the company's interests, director may be deemed exonerated in accordance with the "business judgment" rule. While Article 369 draws a wide spectrum of liability, the business judgment rule balances this with management discretion of directors and prevents liability arising solely from unsuccessful business risks.

The main purpose of the business judgment rule is to shield directors from penalty or liability for mere business risks that did not materialize as expected. It stems from Article 369 of the TCC, which requires directors to act with due care and loyalty. However, business judgment rules do not apply to breaches of non-delegable duties, capital protection rules or other obligations explained above. There are also specific situations that can give rise to liability for sensitive corporate matters. In such cases directors are not acting in managerial discretion but under a certain legally prescribed course of conduct.

Delegation of powers by directors may also result in relief from liability. Directors may delegate their powers and duties to third parties, provided that such delegation is carried out in accordance with the articles of association and formalized through an internal directive (TCC Article 367). As a general rule directors are not liable for the actions of persons whom they duly delegated their powers and duties. However, this is not an absolute exemption, and directors would still be liable for such actions in case claimant proves that the director had failed to exercise due care in the selection of delegated person.

Release (ibra) resolution is another mechanism stipulated by the TCC for exclusion from liability. In this case, directors may be released from liability in respect of their actions during a financial period by a release (ibra) resolution of the general assembly. The company and shareholders who voted in favour of said release cannot later bring a claim or hold directors liable for matters that were known or should have been known at the time of the release. However, a shareholder who voted against releasing the director(s) and had this recorded in the general assembly minutes may still bring a liability claim within six months from the date of the general assembly resolution. Moreover, release does not provide protection for damages arising from matters that were concealed or misrepresented. Release only removes liability towards the company and shareholders for matters that were duly disclosed.

Banking and Finance Law

Open Banking Services in Turkiye

Open banking service is a financial service model where banks allow third-party service providers to access customer account data and initiate certain transactions based on customer's explicit consent. Main open banking services are account information services (**"AIS"**) and payment initiation services (**"PIS"**). Account information services allow customers to access information regarding their bank accounts held by different banks and through payment initiation services customers can initiate payment transactions from different bank accounts by using a single platform, a third-party service provider.

Turkiye does not have a single framework legislation regarding open banking services. Instead, open banking regulations have developed through a combination of payment services legislation, banking regulations and secondary legislation.

The Central Bank of the Republic of Turkiye (**"CBRT"**) and Banking Regulation and Supervision Agency (**"BRSA"**) are two main governmental authorities that shape framework regarding open banking services. While CBRT regulates payment services and electronic money institutions, BRSA is authorized to oversee banks' information systems and electronic banking services.

PIS and AIS have been recognized as payment services in line with the amendments made in 2019 to Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (**"E-Money Law"**). Accordingly, only banks, electronic money institutions and payment service providers that are duly licensed may provide payment services pursuant to article 12/2 of the E-Money Law.

The Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers (**"E-Money Regulation"**), sets out the operational framework applicable to open banking services. CBRT is authorized to regulate technical and operational requirements regarding AIS and PIS. Interbank Card Center (**"BKM"**) is assigned to a formal technical control and assessment role. BKM verifies compliance with technical and operational requirements set by CBRT. Providers that successfully complete this process are registered and publicly announced by BKM.

Only the service providers that can pass BKM's technical assessment and obtain CBRT authorization are deemed authorized providers for PIS and AIS. Account provider institutions that provide online access to PIS and AIS must connect to the BKM infrastructure and provide the necessary technical access to all authorized third-party providers, while preventing unauthorized access. However, obligation to provide technical access to all authorized third-party providers is only applicable for FAST system participants and non-FAST system participants ranked among the top ten institutions by payment volume.

Customers may use AIS and PIS if their payment accounts are accessible online. Once a customer authorizes the payment, the account provider institution ("*account servicing payment service provider" as referred by BKM*) must (i) communicate securely and without discrimination against the PIS provider, (ii) provide relevant transaction data promptly, and (iii) treat PIS initiated payments equally with directly initiated payments. PIS providers may never hold customer funds, must protect sensitive customer data, may only use data strictly necessary for the service, must not alter the payment amount, recipient or transaction characteristics, must identify themselves to the account provider institution for each transaction. Provided that CBRT rules are complied with and the BKM infrastructure is used, account provider institution and PIS provider are not required to make an agreement on subjects other than fee, expenses, commission and other benefits.

AIS providers (i) may only provide services explicitly approved by the customer, (ii) may access only designated accounts and transaction data, (iii) must protect sensitive data and communicate

securely and (iv) may not request or process unnecessary data. Account provider institutions must communicate securely with AIS providers and avoid discriminatory treatment in responding to data requests. As with PIS, no specific bilateral agreement is required if CBRT rules are met and the BKM system is used.

AIS and PIS providers may access, use and store data only within the scope of their legal authority, and after clearly informing the customer. Use of data for purposes not directly related to payment services requires customer approval and, where applicable, explicit consent under data protection law. Data obtained for PIS or AIS cannot be shared with third parties, even with customer consent, unless there is specific customer instruction. Certain sensitive payment data must be stored domestically.

The Regulation on Banks' Information Systems and Electronic Banking Services (**"E-Banking Regulation"**) defines open banking services as an electronic distribution channel through which customers, or parties acting on behalf of customers, may remotely access the financial services offered by a bank via technical methods such as application programming interfaces (**"API"**), web services or file transfer protocols, either to perform banking transactions directly or to instruct the bank to execute such transactions and classifies it as electronic banking service.

Article 41 of the E-Banking Regulation requires end-to-end secure communication between the bank and the customer or authorized third parties during the use of open banking services. While multi-factor authentication remains the general rule in electronic banking, E-Banking Regulation allows single-factor authentication in open banking scenarios, provided that the bank implements compensating controls, additional restrictions on accessible resources, and ensures secure communication.

E-Banking Regulation further regulates API infrastructure and system continuity, data access controls and authorization mechanisms, information security and cyber risk management, auditability and traceability of transactions, protection of customer data and integration of systems.

To conclude, open banking services mainly refer to AIS and PIS. There is no specific single legislation regarding open banking services in Turkiye. Considering the technological developments and market and customer needs, the legal basis of open banking is continually improved. Currently, to provide AIS and PIS, service providers are required to obtain a license from CBRT, comply with technical and operational requirements and register with BKM. Account provider institutions that are FAST system participants (or non-FAST participants ranked among the top ten payment volume) are required to provide access to all authorized AIS and PIS providers. E-Banking Regulation classifies AIS and PIS as e-banking services and regulates technical applicable authentication mechanisms and system security requirements.

Capital Markets Law

Private Company Goes Public: Share Capital Increase Route

I. Introduction

Private companies can offer their shares to the public by means of offering existing shares of the shareholders or by offering newly issued shares which have been subscribed through share capital increase.

If the existing shareholders do not wish to offer their shares to the public, or if the company's financial needs may also necessitate a capital increase, the initial public offering would be conducted by offering new shares to the public through a capital increase, so that shares of the shareholders can be protected and at the same time capital of company would be increased.

In this article, we will generally focus on initial public offering through newly subscribed shares considering the provisions of Turkish Commercial Code ("**TCC**") and Capital Markets Law ("**CML**"), leaving out the technical details regarding financial aspects of public offerings.

II. Prerequisites for Initial Public Offering

As an initial step, companies intending to offer their shares to the public must be joint stock companies. Accordingly, if the company was incorporated as a limited liability company, it must first be converted into a joint stock company. If the company undergoes this change within the last 2 (two) years prior to applying to the Capital Markets Board ("**Board**") for initial public offering, additional adjustments may be required in the company's balance sheet in accordance with Article 5/4 of VII-128.1 Communiqué on Shares ("**Communiqué**").

Secondly, the company's share capital must be fully paid up. This requirement is an essential condition for a capital increase under the TCC. In addition, Communiqué imposes restrictions on the values that may be included in the company's share capital. Accordingly, during the 2 (two) year period prior to applying to the Board, except for funds allowed by the legislation, the company's paid-up or issued capital cannot include value increase funds and similar funds which were made though the registering actual value of the assets. The purpose of this restriction is to prevent such funds from misleading investors when determining the public offering price.

Thirdly, the company must meet certain financial requirements. For instance, the total assets in company's financial statements for the last 2 (two) years should meet certain thresholds. Another financial requirement is in relation to non-commercial receivables of the company. In this respect, the ratio of non-commercial receivables from related parties included in the most recent financial statements to be provided in the prospectus, must not exceed the limits specified in Article 5/6 of Communiqué. The limit for the ratio of non-commercial receivables to total receivables is 20%, and ratio to total assets is 10%.

Lastly, the authorized institution acting as an intermediary in the sale of shares in the public offering must undertake to purchase the shares that remain unsold. The Communiqué details the rates at which the authorized institution will be required to make such commitments. Briefly, this undertaking shall be based on the market value calculated using the public offering price of the offered shares, excluding any additional sales. However, if the market value of the shares to be offered to the public exceeds TRY 40 million, such undertaking will not be mandatory, and in that case the authorized institutions will not be required to undertake to purchase the shares that remain unsold.

III. Initial Public Offering

A private joint-stock company that will offer its shares to the public for the first time should first amend and bring its articles of association ("**AoA**") in line with the capital markets legislation, as company will become subject to the CML upon the public offering. To be more precise, certain additional provisions as to corporate governance principles and independent board members should be included in the AoA. In addition, if the company is subject to the fixed capital system and wishes to switch to the authorized capital system, the amendment to the capital share article can also be included in the amendment text.

The proposed amendments to the AoA must be submitted to the Board for review. Following the Board's approval, the general assembly must adopt the amendments within 6 (six) months; otherwise, the approval becomes invalid. Upon approval of general assembly, AoA amendment is required to be registered with the trade registry. The AoA amendment brings the company's AoA in compliance with capital markets legislation; however, this phase does not finalize the public offering process as this constitutes merely one of the required steps.

Once the AoA amendment is completed, the competent governing body of the company authorized to increase capital must adopt a resolution approving the capital increase. To be more precise, if the company has transitioned to the authorized capital system and the board of directors has been authorized to increase its capital, the relevant resolution will be adopted by the board of directors; whereas if the company is subject to the fixed capital system, the relevant resolution will be adopted by the general assembly.

Regardless of the competent governing body, the capital increase resolution must include the partial or full restriction of existing shareholders' pre-emptive rights. Consequently, existing shareholders will not have the right to purchase the new shares to be issued, which will be offered to the public investors. At this stage, since the company remains a private company, Article 461 of the TCC applies and this provision provides that pre-emptive rights may only be restricted or removed for just cause, and a public offering is explicitly recognized as a just cause.

In addition, the board of directors has key responsibilities regarding the exercise and restriction of pre-emptive rights. In particular, the board of directors must prepare a report explaining the reasons for restricting or removing pre-emptive rights and register this report with the trade registry. If the pre-emptive right is partially restricted, the board of directors must separately adopt a resolution determining the principles for exercising the right to acquire new shares for which the pre-emptive right can be exercised. The board of directors shall grant a minimum of 15 (fifteen) days to shareholders to exercise their pre-emptive rights. If the pre-emptive right is not exercised during the specified period, it will lapse.[1] Similarly, this resolution must be registered with the trade registry as well.

After the capital increase and the restriction of pre-emptive rights have been duly approved by the competent governing body (***i.e.***, board of directors or general

[1] Mustafa Turan, Rüçhan Hakkının Kullanılması ve Sınırlandırılması, Prof. Dr. Zühtü Aytaç'a Armağan *[Exercise and Restriction of Pre-Emptive Right, Gift to Prof Dr. Zühtü Aytaç],* On İki Levha Yayıncılık, 2022 at 1890.

assembly depending on the capital system adopted), an application is submitted to the Board for approval of the prospectus prepared in conjunction with this resolution. The prospectus aims to inform investors about the issuer's financial position, future expectations, and potential risks.

In addition to the prospectus, in the application documents, the board of directors must include a report detailing the purposes for which the funds raised from the public offering will be used, as well as the sales announcement. Furthermore, if the company has adopted the fixed capital system, a purchase undertaking regarding the unsold shares representing the increased capital must be submitted to the Board during the application process. Aside from these, the application must also include other documents specified in the Communiqué, such as but not limited to the company's signature circular, financial advisor's report, and the company's trade registry gazettes.

The Board reviews the adequacy of the prospectus and renders its decision within 20 (twenty) business days. If the Board approves the prospectus, it will be published on the Public Disclosure Platform ("**KAP**"), which serves as the official electronic disclosure system.

After the prospectus is approved and published on KAP, the next step is the sale announcement. This announcement is made on the issuer's website or, if available, on their KAP account. The shares are offered to the public in accordance with the principles stated in the announcement.

After sale of the shares through public, there is a risk that certain shares are not purchased by investors. Therefore, in the fixed capital system, any shares remaining unsold must be purchased by the subscribers in accordance with the subscription undertaking submitted to the Board at the time of application. On the other hand, in the authorized capital system, shares that cannot be sold would be cancelled, and the board of directors would need to adopt a separate resolution regarding the final capital amount and then re-apply to the Board to amend the share capital article of the AoA.

There is also a registration requirement before the trade registry for share capital increases. Although the TCC requires registration within 3 (three) months of the capital increase resolution, the legislator has excluded the Board's review period from this calculation. Accordingly, it can be said that the capital increase must be registered within 3 (three) months following the approval of the prospectus.

IV. Conclusion

An initial public offering through a capital increase remains subject to the legal regime applicable to private companies until the completion of the public offering process. Accordingly, the provisions of the TCC governing capital increases must be applied in conjunction with the CML and the relevant secondary legislation. This duality requires careful coordination, as the process entails not only capital increase procedures, but also multiple applications to the Board, together with registration and public disclosure obligations before the trade registry and KAP.

Competition / Antitrust Law

Turkish Competition Authority Introduced Revised Jurisdictional Thresholds And Simplified Notification Framework

I. Introduction

The Turkish Competition Authority ("**TCA"**) has introduced significant changes to the rules applicable to transactions that are subject to the Turkish Competition Board's ("**Board**") approval. The changes have been entered into force with Communiqué No. 2026/2 amending the Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board, published in the Official Gazette on February 11, 2026 ("**Amended Communique No. 2010/4**").

II. New Jurisdictional Thresholds

Based on the amendments, transactions are now required to be notified in Turkiye if one of the following alternative turnover thresholds is met:

- The combined aggregate Turkish turnover of all the transaction parties exceeds TL 3 billion (approximately USD 76 million and EUR 67.2 million) and the Turkish turnover of each of at least two of the transaction parties exceeds TL 1 billion (approximately USD 25.3 million and EUR 22.4 million), or
- The Turkish turnover of the transferred assets or businesses in acquisitions, and at least one of the transaction parties in mergers exceeds TL 1 billion (approximately USD 25.3 million and EUR 22.4 million), and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 9 billion (approximately USD 228.2 million and EUR 201.6 million).

Revised Rules for Undertakings Operating in the Field of Digital Platforms, Software or Gaming Software, Financial Technologies, Biotechnology, Pharmacology, Agricultural Chemicals or Healthcare Technologies, or Their Related Assets

The Amended Communique No. 2010/4 also envisages significant changes to specific turnover thresholds applicable for transactions involving undertakings operating in the field of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or healthcare technologies, or their related assets. Accordingly, in merger transactions where at least one of the transaction parties is an undertaking resided/located in Turkiye and active in the fields described above or assets related to these in Turkiye, and in transactions involving the acquisition of such undertakings, the TL 1 billion thresholds set out above shall be applied as TL 250 million (approximately USD 6.3 million and EUR 5.6 million), for the transaction party subject to the acquisition (***i.e.,*** target).

III. Simplified Notification Form

The amendment simplifies the template notification form by removing certain information requirements and reducing the level of detail required where the parties' combined market shares is below 15% in horizontally affected markets and the market share of a transaction party is below 20% in vertical relationships in Turkiye.

It also introduces procedural convenience for acquisitions made by venture capital investment trusts, venture capital

investment funds and private equity investment vehicles. In particular, for filings including these parties, the scope of information required in the notification form is limited to their activities and turnover in Turkiye. Accordingly, they are not required to submit detailed information regarding their global activities. Where the undertakings confirm that their worldwide turnover exceeds the applicable global threshold, it will be sufficient to provide only their turnover in Turkiye.

IV. Joint Venture Assessment

The amendment establishes a clearer framework for evaluating potential coordination risks among parent companies of a joint venture. Although full-function joint ventures will continue to fall under the applicable merger control rules, the Board will assess whether the formation of a joint venture could lead to anti-competitive coordination between its parent undertakings, and may review the transaction under Articles 4 and 5 of Law No. 4054 on the Protection of Competition, if such coordination has the purpose or effect of restricting competition.

V. Ongoing Transactions

The Amended Communique No. 2010/4 entered into force effective immediately with its publication. Ongoing reviews of already notified transactions that fall below the newly determined thresholds or no longer meet the applicable conditions will be terminated by a Board decision.

VI. Conclusion

Overall, the amendment introduces a comprehensive change of the merger control regime in Turkiye with increased jurisdictional thresholds. The updated jurisdictional thresholds for undertakings in the exceptional sectors also recalibrated the mandatory filing requirement. Furthermore, the amendments seek to simplify the merger control filing for transactions where there is no affected market stemming from the transactions.

***Drawing the Line on Discriminatory Practices: The Turkish Competition Authority Concludes Its Pre-Investigation into the Online Marketplace Platform Trendyol with No Violation Found*[2]**

This case summary provides an analysis of the Turkish Competition Board's ("**Board**") decision[3] concerning Trendyol, in which the Board decided not to initiate a full-fledged investigation against Trendyol, a leading multi-category online marketplace in Turkiye. During the preliminary investigation, which was triggered by six confidential and nine disclosed complaints, the Board assessed allegations that Trendyol discriminated among sellers on its platform through (i) the determination of product originality and the application of sanctions, (ii) the granting of the "Good Price" label, and (iii) the granting of the "Advantageous Product" label. The Board also examined whether Trendyol engaged in abusive practices by hindering sellers' activities through unfair interference with consumer reviews. The Board assessed these allegations under Articles 4 and 6 of Law No. 4054 on the Protection of Competition

[2] This article first appeared in Concurrences as "*The Turkish Competition Authority declines to open a full investigation into alleged discriminatory practices by an online marketplace (Trendyol)*" (https://www.concurrences.com/en/bulletin/news-issues/july-2025/the-turkish-competition-authority-declines-to-open-a-full-investigation-into

[3] The Board's decision of 03.07.2025 (25-24/594-376).

("**Law No. 4054**"). It concluded that Trendyol's practices did not constitute a violation, and that there was no need to initiate a full-fledged investigation.

I. Relevant Product Market and Assessment of Dominance

In determining the relevant product market, the Board assessed the substitution relationship between (i) the physical and the online sales channel, (ii) the sales operation through the online marketplace and the merchants' sales via its website and social media and (iii) multi-category online marketplaces and marketplaces offering services only in one category. The Board decided that these are not substitutable with each other and therefore defined the relevant product market as "the market for multi-category online marketplace."

The Board then found that Trendyol is dominant in the relevant product market based on the grounds that (i) Trendyol is the market leader in terms of its market shares since 2020, (ii) there are barriers to growth for the existing competitors and to entry in terms of new entrants considering the advantages that Trendyol holds as an incumbent player and (iii) there is no bargaining power either in terms of the merchants in Trendyol considering the sales values.

II. Assessment of Discriminatory Practices as a Theory of Harm Under Article 4 and Article 6

The Board grouped the allegations in the case file into four main categories, namely claims that Trendyol discriminated among sellers on its platform by (i) determining the originality of products and applying sanctions, (ii) granting the "Good Price" label, and (iii) granting the "Advantageous Product" label to products sold on the platform, and that (iv) Trendyol hindered the activities of its sellers by unfairly interfering with consumer reviews. The Board found that these allegations primarily concerned discriminatory practices and assessed them from the perspective of both anti-competitive agreements under Article 4, which is akin to Article 101 of the Treaty on the Functioning of the European Union ("**TFEU**"), and unilateral conduct under Article 6, which is akin to Article 102 of the TFEU. Before turning to the substance of the claims, the Board first set out the theoretical framework on discrimination in competition law.

As per Article 4 analysis, the Board indicated that the discriminatory practices should be, without doubt, conducted either through agreements/concerted practices or as a result of the decisions of associations of undertakings to be constituted as Article 4 violation. Thus, a mutual declaration and alignment of intent of two or more undertakings aim to discriminate a third party are sought to establish Article 4 violation. The Board emphasized that if the discrimination allegation cannot be proven clearly and beyond any doubt that this practice is based on an agreement and/or concerted practice, it is not possible to evaluate a discrimination allegation under Article 4. On the other hand, in a case where there is a unilateral will, discrimination allegation will only be evaluated within the scope of abuse of dominance under Article 6, regardless of the intent or purpose.

The Board set out the criteria for abuse of dominance violation via discriminatory practices under Article 6 as (i) whether the buyers are in the same condition, (ii) whether the undertaking in question imposes different conditions on buyers for the same and equivalent rights, obligations,

and actions, (iii) whether the buyer subjected to discrimination has been placed at a competitive disadvantage, (iv) whether the conduct has the capacity to distort the competitive environment in the market and (v) a legitimate justification exists. The Board also decided that allegations subject to the pre-investigation should be assessed as secondary-line discrimination because these allegations are related to commercial parties that do not have a competitive relationship with Trendyol (***i.e.*** sellers).

The Board then examined each allegation in light of the theoretical framework explained above. For the allegations that Trendyol discriminated between sellers in granting the "Good Price" and "Advantageous Product" label to the products sold on Trendyol's platform, the Board held that there is no discrimination under Article 6. The Board first decided that the complainant sellers and the sellers subject to the allegations are in the same condition since (i) their commercial relationship with Trendyol is the same, (ii) they are active in the same side in the market and (iii) they are subject to the same algorithm. The Board then concluded that (i) the rule set determined for the "Good Price" label is implemented for all sellers equally and Trendyol allocates the relevant label automatically through a system and (ii) Trendyol does not impose different conditions on sellers which are in the same condition by distributing the "Advantageous Product" label.

For the allegation that Trendyol discriminates between sellers on its platform in the determination of originality of the products sold on Trendyol's platform and in the application of sanctions, the Board assessed Trendyol's originality tracking system and sanctions in the determination of originality. The Board held that there is no discriminatory practice under Article 6 based on the grounds that metrics related to reviews within the scope of the originality tracking system are transparent, foreseeable and based on objective grounds. The Board did not find evidence that there was an agreement between Trendyol brand owners and other sellers operating in the same category to discriminate sellers and thus, did not find Article 4 violation.

For the allegation that Trendyol hinders the activities of its sellers by unfairly interfering with the consumer reviews, the Board reviewed Trendyol's Publication Criteria and found that these criteria were related to metrics such as "compliance with laws, public morals and public order," "not violating intellectual property rights," and "not containing insult, cursing, threats, harassment and/or obscenity". Another issue the Board examined within this allegation was that Trendyol did not provide an explanation to the sellers on the non-published reviews. For this issue, the Board found that (i) compliance with the publication rules regarding product and seller reviews is directly aimed at customers, which protects the customers' right to information and the principle of transparency and (ii) providing such an explanation to the sellers is neither a legal obligation nor practically feasible because the sellers do not have any authority to interfere with the contents of the reviews. The Board concluded that Trendyol's conduct did not constitute a violation under Article 6 of Law No. 4054.

After separately assessing the allegations within the case file, the Board also emphasized that as an online marketplace, it is not possible for Trendyol to have an incentive to discriminate between sellers to hinder the activities of some of these sellers (as a secondary-line discrimination)

because such a behavior would not benefit Trendyol based on the fact that a critical amount of Trendyol's revenues comes from commission income which is increased through sellers' sale on the platform.

III. Conclusion

The Board concluded the pre-investigation with no finding of a violation and decided to not launch an investigation against Trendyol. The decision is significant as it clearly draws the line between discriminatory unilateral practices and agreements within the scope of Article 4 and Article 6 of Law No. 4054. The decision also sets out a precedent in the market for online marketplaces, highlighting the Board's approach that commercial incentives are also significant in the assessment of secondary-line discrimination.

Where to Draw the Line? – Shifting Alliances under Turkish Merger Control Regime[4]

I. Introduction

The Turkish Competition Board ("**Board**") determined that the transaction concerning the acquisition of 51% of the shares in Andar Elektromekanik Sistemler Sanayi ve Ticaret AŞ ("**Andar**") by H. Ibrahim Bodur Holding AŞ ("**HIB Holding**") does not constitute a concentration under Turkish merger control regime given that the transaction results in a shifting alliances structure post-transaction. As a result of its assessment under Article 4 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**"), which prohibits anticompetitive agreements, the Board granted negative clearance to the transaction on the grounds that it does not have the object or effect of restricting competition (the "**Decision**").[5] The Decision is notable for the Board's analysis of the control structure of Andar post-transaction (in particular, the assessment of a shifting alliances structure).

II. Legal Background Regarding the Concept of Control and Shifting Alliances under Turkish Merger Control Regime

Pursuant to Article 5(1) of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("**Communiqué No. 2010/4**"), which is akin to Article 3(1) of the EU Merger Regulation ("**EUMR**"), a transaction is deemed to be a merger or an acquisition (***i.e.*** a concentration) provided that it brings about a change in control on a lasting basis. Under Turkish merger control regime, control is defined as the possibility to exercise decisive influence over an undertaking. If an acquired undertaking will not be controlled by any of its shareholders after the transaction, such transaction would not result in a change in control over the acquired undertaking on a lasting basis and it would not constitute a notifiable concentration within the meaning of Article 5 of Communiqué No. 2010/4.

According to paragraphs 50-66 of the Turkish Competition Authority's (the

[4] This article first appeared in Mondaq as "*Where to Draw the Line? – Shifting Alliances under Turkish Merger Control Regime*" (https://www.mondaq.com/Turkiye/antitrust-eu-competition/1727316/where-to-draw-the-line-shifting-alliances-under-turkish-merger-control-regime).

[5] The Board's decision dated 28.08.2025 and numbered 25-32/760-451.

"**Authority**") Guidelines on Cases Considered as a Merger or Acquisition and the Concept of Control ("**Control Guidelines**"), which are closely modelled on paragraphs 64-80 of the European Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 ("**CJN**"), joint control can be typically established through (i) equality in voting rights or appointment to decision-making bodies, (ii) veto rights, and (iii) joint exercise of voting rights. According to paragraph 48 of the Control Guidelines, joint control over an undertaking exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Decisive influence in this sense means the power to block actions which determine the strategic commercial behaviour of an undertaking. Accordingly, joint control is the possibility of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions. In this respect, the veto rights allowing to exercise decisive influence must be related to strategic decisions on the business policy of the target and must go beyond the veto rights normally granted to minority shareholders that are given in order to protect financial interests of investors.

In terms of the analysis of control structure, the level of shareholdings and representations in certain corporate bodies would not play a decisive role on their own, if they are not accompanied with specific voting rights and/or meeting/decision quorum mechanisms that would allow the relevant parties to exercise decisive influence over an undertaking (***i.e.*** the power to block/reject the actions which determine the strategic commercial behaviour of the undertaking). Accordingly, the analysis for the control structure under Turkish merger control regime will boil down to whether the parties will have the ability to reject the strategic commercial decisions of an acquired undertaking (***e.g.*** the business plan, budget or the appointment/dismissal of senior management) via their voting rights, veto mechanisms or creating a deadlock merely by refusing to attend meetings.

The matters which confer joint control typically include decisions on material issues, such as the appointment of senior management, the budget, the business plan and certain major investments. Apart from these typical veto rights, there may be other veto rights that might come into play in terms of control analysis in the context of the market where the joint venture is active (***e.g.*** if technological investments are crucial for the joint venture's activities, a veto right on technology investment decisions could be considered with this respect). As set forth in paragraph 54 of Control Guidelines, which is akin to paragraph 68 of the CJN, and also acknowledged by the Board with its precedent on this front, it will be sufficient to have a veto right on only one of the strategic business decisions for there to be joint control. By way of example, the Board consistently resolved that veto rights regarding the appointment and dismissal of high level/senior management (such as the general manager, CEO, CFO *etc*.) are considered as strategic veto rights and that such rights alone are adequate to conclude that the undertakings in question will be jointly controlled by the relevant transaction parties.[6]

[6] For example, the Board's AMG/Shell-JV decision dated 09.01.2020 and numbered 20-03/20-10; Alcan decision dated 11.12.2014 and numbered 14-50/885 403; Yargıcı decision

Similar to the EUMR, under the Turkish merger control regime, paragraphs 66 and 75 of the Control Guidelines indicate that the possibility of changing coalitions/shifting alliances between minority shareholders will exclude the assumption of joint control since in such a case, there is no stable majority in the decision-making procedure and the majority can on each occasion be any of the various combinations possible among the shareholders. In particular, paragraph 66 of the Control Guidelines indicates that in the case of an undertaking where three (3) shareholders each own one-third (1/3) of the share capital and each elect one third (1/3) of the members of the board of directors, the shareholders do not have joint control since decisions are required to be taken on the basis of a simple majority. The decisional practice of the Board also indicates that if a transaction would result in shifting alliances (***i.e.*** none of the parties will acquire control after the envisaged transaction), such transaction would not constitute a concentration under Turkish merger control regime, and it would not require a mandatory merger control filing before the Authority.[7]

III. The Board's Assessment of Transactions That Result in a Shifting Alliances Structure Post-Transaction

Paragraphs 69 and 70 of the Control Guidelines - which are closely modelled on and akin to paragraph 83 of the CJN - provide that Communiqué No. 2010/4 covers transactions resulting in the acquisition of sole or joint control, including transactions leading to changes in the nature of the control: mere changes in the level of shareholdings of the same controlling shareholders, without changes to the powers they hold in a company and of the composition of the control structure of the company, do not constitute a change in the nature of control and therefore are not a notifiable concentration; and similarly, there is no change in the nature of control if a change from negative to positive sole control occurs.

In this respect, the transactions which result in a shifting alliances/changing coalitions structure post-transaction (***i.e.*** where the acquired entity will not be controlled by any of its shareholders after the transaction) do not qualify as notifiable concentrations within the meaning of Communiqué No. 2010/4. In such cases, the Board typically considers these joint venture transactions as cooperation agreements and analyses these cooperation agreements under Article 4 of Law No. 4054. Indeed, there are various decisions where the Board determined that the joint venture in question will not be solely or jointly controlled by any of its shareholders; there will be a shifting alliances structure as a result of the transaction; therefore, such transaction should be deemed a cooperation agreement rather than a concentration; and the transaction/agreement should be evaluated under Article 4 of Law No. 4054 in order to determine whether it has the object or

dated 26.05.2011 and numbered 11- 32/660-205; THY Teknik decision dated 5.6.2008 and numbered 08-37/503-183; Caradon Radiators decision dated 24.7.2008 and numbered 08-47/656-252.

[7] For example, the Board's Kayı decision dated 08.12.2016 and numbered 16-43/701-315; Orica Limited decision dated 29.3.2007 and numbered 07-29/268-98; Bain Capital Investors decision dated 9.10.2007 and numbered 07-78/965-366; Silver Lake Partners decision dated 18.11.2009 and numbered 09-56/1337-340.

effect of restricting competition.[8] Within the scope of these decisions, the Board regarded these transactions as agreements between the parties that fall within the scope of Law No. 4054; conducted a substantive analysis under Article 4 to see whether they lead to any competition law concerns; and typically granted individual exemption or negative clearance on the grounds that the transactions/agreements would not lead to coordination between the parties' activities.[9]

For instance, in its *Turkcell/Anadolu Grubu/Zorlu/Kök Ulaşım/BMC/TOBB* decision,[10] the Board examined the corporate charter of the joint venture to be established by the parties as well as the shareholders agreement signed between the parties. The Board determined that none of the parents or a fixed combination thereof constituted the majority in the board of directors; the required majority to adopt resolutions at the general assembly and the board of directors is established through different coalitions; the joint venture will not be jointly controlled by its shareholders due to the shifting alliances structure; and the transaction cannot be regarded as a concentration. Accordingly, the Board deemed the relevant joint venture to be a joint production agreement between the parent undertakings; evaluated this agreement under Article 4 of Law No. 4054; and granted negative clearance since the agreement did not have the object or effect of restricting competition.

Furthermore, in *Artaş/Betatrans* decision,[11] the Board evaluated the control structure of Çelik Halat ve Tel Sanayii AŞ ("**Çelik Halat**") post-transaction and underlined that (i) neither Artaş İnşaat San. ve Tic. AŞ ("**Artaş**") nor Betatrans Lojistik İnşaat Sanayi ve Ticaret AŞ ("**Betatrans**") will be able to reach the quorum of meeting for the board of directors, by themselves, (ii) none of the members of the board of directors have privilege in terms of meeting and/or decision quorums, and (iii) neither Artaş nor Betatrans alone will be able to convene the board of directors and they will have to establish

[8] For example, the Board's Anadolu Güçbirliği/Bellona decision dated 03.07.2025 and numbered 25-24/593-375; Midas/Egem Eraslan/Desmarais/Spark decision dated 12.09.2024 and numbered 24-37/880-376; Artaş/Betatrans decision dated 23.11.2022 and numbered 22-52/795-325; Turkland decision dated 27.08.2018 and numbered 18-29/491-242; Turkland decision dated 27.08.2018 and numbered 18-29/492 243; Turkcell/ Anadolu Grubu/Zorlu/Kök Ulaşım/BMC/TOBB decision dated 26.09.2018 and numbered 18-34/566-279; CMLKK Liman decision dated 31.05.2018 and numbered 18-17/303-152; CMLKK Bilişim decision dated 05.07.2018 and numbered 18-22/376-184; IGA Akaryakıt decision dated 02.08.2018 and numbered 18-24/421-199; CMLKK Otopark/CMLKK Döviz/CMLKK Akaryakıt decision dated 02.08.2018 and numbered 18-24/426-200; IGA decision dated 16.10.2014 and numbered 14-40/737-329.

[9] For the sake of completeness, the Board follows the same path when assessing transactions which involve joint ventures that do not meet the full-functionality requirement. In such cases, the Board deems these transactions as cooperation agreements between the parties rather than notifiable concentrations and evaluates their impact in the market under Article 4 of Law No. 4054. For instance, please see the Board's SK/EVE/BTR/Changzou BTR decision dated 23.06.2022 and numbered 22-28/452-183; Voith/MOOG-JV decision dated 09.04.2020 and numbered 20-19/259-125; ITOCHU/Press Metal decision dated 10.01.2019 and numbered 19-03/20-9; DSM/Evonik decision dated 26.10.2017 and numbered 17-35/573-248; POAŞ/ShellMDH decision dated 05.06.2014 and numbered 14-20/382- 166.

[10] The Board's decision dated 26.09.2018 and numbered 18-34/566-279.

[11] The Board's decision dated 23.11.2022 and numbered 22-52/795-325.

alliance/coalition with each other or other members of the board of directors. As a result, the Board concluded that the shareholders will not acquire control over Çelik Halat after the consummation of the transaction and regarded the joint venture in question as a cooperation agreement between the parties. Ultimately, the Board granted negative clearance to the transaction on the grounds that the transaction does not have the object or effect of restricting competition.

IV. The Board's Assessment of HIB Holding/Andar Transaction:

The transaction concerned the acquisition of 51% of Andar's shares by HIB Holding. Post-transaction, Andar's existing shareholders (***i.e.*** Mr. Serkan Kale, Mr. Reşat Hakan Avcı and Mr. Gökhan Koyuncu) will continue to own the remaining shares in Andar. According to the Decision, within the scope of the merger control filing, HIB Holding argued that post-transaction, Andar will be solely controlled by HIB Holding.

Within the scope the Decision, the Board assessed the provisions of the Share Purchase Agreement ("**SPA**") between HIB Holding and the existing shareholders of Andar. According to the SPA, (i) post-transaction, the shareholders of Andar will be divided into two groups, and HIB Holding will be Group A shareholder while the existing shareholders of Andar will be Group B shareholders, (ii) the board of directors of Andar will consist of five members, and HIB Holding will appoint three directors while Group B shareholders will appoint two directors, (iii) in the event that the members nominated by Group B shareholders are Mr. Serkan Kale, Mr. Reşat Hakan Avcı and Mr. Gökhan Koyuncu, HIB Holding will not have a veto right over the appointment of these members or cannot vote against the dismissal and change of these members, and (iv) ordinary decisions of the board will be adopted by simple majority (i.e. affirmative vote of three members) while important decisions of the board will be adopted by a qualified majority (***i.e.*** affirmative vote of four members).

In line with the quorum of decision stipulated for important decisions of the board of directors, HIB Holding will require the affirmative vote of at least one of the two board members appointed by Group B shareholders. The Board evaluated that decisions related to the significant changes in the annual budget, R&D plans and the three-year business plan as well as the conclusion of R&D (product development) agreements, which are envisaged as important decisions in the SPA, can be considered as strategic commercial decisions. Given that there are no links/ties between Group B shareholders, there are no provisions which stipulate that Group B shareholders will act together, and each Group B shareholder can act individually in the adoption of strategic decisions, the Board evaluated that the required majority related to strategic commercial decisions of Andar can be achieved by different coalitions/alliances in each occasion. As a result, the Board concluded that given that the transaction will result in a shifting alliances structure, the transaction would not be deemed as a concentration within the meaning of Communiqué No. 2010/4.

In accordance with the Board's decisional practice, the Board regarded the transaction as an agreement between the parties and analysed whether it would fall within the scope of Article 4 of Law No. 4054. The Board determined that there are not any horizontal overlaps or vertical

relationships between the activities of Andar and HIB Holding Turkiye. Even under the assumption that there is a complementary relationship between Andar's activities in electromechanical motion systems and HIB Holding's activities in the manufacture of turbojet engines, the Board evaluated that such potential relationship would not lead to any competition law concerns given that HIB Holding's only active customer is Roketsan Roket Sanayi ve Tic. A.Ş., local players such as Andar are not able to meet the total demand for electromechanical motion systems, and there are many other strong international suppliers such as Safran S.A., Moog Inc., Maxon International Ltd., Dr. Fritz Faulhaber GmbH & Co. KG and Assun Motors Pte Ltd. The Board also noted that there is no risk of coordination between Group B shareholders and HIB Holding since Group B shareholders do not have any other activities besides Andar. Against the foregoing, the Board granted negative clearance to the transaction on the grounds that the transaction does not have the object or effect of restricting competition.

V. Conclusion

The Decision sheds further light on the concept of control and the elements to be taken into consideration when evaluating a shifting alliances structure post-transaction. The Decision is particularly important since it elaborates on the analysis of the transactions that are not deemed as a concentration, and how to examine such transactions under Article 4 of Law No. 4054 as agreements between undertakings.

Screening Access Under Scrutiny: The Turkish Competition Board's Commitment-Based Resolution in the Cinema Exhibition Market

I. Introduction

This case summary provides an analysis of the Turkish Competition Board's ("**Board**") decision (the "**Decision**")[12] concerning the investigation into Mars Entertainment Group AŞ ("**Mars**") and CJ Enm Medya Film Yapım ve Dağıtım AŞ ("**CJ Enm**") with respect to alleged abuse of dominance in the cinema exhibition market. The investigation was terminated following the Board's acceptance of the commitments submitted by the parties pursuant to Article 43 (3) of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") and Article 9 of 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**").

The Decision examines whether Mars, which operates the largest cinema exhibition network in Turkiye under the Paribu Cineverse brand, had engaged in conduct capable of giving rise to competition concerns under Article 6 of Law No. 4054 by favouring films distributed by its vertically integrated distribution arm, CGV Mars, thereby raising concerns of leveraging market power from cinema exhibition into film distribution.

Instead of adopting a finding of infringement, the Board resolved the case

[12] The Board's decision dated 14.08.2025 and numbered 25-31/745-443.

through a comprehensive set of behavioural commitments, rendering the Decision a significant example of commitment-based enforcement in a traditional, vertically integrated market.

II. Background

The investigation was initiated following complaints submitted to the Turkish Competition Authority ("**Authority**") alleging that Mars's conduct adversely affected independent film distributors. The complaints primarily concerned allegations that films distributed by CGV Mars benefited from more favorable screening conditions at Mars cinemas, particularly in terms of access to locations and visibility, which may have potentially placed competing distributors at a disadvantage. These practices were alleged to be especially pronounced during peak release periods, when access to screens and continuity of exhibition are of critical commercial importance.

Following a preliminary inquiry, the Board decided to launch a full-fledged investigation to assess whether Mars and CJ Enm had infringed Article 6 of Law No. 4054. During the investigation, the Board collected extensive quantitative and qualitative data, including box office revenues, audience numbers, cinema locations, screen and seat capacity, and screening schedules, as well as information obtained from producers, distributors, and exhibitors active in the sector. While the investigation was ongoing, both Mars and CJ Enm applied for the commitment procedure, which the Board accepted and assessed the proposed commitments under Article 43 of Law No. 4054 and Communiqué No. 2021/2.

III. Relevant Product Market and Assessment of Dominance

In its analysis, the Board distinguished between film production, film distribution, and cinema exhibition, emphasizing that these activities constitute distinct and non-substitutable economic functions. Within this framework and in light of the allegations concerning film distribution and cinema exhibition, the Board defined two relevant product markets: (i) the "cinema film exhibition services market," which covers the provision of services relating to the exhibition of films to end consumers in cinemas, and (ii) the "market for the distribution of films for exhibition in cinemas," which covers the activities relating to the distribution of films to cinema operators for theatrical exhibition. The Board noted that, although certain undertakings are active across multiple levels of the value chain, the film production was not considered relevant for the purposes of the allegations examined.

As regards the geographic scope, the Board concluded that the relevant geographic market for both the cinema film exhibition services market and the market for the distribution of films for exhibition in cinemas should be defined as Turkiye, given that films are distributed and exhibited on a nationwide basis, competitive conditions do not materially differ across regions and the allegations are not region-specific.

In terms of its assessment on the dominance, the Board concluded that Mars holds a dominant position in the cinema film exhibition services market in Turkiye, within the meaning of Article 6 of Law No. 4054.

First, the Board examined market structure and capacity indicators, placing particular emphasis on Mars's nationwide scale. Mars was found to operate the largest cinema exhibition network in Turkiye in

terms of number of locations, screens, and seat capacity, with a particularly strong presence in shopping malls, which were considered commercially critical due to higher foot traffic and revenue potential. The Board further noted that the overall number of cinemas, screens, and seats in Turkiye had declined significantly in recent years, rendering access to exhibition capacity an increasingly scarce and valuable input for film distributors.

Secondly, the Board assessed Mars's economic strength and competitive constraints. It observed that no competing cinema chain approaches Mars's scale or geographic coverage, and that competing exhibitors operate on a substantially smaller scale. This limited the extent to which competitors could exert effective competitive pressure on Mars at the national level.

Thirdly, the Board analysed the degree of dependency of film distributors on Mars's exhibition network. It found that distributors seeking nationwide releases generally require access to Mars cinemas in order to achieve commercially viable audience reach. Alternative exhibition networks were considered insufficient in terms of capacity and coverage, particularly for wide releases, resulting in distributors having limited countervailing buyer power vis-à-vis Mars.

Finally, the Board highlighted the existence of significant structural and economic barriers, including high investment costs, long-term lease agreements in shopping malls, and the limited availability of suitable new locations. These factors were found to constrain both expansion by existing competitors and effective entry by new players within a reasonable timeframe. On the basis of these cumulative factors, the Board concluded that Mars holds a dominant position in the cinema exhibition services market.

IV. Competition Concerns Arising from Mars' Dominance in the Cinema Film Exhibition Services Market

Against this background, the Board examined whether Mars's screening practices could give rise to competition concerns under Article 6 of Law No. 4054. The Board emphasized that screening schedules, particularly the number of locations, number of sessions, and access to high-revenue cinemas, directly affect a film's visibility and box office performance.

The Board further noted that Mars' distribution activities are carried out through two channels: (i) CGV Mars operating under the same legal entity as Mars, and (ii) CJ Enm, operating under a separate legal entity in Turkiye but forming part of the same economic entity at the level of the ultimate control. Although these activities could, in principle, be assessed as belonging to a single undertaking, the Board considered it necessary, for various factual and organizational reasons, to examine the data relating to CGV Mars and CJ Enm separately in order to assess the competitive effects of the alleged conduct.

To assess whether Mars's screening practices gave rise to competition concerns, the Board conducted a comparative analysis of screening conditions applied to films based on their distributor, relying on quantitative data covering multiple years. This analysis examined parameters such as the number of cinema locations, the allocation of screening sessions, the duration of exhibition, and access to cinemas

generating higher box office revenues, with particular attention paid to the opening weeks of films' exhibition. Based on multi-year quantitative data, the Board observed that, particularly in 2024, films distributed by CGV Mars were screened in a higher number of locations and enjoyed broader access to high-revenue cinemas than films distributed by competing undertakings, including in instances where competing films achieved higher average box office revenues. The Board further noted that while the overall presence of third-party films in Mars cinemas declined, the share of CGV Mars-distributed films increased. Taken together, these findings indicated that screening outcomes in the opening weeks of exhibition could not be sufficiently explained solely by audience demand indicators. In light of Mars's dominant position and distributors' dependency on its exhibition network, the Board concluded that the observed practices indicated a risk of leveraging market power from cinema exhibition into film distribution, thereby giving rise to competition concerns under Article 6 of Law No. 4054. However, the Board expressly refrained from making a finding as to whether the conduct constituted abuse and instead proceeded to assess whether the concerns could be remedied through commitments.

V. Commitments Submitted by Mars

During the investigation, Mars applied for the initiation of the commitment procedure under Article 43(3) of Law No. 4054, submitting commitments aimed at eliminating the competition concerns identified within the scope of the investigation. The Board accepted this request and proceeded to assess the commitments submitted by Mars in accordance with Communiqué No. 2021/2.

The final commitment text introduced a set of basic principles governing the distribution and programming of films in Mars cinemas, based on a seat-capacity allocation model. Under these principles, Mars undertook that films distributed by CGV Mars would be allocated no more than 20% of the total seat capacity, while films distributed by independent or third-party distributors would be allocated at least 80% of the total seat capacity. Mars defined "Zero Day" as the date falling one month after the Board's official acceptance of the commitments and undertook that, as of Zero Day, it would not allocate more than 20% of total seat capacity to films distributed by CGV Mars. With respect to newly released films, Mars undertook that, for the first week of exhibition (defined as the period from Friday to the following Thursday), after deducting the seats allocated to films continuing under the objective criteria, at most 20% of the total seat capacity would be allocated to films distributed by CGV Mars, and at least 80% to those films distributed by third-party distributors. For this purpose, Mars defined "Remaining Seat Capacity" as the seat capacity remaining after deducting the seats allocated to films continuing to be screened pursuant to the objective criteria set out in the commitments. In addition to the weekly allocation rules, Mars undertook an "Annual Compliance Obligation," under which the 20% / 80% seat-capacity allocation would be ensured on a cumulative annual basis. Mars stated that this obligation was designed to restore the 20% / 80% balance in cases where, in certain weeks, films distributed by CGV Mars could exceed the 20% threshold due to the interaction between continuing films and newly released films.

The commitments further established objective criteria for continuing screenings

beyond the first week of exhibition. Under this framework, Mars undertook to determine, on a location-by-location basis, whether a film would continue to be screened in the second and subsequent weeks by applying measurable and non-discriminatory criteria, without differentiation between distributors. These criteria include audience per location, occupancy rates, ranking among the top four films at a given location, and the rate of week-on-week audience decline in audience numbers.

The commitment package further provides that the same principles apply collectively to the ten highest-revenue cinema locations. In this respect, the 20% / 80% seat-capacity allocation applies to the total seat capacity of these locations, and the objective criteria for continuing screenings are applied in the same manner. The commitments also include defined exceptions, as well as monitoring and reporting obligations, publication requirements, and a three-year duration.

The Board stated that the commitments address the competition concerns identified in the file by (i) applying objective criteria for continuing screenings, (ii) applying a 20% / 80% seat-capacity allocation for newly released films after deducting continuing films and exceptions, (iii) applying the same approach to the ten highest-revenue locations, and (iv) ensuring objective and equal treatment of all distributors, including those operating within the same economic entity. On this basis, the Board concluded that the commitments submitted by Mars were proportionate, capable of eliminating the identified concerns, implementable within a short period, and effectively enforceable.

VI. Commitments Submitted by CJ Enm

In the Decision, the Board noted that Mars and CJ Enm form part of the same economic entity due to their common ultimate ownership structure, notwithstanding the fact that they operate under separate legal entities in Turkiye. Although no conduct favouring CJ Enm in the cinema exhibition services market was identified during the investigation, the Board stated that the concerns relating to CJ Enm arose from the potential for Mars, by virtue of its dominant position in the exhibition market, to favour films distributed by CJ Enm as an undertaking operating within the same economic entity.

Against this background, CJ Enm submitted its final commitment text to the Authority during the investigation. In the commitment text, CJ Enm confirmed that it competes with Mars and other distributors in the film distribution market and undertook that it does not and will not enter into any coordination with Mars for the purpose of securing more favourable screening conditions for the films it distributes. CJ Enm further undertook to maintain its operational management, personnel and organisational structure separately from Mars and committed that individuals involved in CJ Enm's operational management would not simultaneously hold operational roles within Mars, and vice versa. CJ Enm also stated that, as of the date of submission of the commitments, there were no board members, directors, managers or employees simultaneously employed by both undertakings, and undertook to preserve this separation throughout the commitment period.

In addition, CJ Enm undertook that its communications with Mars would be limited to the scope of an ordinary commercial relationship between a distributor/producer and an exhibitor.

Within this framework, communications would be confined to matters such as film distribution, hall allocation, screening sessions, promotional activities, and performance evaluations, and would not extend to Mars's own distribution activities or those of competing distributors. CJ Enm further committed that it does not have access to Mars's confidential commercial information, competitively sensitive data, or proprietary databases, and that this situation would be maintained. Similarly, Mars would not have access to CJ Enm's confidential or competitively sensitive information.

Finally, CJ Enm stated that the commitments would be implemented within three months following notification of the Board's reasoned decision accepting the commitments and would remain in force for a period of three years.

VII. Conclusion

In its final decision, the Turkish Competition Board concluded that the behavioural commitments submitted by Mars and CJ Enm were sufficient to eliminate the competition concerns identified within the scope of the investigation, proportionate to the nature of those concerns, capable of being implemented within a short period of time, and effectively enforceable, within the meaning of Communiqué No. 2021/2. Accordingly, the Board decided to accept the final commitment texts submitted by both undertakings and to render these commitments binding. On this basis, the investigation conducted against Mars in relation to its cinema exhibition practices was terminated pursuant to Article 43(3) of Law No. 4054, without determining whether the conduct constituted an abuse of dominant position. Similarly, the investigation conducted against CJ Enm was terminated following the acceptance of its commitments aimed at preventing potential competition concerns arising from the common economic entity structure.

The Decision illustrates the Board's approach to conclude the investigation through the commitment mechanism, without imposing administrative monetary fines or adopting an infringement finding, while ensuring that the competition concerns identified in this case were addressed in accordance with the applicable legal framework. In this respect, the Decision constitutes a notable example of the use of behavioural commitments to resolve concerns relating to access-based foreclosure risks in traditional markets such as cinema exhibition.

Turkish Competition Board Approved Acquisition of All Rights, Liabilities, Ownership and Interests Held by Gybe Games in the Color Block Jam Mobile Game by Take-Two Interactive Software Inc. by a Majority Vote[13]

Turkish Competition Board Approved Acquisition of all rights, liabilities, ownership and interests held by Gybe Games Teknoloji Anonim Şirketi in the Color Block Jam mobile game by Take-Two Interactive Software Inc by a majority vote.

The Turkish Competition Board ("**Board**") recently published its decision14 concerning the acquisition of sole control of the "Color Block Jam" mobile game jointly owned by Rollic Games Oyun Yazılım ve Pazarlama Anonim Şirketi

[13] This article first appeared in European Competition Law Review (to be published).
[14] The Board's *Color Block Jam* decision dated 31.07.2025 and numbered 25-28/665-403

("**Rollic Games**") and Gybe Games Teknoloji A.Ş. ("**Gybe**") by Take-Two Interactive Software, Inc. ("**Take-Two**"). The transaction is based on the Software Transfer Agreement ("**Agreement**") dated June 3, 2025, which mandates that Gybe will transfer all rights and obligations in Color Block Jam to Take-Two. The transaction was approved on the basis that it will not create a dominant position or the strengthen an existing dominant position within the scope of art. 7 of Law No. 4054 on the Protection of Competition (Law No. 4054).

Color Block Jam is a mobile game developed and streamed by Rollic Games and Gybe. After the transaction, both Take-Two and Rollic Games will jointly control Color Block Jam. However, considering that Take-Two has an active control over Rollic Games, the sole control will be owned by the Take-Two.

The Board stated that according to art. 5 of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board ("**Communiqué no 2010/4**") and paragraph 17 of the Guidelines on Cases Considered As a Merger or an Acquisition and the Concept of Control (Control Guidelines), the acquisition of control over assets can only be considered a merger if those assets constitute a part of an undertaking, which a market turnover can be attributed. The Board assessed that it is possible to attribute turnover to Color Block Jam since it is a revenue-generating unit and decided that the proposed transaction is an acquisition that requires mandatory merger control filing before the Turkish Competition Authority (the "**Authority**"), within the scope of the Law No. 4054 and Communiqué No. 2010/4.

Further, the Board determined that even though the turnover generated through transferred assets does not meet the threshold set forth in art. 7/1 of Communique No. 2010/4, since Take-Two engages in developing and marketing interactive entertainment content that are designed for computer, consoles and mobile devices through Rockstar Games, 2K and Zynga brands, it falls under the scope of technology undertaking definition and therefore the TL 250 million Turkish jurisdictional turnover thresholds under art. 7(a) and 7(b) of Communiqué No. 2010/4 will not be sought for the proposed transaction.

The transferring company, Gybe, is active in mobile game creation and development in Turkiye. Currently, Gybe's all activities concern mobile game development.

The Board further determined that even though parties' activities in the "mobile game developing and streaming" market will have a horizontal overlap, considering that the market shares are low both in Turkiye and globally in a fragmented and competitive market, the transaction will not result in a significant increase in the market concentration. The Board did not conduct further in-depth analysis as the sum of the merging parties' shares in the relevant market is lower than 20% and presumed that the merger's negative effects on competition are not significant to require an in-dept assessment and prohibition of the merger.

Therefore, by way of majority vote, the Board concluded that the transaction will not significantly impede competition by creating a dominant position or strengthening an existing dominant position within the scope of art. 7 of Law No. 4054.

In its Dissenting Opinion, one of the Board Member stated that the even though the transaction clearly has affected horizontally and vertically affected markets, the decision lacked in-depth analysis on the grounds that there were not any affected markets by solely considering the low market shares. The Dissenting Opinion further noted that the decision did not consider the vertical relationships between the acquiring and transferring parties, the game types or whether the non-compete obligation led to a talent hoarding effect in the labour market and the barriers to entry such as two operating systems which are considered as gatekeepers on mobile devices. The Dissenting Opinion also pointed that the analysis on the affected markets insufficient considering that the data presented for the estimated market shares of the top five competitors were inconsistent and presented without differentiating between different types of games.

The Dissenting Opinion further stated that undertakings may be in a stronger position than expected in the relevant markets through their ecosystems and datasets in such digital marketplaces, even if they do not have a significant presence in the beginning. As such, several parameters such as (i) user numbers, (ii) visitor numbers, (iii) network effects and (iv) scope and size of the data possesses are important parameters in assessing market power.

In this regard, it is argued that the decision did not holistically assess all game types and characteristics subject to the transactions considering the platforming within the scope of the digital markets. Accordingly, the Dissenting Opinion stated that one of the reasons behind controlling the killer acquisition is to prevent the entanglement of ecosystems in sectors such as digital games. Therefore, it is concluded that the reasoning of the decision is insufficient on the grounds that it did not consider the vertical supply chain in the gaming sector, the gaming ecosystem and the dominance of the established competitors in the system.

The dissenting opinion argues that solely relying on the market shares are not sufficient, when the transaction concerns the multi-faceted and rapidly concentrating markets, such as digital games. Finally, it is pointed out that the Board should focus not only on existing market shares but also on the ecosystem strength that undertakings have and their long-term competitive effects in similar transactions.

In the light of the foregoing, this decision and the dissenting opinion serve as an important reference on the assessing the acquisitions in the digital sectors and the importance of long-term competitive effects of the mergers in the digital markets.

Dispute Resolution

The Timing of Mandatory Mediation Applications: An Analysis in Light of the Regional Court of Appeal's Decision on Eviction Lawsuits Based on the New Owner's Need

I. Introduction

The balance between property rights and lessee protection becomes particularly important in cases where the property changes ownership. The right of eviction due to necessity, which is granted to the new owner under Article 351 of the Turkish Code of Obligations ("**TCO**"), can be exercised subject to specific timeframes and procedural requirements. With the regulation that entered into force on

September 1, 2023, concerning the Law on Mediation in Civil Disputes No. 6325, the classification of mediation as a "procedural prerequisite" in rental disputes has added a new dimension to the functioning of this process.

The decision of the 6th Civil Chamber of the Antalya Regional Court of Appeals, dated November 10, 2025 (2025/2648 E., 2025/1948 K.), introduced that the new owner can apply for mediation before the expiration of the six-month waiting period.

II. Background of the Dispute

The lawsuit was initiated by the new owner who had acquired the immovable property, for evicting the lessee due to necessity for business premises. The plaintiff served the warning letter within one month of the acquisition date and initiated the mediation process during the statutory waiting period, obtaining a final minute of non-agreement. Following the expiration of the six-month legal period, the plaintiff filed the eviction lawsuit.

The attorney for the lessee argued that the mediation was initiated before the claimant`s right to bring action had accrued (***i.e.*** prior to the end of the 6-month period); therefore, the mediation process had not been procedurally valid, and the case must be dismissed due to the lack of a procedural prerequisite.

The court of first instance accepted this objection, ruling that a mediation application that is filed before the right to sue has accrued does not satisfy the procedural prerequisite. The court held that the right to apply for mediation is contingent upon the right to sue, and therefore mediation cannot be initiated before the right to bring claim has accrued. Consequently, the court decided to dismiss the lawsuit on procedural grounds due to the lack of procedural prerequisite. This decision was appealed to the Regional Court of Appeals.

III. Decision of the Antalya Regional Court of Appeals

The 6th Civil Chamber of the Antalya Regional Court of Appeals overturned the first instance court's dismissal. The Regional Court adopted an approach that diverges from the Court of Cassation' decision dated May 26, 2025 (2025/1495 E., 2025/3048 K.), in which it was concluded that "mediation process cannot be initiated before the right to sue has accrued".

The Regional Court first examined the relevant provisions of the Law on Mediation in Civil Disputes No. 6325 and pointed out that there is no restrictive regulation or phrasing in the law requiring the right to sue to have accrued before applying for mediation. The Regional Court made a distinction in the "timing" debate that is at the heart of the dispute; it emphasized that the aforementioned decision of the Court of Cassation pertained to lawsuits within the scope of Article 350 of the TCO (necessity of the existing owner), whereas the case at hand was filed based on the "necessity of the new owner" under Article 351 of the TCO.

According to the Regional Court, directly extending the Court of Cassation' interpretation of TCO Article 350 to Article 351 would mean trapping the new owner in a long-term contract lasting until 2032 and would violate the essence of the right of access to a court. In other words, it is clear that despite purchasing the immovable property by relying on the right granted under Article 351/1 of the TCO, the owner would be unable to benefit from this legal right and would also be barred

from filing a lawsuit under TCO Article 351/2 until September 1, 2032. Consequently, the Regional Court underlined that alternative dispute resolution methods are not a barrier to seeking justice but a complementary method; it accepted that applying for mediation before filing the lawsuit is sufficient, regardless of whether the application was made during the waiting period.

The Regional Court stated, in this case, that mediation negotiations that constitute a procedural prerequisite were held between the parties and that the parties failed to reach a settlement as established by the mediation minutes. At this point, the Regional Court expressed that deeming a procedurally completed process invalid solely due to its timing would lead to severe negative consequences. It ruled that if an already conducted and failed mediation process were ignored and the case dismissed, the plaintiff would be forced to re-apply unnecessarily; this situation would lead to a loss of both time and money, as well as a loss of public resources.

One of the most critical points emphasized in the Regional Court's decision was the right of access to court. By referencing the freedom to seek legal remedies regulated under Article 36 of the Turkish Constitution, the Regional Court reminded that alternative dispute resolution methods should not turn into an obstacle that makes it impossible or excessively difficult for individuals to seek legal remedies. According to the Regional Court, the fact that the new owner completed this process during the waiting period demonstrates their intent to resolve the dispute. Consequently, it was accepted that applications made before the expiration of the six-month period satisfy the procedural prerequisite, provided that the mediation application was made before the lawsuit was filed.

Accepting the appeal request on these grounds, the Regional Court found the dismissal of the case on procedural grounds to be erroneous and ruled that the first instance court must examine the merits of the case, collect evidence, and render a decision.

IV. Conclusion

This decision of the Antalya Regional Court of Appeal departs from the established practice of the Court of Cassation and from a fundamental legal principle concerning the existence of the right, by adopting an approach that emphasizes the purpose of mediation as a procedural prerequisite in tenancy laws to resolve disputes through amicable means, and that mediation should not be interpreted as a barrier to access to justice.

The decision is expected to spark discussions within legal circles regarding the timing of the enforcement of rights, and to have implications for other areas of law in which mediation is a mandatory prerequisite to initiating court proceedings.

Data Protection Law

The Constitutional Court's Recent Decision on Amendments to the Data Protection Law

Members of Parliament Murat Emir, Gökhan Günaydın, and Ali Mahir Başarır together with 125 members of Parliament ("**the Applicants**"), filed an action for annulment challenging several provisions of Law No. 7499 on Amendments to the Code of Criminal Procedures and Certain Laws, dated March 2, 2024, which introduced amendments to various laws,

including the Law on the Protection of Personal Data No. 6698 ("**KVKK**"). The applicants alleged that the contested amendments violated multiple constitutional guarantees. The Constitutional Court ("**Court**") rendered its decision in this case on July 10, 2025 under file no. 2024/98 and decision no. 2025/149. This decision was published in the Official Gazette dated December 31, 2025, and numbered 33124.

Within the scope of the KVKK, the applicants sought the annulment of three specific provisions. These were the amendments to Article 6(3)(e) and (g), which regulate exceptions to the prohibition on processing special categories of personal data, the newly introduced Article 9(9) governing the transfer of personal data abroad in exceptional circumstances and the amendment to Article 18(1)(d), which regulates the administrative fine applicable for breaches of the notification obligation related to cross-border data transfers.

As regards Article 6(3)(e) and (g) of the KVKK, the applicants argued that the newly introduced exceptions to the general prohibition on the processing of special categories of personal data were drafted in overly broad and vague terms. In particular, they contended that enabling the processing of such data by persons subject to a duty of confidentiality or by authorized public institutions for purposes such as the protection of public health, medical diagnosis, treatment and care services, as well as the planning, management, and financing of health services under subparagraph (e), and by non-profit foundations, associations, and similar organizations established for political, philosophical, religious, or trade-union purposes under subparagraph (g), weakened the level of constitutional protection afforded to sensitive personal data. It was further alleged that, despite being framed as exceptions to the rule that the processing of special categories of personal data is prohibited, these provisions created a risk of arbitrary interference with the right to private life.

The Constitutional Court rejected these arguments and held that the contested provisions were not contrary to the Constitution. The Court emphasized that special categories of personal data remain subject to a general prohibition and may only be processed under strictly defined statutory conditions. It underlined that the exceptions introduced by the legislature pursued legitimate aims, such as the protection of public health and the safeguarding of freedom of association and are further limited by requirements relating to purpose limitation, non-disclosure to third parties, and the obligation to take adequate safeguards as determined by the Personal Data Protection Board. Accordingly, the Court concluded that the rules strike a fair balance between the protection of personal data and competing public interests, and therefore do not violate Articles 13 or 20 of the Constitution.

The applicants also challenged Article 9(9) of the KVKK, which was introduced by Article 34 of Law No. 7499 and regulates the cross-border transfer of personal data. Under this provision, personal data can be transferred abroad without prejudice to the provisions of international agreements, only in cases where the interests of Turkiye or the data subject would be seriously harmed and solely upon obtaining the opinion of the relevant public institution or authority and the permission of the Personal Data Protection Board. The applicants argued that, in the context of rules governing the transfer of personal

data abroad, this provision vested excessive discretionary power in the administration and failed to provide sufficient foreseeability and safeguards against arbitrary interference with the right to the protection of personal data.

In its assessment, the Constitutional Court held that the situations in which the interests of Turkiye or the data subject may be seriously harmed can arise in different forms and that it is not possible or necessary to list all such scenarios exhaustively in the law. Emphasizing that the use of general statutory wording is inherent in legislative technique, the Court found that the provision does not create legal uncertainty and satisfies the requirement of legality. It further noted that requiring the permission of the Personal Data Protection Board constitutes an additional safeguard applicable only in exceptional cases and that the procedure and competent authority for cross-border data transfers are clearly defined. The Court concluded that the measure pursues legitimate aims, is suitable and necessary to meet an urgent social need and remains proportionate in a democratic society. On this basis, the annulment request concerning Article 9(9) was unanimously rejected.

Finally, the Court examined the challenge directed at Article 18(1)(d) of the KVKK, which introduced an administrative fine ranging from TL 50,000 to TL 1,000,000 (which will be subject to re-evaluation rates every year) for failure to comply with the notification obligation relating to the transfer of personal data abroad. The applicants argued that there was a disproportionality between the nature of the act subject to sanction and the level of the administrative fine, potentially leading to an ineffective enforcement. The Constitutional Court held that granting the administration discretion in determining the amount of the fine does not imply arbitrariness, provided that it is exercised in line with the gravity of the violation, the circumstances of the case, and the harm caused, and remains subject to judicial review. Emphasizing the tiered structure of the sanction and its periodic adjustment through revaluation, the Court concluded that the provision allows for proportionate penalties and preserves a fair balance and therefore rejected the annulment request.

In conclusion, the Constitutional Court unanimously rejected all annulment requests concerning the amendments made to the Law on the Protection of Personal Data by Law No. 7499 and found that the contested provisions were not contrary to the Constitution.

Internet Law

Recent Changes to the Presidency of Cyber Security

With the publication of the Presidential Decree Amending the Presidential Decree on the Presidency of Cyber Security ("**Decree**") in the Official Gazette No. 33118 dated December 25, 2025, significant changes have been introduced to the mandate and organizational structure of the Presidency of Cyber Security ("**the Presidency**"). Through this Decree, the duties and powers of the Presidency have been expanded, its institutional structure has been reorganized, and the number of its service units has been increased.

I. Amendments to the Duties and Powers of the Presidency

Pursuant to the additions made to Article 4(1)(a), the Presidency has been entrusted with new responsibilities in the field of digital government. These include conducting legislative studies, preparing

national strategies and action plans, contributing to the formulation of national policies, and ensuring coordination with the relevant institutions for the harmonization of national legislation with international regulations.

With the amendment to Article 4(1)(d), the Presidency's mandate has been extended beyond cybersecurity to encompass activities aimed at developing the digital government ecosystem, supporting the advancement of domestic and national products and technologies, and enhancing the global competitiveness of local entrepreneurs.

Furthermore, the amendment and addition to Article 4(1) (i) introduces a new duty whereby the Presidency is authorized to establish the institutional architecture of digital government. In this context, the Presidency is empowered to determine the principles, procedures, and standards governing the administrative, financial, and technical characteristics of information technology products, services, and systems to be procured or developed by public institutions and organizations.

In addition to amendments to existing provisions, several new subparagraphs have been introduced, granting the Presidency the following additional duties and authorizations:

j) To determine the project management principles, procedures, and standards to be applied in information technology projects carried out by public institutions and organizations, and to provide opinions to the Presidency of Strategy and Budget regarding the financial and technical aspects of such projects.

k) To develop and operate the e-Government Gateway and shared digital government products, services, and systems, and to determine the principles, procedures, and standards governing the integration of public institutions' information systems with these infrastructures and the provision of services.

l) To conduct legislative studies concerning artificial intelligence applications in the public sector; to contribute to the preparation of national policies, strategies, and action plans in the field of artificial intelligence; to support efforts aimed at harmonizing national legislation with international regulations; and to participate in ecosystem development activities.

m) To determine the principles, procedures, and standards relating to data governance, encompassing the management of data used in digital government and public-sector artificial intelligence technologies throughout its entire lifecycle, from creation to destruction.

n) To lead artificial intelligence applications in the public sector, including identifying requirements in cooperation with relevant institutions, establishing shared data space infrastructure, determining quality criteria and standards for data to be used in applications, and granting conformity approvals in this regard.

II. Amendments to the Organizational Structure of the Presidency

The amendments introduced under Article 5 have brought notable changes to the organizational structure of the Presidency. Accordingly: (i) three Deputy Presidents have been added to the structure; (ii) the authority to establish representative offices has been removed from the requirement of a Presidential decision; (iii) the Presidency

has been authorized to establish up to seven domestic representative offices upon the decision of the President of the Presidency; (iv) the authority to establish an overseas organization has been granted; and (v) the Presidency has been authorized, upon a Presidential decree, to establish companies either abroad or in Turkiye in relation to its areas of responsibility.

III. New Service Units

With the additions made to Article 7, the following service units have been established within the Presidency:

- General Directorate of Public Artificial Intelligence
- General Directorate of Digital Government
- General Directorate of Administrative Services
- Strategy Development Department
- Private Office Directorate

In parallel with these changes, the Administrative Services Department has been abolished.

IV. Conclusion

The amendments introduced by the Decree represent a comprehensive transformation of the Presidency of Cyber Security, reflecting a strategic shift toward an integrated governance model that encompasses cybersecurity, digital government, and artificial intelligence. By significantly expanding the Presidency's duties and powers, strengthening its organizational structure, and establishing specialized service units, the legislator has positioned the Presidency as a central authority in shaping Turkiye's digital transformation. These developments not only enhance institutional capacity and coordination within the public sector but also underscore the growing importance of technologically aligned public administration.

Telecommunications Law

Amendments to Electronic Communications Law No. 5809

On December 25, 2025, Law No. 7571 Amending the Turkish Criminal Code, Certain Laws, and the Decree Law No. 631 ("**Law No. 7571**") was published in the Official Gazette numbered 33118. Commonly referred to as the 11th Judicial Package, Law No. 7571 introduced amendments to various laws and substantial changes to criminal law enforcement procedures. Notably, Law No. 7571 amended Articles 50 and 60 of the Electronic Communications Law No. 5809 ("**Law No. 5809**") and introduced a new Provisional Article 8.

I. Amendments to Article 50 of Law No. 5809

Article 30 of Law No. 7571 introduced five new paragraphs to Article 50 of Law No. 5809 which governs Subscription Agreements relating to identity verification and limitations to line/mobile number subscriptions.

a. Identity Verification

As per the newly introduced paragraph 8, operators, who are defined as the companies providing electronic communications services and/or electronic communications networks and operating their infrastructure based on an authorization in Article 3 of the same law, must verify the person's identity using identity cards that allow electronic identity

verification. Operators cannot use identity cards that do not meet this requirement even if the identity card is legally valid. Accordingly, for new subscriptions, operators will now be obliged to verify the person's identity using biometric means such as face or fingerprints or a secure verification password.

The relevant paragraph also introduces alternative methods of verification for operators if the subscriber is a foreigner. In such a case operators will be obliged to verify their identity with Presidency of Migration Management's database via the Information and Communication Technologies Authority ("**ICTA"**). Diplomats, international organizations` staff, and their families are exempt from these biometric verification requirements if the Ministry of Foreign Affairs confirms their status.

Paragraph 9 added to Article 50 brings an obligation to the operators to check with official authorities to confirm if a subscriber is still active for cases of death or company liquidation. If the operator cannot confirm that the subscriber is still active, then the relevant subscriber's relationship with the electronic communications network must be ceased. This control must be conducted over three-month intervals.

b. Limitations Related to Number of Lines per Subscriber or Device

The amendments also introduce a limitation to the number of lines that can be provided to subscribers and subscriber numbers that can be used by a single device. As per the new paragraphs 10 and 11 added to Article 50, operators cannot provide a subscriber with more lines than the limit that will be set out by ICTA. In addition, if a device is found to be using more subscriber numbers than allowed by the ICTA, operators must stop providing electronic communications services to that device.

c. ICTA's Authorities

Pursuant to new paragraph 12, the ICTA is now authorized to create separate rules for number allocation systems, and usage principles specifically for foreign real persons. In addition, as per the amendment made in paragraph 13, ICTA will consult the relevant ministries when establishing the procedures and principles subject to this Article 50.

II. Amendments to Article 60 of Law No. 5809

a. Administrative Fines

Article 60 of Law No. 5809 regulates the ICTA's authorities and administrative sanctions. Accordingly, the first paragraph Article 60 stipulates the authorities granted to the ICTA and the range of administrative fines that it can impose for specified violations. The fine is calculated based on the revenues of the operators. The second paragraph, which was recently amended, focused previously on the new operators and how an administrative fine would be determined for those, considering that they do not have historical revenue data. With the amendment made to the second paragraph by referring to the operators whose net sales data are not yet available for the relevant calendar year, the uncertainty surrounding such operators is eliminated. Now, even if an operator has been active for years, they cannot escape a fine simply because their financial statements for the previous year are not yet ready or are disputed. If that percentage cannot be calculated because the net sales figure is missing, the ICTA is now explicitly authorized to use the fixed range

(TL 1,000 – TL 1,000,000) specified in paragraph 2 while imposing an administrative fine.

The amended paragraph 2 also includes an additional sentence at the end which ensures that any administrative fine imposed by the ICTA as per paragraph 1 of the same article calculated based on the relevant percentage of the net sales, cannot be less than the statutory minimum amount regulated in the second paragraph.

Law No. 7571 also amends Article 60/7 of Law No. 5809. As explained in the foregoing section, the amendments brought new obligations for the operators in Article 50. Accordingly, the amendment made in paragraph 7 of Article 60 specifies the amount of administrative fines that will be imposed in case of violations relating to the new paragraphs added to Article 50 of Law No. 5809.

b. Refunds to Consumers

Paragraph 8 of Article 60, which relates to the operators' refunds to the consumers, is also amended to oblige operators to calculate the refunds on the basis of Article 51 of Law No. 6183 on the Collection Procedures of Public Receivables. It is understood that the operators who overcharge their customers will not just pay back the excess amount, but they will also include the default interest rate stipulated under the relevant article.

c. Lines Used In Criminal Activities

The new paragraphs 18 and 19, added to Article 60, regulate cases where lines are used for criminal activities.

As per the newly introduced paragraph 18, if any of the crimes of aggravated fraud, fraud or misuse of bank or credit cards are committed using a mobile communication line, the operator must cut the relevant line off based on judge's decision within the scope of the investigation, or upon the written order of the public prosecutor in non-delayable cases. If the operator fails to fulfil any such decision or written order to cut off the line, an administrative fine between TL 50,000 – TL 300,000 may be imposed on the operator.

With the following new paragraph 19, the operators are also obligated to provide documents and information requested by judicial authorities within 10 days, and failing to do so may result in an administrative fine between TL 50,000 – TL 300,000.

III. New Provisional Article 8 Introduced to Law No. 5809

Provisional Article 8 brought with the amendment establishes a transition period and deadlines for the implementation of the new obligations.

Accordingly, foreign real persons have a 6-month grace period for updating their subscriptions in line with the amended Article 50 of Law No. 5809. The ICTA may extend this period. That said, if foreign real persons fail to fulfill this obligation within the time provided their lines will be disconnected within 1 month after the grace period ends.

The temporary article also brings a 6-month grace period for the new paragraphs added to Article 50 of Law No. 5809 which were elaborated in the foregoing section to enter into force. Accordingly, the temporary article states that these paragraphs will enter into force after 6 months of the publication of the law.

The ICTA will also have 6-months to establish the relevant rules for number allocation systems, and usage principles

specifically for foreign real persons and for specifying the maximum limit for number of lines that can be provided to a real or a legal person, and the number lines that can be used in a single device for a given period of time. After the ICTA announces these limits, those who exceed these limits will have again 6 months to either close the extra lines or transfer them to someone else. If the subscribers fail to take action in the grace period provided to them, the operators will automatically terminate their connection of the newest lines, keeping only the oldest ones, considering the allowed limit.

The provisional article stipulates an administrative fine for the operators who fail to fulfill their obligations. If an operator fails to disconnect unverified foreign lines or excess lines as required, they may be subject to an administrative fine of TL 20,000 per line, which may lead to a substantial financial penalty if the number of unverified lines is high.

IV. Conclusion

Amendments to Law No. 5809, which were introduced at the end of 2025, represent a strategic tightening of the regulatory and judicial framework governing the electronic communications sector. The introduction of mandatory biometric verification and line limitations along with activity controls shifts the regulatory focus toward proactive identity management, which appears to be a step taken to eliminate the anonymity often exploited in digital fraud. By integrating the interest-calculation principles into consumer refunds, the legislature also seeks a way to effectively address the issue of operator inaction and ensures a more responsive process benefiting the consumers. Further, establishing expedited judicial oversight for the suspension of services used in financial crimes, the legislature targets the exploitation of communication infrastructures for illicit gains. The establishment of the new administrative fines, enforced by the ICTA, standardizes the application of sanctions and eliminates any uncertainty surrounding the penalties. It can be said that the amendments brought with Law No. 7571 necessitate greater operator involvement in ensuring legal compliance and fighting fraudulent activities. Ultimately, these reforms establish a comprehensive regulatory framework, ensuring that administrative and judicial procedures remain effective within a shifting regulatory landscape.

Compliance

Financial Crimes Investigation Board Updates the Compliance Guidelines for Crypto Asset Service Providers

I. Introduction: A New Phase in the Regulation of the Crypto Asset Ecosystem

The rapid global growth of crypto asset markets has brought with it significant risks related to money laundering and the financing of terrorism. In this context, aligning the activities of crypto asset service providers (CASPs) with international AML/CFT standards has become a critical necessity, not only for the integrity of the financial system, but also for the sustainability of the market itself.

The Compliance Guidelines ("**Guidelines**") for Crypto Asset Service Providers ("**CASPs**"), updated and published by the Financial Crimes Investigation Board ("**MASAK**"),

particularly represents this necessity.[15] With this update, the legal positioning of CASPs has undergone a fundamental transformation. CASPs are no longer treated merely as "obliged entities," but are now put on the same pedestal, in terms of regulatory compliance, as financial institutions. This shift has significantly expanded the scope of their obligations and necessitated a substantial restructuring of operational processes.

II. Customer Due Diligence (KYC) Obligations and Their Expanded Scope

a. Scope of the Identification Obligation

The updated Guidelines emphasize that the customer due diligence obligation is not limited to the mere collection of identification information. CASPs are required to identify customers and any persons acting on their behalf when establishing a continuous business relationship, regardless of transaction amount, and particularly in transactions of TL 15,000 or more.

Crypto asset transfers conducted within the framework of a continuous business relationship established through a membership agreement are considered subsequent transactions. Where the threshold amount is exceeded, additional identification and verification obligations are triggered.

b. Remote Identification

One of the most notable changes introduced by the Guidelines concerns the detailed technical standards applicable to remote customer identification. CASPs may acquire customers through remote identification; however, this process must be conducted via uninterrupted, real-time video communication.

Remote identification now requires advanced identity verification, biometric comparison, liveness detection, and one-time password verification as standard elements. Where the process is partially or entirely outsourced, the service provider must hold a TS EN ISO/IEC 27001 Information Security Management System certification. Furthermore, CASPs that facilitate the trading or custody of privacy-focused crypto assets are explicitly prohibited from conducting remote identification.

c. Identification of the Beneficial Owner

The Guidelines also address the identification of beneficial owners in detail, particularly with respect to legal entity customers. Individuals holding more than 25% of shares are primarily deemed beneficial owners. Where no such determination can be made, individuals exercising ultimate control are identified. If neither criterion can be met, senior executives with ultimate executive authority are considered beneficial owners.

III. The Travel Rule and Transparency in Crypto Asset Transfers

Reflecting FATF standards at the international level, the Travel Rule has been placed at the center of CASPs' operational processes through the updated Guidelines. Accordingly, in crypto asset transfers of TL 15,000 or more, specific information relating to the sender and the recipient must be included in transfer messages and preserved throughout the transfer chain.

[15] https://masak.hmb.gov.tr/duyuru/kripto-varlik-hizmet-saglayicilar-rehberi-guncellendi-ve-yayimlandi (Last accessed on January 23, 2026)

While the accuracy of sender's information must be verified, the obligation to verify recipient information rests with the CASP which is serving the recipient. Transfers containing incomplete information must be rejected, and in cases of persistent non-compliance, the business relationship with the relevant service provider must be restricted or terminated. This regulation requires CASPs to adopt a risk-based assessment not only of their own customers, but also of their service provider counterparts.

IV. Suspicious Transaction Reporting and the Principle of Confidentiality

For CASPs, the obligation to submit suspicious transaction reports has been largely aligned with that of traditional financial institutions. Suspicious transactions must be reported to MASAK, and the fact that such a report has been filed may not be disclosed to the customer or to any third party under any circumstances.

The Guidelines emphasize the need for a proactive and risk-based approach to detecting suspicious transactions, particularly in light of the anonymity potential inherent in crypto assets. Failure to comply with reporting obligations may result in severe administrative and criminal sanctions.

V. Obligation to Establish a Compliance Program

Under the updated Guidelines, CASPs are required to establish a corporate compliance program. This includes the establishment of a compliance unit and the appointment of a compliance officer and, where necessary, assistant compliance officers.

The compliance program must encompass risk management, monitoring and control activities, training programs, and internal audit mechanisms. The active responsibility of the board of directors and senior management in these processes is expressly emphasized.

VI. Compliance with Asset Freezing and Transaction Postponement Decisions

Compliance with asset freezing and transaction postponement decisions issued under Law No. 7262 constitutes a critical area of obligation for CASPs. The Guidelines require that such decisions be implemented promptly and in full, and that technical and operational infrastructures be structured accordingly.

Failure to comply with these obligations may result not only in administrative fines but also in criminal sanctions, including imprisonment.

VII. Breaches of Obligations and Sanctions

The Guidelines clearly set out the consequences of breaches of obligations. In addition to administrative monetary fines, certain violations may give rise to criminal liability under the Turkish Penal Code and other special laws. In particular, non-compliance with asset freezing decisions and failures in suspicious transaction reporting represent areas of heightened risk with potentially severe consequences.

VIII. Conclusion: Compliance Is No Longer Optional for CASPs

The updated CASP Compliance Guidelines make it clear that compliance is no longer optional or just a formality for CASPs. It is essential for continuing their operations.

To reduce regulatory risks and maintain market trust, CASPs must take a proactive approach that brings together legal, technical, and operational compliance.

Employment Law

A Recent Decision of the Court of Cassation on Entitlement to Salary Increases During the Statutory Notice Period

I. Introduction

Article 17 of Labor Law No. 4857 regulates that the termination of an indefinite-term employment agreement must be notified to the other party in advance. This requirement is intended to safeguard both the continuity of the work and the legal security of both the employee and the employer. The statutory notice periods vary according to the employee's length of service, which are: (i) two weeks, for employment of less than six months; (ii) four weeks, for employment of six months to one and a half years; (iii) six weeks, for employment of one and a half three years; and (iv) eight weeks, for employment exceeding three years. The party, whether it is the employer or the employee, who fails to comply with the applicable notice period is required to pay the other party compensation in lieu of notice, corresponding to the salary that would have been earned during the relevant notice period. During the notice period, the employment relationship remains in force, and all rights and obligations of the parties continue to apply.

Due to the continuation of the employment relationship being limited in time, several legal questions arise in practice. One of the most frequently disputed questions is whether an employee who is serving a notice period is entitled to benefit from salary increases implemented by the employer at the workplace during the notice period. By virtue of the 9th Civil Chamber of the Court of Cassation' decision numbered 2025/1599 E., 2025/5178 K. and dated 18.6.2025, this issue has been addressed with an up-to-date interpretation and uniformity of case law has been established.

II. Contradictory Decisions of the Regional Courts of Appeals

In its decision numbered 2024/176 E., 2024/211 K. and dated January 10, 2025, the 5th Civil Chamber of the Denizli Regional Court of Appeals upheld the judgement of the court of first instance, holding that although the employee's "final salary" must be determined for the purpose of calculating employment-related receivables, any salary increase implemented at the workplace during the employee's notice period should not be taken into account for an employee whose employment has already been terminated and who is merely serving the notice period.

In contrast, in its decision numbered 2017/2685 E., 2019/373 K., and dated March 28, 2019, the 9th Civil Chamber of the İzmir Regional Court of Appeals ruled that the first instance court had erred in determining the employee's final salary without reflecting the salary increases that would have taken effect during the notice period. The 9th Civil Chamber of the İzmir Regional Court of Appeals held that the employees' receivables should have been calculated based on a salary that included the salary increase implemented at the workplace during the notice period.

As can be seen from these decisions, the jurisprudence of the Regional Courts of Appeals was far from uniform on the

question of whether an employee who is serving their notice period is entitled to benefit from salary increases introduced during that period.

III. Decision of the Court of Cassation

In order to eliminate the inconsistency between the decisions of the Regional Courts of Appeals, the Court of Cassation reviewed both the Izmir and Denizli decisions. In its assessment, the Court referred to the previous decisions and to the opinions of scholars in labor law, emphasizing that "when the historical development of cases involving termination by the employer without granting a notice period and without fully paying the corresponding entitlements is examined, it becomes apparent that the chambers of the Court of Cassation competent to hear labor disputes have established precedents. Accordingly, an employee whose employment agreement has been terminated is entitled to benefit from any salary increase implemented at the workplace until the end of the notice period. The doctrine likewise holds that, in such circumstances, the employment relationship continues until the expiry of the notice period."

Accordingly, the Court of Cassation ruled that the inconsistency between the decisions of the Regional Courts of Appeals must be resolved in line with the approach adopted by the 9th Civil Chamber of the Izmir Regional Court of Appeals. In this respect, it is held that where an indefinite-term employment agreement is terminated without granting the statutory notice period, the employee is entitled to benefit from any salary increases implemented at the workplace until the expiry of that notice period.

This ruling of the Court of Cassation demonstrates that, although the employment relationship during the notice period is of limited duration, it remains legally operative and must be protected until its expiry. The decision underscores that the parties' reciprocal rights and obligations continue to exist throughout the notice period and that an employer may not exclude an employee from workplace entitlements, such as salary increases, merely because the termination notice has already been given.

IV. Conclusion

Following the decision of the Court of Cassation, the divergence that had existed in practice among both employees and employers has been eliminated, and legal certainty has been restored. The Court of Cassation' approach reflects its commitment to maintaining fairness and balance both in the workplace and the employment relations in general by ensuring that employees are not deprived of rights accrued during the statutory notice period.

Intellectual Property Law

Thirteenth Edition of the Nice Classification Entered into Force as of January 1, 2026

I. Introduction

The international system created for classification of goods and services, exclusively for use in trademark registration procedures, was established by the Nice Agreement in 1957 ("**Nice Classification**"). As a party to the Nice Agreement since 1996, Turkiye aligns its national classification practices with these international standards.

Recently, significant amendments were approved for the 13th Edition of the Nice Classification and entered into force on January 1, 2026. These changes are particularly noteworthy for practitioners since they involve the transfer of various goods from the overcrowded Class 9, often referred to as the "Mega Class", to other existing classes. This article outlines the scope of these changes, the rationale behind the reclassification, and the expected procedural implications for the Turkish Patent and Trademark Office ("**TurkPatent**").

II. Rationale Behind the Reclassification of Class 9

For several years, the Committee of Experts and international observers, such as the International Trademark Association, have raised concerns regarding the expansive nature of Class 9. The inclusion of irrelevant goods and the rapid growth of technological products have led to administrative burdens and potential inconsistencies in trademark examinations.

During the recent sessions of the Committee of Experts,[16] various proposals were debated, including the following:

- Dividing Class 9 into smaller subdivisions,
- Reassigning certain goods currently listed in Class 9 to other, already existing classes,
- creation of entirely new classes to accommodate the growing number of goods currently concentrated in Class 9,
- Consideration of whether the mere virtual version of a tangible good should require separate registration or whether such items might be covered under the existing classification of their physical counterparts.

Following a survey conducted among member offices in 2024, the Committee of Experts opted for the reassigning of certain goods in Class 9 as the most viable immediate solution. Consequently, the first package of reclassifications focusing on optical and transportation goods was adopted to ease the bulk of Class 9.

III. Key Changes Effective as of January 1, 2026

The 13th Edition introduces a strategic shift for several high-volume goods. The most significant changes are categorized as follows:

a. **Transfer of Optical Goods to Class 10:** Goods such as spectacles, contact lenses and sunglasses have been removed from Class 9 and reassigned to Class 10. It is important to note, however, that technology-heavy items such as virtual reality headsets and magnifying glasses remained in Class 9.

b. **Transfer of Safety and Rescue Vehicles to Class 12:** Specialized vehicles designed for rescue and fire-fighting purposes, including life-saving boats and fire engines, have been moved from Class 9 to Class 12.

IV. Conclusion

The 2026 amendments represent a significant shift in trademark filing strategies, particularly for the eyewear and

[16] Please see: https://www.wipo.int/edocs/mdocs/classifications/en/clim_ce_35/inta_statement_during_the_clim_ce_35.pdf

personal accessory sectors. While the transfer of goods from the “Mega Class” provides a degree of relief, it is anticipated that the Committee of Experts will continue to evaluate Class 9 in future sessions to address ongoing technological advancements. Trademark owners and practitioners in Turkiye should monitor TurkPatent’s upcoming announcements and adjust their filing and renewal strategies accordingly.

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