PANORAMIC

DOMINANCE

Türkiye

LEXOLOGY

Dominance

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GENERAL FRAMEWORK

Legal framework

What is the legal framework in your jurisdiction covering the behaviour of dominant firms?

The main legislation governing behaviour of dominant firms is Law No. 4054 on the Protection of Competition (Law No. 4054), which was last amended on 18 July 2021, following a more comprehensive amendment of 24 June 2020 (the Amendment Law). Under article 6 of Law No. 4054, "any abuse on the part of one or more undertakings, individually or through joint agreements or practices, of a dominant position in a market for goods or services within the whole or part of the country is unlawful and prohibited". Article 6 of Law No. 4054 does not define what constitutes "abuse" per se but it provides a non-exhaustive list of specific forms of abuse, which is, to some extent, similar to article 102 of the Treaty on the Functioning of the European Union (TFEU). Accordingly, abuse may, in particular, consist of:

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

Law stated - 3 Ocak 2025

Definition of dominance

How is dominance defined in the legislation and case law? What elements are taken into account when assessing dominance?

Article 3 of Law No. 4054 defines dominance as "the power of one or more undertakings in a certain market to determine economic parameters such as price, output, supply and distribution, independently from competitors and customers". Enforcement trends show that the Turkish Competition Board (the Board) is increasingly inclined to somewhat broaden the scope of application of the article 6 prohibition by diluting the "independence from competitors and customers" element of the definition to infer dominance even in cases of dependence or interdependence (see, for example, ***Anadolu Cam*** (1 December 2004, 04-76/1086-271) and ***Warner Bros*** (8 March 2007,07-19/192-63).

The Board considers a high market share as the most indicative factor of dominance. Nevertheless, it also takes account of other factors (such as legal or economic barriers to

entry, portfolio power and financial power of the incumbent firm) in assessing and inferring dominance. This was also the case in ***Obilet*** (15 June 2023, 23-27/521-177), where Obilet was found to have a dominant position due to its high market share and entry barriers to the market. Similarly, in ***Maçkolik*** decision (20 February 2025, 25-07/170-84), Maçkolik was deemed dominant in the digital markets for live sports scores and betting-related services. The Board relied on its traffic share, brand recognition, network effects, portfolio power and the absence of sufficient countervailing buyer power.

On the other hand, within the scope of the merger control analysis, the Amendment Law replaces the dominance test with the significant impediment of effective competition (SIEC) test. Accordingly, the change in merger control analysis is expected to have some effect on assessment of unilateral practices – namely, determination of abuse of dominance.

Law stated - 3 Ocak 2025

Purpose of the legislation

Is the purpose of the legislation and the underlying dominance standard strictly economic, or does it protect other interests?

Influenced by the Turkish Competition Authority's 2001 publication of ***The Prime Objective of Turkish Competition Law Enforcement from a Law & Economics Perspective*** (Dr Gönenç Gürkaynak, Turkish Competition Authority Press, September 2003), the economic rationale is more typically described in Turkish competition law circles as "the ultimate object of maximising total welfare by targeting economic efficiency". Regulations that were enacted in previous years, albeit not directly applicable to dominance cases, place greater emphasis on "consumer welfare" (see Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Approval of the Competition Board). Moreover, adoption of the SIEC test under the merger control rules signals a more economic outlook. Nevertheless, because the legislative history and written justification of Law No. 4054 also contain clear references to non-economic interests (such as the protection of small and medium-sized businesses), some of these policy interests are still pursued in Türkiye, particularly in dominance cases, alongside the economic objective.

Generally, the Board blends economic and non-economic interests and does not allow one to override the other.

Law stated - 3 Ocak 2025

Sector-specific dominance rules

Are there sector-specific dominance rules, distinct from the generally applicable dominance provisions?

Law No. 4054 does not recognise any industry-specific abuses or defences. However, certain sectorial regulators have concurrent powers to diagnose and control dominance in their relevant sectors. For instance, the secondary legislation issued by the Turkish Information and Telecommunication Technologies Authority prohibits "firms with significant market power" from engaging in discriminatory behaviour between companies seeking access to their network and, unless justified, from rejecting requests for access, interconnection or

facility-sharing. These firms are also required to maintain separate accounts for the network costs they incur, such as for energy or air conditioning. Similar restrictions and requirements also exist for energy companies.

Law stated - 3 Ocak 2025

Exemptions from the dominance rules

To whom do the dominance rules apply? Are any entities exempt?

Dominance provisions (and other provisions of Law No. 4054) apply to all companies and individuals, to the extent that they act as an "undertaking" within the meaning of Law No. 4054. An "undertaking" is defined as a single integrated economic unit capable of acting independently in the market to produce, market or sell goods and services. Law No. 4054, therefore, applies to individuals and corporations alike, if they act as an undertaking. State-owned entities also fall within the scope of the application of article 6. While the Board placed too much emphasis on the "capable of acting independently" aspect of this definition to exclude state-owned entities from the application of Law No. 4054 at the very early stages of Turkish competition law enforcement (see, for example, ***Sugar Factories*** (13 August 1998, 78/603-113)), the Board's enforcement shows that it now uses a broader and more accurate view of the definition, in a manner that also covers public entities and sport federations (see, for example, ***Turkish Coal Enterprise*** (19 October 2004, 04-66/949- 227), ***Turkish Underwater Sports Federation*** (3 February 2011, 11-07/126- 38), ***Türk Telekom*** (24 September 2014, 14-35/697-309) and ***Devlet Hava Meydanları İşletmesi*** (9 September 2015, 15-36/559-182). Therefore, state-owned entities are also subject to the Competition Authority's enforcement, pursuant to the prohibition laid down in article 6.

Law stated - 3 Ocak 2025

Transition from non-dominant to dominant

Does the legislation only provide for the behaviour of firms that are already dominant?

The article 6 prohibition applies only to dominant undertakings. In similar fashion to article 102 of the TFEU, dominance itself is not prohibited, only the abuse of dominance.

Moreover, article 7 of Law No. 4054, which previously explicitly focused on structural changes for creating or strengthening dominance, currently stipulates the use of the SIEC test and is expected to provide an outlook on assessment of dominance. As for the dominance enforcement rules, "attempted monopolisation or dominance" is not recognised under Turkish competition legislation.

Law stated - 3 Ocak 2025

Collective dominance

Is collective dominance covered by the legislation? How is it defined in the legislation and case law?

Collective dominance is covered by Turkish competition legislation. The wording "any abuse on the part of one or more undertakings" of article 6 clearly prohibits abuses of collective dominance. Turkish competition law precedents on collective dominance are neither abundant nor sufficiently mature to allow for a clear inference of a set of minimum conditions under which collective dominance would be alleged. That said, the Board has considered it necessary to establish "an economic link" for a finding of abuse of collective dominance (see, for example, ***Biryay*** (17 July 2000, 00-26/292-162), ***Turkcell/Telsim*** (9 June 2003, 03-40/432-186), ***Chemical Solvents*** (25 February 2021, 21-10/140-58) ***Sinema TV*** (18 May 2016, 16-17/299-134), and ***Tuna*** (19 January 2022, ***22-04/58-27)***).

Law stated - 3 Ocak 2025

Dominant purchasers

Does the legislation apply to dominant purchasers? Are there any differences compared with the application of the law to dominant suppliers?

While the law does not contain a specific reference to dominant purchasers, or a monopsony market, dominant purchasers are also covered by the legislation, if and to the extent that their conduct amounts to an abuse of their dominant position. The Board found that TEB had abused its dominance by entering into exclusive agreements with suppliers and imposing exclusive supply obligations upon them, thereby foreclosing the market to its competitors (***TEB*** (6 December 2016, 16-42/699-313)). In ***Nesine*** (29 February 2024, 24-11/194-78), the Board found that Nesine had entered into an exclusive agreement regarding the purchase of advertisement services with one of the largest live match broadcasting platforms and abused its dominant position by preventing competitors from purchasing these advertisement service. Similarly, in ***Maçkolik*** (20.02.2025, 25-07/170-84), the Board held that Maçkolik abused its dominant position in the market for online display advertising and redirection services by engaging in discriminatory conduct against online fixed odds betting operators. The Board also found in ***Ferrero*** (7 March 2023, 24-12/213-87) that Ferrero's activities concerning increasing the purchase amount for shelled nuts while lowering it for unshelled nuts would prevent access to the market by its competitors and disrupt competition in the market.

Law stated - 3 Ocak 2025

Market definition and share-based dominance thresholds

How are relevant product and geographic markets defined? Are there market-share thresholds at which a company will be presumed to be dominant or not dominant?

The test for market definition does not differ from the concept used for merger control purposes. The Board issued the Guidelines on the Definition of the Relevant Market (the Guidelines) on 10 January 2008, with the goal of stating, as clearly as possible, the method used for defining a market and the criteria followed for taking a decision by the Board, to minimise the uncertainties undertakings may face. The Guidelines are closely modelled on

the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03). The Guidelines apply to both merger control and dominance cases. They consider demand-side substitutability as the primary standpoint of market definition. They also consider supply-side substitutability and potential competition as secondary factors.

Although not directly applicable to dominance cases, the Guidelines on Horizontal Mergers confirm that market shares in excess of 50% may be an indication of dominant position. In this scope, the sum of the parties' shares may be taken into account for cases of collective dominance. The Competition Authority's Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings (the Guidelines on Exclusionary Abuses), published on 29 January 2014, and the Board's past and recent precedents, make it clear that an undertaking with a market share lower than 40% is unlikely to be in a dominant position (paragraph 12 of the Guidelines on Exclusionary Abuses and various Board decisions (such as ***Mediamarkt*** (12 May 2010, 10-36/575-205), ***Pepsi Cola*** (5 August 2010, 10-52/956-335), ***Egetek*** (30 September 2010, 10-62/1286-487), ***Unmaş*** (20 May 2021, 21-26/324-150), ***D-Market*** (15 April 2021, 21-22/266-116), ***Aort*** (4 February 2021, 21-06/70-31) and ***Kar Porselen*** (7 December 2023, 23-56/1108-391), ***Align*** (7 December 2023, 23-56/1119-397), ***Obilet*** (15 August 2024, 24-33/815-345), ***Google Advertising Technologies*** (12 December 2024, 24-53/1180-509), and ***Microsoft*** (12 December 2024, 24-53/1166-502)). That said, the Board's decisions and the Guidelines on Exclusionary Abuses clarify that market shares are the primary indicator of dominant position, but not the only one. Barriers to entry, market structure, competitors' market positions and other market dynamics, as the case may be, should also be considered. Undertakings may refute the dominance assumption through demonstrating that they do not have the power to act independently of market parameters. Economic or market studies are important in this regard.

Law stated - 3 Ocak 2025

ABUSE OF DOMINANCE

Definition of abuse of dominance

How is abuse of dominance defined and identified? What conduct is subject to a per se prohibition?

Law No. 4054 on the Protection of Competition (Law No. 4054) is silent on the definition of abuse. It only contains a non-exhaustive list of specific forms of abuse. Nevertheless, paragraph 22 of the Guidelines on Exclusionary Abuses articulates that "abuse" may be defined as when a dominant undertaking takes advantage of its market power to engage in activities that are likely, directly or indirectly, to reduce consumer welfare. Moreover, article 2 of Law No. 4054 adopts an effects-based approach to identifying anticompetitive conduct, with the result that the determining factor in assessing whether a practice amounts to an abuse is the effect on the market, regardless of the type of conduct. In parallel, as per paragraph 24 of the Guidelines on Exclusionary Abuses: "In the assessment of exclusionary conduct, in addition to the specific conditions of the conduct under examination, its actual or potential effects on the market should be taken into consideration as well."

Law stated - 3 Ocak 2025

Exploitative and exclusionary practices

Does the concept of abuse cover both exploitative and exclusionary practices?

The concept of abuse covers both exploitative and exclusionary practices. It also covers discriminatory practices.

Law stated - 3 Ocak 2025

Link between dominance and abuse

What link must be shown between dominance and abuse? May conduct by a dominant company also be abusive if it occurs on an adjacent market to the dominated market?

Theoretically, a causal link must be shown between dominance and abuse. This is also emphasised in a recent decision of the Competition Board (the Board), in which the Board noted that an abuse of a dominant position necessitates a connection between the abusive conduct and the dominant position, whether expressed explicitly or implicitly (***Meta*** (20 October 2022, 22-48/706-299)). However, the Board does not yet apply a stringent test of causality and it has, in the past, inferred abuse from the same set of circumstantial evidence that was also employed in demonstrating the existence of dominance. Article 6 also prohibits abusive conduct on a market different to the market subject to dominant position. Accordingly, the Board found incumbent undertakings to have infringed article 6 by engaging in abusive conduct in markets neighbouring the dominated market (see, for example, ***Google Shopping*** (13 February 2020, 20-10/119-69), ***Google Android*** (19 September 2018, 18-33/555-273), ***Volkan Metro*** (2 December 2013, 13-67/928-390), ***Türkiye Denizcilik İşletmeleri*** (24 June 2010, 10-45/801-264), ***Türk Telekom*** (2 October 2002, 02-60/755-305) and ***Turkcell*** (20 July 2001, 01-35/347-95)).

Law stated - 3 Ocak 2025

Defences

What defences may be raised to allegations of abuse of dominance? When exclusionary intent is shown, are defences an option?

The chances of success of certain defences and what constitutes a defence depend heavily on the circumstances of each case. Paragraph 30 of the Guidelines on Exclusionary Abuses provides that the Board will also take into consideration any claims put forward by a dominant undertaking that its conduct is justified through "objective necessity" or "efficiency", or both. In this regard, it is possible to invoke efficiency gains, as long as it can be adequately demonstrated that the pro-competitive benefits outweigh the anticompetitive impact.

As for the question of whether the defences are available when exclusionary intent is shown, objective justifications such as "objective necessity" or "efficiency", or both, can be utilised as a defence on that front. Moreover, as per paragraph 24 of the Guidelines on Exclusionary Abuses: "In the assessment of exclusionary conduct, in addition to the specific conditions

of the conduct under examination, its actual or potential effects on the market should be taken into consideration as well." In this regard, to determine that an undertaking has carried out an abusive conduct, an actual (or potential) effect of the alleged conduct on the relevant market should be demonstrated.

Law stated - 3 Ocak 2025

SPECIFIC FORMS OF ABUSE

Types of conduct
Rebate schemes

While article 6 of Law No. 4054 on the Protection of Competition (Law No. 4054) does not explicitly refer to rebate schemes as a specific form of abuse, they may be deemed to constitute abuse. In ***Turkcell*** (23 December 2009, 09-60/1490-379), the Competition Board (the Board) condemned the defendant for abusing its dominance by, inter alia, applying incremental rebate schemes to encourage the use of the Turkcell logo and refusing to offer rebates to buyers that cooperate with competitors. The Board adopted a similar approach concerning both retroactive and incremental rebate schemes used by Doğan Media Group and fined the defendant for abusing its dominance through, inter alia, rebate schemes (30 March 2011, 11-18/341-103). Another similar decision was rendered in relation to a rebate scheme adopted by Luxottica, which pertained to all unit discounts and retroactive discounts (23 February 2017, 17-08/99-42). Moreover, the Board found that Unilever's rebate schemes in the market for industrial ice cream have led to de facto exclusivity, thereby giving rise to an abuse of Unilever's dominant position in the relevant market (18 March 2021, 21-15/190-80). In ***Ortadoğu Antalya Liman İşletmeleri***, the Board concluded that Ortadoğu Antalya Liman İşletmeleri had abused its dominant position in violation of article 6 of Law No. 4054 in the market for container stuffing services through practices that hindered the activities of competitors by creating de facto exclusivity through rebate schemes (3 March 2022, 22-11/169-68). The administrative court annulled the Board's earlier decision regarding Mey İçki's practices in the vodka and gin market, and upon its re-assessment, the Board found that the defendant had abused its dominance by applying retroactive rebate schemes, which amounted to exclusionary practices (11 June 2020, 20-28/349-163). A similar assessment was made in relation to,inter alia, exclusivity-enhancing and exclusionary rebate schemes applied by Mey İçki in the rakı (a Turkish alcoholic drink) market (12 June 2014, 14-21/410-178).

Law stated - 3 Ocak 2025

Types of conduct
Tying and bundling

Tying and bundling are among the specific forms of abuse listed in article 6. The Board has assessed many tying, bundling and leveraging allegations against dominant undertakings. However, the Board has limited case law where the incumbent firms were fined based on tying or leveraging allegations (see ***Google Android*** (19 September 2018, 18-33/555-273) and ***Google Shopping*** (13 February 2020, 20-10/119-69)). In the ***Google Android*** case, the

Board found that Google used its dominant position in the licensable smart mobile operating systems market and abused its dominance through its practices in the same market as well as in other markets such as the search and app store services market by tying the search and app store services, engaging in exclusivity practices and preventing use of alternative services by manufacturers. Similarly, in the ***Google Shopping*** case, the Board concluded that Google has been using its dominant position in the general search engine market to unfairly prioritise its product in the online shopping comparison services market against its competitors. In some cases, the Board has ordered behavioural remedies against incumbent telephone and internet operators to remedy the tying and leveraging without imposing a fine (*TTNET-ADSL* (18 February 2009, 09-07/127-38)).

In ***Obilet*** (15 June 2023, 23-27/521-177), the Board concluded that Obilet could be considered to have a dominant position in the markets for bus transportation ticketing software services, bus trip data distribution to platforms and bus ticket platform sales. The Board found that Obilet's practices – which de facto sought to tie its bus transportation ticketing software services to bus ticket platform sales – could violate article 6 of Law No. 4054. The Board concluded its investigation by making the commitments offered by Obilet binding.

In ***Meta (Instagram–Threads)*** (23 November 2024, 24-45/1053-450), where the Board assessed Meta's tying of its newly launched Threads platform to Instagram and found that such conduct, including cross-platform data integration, could raise exclusionary concerns. After imposing interim measures and issuing daily fines for non-compliance, the Board accepted Meta's commitments to cease the tying of Threads to Instagram and terminate data sharing between the services.

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

Law stated - 3 Ocak 2025

Types of conduct
Exclusive dealing

Although exclusive dealing normally falls under the scope of article 4 of Law No. 4054, which governs restrictive agreements, concerted practices and decisions of trade associations, these practices could also be scrutinised within the scope of article 6. The Board has found past infringements of article 6 on the basis of exclusive dealing arrangements (eg, ***Karboğaz*** (1 December 2005, 05-80/1106-317)). Moreover, in terms of single branding obligations, in ***Unilever*** (18 March 2021, 21-15/190-80), the Board scrutinised Unilever's rebate schemes in the market for industrial ice cream, which the Board found led to de facto exclusivity. Additionally, the Board investigated Trakya Cam to determine whether it had violated articles

4 and 6 of Law No. 4054 through the de facto implementation of its exclusive dealership system. The relevant dealership system was also subject to a Board decision whereby the Board did not grant an individual exemption to Trakya Cam's relevant conduct (2 December 2015, 15-42/704-258). As a result of the investigation, the Board considered Trakya Cam's conduct as abuse of dominance (14 December 2017, 17-41/641-280).

In ***Tadım Gıda*** (7 July 2022, 22-32/505-202) the Board terminated its investigation following its acceptance of the commitment package submitted by Tadım Gıda Maddeleri San ve Tic AŞ (Tadım). The Board had identified competitive concerns with Tadım's discount and booth installation practices, viewing them as creating exclusivity or loyalty, which could have the effect of hindering the sales of competitors' products, leading to de facto exclusivity. Tadım's commitment package included not offering bonuses or retroactive rebates for exclusivity, avoiding exclusive supply relationships in traditional channels and not providing benefits to purchasers based on non-compete or exclusive supply agreements or requiring buyers to purchase more than 60% of their total purchases from the previous year.

In ***EssilorLuxotica*** (17 August 2023, 23-39/749-259), the Board found that EssilorLuxotica (Essi-Lux) had violated binding commitments under the Board's decision of 1 October 2018 and imposed an administrative monetary fine on Essi-Lux. The Board also found that Essi-Lux had abused its dominant position in the ophthalmic contacts production and wholesale market and the optical machinery distribution market by way of agreements through which ophthalmic contacts and ophthalmic machinery were provided together, resulting in de facto exclusivity. The Board did not impose a separate administrative monetary fine in line with the ***ne bis in idem*** principle.

In ***Storytel*** (30 November 2023, 23-55/1076-380), the Board evaluated allegations that Storytel had prevented competitors from entering and operating in the market for audiobooks by way of long-term exclusivity agreements with publishers. Storytel proposed commitments to allay the Board's concerns and the Board concluded its fully fledged investigation by approving the proposed commitments.

In ***Nesine*** (29 February 2024, 24-11/194-78), the Board found that Nesine had abused its dominant position in the fixed-odds betting games market through long-term exclusivity agreements for advertising, sponsorship and broadcasting activities and decided on interim measures to prevent the imposition of exclusivity clauses. The Board imposed an administrative monetary fine on Nesine.

Law stated - 3 Ocak 2025

Types of conduct
Predatory pricing

Predatory pricing may amount to a form of abuse, as evidenced by many Competition Board (the Board) precedents (see, for example, ***TTNet*** (11 July 2007, 07-59/676-235), ***Denizcilik İşletmeleri*** (12 October 2006, 06-74/959-278), ***Coca-Cola*** (23 January 2004, 04-07/75-18), ***Türk Telekom/TTNet*** (19 November 2008, 08-65/1055-411), ***Trakya Cam*** (17 November 2011, 11-57/1477-533), ***Tüpraş*** (17 January 2014, 14-03/60-24), ***THY*** (30 December 2011, 11-65/1692-599) and ***UN Ro-Ro*** (1 October 2012, 12-47/1413-474)). That said, complaints on this basis are frequently dismissed by the Board owing to its welcome reluctance to micromanage pricing behaviour. There are high thresholds for bringing forward predatory

pricing claims, as seen in the Board's ***Sony Eurasia*** decision in which it concluded that temporary below-cost prices did not constitute an article 6 violation (7 February 2019, 19-06/47-16) (see also, ***BİM*** (27 June 2008, 08-41/568-216) and ***Migros*** (25 February 2010, 10-19/241-95)).

In predatory pricing analysis, the Board primarily evaluates whether there is anticompetitive foreclosure for competitors. Neither the Guidelines nor the precedents of the Board deem recoupment a necessary element. Predatory pricing may be established based on the following four criteria (***Kale Kilit*** (6 December 2012, 12-62/1633-598)):

- financial superiority of the undertaking;
- unusually low price;
- intention to impair competitors; and
- losses borne in the short term in exchange for long-term profits.

Moreover, the Board usually uses the "as-efficient competitor test" to analyse whether competitors could be excluded from the market due to predatory pricing. Accordingly, if the Board finds that an equally efficient competitor can effectively compete with an undertaking imposing predatory prices, in principle it will not intervene based on the consideration that the pricing practice of the relevant undertaking has no negative effect on competition and therefore on consumers (see ***Çiçek Sepeti*** (8 March 2018, 18-07/111-58)). If, however, the relevant undertaking's pricing has the potential to exclude equally efficient competitors, the Board will consider this in its assessment of general anticompetitive foreclosure, taking into account other relevant quantitative and qualitative evidence. More specifically, the undertaking's pricing strategies would be considered exclusionary for as-efficient competitors if those competitors are unable to apply effective counter-strategies for the contested portion of consumer demand (without pricing below cost). For completeness, the Board may also consider the impact on less-efficient competitors (***UN Ro-Ro*** (1 October 2012, 12-47/1413-474)). However, this is exceptional, and the Board generally favours the "as-efficient competitor test" to avoid false positives and deter competition (***Türk Telekom*** (3 May 2016, 16-15/254-109)).

Law stated - 3 Ocak 2025

Types of conduct
Price or margin squeezes

Price squeezes may amount to a form of abuse in Türkiye and precedents have resulted in the imposition of fines on the basis of price squeezing. The Board is known to closely scrutinise allegations of price squeezing (see ***Şişecam*** (21 October 2021, 21-51/712-354), ***Türk Telekom*** (19 October 2004, 04-66/956-232), ***TTNet*** (11 July 2007, 07-59/676-235), ***Dogan Dağıtım*** (9 October 2007, 07-78/962-364),***Türk Telekom/TTNet*** (19 November 2008, 08-65/1055-411) and***Türk Telekomünikasyon AŞ*** (3 May 2016, 16-15/254-109)).

For the assessment on whether there is anticompetitive foreclosure by price squeeze, the Guidelines on Abuse of Dominance state that:

- the undertaking implementing margin squeeze must be vertically integrated and active in both upstream and downstream markets;

- the product or service in the upstream market must be indispensable for operating in the downstream market;
- the undertaking implementing margin squeeze must be in a dominant position in the upstream market; and
- the margin between the upstream and downstream products must be so low as to ensure that a competitor that is as efficient as the undertaking dominant in the upstream market would be unable to profit and operate in the downstream market on a lasting basis.

Law stated - 3 Ocak 2025

Types of conduct
Refusals to deal and denied access to essential facilities

Refusals to deal and access to essential facilities are common forms of abuse, and the Competition Authority is very familiar with this type of abuse (see, for example, ***Eti Holding*** (21 December 2000, 00-50/533-295), ***POAS*** (20 November 2001, 01-56/554-130), ***Ak-Kim*** (4 December 2003, 03-76/925-389), ***Çukurova Elektrik*** (10 November 2003, 03-72/874-373), ***BOTAŞ*** (27 April 2017, 17-14/207-85), ***Sanofi*** (29 March 2018, 18-09/156-76), ***Lüleburgaz*** (7 September 2017, 17-28/477-205), ***Akdeniz/CK Akdeniz Elektrik*** (20 February 2018, 18-06/101-52), ***Enerjisa*** (8 August 2018, 18-27/461-224), ***Aydem/Gediz*** (1 October 2018, 18-36/583-284)***and İsttelkom*** (11 April 2019, 19-15/214-94)). In the Board's ***Varinak*** decision, Varinak was found to be in a dominant position in the market for maintenance and repair of linear accelerator devices as well as treatment control devices and it was concluded that it abused its dominance by way of refusing access to training certifications for the relevant devices and effectively foreclosing the market to its competitors (19 December 2019, 19-45/768-330). A similar decision was rendered in relation to Medsantek's practices in the sequence analysis devices market (28 March 2019, 19-13/182-80).

The Board also reviews whether the refusal is grounded on an objective justification (***Türk Telekom*** (27 February 2020, 20-12/153-83)). Moreover, the Board has generally declined to uphold refusal to supply allegations concerning supplier/reseller relations on the basis that there was no meaningful competition between a supplier and a reseller (***Allergan*** (8 September2022, 22-41/594-248); ***Novartis*** (11 April 2019, 19-15/215-95); and ***Baymak*** (6 September2018, 18-30/523-259)).

Law stated - 3 Ocak 2025

Types of conduct
Predatory product design or a failure to disclose new technology

The list of specific abuses contained in article 6 is not exhaustive, and other types of conduct may be deemed abusive. However, the enforcement track record shows that the Board has not been in a position to hand down an administrative fine on any allegations of other forms of abuse, such as strategic capacity construction, predatory product design or process

innovation, failure to disclose new technology, predatory advertising or excessive product differentiation.

Law stated - 3 Ocak 2025

Types of conduct
Price discrimination

Price and non-price discrimination may amount to abusive conduct under article 6. The Board has found incumbent undertakings to have infringed article 6 in the past by engaging in discriminatory behaviour concerning prices (see, for example,***TTAŞ*** (2 October 2002, 02-60/755-305) and ***Türk Telekom/TTNet*** (19 November 2008, 08-65/1055-411)) and other trade conditions (see, for example, ***Krea*** (14 September 2023, 23-43/826-292)). There is no other law that specifically regulates price discrimination.

Law stated - 3 Ocak 2025

Types of conduct
Exploitative prices or terms of supply

Exploitative prices or terms of supply may be deemed to be an infringement of article 6, although the wording of the Law does not contain a specific reference to this concept. The Board has condemned excessive or exploitative pricing by dominant firms in the past (eg, ***Port Akdeniz*** (5 November 2020, 20-48/666-291), ***Sahibinden*** (1 October 2018, 18-36/584-285), ***Tüpraş*** (17 January 2014, 14-03/60-24),***TTAŞ*** (2 October 2002, 02-60/755-305) and ***Belko*** (9 April 2001, 01-17/150-39)). However, complaints filed on this basis are frequently dismissed because of the Competition Authority's reluctance to micromanage pricing behaviour. Additionally, Ankara's 6th Administrative Court (in a decision that was upheld by the 8th Administrative Chamber of Ankara Regional Administrative Court (20 January 2021, E. 2020/699, K. 2021/68)), overturned the Board's judgment that Sahibinden's pricing behaviour in the market for online platform services for vehicle sales and real estate sales and rental had been excessive due to it lacking the required standard of proof, recognising that interference in pricing behaviour is a rare occasion (18 December 2019, E. 2019/946, K. 2019/2625).

Law stated - 3 Ocak 2025

Types of conduct
Abuse of administrative or government process

While the precedents of the Board do not yet include a finding of infringement on the basis of abuse of a government process, and this issue has not yet been brought to the Competition Authority's attention, there seems to be no reason why these abuses should not lead to a finding of an infringement of article 6, if adequately demonstrated.

Law stated - 3 Ocak 2025

Types of conduct
Mergers and acquisitions as exclusionary practices

Mergers and acquisitions are normally caught by the merger control rules contained in article 7 of Law No. 4054. However, there have been some cases, albeit rare, where the Board found structural abuses through which dominant firms used joint venture arrangements as a backup tool to exclude competitors. This was condemned as a violation of article 6 (see ***Biryay I*** (17 July 2000, 00-26/292-162) and ***Trakya Cam*** (9 February 2015, 15-08/110-46)).

Law stated - 3 Ocak 2025

Types of conduct
Other abuses

The list of specific abuses present in article 6 is not exhaustive, and it is very likely that other types of conduct may be deemed as abuse of dominance. However, the enforcement track record shows that the Board has not been in a position to review any allegations of other forms of abuse, such as strategic capacity construction, predatory product design or process innovation, failure to disclose new technology, predatory advertising or excessive product differentiation.

Law stated - 3 Ocak 2025

ENFORCEMENT PROCEEDINGS

Enforcement authorities
Which authorities are responsible for enforcement of the dominance rules and what powers of investigation do they have?

The national competition authority that enforces competition law in Türkiye is the Competition Authority, a legal entity with administrative and financial autonomy, which consists of the Competition Board (the Board), the presidency and service departments. The structure of the Authority has changed somewhat in the past and, currently, six divisions with sector-specific areas of responsibility handle competition law enforcement work through approximately 288 case handlers. A research and economic analysis department, a legal consultancy unit, a decisions unit, an information technologies unit, an external relations unit, a management services unit, a strategy development unit, an internal audit unit, a consultancy unit, a media and public relations unit, a human resources unit, a cartel and on-site investigation support unit and a regional representation unit in Istanbul assist the six technical divisions and the presidency in the completion of their tasks. As the competent body of the Competition Authority, the Board is responsible for,inter alia, investigating and condemning abuses of dominance.

The Board has relatively broad investigative powers. It may request all information it deems necessary from all public institutions and organisations, undertakings and trade associations. Officials of these bodies, undertakings and trade associations are obliged to provide the necessary information within the period fixed by the Board. Failure to comply

with a decision ordering the production of information or failure to produce requested information within the given time frame may lead to the imposition of a fine of 0.1% of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Where incorrect or misleading information has been provided in response to a request for information, the same penalty may be imposed. The minimum administrative fine for 2025 is 241,043 Turkish lira (effective as of 1 January 2025).

Article 15 of Law No. 4054 on the Protection of Competition (Law No. 4054) also authorises the Board to conduct on-site investigations. Accordingly, the Board can examine the records, paperwork and documents of undertakings and trade associations and, if need be, take copies of these; it can also request undertakings and trade associations to provide written or verbal explanations on specific topics and conduct on-site investigations with regard to any asset of an undertaking. Additionally, as stipulated under the Amendment Law and the Guidelines on Examination of Digital Data during on-site Inspections, the Board can also inspect and make copies of all information and documents held in the electronic mediums and information systems of the companies. The Guidelines also enable the Competition Authority to examine mobile devices (such as mobile phones and tablets), unless it is determined that these devices are used solely for personal use of a given employee. Regardless, the Board is authorised to conduct a quick review of any portable electronic device to ascertain the intended purpose.

Law No. 4054, therefore, grants the Board vast authority to conduct dawn raids. A judicial authorisation is obtained by the Board only if the undertaking concerned refuses to allow the dawn raid. While the mere wording of the Law allows employee oral testimony to be compelled, case handlers do allow delaying an answer as long as a written follow-up is promptly submitted. Therefore, in practice, employees can avoid providing answers on issues that are uncertain to them, provided a written response is submitted in a mutually agreed timeline. Computer records, as well as phone records such as email and other messaging (eg, WhatsApp) correspondence, are fully examined by the Authority's experts, including deleted items. Refusing to grant the Authority's staff access to business premises and records may lead to the imposition of fines.

The Board has imposed administrative monetary fines for the obstruction of on-site inspections in various decisions, even where the relevant correspondence or messages were restored or where no evidence of a violation was found; for example, see the Board's decisions in the following decisions:

- ***Hepsiburada*** (Decision 21-48/678-338 of 7 October 2021);
- ***Unmas*** (Decision 21-26/327-152 of 25 January 2022);
- ***Güven*** (Decision 22-54/831-341 of 8 December 2022);
- ***Misdağ*** (Decision 23-28/530-179 of 22 June 2023);
- ***AbbVie*** (Decision 23-47/898-318 of 5 October 2023);
- ***Epson*** (Decision 23-48/910-324 of 12 October 2023); and
- ***Lyksor*** (Decision 24-19/416-169 of 18 April 2024)
- ***Serin Beton*** (Decision 24-40/955-413 of 3 October 2024);
- ***Kloroplas*** (Decision 24-50/1125-483 of 28 November 2024);

- *Koçak Baklava* (Decision 24-33/772-322 of 15 August 2024); and
- *Arzum* (Decision 25-07/178-89 of 20 February 2025).

The Turkish Constitutional Court issued a decision (23 April 2023, application No. 2019/40991) on 20 June 2023, which may have an impact on the Authority's on-site inspection processes. The Authority's regular procedure permitted its case handlers to perform on-site inspections with a certificate of authority issued by the Board, as stipulated by Law No. 4054. However, the Constitutional Court found that the provision of law that enabled on-site inspections without a court warrant violated article 21 of the Turkish Constitution, which protects domicile immunity. Therefore, the Authority may have to apply to the Criminal Judgeship of Peace to obtain a warrant before conducting on-site inspections, a process that was already set out under the law but only occasionally applied by the Authority when undertakings refused to cooperate.

Law stated - 3 Ocak 2025

Sanctions and remedies

What sanctions and remedies may the authorities impose? May individuals be fined or sanctioned?

The sanctions that can be imposed for abuses of dominance under Law No. 4054 are administrative in nature. In the case of a proven abuse of dominance, the incumbent undertakings concerned shall be (separately) subject to fines of up to 10% of their Turkish turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Employees or members of the executive bodies of the undertakings or association of undertakings (or both) that had a determining effect on the creation of the violation are also fined up to 5% of the fine imposed on the undertaking or association of undertakings. In this respect, Law No. 4054 makes reference to article 17 of the Minor Offences Law (Law No. 5326) and theRegulation on Administrative Fines to Apply in Cases of Agreements, Concer
ted Practices and Decisions Limiting Competition, and Abuse of Dominant Pos
ition (Regulation No. 32765 of 27 December 2024). This Regulation recently came into force, revoking the previous regulation, and it sets out detailed guidelines on the calculation of monetary fines. Accordingly, when calculating fines, the base fine will be determined by considering the severity of the harm caused or likely to be caused by the violation and whether the violation is naked or hardcore in nature. It puts forth specific base fines for violations lasting: more than one year but less than two years, more than two years but less than three years, more than three years but less than four years, more than four years but less than five years, and more than five years. The Board will also consider aggravating and mitigating factors in determining the magnitude of fines. Aggravating factors include:

- recurrence of violations of articles 4 or 6 (or both) of Law No. 4054;
- continued violation after notification of an investigation decision;
- playing a decisive role in the infringement; and
-

> a breach of the confidentiality requirement under article 12 of the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position.

Mitigating factors include:

- assistance with on-site inspections (beyond fulfilling legal obligations);
- coercion by other undertakings;
- limited involvement in the violation;
- low revenue share of the activities constituting the violation; and
- the presence of overseas sales revenues in the annual gross revenues.

In addition to the monetary fine, the Board is authorised to take all necessary measures to terminate the abusive conduct, to remove all de facto and legal consequences of all unlawful actions and to take all other necessary measures required to restore competition and status to pre-infringement levels. Additionally, article 56 of Law No. 4054 provides that agreements and decisions of trade associations that infringe article 4 are invalid and unenforceable with all their consequences. The issue of whether the '"null and void" status applicable to agreements that fall foul of article 4 may be interpreted to cover contracts entered into by infringing dominant companies is a matter of ongoing controversy. However, contracts that give way to or serve as a vehicle for abusive conduct may be deemed invalid and unenforceable because of violation of article 6.

Furthermore, article 43 of the Amendment Law states that the Board, ex officio or upon parties' request, can initiate a settlement procedure. Parties that admit to an infringement can apply for the settlement procedure until the official notification of the investigation report. If a settlement is reached, a reduction of up to 25% of the administrative monetary fine may be applied. The parties may not dispute settled matters or administrative monetary fines once an investigation settlement is finalised.

Article 43 also states that undertakings or associations of undertakings can voluntarily offer commitments during a preliminary investigation or full investigation to eliminate the Competition Authority's competitive concerns in terms of articles 4 and 6 of Law No. 4054. Depending on the sufficiency and the timing of the commitments, the Board can decide not to launch a full investigation following the preliminary investigation or to end an ongoing investigation without completing the entire investigation procedure. The parties are allowed to submit commitments until three months following the official service of the investigation notice. In any event, the commitments will not be accepted for hardcore or naked violations. The Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position (Communiqué No. 2021/2) defines naked and hardcore violations as:

> agreements and/or concerted practices as well as decisions and practices of associations of undertakings on the following subjects, the goal of which is to directly or indirectly prevent, distort or restrict competition in the market for a good or service, or which have led or may lead to such effects: 1) Price fixing among competing undertakings, allocation of customers, suppliers, regions or trade channels, restriction of supply amounts or imposing quotas, collusive

> bidding in tenders, sharing competitively sensitive information including future prices, output or sales amounts; 2) fixing or determining minimum sales price of the buyer in a relationship between undertakings operating at different levels of a production or distribution chain.

Therefore, agreements regarding price-fixing, region or customer sharing and restriction of supply,procurement cartels, information exchange regarding future prices, output or sales amounts, and resale price maintenance are considered as naked and hardcore violations under Turkish law.

The highest fine imposed to date in relation to abuse of a dominant position is in the ***Google DSP*** case (12 December 2024, 24-53/1180-509), where Google incurred an administrative monetary fine of 2,607,563,963.59 Turkish lira. The Board did not disclose the administrative rate it used in calculating the fine.

Law stated - 3 Ocak 2025

Enforcement process

Can the competition enforcers impose sanctions directly or must they petition a court or other authority?

The Board is entitled to impose sanctions directly. Article 27 of Law No. 4054 deems taking necessary measures for terminating infringements and imposing administrative fines within the duties and powers of the Board. A preliminary approval or consent of a court or another authority is not required.

Law stated - 3 Ocak 2025

Enforcement record

What is the recent enforcement record in your jurisdiction?

In the past, the Competition Authority has initiated various investigations against technology firms, with a focus on article 6 infringements (for example, it has brought various cases against Google in recent years (***Google Android*** (19 September 2018, 18-33/555-273), ***Google Shopping*** (7 November 2019, 19-38/575-243), ***Google Adwords*** (12 November 2020, 20-49/675-295) and ***Google Search*** (8 April 2021, 21-20/248-105)). In 2022, in ***Meta*** (20 October 2022, 22-48/706-299), the Board decided that Meta had abused its dominant position by creating entry barriers and hindering competitors' activities through merging the data it collected from Facebook, Instagram and WhatsApp services.

In ***Trendyol*** (26 July 2023, 23-33/633-213), the Board concluded that Trendyol held a dominant position in the multi-category e-marketplace market and had abused its dominant position by taking unfair advantage over its competitors by manipulating the algorithm and using the data of third-party sellers that were active on its e-marketplace.

In ***Sahibinden*** (17 August 2023, 23-39/754-263), the Board found that Sahibinden had violated article 6 of Law No. 4054 and obstructed its corporate members' ability to use multiple platforms by preventing data portability, implementing actual or contractual

exclusivity by the same method and by non-compete obligations in its contracts and obstructing its competitors' operations.

In ***Storytel*** (30 November 2023, 23-55/1076-380), the Board evaluated allegations that Storytel had prevented competitors from entering and operating in the market for audiobooks by way of long-term exclusivity agreements with publishers. Storytel proposed commitments to allay the Board's concerns and the Board concluded its full fledged investigation by approving the proposed commitments.

In ***Meta II*** (18 January 2024, 24-05/80-32), the Board investigated allegations that Meta had abused its dominant position through discriminatory practices by offering different terms for access to WhatsApp's Channels feature. However, the Board found no evidence of abuse of dominance in the creation or listing of channels.

In ***Google General Search*** (4 July 2024, 24-28/682-283), the Board investigated allegations that Google had abused its dominant position in the general search services market by obstructing the operations of other websites through some of its offered features. The investigation focused on the allegations that various search features offered on Google's desktop and mobile search results page (including videos, "people also ask", translation box, sports box and weather box) pushed website results further down the search results page, causing them to lose traffic. However, the Board found no evidence that Google had abused its dominant position through these search features.

In ***Google DSP*** (12 December 2024, 24-53/1180-509), the Board evaluated whether Google had abused its dominant position in the demand-side platform services market. The Board concluded that Google had gained unfair advantage for its own supply-side platform service based on its dominance in the publisher ad server market, that the self-preferencing practice in question could complicate its rivals' activities and that it was therefore in violation of article 6 of Law No. 4054.

A prominent and recent example of the Board assessing discriminatory practices is the ***Krea*** case (14 September 2023, 23-43/826-292). In this case, the Board examined allegations that Krea – the exclusive owner of the right to broadcast football matches in the top-tier and second-tier leagues in Türkiye – had violated article 6 of Law No. 4054 through discriminatory practices when providing sub-broadcasting rights such as footage for news purposes or highlights to other broadcasters. The Board found that Krea held a dominant position in the sale of top-tier league highlights and that its discriminatory sales policy could amount to a violation of article 6 by affecting competition between open TV channels. Ultimately, the Board found that the commitments proposed by Krea were sufficient to eliminate these concerns and concluded its investigation.

The Board has also focused on agricultural markets and purchasing dominance. In ***Ferrero*** (7 March 2023, 24-12/213-87), the Board assessed whether Ferrero had abused its dominant position in the hazelnut and the related sweets and chocolates market. The Board was concerned that Ferrero may have violated article 6 of Law No. 4054 by reducing purchases of shelled nuts while increasing purchases of unshelled nuts and disregarding the Grain Board's reference price for hazelnuts. The Board concluded its investigation by approving Ferrero's proposed commitments and making them binding on the company.

In recent years, the Competition Authority has investigated multiple refusal to deal or preventing access to essential facilities cases (see, for example, ***MDF/ChipBoard*** (1 April 2021, 21-18/229-96), ***Türk Telekom I*** (27 February 2020, 20-12/153-83), ***Akdeniz/CK Akdeniz***

Elektrik (20 February 2018, 18-06/101-52), ***Varinak*** (19 December 2019, 19-45/768-330), ***Daichii Sankyo*** (22 May 2018, 18-15/280-139), ***Türkiye Petrol Rafinerileri*** (12 June 2018, 18-19/321-157) and ***Kardemir Karabük Demir Çelik*** (7 September 2017, 17-28/481-207)) as well as exclusive dealing cases (see, for example,***Tırsan*** (23 May 2019, 19-19/283-121), ***Mars Media*** (18 January 2018, 18-03/35-22), ***Frito Lay*** (12 June 2018, 18-19/329-163) and ***Trakya Cam*** (14 December 2017, 17-41/641-280)). It has also investigated rebate schemes (see ***Unilever*** (18 March 2021, 21-15/190-80) and ***Port Akdeniz*** (3 March 2022, 22-11/169-68)).

The length of abuse of dominance proceedings depends on the specific dynamics of each case and the workload of the Board. However, it is fair to say that the average length of these proceedings is between one and one and a half years.

Law stated - 3 Ocak 2025

Contractual consequences

Where a clause in a contract involving a dominant company is inconsistent with the legislation, is the clause (or the entire contract) invalidated?

Article 56 of Law No. 4054 ordains that any agreements and decisions of associations of undertakings that are contrary to article 4 of Law No. 4054 are invalid and unenforceable with all their consequences. The agreement stands if the clause that is inconsistent with the legislation may be severed from the contract according to severability principles.

In ***İsttelkom*** (11 April 2019, 19-15/214-94), the Board decided that İsttelkom had abused its dominance in the electronic communication infrastructure market in Istanbul through the terms in the Facility Sharing Protocol entered into with operators. İsttelkom was requested to remove the clauses that required it to own the infrastructure funded by operators and restricting its use, rental or transfer to third parties.

In the ***Google Android*** case (19 September 2018, 18-33/555-273), the Competition Authority requested certain contractual changes and ordered amendments to pre-instalment and exclusivity terms in the manufacturer contracts, including the addition of an explicit statement to enable competition in the app store.

Law stated - 3 Ocak 2025

Private enforcement

To what extent is private enforcement possible? Does the legislation provide a basis for a court or other authority to order a dominant firm to grant access, supply goods or services, conclude a contract or invalidate a provision or contract?

Private enforcement is available to the extent of seeking damages. However, Law No. 4054 does not envisage a way for private lawsuits to enforce certain behavioural or other remedies.

Article 9 of the Amendment Law introduces application of the remedy mechanism to articles 4 and 6 of Law No. 4054 and changes the mechanism previously applicable to article 7.

Accordingly, in cases where behavioural remedies have failed, structural remedies may be applied for anticompetitive conduct.

Failure by a dominant firm to meet the requirements ordered by the Board would lead it to initiate an investigation, which may or may not result in the finding of an infringement. The legislation does not explicitly empower the Board to demand the performance of a specific obligation such as granting access, supplying goods or services, or concluding a contract through a court order.

Law stated - 3 Ocak 2025

Damages

Do companies harmed by abusive practices have a claim for damages? Who adjudicates claims and how are damages calculated or assessed?

A dominance matter is primarily adjudicated by the Board. The Board does not decide whether the victims of abusive practices merit damages. These aspects are supplemented with private lawsuits. Pursuant to article 57 of Law No. 4054, real or legal persons that bear losses owing to distortion of competition might compensate the loss from the parties causing the loss. Article 58/1 of Law No. 4054 provides that the damage is the difference between the cost the injured parties paid and the cost they would have paid if competition had not been limited and, thus, indicates that the actual losses suffered by the claimant would be subject to compensation. Furthermore, the same article stipulates that competitors that were not involved in the violation but suffered because of it may claim compensation for "all of their damages" (ie, actual damages and loss of profit). Moreover, as for the damages exceeding the amount of the claimant's loss, the most distinctive feature of the Turkish competition law regime is the rule of triple damages (also known as "treble damages"). Article 58/2 of Law No. 4054, which regulates treble compensation, states the following:

> If the resulting damage arises from an agreement or decision of the parties, or from cases involving gross negligence of them, the judge may, upon the request of the injured, award compensation by treble of the material damage incurred or of the profits gained or likely to be gained by those who caused the damage.

For treble damages to apply:

- the damage should be the result of an agreement or decision of the parties or an act of gross negligence of them; and
- only the material (and not the moral) damage can be subject to compensation threefold.

The damage should be actual damage. However, the issue regarding this article's enforcement method is controversial in practical terms. Certain opinions in the doctrine argue that the judge can solely order treble compensation if the conditions are fulfilled; thus, a different multiplier cannot be used. Nevertheless, the prevailing opinion in the doctrine and the practice of the local courts are that the judge has discretion to order "up to" treble

compensation. There are decisions of courts of first instance in which the court ordered (1) standard compensation (ie, the compensation was not multiplied) (Istanbul 12th Consumer Court, 6 June 2017, 2016/82 E, 2017/220 K), (2) double compensation (Istanbul Anatolian 4th Commercial Court of First Instance, 12 December 2017, 2015/1008 E. 2017/1325 K) and (3) triple compensation (Marmaris 1st Civil Court of First Instance in the capacity of Consumer Court, 14 November 2017, 2017/17 E, 2017/494 K).

Article 58 of Law No. 4054 determines the general rule to follow in the calculation of damages (ie, "the difference between the cost the injured paid and the cost the injured would have paid if competition had not been restricted"). This is also called the "difference theory". This reference specifically concerns the artificially increased prices that resulted from the competition law violations and aims to compensate the damage suffered by purchasers who paid more than the normal price of a product because of the increase in prices applied by the cartellists.

Most civil courts wait for a Board decision before forming their own decision on the Board's decision. Through its decision of 1 November 1999 (Decision No. 99/3350 E, 99/6364 K), the 19th Civil Chamber of the Court of Appeals annulled the court of first instance's decision on damages for abuse of dominance. The annulment was due to the lower court's failure to consider whether an application had been filed with the Competition Authority, which should have been treated as a preliminary issue (also see 11th Civil Chamber of the Court of Appeals, 5 October 2009, 2008/5575 E, 2009/10045 K). Board decisions are not binding on courts. However, the existence of a Board decision becomes relevant in a number of aspects of civil litigation.

Law stated - 3 Ocak 2025

Appeals
To what court may authority decisions finding an abuse be appealed?

Final decisions of the Board, including its decisions on interim measures and fines, can be submitted to judicial review before the administrative courts in Ankara by filing an appeal case within 60 days of receipt by the parties of the justified (reasoned) decision of the Board according to Law No. 2577. Decisions of the Board are considered to be administrative acts, and thus legal actions against them shall be pursued in accordance with the Turkish Administrative Procedural Law.

Law stated - 3 Ocak 2025

UNILATERAL CONDUCT

Non-dominant firms
Are there any rules applying to the unilateral conduct of non-dominant firms?

Closely modelled on article 102 of the Treaty on the Functioning of the European Union, article 6 of Law No. 4054 on the Protection of Competition (Law No. 4054) is theoretically designed to apply to the unilateral conduct of dominant firms only. When unilateral conduct

is in question, dominance in a market is a condition precedent to the application of the prohibition laid down in article 6. That said, the indications in practice show that the Competition Board (the Board) is increasingly and alarmingly inclined to assume that purely unilateral conduct of a non-dominant firm in a vertical supply relationship could be interpreted as giving rise to an infringement of article 4 of Law No. 4054, which deals with restrictive agreements. With a novel interpretation, by way of asserting that a vertical relationship entails an implied consent on the part of the buyer and that this allows article 4 enforcement against a "discriminatory practice of even a non-dominant undertaking" or "refusal to deal of even a non-dominant undertaking" under article 4, the Board has, in the past, attempted to condemn unilateral conduct that should not normally be prohibited as it is not engaged in by a dominant firm. Owing to this new and rather peculiar concept (that is, article 4 enforcement becoming a fallback to article 6 enforcement if the entity engaging in unilateral conduct is not dominant), certain unilateral conduct that can only be subject to article 6 (dominance provisions) enforcement (ie, if the engaging entity were dominant) has been reviewed and enforced against under article 4 (restrictive agreement rules).

This allowed a breach of article 6 (dominance) by article 4 (restrictive agreements) behaviour. The Board has issued several decisions warning non-dominant entities against imposing dissimilar trade conditions on their distributors or unilaterally adopting supply regimes requiring counterparts to meet minimum objective criteria. The Board's ***3M Turkiye*** and ***Turkcell*** decisions are examples of this trend. In ***3M Turkiye*** (9 June 2016, 16-20/340-155), the Board analysed whether 3M Turkiye, which was not found to be in a dominant position in the work safety products market, discriminated against some of its dealers under article 4 and not under article 6. In ***Turkcell*** (13 August 2014, 14-28/585-253), the Board assessed whether Turkcell's (Turkiye's dominant GSM operator) exclusive contracts foreclosed the market, based on both article 6 and article 4. The Board found that Turkcell did not violate either article 6 or article 4. The court did not engage in a review of the nuances between articles 4 and 6.

Law stated - 3 Ocak 2025

UPDATE AND TRENDS

Forthcoming changes

Are changes expected to the legislation or other measures that will have an impact on this area in the near future? Are there shifts of emphasis in the enforcement practice?

Similar to the rest of the world, technology and digital platforms in Türkiye are under the Competition Authority's radar. The Authority closely follows recent national and international developments in the digital economy sector. It announced plans for its strategy development unit to focus on digital markets in May 2020. On 4 April 2021, it announced on its website that it closely scrutinises digital markets and that it is working on a legislation proposal for digital markets, referencing the EU Digital Markets Act (DMA) proposal. The Ministry of Trade prepared a Draft Regulation on Amending Law No. 4054 (the Draft Amendment) that specifically focuses on updating existing competition rules to establish and preserve competition in digital markets. The proposed changes through the Draft Amendment are in parallel with the recently implemented DMA in the European Union. Since the preparation of the original draft, several revisions have been shared with certain institutions for feedback

before its enactment. The Authority recently shared its final draft with related parties and held stakeholder meetings to gather their opinions on the current state of the draft. The Draft Amendment is a result of the Authority's efforts to regulate competition issues in digital markets, which have been ongoing since at least early 2021. However, the timing for its adoption remains unclear at the time of writing.

The Authority has prepared many advisory reports on competition issues in digital markets. It published its Final Report on the E-Marketplace Sector Inquiry on 14 April 2022, its assessment of financial technologies in payment services, which focuses on payment services and fintech ecosystems, on 9 December 2021, and its Preliminary Report on the Online Advertisement Sector Inquiry on 7 April 2023. It initiated a sector inquiry of mobile ecosystems on 12 April 2023 and published Reflections of Digital Transformation on Competition Law on 18 April 2023.

The Guidelines on Competition Infringements in Labour Markets were adopted by the Competition Board on 21 November 2024. While the Guidelines focus on violations in labour markets in relation to article 4 of Law No. 4054 on the Protection of Competition (Law No. 4054), they highlight that in the labour markets, abuses of dominant position can occur in different ways; therefore, this form of competition infringement will be assessed on the specific circumstances and characteristics of each case.

Finally, a new Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position was published in the Official Gazette on 27 December 2024, revoking the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position of 2009. While the revoked Regulation provided a distinction between "cartel" and "other violations" in determining base fines and provided lower and upper limits for these fines dependent on the type of violation, the new Regulation removes this distinction. It simply notes that fines will be determined by considering the severity of the harm caused or likely to be caused by the violation and whether the violation is naked or hardcore in nature. Moreover, while the revoked Regulation prescribed an increase in base administrative monetary fines if the violation lasted for more than one but less than five years or more than five years, the new Regulation puts forth specific base rates for different violation terms. There are base fines for violations lasting: more than one year but less than two years, more than two years but less than three years, more than three years but less than four years, more than four years but less than five years and more than five years. The new Regulation redefines aggravating factors and mitigating factors; while the revoked Regulation provided upper and lower limits for discounts available for mitigating factors, these do not exist in the new Regulation. In terms of fines for managers or employees who have had a decisive influence on violations, the new Regulation removes the lower limit and retains the upper limit only.

Law stated - 3 Ocak 2025